



# Argyll and Bute Council CONSTITUTION



**We have a vision for a successful,  
vibrant Argyll and Bute with a growing  
population and a thriving economy**

**Argyll and Bute Council**

[www.argyll-bute.gov.uk](http://www.argyll-bute.gov.uk)

Reviewed October 2024





## **ARGYLL AND BUTE COUNCIL**

### **THE CONSTITUTION**

The Council's Constitution comprises -

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART A**

**THE CONSTITUTION**



## THE CONSTITUTION

### PART A

The Council is a unitary authority established as a body corporate by the Local Government (Scotland) Act 1994. Since 1 April 1996, following local government reorganisation, It has been providing the full range of local government services to the people of Argyll and Bute across Scotland's second largest local authority area in urban, rural, remote and island communities. Additional information is provided on the Council's website, <http://www.argyll-bute.gov.uk/asp>.

#### The Operation of the Council

The Council's Constitution sets out how the council operates, how decisions are made and the procedures that are followed to ensure that these are efficient, transparent and accountable to local people. The constitution comprises a number of parts and these parts set out the basic rules governing the manner in which the Council conducts its business. Appendices contain more detailed procedures and codes of practice regulating different aspects of the Council's business.

The Council's political management arrangements comprise –

- (1) the Council and the Strategic Committees of Policy and Resources, Community Services and Environment, Development and Infrastructure to take decisions on matters within their powers as contained in statute or by the provisions of this Constitution;
- (2) four decentralised Area Committees with delegated authority to make decisions affecting local communities, to lead local community engagement, to lead Local Area Community Planning Groups involving Community Planning partners, to bring decision making closer to local people;
- (3) robust governance arrangements in the shape of an Audit and Scrutiny Committee (on which there is an independent non-Councillor Chair person) which scrutinises and advises on audit and risk management aspects of the Council's business;
- (4) a Planning, Protective Services and Licensing Committee which provides a strategic reference point to take decisions relating to regulatory and quasi-judicial matters including development management;
- (5) the Council may also establish Short Life Working Groups to look at policy matters in more detail and to report their findings to the Council;
- (6) a single Harbour Board to oversee the operation of all Council piers and harbours.

Both Councillors and Council employees are servants of the public, they have separate responsibilities: Councillors are responsible to the electorate; the employee is responsible to the Council as a whole. They have separate roles: the Councillors' role is to determine policy and direction, scrutinise performance and achievement of outcomes, and to participate in decisions on matters placed before them. Direct operational management of the Council's services is the responsibility of the Council's Chief Executive and Executive Leadership Team.

## **PART I**

### **THE CONSTITUTION, THE COUNCIL AND THE CITIZEN**

#### **1. The Constitution**

##### *Exercise of powers and duties*

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

##### *The Constitution*

- (2) This, together with the documents that follow, is the Constitution of Argyll and Bute Council.

##### *Purpose of the Constitution*

- (3) The purpose of the Constitution is to –
- Enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations;
  - Support the active involvement of citizens in the process of council decision making;
  - Help councillors represent their constituents more effectively
  - Enable decisions to be taken efficiently and effectively;
  - Create a powerful and effective means of holding decision makers to public account;
  - Ensure that those responsible for decision making are clearly identifiable to local people and that they explain the reasons for decisions; and
  - Provide a means of improving the delivery of services to the community.

##### *Interpretation and review of the Constitution*

- (4) Where the Constitution permits the Council to choose between different courses of action, the Council will always choose the option that it thinks is closest to the purposes set out in sub-paragraph (3).



## **2. Members of the Council**

### *Composition*

- (1) The Council comprises 36 Councillors representing 11 multi member wards of either 3 or 4 members.

### *Election and term of councillors*

- (2) The ordinary election of all councillors takes place on the first Thursday in May in years prescribed by the Scottish Parliament.
- (3) The term of office of councillors is prescribed by Parliament, with all Councillors retiring together.

### *Roles and functions of all councillors*

- (4) All councillors –

- collectively act as ultimate policy makers and carry out a number of strategic and corporate functions;
- represent their communities and bring their views into the Council's decision making process, that is to say, become the advocate of and for their communities;
- deal with individual casework on behalf of constituents assisting in resolving particular concerns or grievances;
- balance different interests, representing their ward and their electorate as a whole;
- are involved in decision making;
- are available to represent the Council on other bodies; and
- maintain the highest standards of conduct and ethics.

Appendix 1 contains a detailed description of the role and duties of a Councillor.

### *Rights and duties*

- (5) Councillors have an absolute right of access to meetings of the Council, and also to meetings of Committees and Sub-Committees in accordance with the detailed provisions contained elsewhere in this Constitution. They have the right of access to the documents, information, land and buildings that are owned or in the possession or control of the Council in so far as such access is necessary for the proper discharge of their duties as a Councillor and in accordance with the law.

