

Part 1

Summary, Explanation and Definitions



The Council's Constitution

South Hams District Council has a Constitution which sets out how the Council 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 law, while others are a matter for the Council to decide.

Part 2 of the Constitution is divided into sixteen articles which set out the basic rules governing the Council's business. More detailed procedures and codes of practice are provided in separate rules and protocols in Parts 3 – 7.

The main features of the Constitution are as follows:

- the Council meeting will set the overall budget and policy framework and will be a focus for debate about the performance of the Executive;
- an Executive body consisting of a Leader and other Executive Members will make decisions within the policy and budget framework established by full Council. Decisions will be delegated to the Executive as a body and (since May 2011) to individual Members;
- three Scrutiny Panels will hold the Executive to account, can make recommendations to the Executive or Council (or both) arising from the outcome of the Scrutiny process and may review not only areas of Council activity but also matters of wider local concern. The Corporate Performance & Resources Scrutiny Panel will also promote high standards of conduct and support Member's observance of their Code of Conduct;
- an Audit Committee will provide independent assurance of the adequacy of the risk management framework and the associated control environment and independent scrutiny of the Council's performance in financial and non financial matters;
- most "regulatory" decisions (this term is defined below) will continue to be made by bodies of the Council;
- the functions of the Council as harbour authority under the Pier and Harbour Order (Salcombe) Confirmation Act 1954 stand referred to the Salcombe Harbour Board which is charged with operating, improving, maintaining and managing the whole of the Salcombe Harbour Estuary for the benefit of users.

What's in the Constitution?

Article 1 of the Constitution commits the Council to principles of good governance, community leadership, public involvement and efficient, effective, transparent and accountable decision making. Articles 2 – 16 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2)
- Citizens and the Council (Article 3)
- The full Council meeting (Article 4)
- Chairing the Council (Article 5)
- Overview and Scrutiny (Article 6)
- The Executive (Article 7)
- Regulatory and Other Bodies of the Council (Article 8)
- Audit Committee and Salcombe Harbour Board (Article 10)
- Joint Arrangements (Article 11)
- Officers (Article 12)
- Decision Making (Article 13)
- Finance, Contracts and Legal Matters (Article 14)
- Review and Revision of the Constitution (Article 15)
- Suspension, Interpretation and Publication of the Constitution (Article 16)

Part 3 of the Constitution contains the description of the functions of the Council and how they are carried out – whether by the Council itself, a committee, a Member of the Executive or officers.

Part 4 contains the Rules by which the Council and its committees work, and how information can be made available to the public.

Part 5 contains codes and protocols governing how Members of the Council and officers should behave.

Part 6 contains the scheme for Members' allowances.

Part 7 contains the managerial structure of the Council's staff.

How the Council operates

The Council is composed of forty Councillors elected every four years. 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 have to agree to follow a code of conduct (set out in Part 5 below) to ensure high standards in the way they undertake their duties. The Corporate Performance & Resources Scrutiny Panel is responsible for ensuring that Members are sufficiently trained on the Code of Conduct.

All Members meet together in Council. Meetings of the Council are normally open to the public. At Council meetings, Members decide the Council's overall policies, particularly Statutory Plans and they set the budget and policy framework for the Council's business overall.

The Council appoints the Leader of the Council and the Deputy Leader of the Council at its first meeting after an election. They hold office for the next four years. The Council appoints other Members of the Executive, chairmen, vice-chairmen and members of all the other bodies of the Council and most representatives on Outside Bodies at the annual meeting of Council.

The Council may question the performance and decisions of the Executive and of other bodies of the Council. It receives annual and other reports from the Leader of the Council, Executive portfolio holders, chairmen of other bodies and individual Councillors.

There is a list of functions that are reserved to the Council (in Article 4). Many other functions are delegated to bodies of the Council or officers (see below), but the Council may determine those matters not within the remit of any of its reporting bodies.

Council meetings may include formal decision making, wider debates and presentations. The Council may also meet informally in workshops and seminars.

How decisions are made

The Executive is the part of the Council which is responsible for most day-to-day decisions. The Executive is made up of the Leader of the Council, the Deputy Leader of the Council and between three and eight other Members all appointed by the Council. The Deputy Leader and the other Members of the Executive are each individually responsible for a particular service area, or portfolio, of Council functions, namely –

- Assets
- Corporate Services
- Customer Services and ICT
- Environment Services
- Environmental Health and Housing
- Finance and Audit
- Planning, Economy and Community

When major 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 at a meeting of the Executive, the meeting will generally be open for the public to attend except where personal or confidential matters are being discussed.

