

**The Constitution**  
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## Version Control Sheet

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## **Document History**

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## Part 1 – Summary and Explanation

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1.1	The Council's Constitution
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1.3	How the Council (i.e. the Authority) operates
1.4	How decisions are made

### 1 - 1.1 The Council's Constitution

The Amber Valley Borough Council ('the Authority') is a local authority (a 'principal council') which is a district council, awarded borough status in 1988. It serves the area of the Borough of Amber Valley and is one of ten principal councils within the County of Derbyshire.

One of those other principal councils is Derbyshire County Council ('DCC') which is responsible for 'county functions' and which has its own Constitution. Although a 'two tier' system of local governance at principal council level is in existence within the Borough rather than a single (i.e. unitary) authority, there is no hierarchical arrangement. Both are principal councils and the Authority and DCC have different functions as well as some concurrent functions.

The Council has agreed this Constitution which sets out how the Authority operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by the law, while others are a matter for the Authority to choose as a matter of local choice.

The Constitution is divided into 16 Articles which set out the basic rules governing the Authority's business. More detailed procedures and codes of practice are provided in separate rules and protocols at the end of the document. The Constitution is therefore at the heart of the Authority's business. It is intended to be a coherent single document which can be used as a comprehensive point of reference by individuals and organisations inside and outside the Authority and as a result is not and cannot be a brief document.

## **1 - 1.2 What's in the Constitution**

Article 1 of the Constitution commits the Authority to the efficient delivery of services in an open and accountable system of government. Articles 2 – 16 explain the rights and responsibilities of members of the public and how the key parts of the Authority operate.

These are:

Article 1 - The Constitution

Article 2 - Members of the Council

Article 3 - Members of the Public and the Council

Article 4 - The Full Council

Article 5 - Chairing the Council

Article 6 - Overview and Scrutiny Committees

Article 7 - The Cabinet

Article 8 - Regulatory and Other Committees

Article 9A - The Standards and Appeals Committee

Article 9B - Governance and Audit Board

Article 10 - Partnerships

Article 11 - Joint Arrangements

Article 12 - Officers

Article 13 - Decision Making

Article 14 - Finance, Contracts and Legal Matters

Article 15 - Review and Revision of the Constitution

Article 16 - Suspension, Interpretation and Publication of the Constitution

Schedule 1 - Description of 'Executive Arrangements'

## **1 - 1.3 How the Council (i.e. the Authority) operates**

The Authority is a single corporate body which operates a 'leader and cabinet executive' form of local governance. The responsibility for the exercise of the Authority's functions is divided between the Council and the Leader and Cabinet Executive, with default functions being discharged by the 'Executive'.

Wherever possible (unless the context otherwise requires), the term 'Authority' will be used to mean the entire corporate body, with the word 'Council' being used to describe the Full Council and their committees/sub-committees (including any delegations to the Authority's officers of 'council functions') and the term 'Executive' being used interchangeably to mean the Leader of the Cabinet and/or the Cabinet (including any

delegations to Authority's officers of 'executive functions'). This attempt at a definition of terms is not always straightforward to achieve in practice, however, as legislative provision does not always use terms in a consistent manner.

## **The Council**

The Council is composed of 45 Councillors with ordinary elections three years in four whereby one-third (or as near as may be) being elected every year for a term of office of four years except the fourth year (in which elections for Derbyshire County Council are held). Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors are required to comply with a Members' Code of Conduct to ensure high standards in the way they undertake their duties. The Standards and Appeals Committee trains and advises them on the Members' Code of Conduct.

All Councillors meet together as the Council ('the Full Council'). Meetings of the Council are normally open to the public. Here Councillors decide the Council's overall policies and set the budget each year. The Council may usually delegate their functions to their committees and to Officers where the law permits. Certain matters are however reserved to Full Council by law and by local choice.

## **The Leader and Cabinet Executive**

The Council elects one of their councillors as the Executive Leader known as the Leader of the Cabinet and he or she appoints between two and nine councillors to serve with him or her in the Cabinet ('the Cabinet') except that the Cabinet may not include the Chairman (the 'Mayor') or Vice-Chairman (the 'Deputy Mayor') of the Authority. The Leader of the Cabinet is required to appoint a Deputy Leader of the Cabinet from among the members of the Cabinet.

The Leader and Cabinet assist in the formulation of certain policies agreed by Council and are responsible for implementing Council policy and the Council's spending plans where such decisions are the responsibility of the Executive. Where policy formulation is not the shared or sole responsibility of the Council (either by law or by choice made by Full Council), the Leader and Cabinet has the default role of formulating and agreeing

policies on behalf of the Authority.

Any functions which under executive arrangements are the responsibility of the 'leader and cabinet executive' may, with limited exception, be discharged by the Leader of the Cabinet. The Leader of the Cabinet may however make arrangements for the discharge of executive functions by onward delegation to the Cabinet and Officers.

### **Overview and Scrutiny of the Full Council and the Leader and Cabinet Executive**

The Council also appoints one or more overview and scrutiny committees to closely monitor the Leader, Cabinet and Officers. Members of the Cabinet cannot serve on such committees.

Councillors who are not Members of the Cabinet may usually refer specific issues to an overview and scrutiny committee for examination.