- (6) Without the Council's consent, councillors must not make public information which is confidential or exempt (as defined in Section 50 of the Local Government (Scotland) Act 1973) or divulge information given in confidence to them as a Councillor to anyone other than another councillor, or an officer, entitled to know it.

*Conduct*

- (7) Councillors must at all times observe the Councillors' Code of Conduct, and the provisions of this Constitution.

*Remuneration and Expenses*

- (8) Councillors are entitled to receive remuneration and expenses in accordance with regulations approved by Parliament for approved duties specified elsewhere in this Constitution.

**3. The Full Council**

*Policy framework*

- (1) The policy framework means the following plans, policies and strategies;
- The Corporate Plan;
  - Estimates of expenditure and income (the Budget) ;
  - Corporate Improvement Plan;
  - The Performance Improvement Framework
  - Argyll and Bute Outcome Improvement Plan (SOA / Community Plan)
  - Children and Young Peoples Plan
  - The plans and strategies which together comprise the Development Plan;
  - Argyll and Bute Local Development Plan
  - Decarbonisation Plan
  - The Carbon Management Plan;
  - Argyll and Bute Council Biodiversity Duty Action Plan;
  - The Asset Management Strategy

- The Treasury Management and Investment Strategy
- The Local Housing Strategy
- The Strategic Housing Investment Plan
- The People Strategy
- The Education Vision and Strategy “Our Children, Their Future”
- ICT & Digital Strategy
- Procurement Strategy
- Customer Service Strategy
- Any other plan or strategy that the Council has decided should be part of the Policy Framework.

*Budget*

(2) The “budget” includes –

- Annual approved Corporate Plan
- The approved estimates of revenue expenditure
- Any reserve funds;
- The council tax base and setting the council tax;
- The approved programme of the Council’s capital expenditure and decisions relating to the control of the Council’s borrowing requirement.

*Functions exercised by the full Council*

(3) Only the full Council will exercise the functions –

- Adopting and changing the Constitution;
- Approving, adopting or amending the policy framework and any plan, policy or strategy which is contained within the Policy Framework;
- Approving the budget and expenditure not provided in the budget;
- Appointing a Councillor to any Executive position as defined elsewhere in this Constitution;
- Agreeing and amending the terms of reference for committees, deciding on their composition and making appointments to them;

- Reserved to it in terms of detailed provisions elsewhere in this Constitution;
- Making decisions about all other matters that by law must be reserved to the full Council.

#### *Council meetings*

- (4) A Council, Committee, Sub-committee, or Short Life Working Group meeting will be conducted in accordance with the Council's *Standing Orders for Meetings*.

#### *Responsibility for functions*

- (5) The Council's arrangements for the discharge of functions which are set out in the Council's *Scheme of Administration and Delegations* provide for certain powers and duties of the Council to be discharged on the Council's behalf by a Committee, Sub-Committee or an officer.

## **4. Decision making**

#### *Principles of decision making*

- (1) All decisions of the Council, or any Committee or Sub-Committee will be made in accordance with certain immutable principles, which are –
- Proportionality (that is to say, the action must be proportionate to the desired outcome);
  - Due consultation with and the taking of and consideration of professional advice from officers;
  - Respect for human rights (see below);
  - A presumption in favour of openness; and
  - Clarity of aims and desired outcomes.
  - Public Sector Equality Duty Compliance to eliminate unlawful discrimination, advance equality of opportunity and foster good relations, in terms of the Equality Act 2010.

#### *Decision making by Council bodies acting as quasi-judicial bodies*

- (2) In acting as a tribunal or in a quasi-judicial manner the Council, a councillor or an officer must follow a proper procedure which accords with the requirements of natural justice and the right to a fair and impartial hearing in accordance with article 6 of the European Convention on Human Rights.

## 5. Citizens' Rights and the Council

### *Information*

The Council is committed to open and transparent Government and to meeting its responsibilities under the Freedom of Information (Scotland) Act 2002. The Council has a procedure for complying with the Act in relation to the provision of information and the conduct of reviews of decisions whenever requested.

(1) Citizens have the right to –

- Attend meetings of the Council, its Committees, Sub-Committees and Short Life Working Groups except where confidential or exempt information (as defined in Section 50 of the Local Government (Scotland) Act 1973) is likely to be disclosed, and the meeting is therefore held with the public excluded;
- See reports and background papers and any records of decisions made by the Council or any Committee, Sub-Committee or Short Life Working Group; in accordance with the foregoing provisions of the Local Government (Scotland) Act 1973 and otherwise in accordance with the law;
- Inspect the Council's accounts in accordance with the relevant statutory provisions;
- Information held by the Council, in accordance with the Freedom of Information (Scotland) Act 2002 and Environmental Information (S) Regulations (EIR'S);
- Personal information held by the Council in regard to them in terms of the Data Protection Act 2018 and General Data Protection Regulations 2016/679.