The Executive has to make decisions which are in line with the Council's overall policies and budget. If it wishes to make a decision which is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

Scrutiny and Audit

Three Scrutiny Panels support and review the work of the Executive and the Council as a whole. They allow citizens to have a greater say in Council matters by holding public enquiries into matters of local concern. These lead to reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery.

Scrutiny Panels also monitor the decisions of the Executive. They can 'call-in' a decision which has been made by the Executive but not yet implemented in order to consider whether the decision is appropriate. Scrutiny Panels may recommend that the Executive reconsider the decision.

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

The Audit Committee has a more specific role in relation to the Council's financial affairs including the internal and external audit functions and monitors the internal workings of the Council (known broadly as "governance"). It is responsible for making sure that the Council operates in accordance with the law and laid-down procedures, and is accountable to the community for the spending of public money.

Regulatory Committees

A 'Regulatory Committee' is a term often used by councils to describe committees which deal with Local Authority business which the Executive are not allowed to deal with, such as licensing and planning. Regulatory Committees also normally deal with applying legislation and statutory regulations which have a degree of public or environmental protection.

In this Constitution, they include:

- the Development Management Committee (which deals with planning matters)
- the Licensing Committee (which licenses pubs, taxis and a host of other things)

Meetings of the Council's Regulatory Committees are open to the public except where personal or confidential matters are being discussed.

The Council's Staff

The Council has people working for it (called 'officers') to give advice, implement decisions and manage the day-to-day delivery of its services. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A protocol governs the relationships between officers and Members of the Council (Part 5 refers).

Citizens' Rights

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Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others are a result of the Council's own processes and decisions. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Where members of the public use specific Council services, for example as an applicant for benefit, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections, if they are registered;
- contact their local Councillor, or any other Councillor, about any matters of concern to them;
- petition the Council;
- obtain a copy of the Constitution;
- attend meetings of the Council and its other bodies except where, for example, personal or confidential matters are being discussed;
- petition to request a referendum on a mayoral form of Executive;
- with prior notification, ask questions at Executive meetings and address the Development Management and Licensing Committees;
- with no prior notification, ask questions at the Salcombe Harbour Board;
- with prior notification, address the Scrutiny Panels during the Public Forum agenda item;
- find out, from the Executive's Forward Plan, what major decisions are to be discussed by the Executive (or decided by the Executive or officers) and when this will take place;
- see reports and background papers, and any record of decisions ("minutes") made by the Council and Executive;
- complain to the Council about something the Council has done wrong, failed to do or if the Council has not treated a citizen in a professional or courteous manner;

- complain to the Local Government Ombudsman if they think the Council has not followed its procedures properly. However, they must only do this after using the Council's own complaints process;
- complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct; and
- inspect the Council's accounts and make their views known to the external auditor.

The Council welcomes participation by its citizens in its work.

For further information on your rights as a citizen, please contact the Monitoring Officer (or the Democratic Services Manager in her absence), South Hams District Council, Follaton House, Plymouth Road, Totnes, TQ9 5NE, Telephone: (01822) 813666.

A detailed statement of the rights to inspect agendas, reports, background papers and minutes of meetings of the Council and its bodies is set out in Part 4 of this Constitution.

Definitions used in the Constitution

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- (1) Any reference to an officer of the Council authorising an officer to do any act or thing shall, except where the law says otherwise, include the Chief Executive.
- (2) References to the masculine gender shall include the feminine, and the singular shall include the plural and vice versa, unless the context otherwise demands.
- (3) Reference to a statute or regulation includes any subsequent amendment(s) made to it.
- (4) Unless the context otherwise demands, the following terms mean:

"Article(s)" - the article(s) set out in Part 2 of the Constitution.

"Chairman" - the chairman of Council, a committee or the person presiding at a committee or sub-committee meeting.

"Chief Executive" - the Council's Chief Executive and **Head of Paid Service** (being designated as such under section 4 of the 1989 Act) or, in his absence, an officer nominated by him or designated as such by the Council due to his incapacity (see Article 9 of the Constitution).

"Chief Finance Officer" - the **Head of Finance & Audit** being the person designated under section 151 of the 1972 Act (and under the 1988 Act and the 1989 Act), (see Article 11 of the Constitution). Sometimes called the Section 151 Officer.