A Standards and Appeals Committee is established to advise on issues of concerns and behaviour. Regulatory bodies are appointed to deal with planning and licensing matters.

## **1 - 1.4 How decisions are made**

Decision making of the Authority is allocated between the Full Council (and its committees/sub-committees) and 'the Executive' (being the Leader of the Cabinet and his/her Cabinet), with delegation of decisions to officers of the Authority where appropriate.

The Leader and Cabinet Executive is the part of the Authority which is responsible for most day-to-day decisions.

When major decisions known as 'key decisions' are to be discussed or made, these are published in the Executive's Forward Plan in so far as they can be anticipated. If these major decisions are to be discussed with Council Officers at a meeting of the Cabinet, this will generally be open for the public to attend except where personal or confidential/exempt matters are being discussed. The Executive has to make decisions which are in line with the Council's overall policies and budget. If the Executive wishes to make a decision which is outside the budget and/or policy framework, this must be referred to the Council as a whole to decide [except (i) in the case where the proposed

decision is concerned with the Authority's budget or their borrowing or capital expenditure, the determination is authorised by the Authority's 'executive arrangements, financial regulations, standing orders or other rules or procedures or (ii) in the case where the proposed decision would be contrary to the plan or, as the case may be, the strategy adopted or approved by the Authority, the urgency provisions apply].

## **Overview and Scrutiny**

Overview and scrutiny committees support the work of the Executive and the Council as a whole. Such committees review decisions and actions taken by the Executive and the Council and make reports or recommendations to those bodies on such matters which affect the Authority's area or its inhabitants.

Such a committee can on occasions 'call-in' a decision which has been made by the Executive but not yet implemented. This enables it to consider whether the decision is appropriate. They may recommend that the decision-maker reconsider the decision.

They may also be consulted by the Executive or the Council on forthcoming decisions and the development of policy.

These Committees can review requests to consider issues through local Councillors. Further details of how this works in practice are set out in the Overview and Scrutiny Procedure Rules and supporting protocol.

The Council has established one overview and scrutiny committee known as the Improvement and Scrutiny Committee. This also acts as the Authority's 'crime and disorder committee'.

## **The Council's Officers**

The Authority has people working for it (called 'Officers') who give advice, implement decisions and manage the day-to-day delivery of its services. Officers are usually employees. Some Officers have a specific duty to ensure that the Authority acts within the law and uses its resources wisely. A protocol governs the relationships between Officers and Members of the Authority (see post Part 5.5 – Protocol on Member/Officer Relations).

## **Rights and Responsibilities of Members of the Public**

Members of the public have a number of rights and responsibilities in their dealings with the Authority. These are set out in more detail in Article 3.

Some of these are legal rights, whilst others depend on the Authority's own processes. The local Citizens' Advice can advise on individuals' legal rights. Where members of the public use specific Authority's services, for example as a Council tenant, they have additional rights. These are not covered in this Constitution.

Members of the public have the qualified right to:

- Vote at local elections if they are duly registered
- Contact their local Councillor about any matters of concern to them
- Access a copy of the Constitution online and, upon request, to purchase a paper copy of the Constitution upon payment of a reasonable sum
- Attend meetings of the Council its Committees and its Sub-Committees and the Cabinet its Committees and Sub-Committees (if any) except where, for example, personal or confidential/exempt matters are being discussed
- Petition to request a referendum on a mayoral form of executive
- Participate in Cabinet question time (subject to Part 4.4 – Cabinet Procedure Rules)
- Find out, from the Executive's Forward Plan, what major decisions ('key decisions') are to be discussed by the Executive or decided by the Leader of the Cabinet, the Cabinet or Officers and when
- See public reports and background papers, and any public record of decisions made by the Council its Committees and Sub-Committees and the Leader of the Cabinet, the Cabinet its Committees and Sub-Committees or Officers
- Any member of the public can ask a local Member to refer an issue to the Improvement & Scrutiny Committee for consideration – this is called the Councillor

Call for Action (details of how this operates are set out in the Scrutiny Procedure Rules and the supporting protocol)

- Complain to the Authority about:
  - failure to provide a service at a level previously stated or published by the Authority
  - the unhelpful attitude of an officer of the Authority
  - neglect or delay in answering a query or responding to a request for service
  - failure to follow the Authority' agreed policies, rules or procedures
  - failure to tell people of their rights
  - failure to consider all relevant information in coming to a decision
  - malice, bias or unfair discrimination
  
- Complain to the Local Government and Social Care Ombudsman if they think the Authority has not followed its procedures properly. However, they should only do this after using the Authority's own complaints process
  
- Complain to the Authority's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Members' Code of Conduct
  
- Inspect the Authority's accounts and make their views known to the external auditor. The Authority welcomes appropriate participation by members of the public in its work
  
- Access information about the Authority's activities (e.g. under the Freedom of Information Act 2000, and the Environmental Information Regulations 2004)

For further information on your rights and responsibilities as a member of the public, please see the statement of the qualified rights of members of the public to inspect agendas and reports and attend meetings, or contact the Authority's Monitoring Officer, or access the Authority's website through [www.ambervalley.gov.uk](http://www.ambervalley.gov.uk)