### *Participation*

(2) Citizens have the right –

- to participate in public question time arrangements made from time to time by Committees, provided the matter is not one where the Committee or other body is regulated under Paragraph 4 (2) above;
- to raise issues of their choosing with the Council, represent their views to their local Councillor(s) and the Council in writing, by telephone and email, at Councillors' surgeries or other particular meetings; in accordance with the Community Engagement Strategy; at community forums or meetings arranged by the Council with a view to consulting communities on particular issues.

## *Complaints*

(3) Citizens have the right to complain to –

- The Council under its complaints procedure about any service failure;
- The Council’s Monitoring Officer under the Council’s Public Interest Disclosure Policy;
- The Scottish Public Services Ombudsman if they believe they have suffered injustice as a result of maladministration on the part of the Council;
- The Standards Commission for Scotland if they believe there has been a breach of the *Councillors’ Code of Conduct*.

## **PART II**

### **THE ROLE OF THE PROVOST, DEPUTE PROVOST, LEADER, DEPUTE LEADER AND POLICY LEADS**

#### **6. Office Holders**

##### *Provost*

- (1) The Provost and the Depute Provost are elected by the Council and normally hold office for the life of the Council in accordance with the provisions of the Local Government (Scotland) Act 1994.

##### *Leader*

- (2) The Leader and Depute Leader of the Council will be councillors elected to the position of Leader or Depute by the Council, and will normally hold office during the life of the Council unless –
- S/he is suspended from being a councillor (partially or wholly) in terms of the Ethical Standards in Public Life etc (Scotland) Act 2000 (although s/he may resume office subject to the approval of the Council at the end of the period of suspension); or
  - S/he is removed from office by resolution of the Council.

##### *Policy Lead*

- (3) The Council accepts that Policy Leads and Depute Policy Leads will be appointed to such positions by the Council on the nomination of the Leader. A Policy Lead will hold office until otherwise determined by the Council (but not beyond the life of the Council) unless:

- S/he is suspended from being a councillor in terms of the Ethical Standards in Public Life (Scotland) Act 2000 (although s/he may resume office subject to the approval of the Council at the end of the period of suspension).

Appendix 1 contains a detailed description of the role and duties of the Provost, Leader and Policy Leads.

## **7. Overview and Scrutiny**

- Responsibility for achieving outcomes identified in the Corporate and Service Plans lies with the Council who will receive performance information in accordance with the Performance Improvement Framework. Similar responsibilities lie with Area Committees in respect of Area Scorecards and the local delivery of Council Services, and the Strategic Committees for service performance and the Audit and Scrutiny Committee in respect of key elements of the Corporate Plan.
- The Audit and Scrutiny Committee (which will comprise Councillors none of whom shall be a Policy Lead and one non-Councillor member who shall be the Chair) has the remit given to it within the Scheme of Administration and Delegations and will monitor, and provide guidance and advice in relation to financial audit, governance and risk management.

## **8. Committees**

The Council will appoint the Committees set out in the Scheme of Administration and Delegations and may appoint other Committees.

**PART III****AREA COMMITTEES AND COMMUNITY PLANNING****9. Area Committees***Area Committees*

- (1) The Council will appoint area committees reflecting the Council's Political Management Arrangements.
- (2) The composition and terms of reference of the area committees appointed by the Council from time to time are set out in the Scheme of Administration and Delegations.

**10. Community Planning**

The Local Government in Scotland Act 2003 provides the statutory basis for Community Planning a process intended to ensure the members of the Community Planning Partnership work together to achieve common goals for the people of Argyll and Bute. Argyll and Bute Council is the lead partner of the Argyll and Bute Community Planning Partnership working with public service and third sector organisations and community groups. The provisions of the Community Empowerment (Scotland) Act 2015 will be given effect to within the Community Planning Framework.

**PART IV****OFFICERS****11. Officers****Chief Executive**

- (1) The Chief Executive is the head of paid service and is principal advisor to the Council on all matters of policy and strategic direction and is responsible for the implementation of Council aims and priorities, including leading the delivery of Best Value and Community Planning.
- (2) The Chief Executive provides leadership, direction and motivation for staff and is responsible for the management of other resources to ensure that the Council's policies and priorities are delivered in an efficient and effective manner.