"Chief Officer" – the Chief Executive and the Corporate Directors

“Clear Day” - a day which is neither a Saturday, Sunday nor a bank holiday.

“Code of Conduct” - the South Hams District Council Code of Members’ Conduct set out in Part 5(a) of the Constitution.

“Committee” - a committee of the Council, being one of the following:

- Audit Committee
- Development Management Committee
- Licensing Committee
- Scrutiny Panels –
 - Community Life and Housing Panel
 - Corporate Performance and Resources Panel
 - Economy and Environment Panel

or such other committee as the Council may from time to time appoint for the discharge of its duties.

“Constitution” - the document adopted for the time being by the Council which sets out how the Council operates, how decisions are made and the procedures which the Council follows.

“Contract Procedure Rules” - the rules governing contracts entered into by the Council (see Part 4(6) of the Constitution).

“Corporate Property Officer” - Head of Assets who is responsible for the Council’s Capital Strategy and Asset Management Plan (see the Financial Procedure Rules in Part 4(5) of the Constitution).

“Council” - South Hams District Council.

“Council Procedure Rules” - the rules set out in Part 4(1) of the Constitution.

“Councillors” - see Members.

“Delegation Scheme” - the powers and duties of the Council which have been delegated to the executive, to committees or to officers in accordance with the Scheme (see Part 3 of the Constitution).

“Deputy Leader” - the person currently appointed to this position by the Council.

“District” - the area for which the Council is responsible.

“Extraordinary meeting” - an extra meeting of the Council which is not an ordinary scheduled meeting (sometimes referred to as special meetings).

“Financial Procedure Rules” - the financial rules of the Council for the time being adopted by it as set out in Part 4(5) of the Constitution.

“Heads of Service” - those shared Heads of Service responsible for the Council's service areas as set out in Article 9 of the Constitution.

“Leader of the Council” - shall mean the person currently appointed to this position by the Council

“Leader of a political group” - the leader of a political group as defined in the Local Government (Committees, etc.) Regulations 1989.

“Majority” - occurs when one candidate receives more votes than the sum of the votes cast for all of the other candidates.

“Meeting” - a meeting of the Council or a Committee.

“Member” - in relation to the Council a Member of the Council and in relation to any committee a person appointed as a member of that committee whether or not entitled to vote. Members are sometimes referred to as Councillors.

“Monitoring Officer” - being the person designated under section 5 of the 1989 Act or, if that person is unable to act owing to absence or illness, the person nominated as her deputy.

“Notice(s) in writing” - includes notices sent by fax or e-mail.

“Number of Members” - 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.

“Officer” - employee of the Council or the holder of a paid office under the Council other than one held by a Member. Sometimes referred to as employees.

“Ordinary meeting” - a Council meeting which is scheduled for the current Council year and appears in the Council's Schedule of meetings.

“Person presiding” - the person entitled, or appointed to preside at any meeting.

“Political group” - a political group as defined in the Local Government (Committees etc.) Regulations 1989.

“Proper Officer” - the person designated as such by the Council.

“Protocol” - the Protocol for Member/Officer Relations set out in Part 5(c) of the Constitution.

“Register of Interests” - the register of Members' interests as required by the Code of Conduct (see Part 5(a) of the Constitution).

“Relevant officer” - an officer appointed for a particular purpose.

“Responsible Budget Holder” - officers who are responsible for managing cost centres within a budget (see the Financial Procedure Rules in Part 4(5) of the Constitution).

“Senior Management Team” - Made up of the Chief Executive, Corporate Directors and Heads of Service (see Article 11 of the Constitution).

“Senior Officers” - members of the Senior Management Team and the Monitoring Officer

“Sub-committee” - a sub-committee of one of the Council's Committees.

“Task and Finish Groups” - as appointed by Scrutiny Panels from time to time.

“Terms of reference” - those functions delegated by the Council to its committees (see Part 3 of the Constitution).

“the 1972 Act” - the Local Government Act 1972.

“the 1988 Act” - the Local Government Finance Act 1988.

“the 1989 Act” - the Local Government and Housing Act 1989.

“the 2000 Act” - the Local Government Act 2000.

“Vice Chairman” - the Vice Chairman of the Council, a committee or the person presiding at a committee meeting where the chairman is absent or unable to act.