**Executive Directors**

- (3) The Executive Directors (Customer Services and Development & Infrastructure Services) are the Heads of the Council's Service Departments.



### **Executive Leadership Team**

- (4) The Chief Executive, the Executive Directors, and the Chief Officer – Health and Social Care Partnership (HSCP) collectively form the Council’s Executive Leadership Team.
- (5) The Executive Leadership Team will act as programme board for change and improvement activity, consider strategic issues, oversee budget planning and deal with any urgent issues (ie. those issues currently raised through departmental updates).

### **12. The Monitoring Officer**

- (1) The Executive Director with responsibility for Legal and Regulatory Support Services is the Council’s Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989 and has the following functions –
  - (a) the statutory functions prescribed in that Act
  - (b) to report to the Council if s/he considers that any decision or proposed decision would be contrary to law or any decision, proposed decision or omission would be likely to give rise to maladministration on the part of the Council or any of its Members or Officers
  - (c) to maintain the Council’s Constitution and its governance arrangements
  - (d) to deal with any matter in terms of the Council’s Public Interest Disclosure Policy
  - (e) to deal with any matter referred to him/her by the Council, the Chief Executive, the Ombudsman or the Standards Commission.
- (2) A report prepared by the Monitoring Officer relating to circumstances outlined in subparagraph (b) above for submission to the full Council will have the effect of stopping the proposal or decision from being implemented until the report has been considered by the Council.
- (3) The Council has agreed a protocol to support the role of the Monitoring Officer and this is detailed in Section F.

### **13. The Chief Finance Officer**

The Executive Director with responsibility for Development and Infrastructure Services is the Council’s Chief Financial Officer in terms of Section 95 of the Local Government (Scotland) Act 1973 as amended and has responsibility for the administration of the financial affairs of the Council and for the provision of financial advice to the Council.

**PART V**

**MISCELLANEOUS**

**14. Finance, contracts and legal matters**

- (1) The Council's *Financial and Security Regulations* will govern the financial management of the Council.
- (2) The Council's Contract Standing Orders will govern the making of contracts, in the name of the Council.

**Appendix 1****ARGYLL AND BUTE COUNCIL****ROLE AND DUTIES OF COUNCILLORS****("A Job Description for Councillors")****PART A: ALL COUNCILLORS****1. INTRODUCTION**

Being a local Councillor is an honourable job which can be a rewarding and enriching experience. It is no easy task being a Councillor. Society needs to have people, whether at a national or local level who are able, willing and prepared to take decisions on its behalf about matters which affect the lives of citizens and who are prepared to be accountable for these. Democratic election gives local Councillors, like Members of Parliament, a special status in public life which brings with it opportunities to contribute to the well being of society, and in doing so, responsibilities to act fairly and within the law.

**2. ROLE OF COUNCILLORS****Local government serves the people**

Providing public services is a prime function of local government. Local Councils are not the only providers of services to the public but no other public body provides the range of services which a local Council does. Providing services to meet community needs and aspirations requires the development of policy about the nature of services to be provided and the planning of the delivery and resourcing of those services.

**As a Councillor, he or she will, therefore, participate as –**

- A policy maker
- An executive decision taker as part of the Council or a Committee of the Council
- A scrutiniser of the effectiveness of the Council in achieving its desired outcomes and delivering services

**Local government represents the people**

Councillors are elected and then have a democratic legitimacy. They represent the people of their communities (including those who did not vote for them). Whatever service delivery functions a Council has (and even if there were none) this representational function would remain.

As a Councillor, he or she, therefore –

- Is a representative of all of his or her constituents
- Is a community leader providing a focus for the development of his or her community.

### **Local government makes rules**

All societies need principles to which action conforms, if they are to safeguard the freedom, safety and well-being of their citizens. At a national level there is a clear distinction between Parliament, which makes the rules, and Government, which applies them, and the Courts (or other tribunals) which interpret them. A local Council, however, has three roles –

- It must apply certain rules which Parliament has laid down for it
- It may make rules of its own
- It must apply rules of its own which it makes

By participating in making or administering rules which affect the rights and obligations of citizens, and which include the granting or refusal of permissions, a Councillor, therefore –

- Pays attention to relevant considerations and ignores irrelevant ones
- Considers and weighs evidence
- Considers each issue on its merits
- Acts fairly and within the law

### **Local government works with others**

Not only is it for Councils to plan and deliver their own services, there is a statutory duty, under the concept of community planning, that Councils take the lead in drawing together the activities of the whole range of public bodies, and the business and voluntary sectors, in identifying a common agenda and drawing together the plans of the partners to address the needs of communities. Beyond that Councils work in a national framework with Government and Parliaments at UK and Scottish level, and with other agencies.

As a Councillor, he or she fulfils advocacy and ambassadorial role not only on behalf of his or her own community in a local context, but also representing the interests of Argyll and Bute in a wider national arena.

## **3. MAIN TASKS**

1. Regular attendance at meetings of the Council, and of any Committee, Sub-Committee and Working Groups to which the Councillor is appointed is an essential component of the policy making and executive decision taking life of the Council.

2. Dealing with issues raised by constituents by correspondence, telephone and in person on an ongoing basis, and making arrangements to facilitate access by constituents, including “surgeries” or in other ways, contributes to the representative role of the Councillor.
3. Actively being aware of issues, inside and outside the Council, affecting the Councillor’s electoral ward and the wider Argyll and Bute community fulfils a community leadership and representative function.
4. Working in partnership with other local organisations to identify and pursue local needs and aspirations and encouraging community action is fundamental to the role of community leader.
5. As a local community leader, Councillors will be invited by local organisations to participate in local forums and events which collectively provide a focus for community activity and development.
6. Representing Argyll and Bute on other organisations or agencies to which the Councillor may be appointed or nominated by the Council represents an ambassadorial function articulating the Council’s policies and views and projecting the good image of the Council and Argyll and Bute.

#### **4. Core skills and competencies**

A commitment to the ethos of public service lies at the heart of being a local Councillor. Active citizenship is a commitment to contributing to and focusing on what best improves the well-being of communities. Beyond this, succeeding within the role of Councillor requires a range of core skills which support elected members in fulfilling their governance roles effectively, thereby improving local governance and accountability of public services to local communities. The Continuous Professional Development Framework for Elected Members in Scottish Local Government identifies 10 core skills which are underpinned by a further range of detailed behaviours and is as follows:

1. **Representation**
2. **Political Awareness and Understanding**
3. **Effective Communication**
4. **Analysis and Problem-Solving**
5. **Making Good Judgements and Decision-Making**
6. **Negotiation and Lobbying**
7. **Effectively Working with Others**
8. **Providing Leadership, Focus and Direction**
9. **Personal Integrity and Values**
10. **Personal Effectiveness**

#### **5. TRAINING**

Each Councillor requires to have a personal development plan designed to achieve at least the core competencies to support the core skill set out above. The Council will provide a range of training opportunities in support of these competencies. To play his or her full part as a Councillor requires a Member to be diligent in accepting the opportunities for training which are provided.

## **PART B: POLICY LEADS**

### **6. ROLE OF POLICY LEADS**

The Council recognises that, at a political level, to help facilitate the development of policy, to help inform opinion within and outside the Council including to represent the Council's interests with Parliament, Ministers and others, additional responsibilities are placed on certain Councillors who are required to act in the role of Policy Leads for groups of Services for which the Council is responsible. These responsibilities include:-

- (1) Facilitating good communication amongst Policy Leads , the wider membership of the Council, the relevant Executive Directors and Heads of Service, relevant employees and service users, including –
- (2) Leading on those service matters of political/policy priority at meetings of the Council and other Committees and Short Life Working Groups of the Council, providing opportunities for information sessions on issues and aspects of the work relevant to the service, and by providing Policy Leads reports at Council meetings.
- (3) Supporting the Executive Director and Heads of Service in taking forward the development of service policy issues.
- (4) Promoting an awareness of service strategies, achievements and constraints in consultation with the Leader and Depute Leader of the Council in order to inform the public, Government and other public and voluntary organisations of the Council's strategies and activities and the reasons for them. To act in a positive manner as an ambassador for the service locally and nationally.
- (5) Maintaining good communications with Council employees, providing a bridge between the Council and employees in a manner that provides a political policy background for, and recognition of, their work.
- (6) Participating, at a political level, in the corporate working of the Council, maintaining regular contact with the Leader and Depute Leader of the Council, other Policy Leads, the Chief Executive and Executive Directors contributing to the development of the Council's corporate strategies in order to help ensure the development of service policy within the corporate environment.

- (7) Reporting back to the Council on meetings with organisations outside the Council, seminars etc, on Service related issues either through regular Policy Lead reports or in other ways.
- (8) The remit of a Policy Lead shall be submitted to the Council for noting.

## **7. COMMITMENTS**

- (a) The role of Policy Lead places demands on the skills and time of those who fulfil this role, including and in addition to those set out in paragraph 3 above, for example developing and maintaining a pro-active and detailed awareness and understanding of –
  - service policy issues in a local and national context;
  - financial and budget matters related to the Service ensuring these are understood by the Council.
- (b) The Council may appoint Depute Policy Lead to support Policy Leads over part or the whole of their portfolio. The expectation is that Policy Leads and their Deputies will maintain a close dialogue with Executive Directors and senior officers, meeting regularly to discuss topical Service issues. Depute Policy Leads discharge their portfolio in consort with the relevant Policy Leads and within the policies and strategies of the Council for the Service.
- (c) Policy Leads and their Deputies will work with the Leader, Depute Leader and Senior Officers to promote high standards of conduct and good working relations.

8.

## **PROVOST**

### **The role of the Provost**

The Provost is the Councillor who chairs Council meetings and in that regard possesses the powers and duties given to him/her by statute, this Constitution and the common law.

The Provost has precedence, that is to say s/he is the first citizen of the Council area.

The Provost's functions are –

- to promote involvement in the Council's activities;
- to act as the conscience of the Council;
- to secure the rights of all Members to participate in the Council's decision taking;
- to act as a focal point for the whole Argyll and Bute community;
- to carry out civic and ceremonial activities and act as an ambassador for the Council and Argyll and Bute.

The Depute Provost deputises for the Provost across the full range of responsibilities and functions.

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## **LEADER**

### **The role of the Leader**

The Leader –

- provides political leadership and direction for the organisation;
- promotes the interests of Argyll and Bute Council in particular and Scottish Local Government in general;
- represents the Council as its Political Leader at meetings and events;
- works across the Council's political groups to establish clear political direction;



- develops and manages the general relationship with the Scottish and UK Government Ministers, MPs and MSPs, COSLA, Parliament and other key organisations and individuals;
- leads the Policy Leads/Deputes ;
- provides the focus for reputation management at a political level and represents the Council to the media where the importance of the issue demands it;
- provides the key political level link between the officer structure and the political structure and provides day to day political direction.
- promotes high standards of behaviour and compliance with all relevant standards.

## **DEPUTE LEADER**

In addition to any other position s/he holds the Depute Leader deputises across the full range of functions and responsibilities.

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART B**

**STANDING ORDERS FOR MEETINGS**



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## **ARGYLL AND BUTE COUNCIL**

### **STANDING ORDERS**

#### **1. MEETINGS**

##### **FIRST MEETING AFTER AN ELECTION**

- 1.1 The first meeting of the Council after an ordinary election of Councillors will be held within 21 days from the date of the election. At that meeting, the Council will –
  - 1.1.1 Elect the Provost;
  - 1.1.2 Elect the Depute Provost;
  - 1.1.3 Appoint a Leader and Depute Leader of the Council;
  - 1.1.4 Appoint the Members of Committees of the Council;
  - 1.1.5 Appoint the Chairs and Vice Chairs of these bodies;
  - 1.1.6 Confirm the appointment of Policy Lead Councillors and Depute Policy Lead Councillors;
  - 1.1.7 Appoint the Members to represent the Council on any Joint Committees or Boards which the Council should appoint, if they need to be appointed at this meeting; if they do not they can be made at another Council meeting;
  - 1.1.8 Appoint persons to serve on various outside bodies if these appointments need to be made by the Council at this meeting; if they do not they can be made at another Council meeting or by a Committee.
  - 1.1.9 Deal with any competent business, keeping to the terms of any law and these Standing Orders.

##### **ORDINARY MEETINGS**

- 1.2 Ordinary meetings of the Council will be held on the dates and at the times which the Council decide. These meetings will normally be held in Kilmory Castle, Lochgilphead, but the Council or the Provost may decide that alternative arrangements can be made, such that a meeting may be held elsewhere, or an ordinary meeting may be held on a wholly virtual basis by electronic means or in circumstances whereby some Councillors attend in person and others take part on a virtual basis.

##### **SPECIAL MEETINGS**

- 1.3 A Special Meeting of the Council may be called at any time –
  - 1.3.1 If the Provost takes the view that one is necessary; or
  - 1.3.2 If at least one-fourth of the members of the Council want one to be held; if they do, they must all sign a notice which must be

given to the Executive Director with responsibility for Legal and Regulatory Support Services and the notice must set out the business which these Members wish the Council to consider at that meeting; in this case the meeting will be held within fourteen days of the date when the Executive Director with responsibility for Legal and Regulatory Support Services receives the notice. The requirements for written notification shall also be satisfied by an email of the notice being submitted by individual members via their Council email account.

## **2 HOW MEETINGS ARE CALLED**

### **Public Notice**

- CS** 2.1 Three clear days at least before a meeting of the Council, the Executive Director with responsibility for Legal and Regulatory Support Services will display a notice at the Council's Headquarters saying when and where the meeting will be held and any associated arrangements. In the event the meeting is being held on a virtual/hybrid basis details on how to access the meeting will be included in the Notice and published on the Council website. If a meeting is called at shorter notice in case of urgency then the notice will be displayed at the time it is called ["Clear days" excludes the day of publication and the day of the meeting and does not include Saturdays, Sundays or public holidays].
- CS** 2.2 If the meeting is called by Members of the Council, the notice must be signed by those Members and must set out the business which they wish the Council to consider; and only that business can be considered at the meeting.

### **A Summons must be sent to each Member**

- CS** 2.3 Seven days at least before a meeting of the Council, the Executive Director with responsibility for Legal and Regulatory Support Services will issue a summons to each Member asking that Member to attend the meeting. Saturdays, Sundays and Public Holidays will not be excluded for the purpose of this Standing Order. The summons will set out the business which the Council will be asked to consider at that meeting. It will be signed by the Executive Director with responsibility for Legal and Regulatory Support Services and sent electronically to each Member.
- CS** 2.4 If a Member does not receive a summons the meeting will still be valid.

## **3 THE AGENDA AND REPORTS FOR MEETINGS**

### **Agenda**

- CS** 3.1 The summons will include an Agenda of the items of business for the meeting. These will be set out in the order in which the Council will consider them, but this can be changed at the meeting.

- CS** 3.2 An item of business may only be considered at a meeting of the Council if:-
- 3.2.1 A copy of the Agenda, including the item, is available for any members of the public who wish to look at it, as provided in paragraph 3.3 below; or
  - 3.2.2 The Provost is of the opinion that the item should be considered at the meeting as a matter of urgency because there are special circumstances; in which case the special circumstances will be recorded in the minutes of the meeting.

**CS The public can see copies of the Agenda and most reports**

- 3.3 Copies of the Agenda and, except as set out in paragraph 3.4 below, copies of any report for a meeting will be open and available at the Council's Headquarters and on the Council website for at least 3 clear days before the meeting for any members of the public who may wish to look at these.

**Reports can sometimes not be available to the public**

- CS** 3.4 When the Executive Director with responsibility for Legal and Regulatory Support Services believes there is a proper reason she/he may exclude from the copies of reports which are to be available for members of the public who wish to look at them, the whole of a report (or any part of a report) which relates only to items of business which she/he thinks are likely to be considered when the meeting is not to be open to the public. Every copy of any report in that category (or part of that report) will either –
- 3.4.1 Be marked “Not for Publication” and every copy (or the appropriate part) will say what kind of exempt information the report contains, in keeping with the law. [The relevant law in this case is Schedule 7A to the Local Government (Scotland) Act 1973].
  - 3.4.2 Be marked “Confidential” and every copy (or the appropriate part) will say that it contains confidential information, in keeping with the law. [The relevant law in this case is Section 50A(3) of the Local Government (Scotland) Act 1973].
- CS** 3.5 It should be borne in mind that reports marked “Not for Publication” or “Confidential” containing information not open to the public at a meeting may require to be disclosed subsequently and made available in compliance with a request for information in terms of the Freedom of Information (Scotland) Act 2002.

- CS** 3.6 Reports from Directors for a meeting must be given to the Executive Director with responsibility for Legal and Regulatory Support Services as early as possible and certainly not later than noon two working days before the day on which the notice of the meeting is to be issued. If the Director does not receive a particular report by that time, he may leave it off the Agenda.
- CS** 3.7 Recording - No sound, film, videotape, digital or photographic recording of the proceedings of any meeting shall be made without the prior approval of the Council or the Provost, other than recording of the proceedings of meetings agreed by the Council for webcasting or as a back-up for a live webcast, or as an alternative where live webcasting is not possible.

#### **4 HOW MANY MEMBERS MUST ATTEND A MEETING**

##### **Quorum**

- CS** 4.1 There must be a minimum number of Members present at a meeting of the Council. This is known as the quorum. The quorum of the Council will be 9 Councillors (that is a quarter of all the seats) except in certain special circumstances set out in the relevant law. No business can be considered at a meeting of the Council unless a quorum is present. [The relevant law in this case is Schedule 7 to the Local Government (Scotland) Act 1973]. For the avoidance of doubt a member that is attending the meeting virtually in accordance with the arrangements for the meeting will be considered as present.

##### **What happens if there is no quorum?**

- CS** 4.2 If there are vacancies in more than 12 seats (that is a third) on the Council, the quorum will be a quarter of the number of Members remaining, but the quorum will never be less than 5 Members (that is an eighth of all the seats).
- CS** 4.3 If, ten minutes after the time set for the start of a meeting of the Council, a quorum is not present, the meeting will be abandoned and the Executive Director with responsibility for Legal and Regulatory Support Services will record that no business was considered because there was no quorum.
- CS** 4.4 If at any time during a meeting there is a question about whether or not there is a quorum, the Provost will, after allowing an interval of 5 minutes, ask the Executive Director with responsibility for Legal and Regulatory Support Services to count the number of Members present.
- CS** 4.5 If a quorum is not present, the meeting will be adjourned to another time the same day, or to another date and time as the Provost may decide then or afterwards.

**5 WHO PRESIDES AT MEETINGS?**

- CS** 5.1 At a meeting of the Council, the Provost, if present, will preside.
- CS** 5.2 If the Provost is absent from a meeting the Depute Provost will preside; if they are both absent, another Councillor chosen by the Members will preside.
- CS** 5.3 If at any time during the meeting the Provost is present she/he will preside and similarly, in the absence of the Provost, the Depute will preside during any time she/he is present.
- 5.4 The Member who is presiding at the meeting must do so from the specified location for the meeting unless alternative arrangements have been made.

**6. WHAT HAPPENS IF A MEMBER FAILS TO ATTEND MEETINGS?**

- 6.1 If a Councillor, throughout a period of six consecutive months, does not attend any meeting of the Council or any Committee Sub-Committee or Short Life Working Group of the Council, or any joint Committee to which any function of the Council has been delegated, and unless the Member has been granted leave of absence by the Council, the Executive Director with responsibility for Legal and Regulatory Support Services will inform the Council. In that event, the Council will consider whether the failure to attend was due to a reason approved by them. If they are not satisfied as to the cause of the failure, the Councillor will cease to be a Member of the Council.

**7 MEMBERS OF THE PUBLIC ARE NORMALLY ALLOWED TO ATTEND MEETINGS**

- CS** 7.1 Every meeting of the Council, its Committees, Sub-Committees and Short Life Working Groups will be open to the public, except in special circumstances which are set out below.

**When are the public sometimes not allowed to be present?**

- CS** 7.2 The public must be excluded from a meeting of the Council or a Committee, Sub-Committee or Short Life Working Group when an item of business is being considered if it is likely, because of the business itself or what might be said, that confidential information as meant by the relevant law would be given to members of the public. [The relevant law in this case is Section 50A(2) of the Local Government (Scotland) Act 1973].

- CS** 7.3 The Council may decide, by passing a resolution at any meeting, to exclude the public when they are considering an item of business if it is likely, because of the business itself or what might be said, that exempt information as meant by the relevant law would be given to members of the public. The resolution to exclude the public will make clear the proceedings or which part of the proceedings of the meeting it applies to and state the description of the exempt information. [The relevant law in this case is Section 50A(4) of the Local Government (Scotland) Act 1973].
- CS** 7.4 It is always open to the Council in order to stop or prevent disorderly conduct or other misbehaviour at a meeting, to exclude or eject members of the public whose presence or conduct is impeding or is likely to impede good conduct of the meeting. If a member of the public interrupts any meeting, the Provost may warn the person. If they continue the interruption the Provost may order that they are removed from the meeting.

## **8 THE ORDER IN WHICH BUSINESS IS CONSIDERED AT MEETINGS**

- CS** 8.1 The items of business at ordinary meetings of the Council will be considered in the following order, but the order may be changed if the Provost decides.
- 8.1.1 The Executive Director with responsibility for Legal and Regulatory Support Services will record the names of the Members present, and apologies will be given on behalf of any Members who have advised the Provost or the Director they will not be present;
- 8.1.2 Any deputations to be heard in terms of Standing Order 18;
- 8.1.3 Motions which it is proposed should be considered without previous notice at the end of the meeting will be read to the meeting by the Executive Director with responsibility for Legal and Regulatory Support Services;
- 8.1.4 Other items of business which it is proposed should be considered as a matter of urgency will be announced;
- 8.1.5 Declarations of interest by Members, if any;
- 8.1.6 Minutes of the previous meeting or meetings of the Council will be considered as a correct record.
- 8.1.7 Minutes or reports by Committees or Short Life Working Groups will be considered in respect of any items on which the Committee has not already acted under delegated powers;

- 8.1.8 Other business which is included on the agenda, including those items advised for noting only, which in the case of the latter shall not be subject to debate or discussion nor shall it be competent to move any motion other than that the matter be referred to the next meeting of the committee as a substantive item.
- 8.1.9 Questions submitted by Members in terms of Standing Order 15;
- 8.1.10 Notices of Motion previously submitted in terms of Standing Order 13;
- 8.1.11 Notices of Motion intimated at the start of the meeting in terms of Standing Order 14, provided the Provost is of the opinion that it is a matter of urgency and the Council agree to consider the Motion;
- 8.1.12 Urgent Business, intimated at the start of the meeting, provided the Provost is of the opinion that it is a matter of urgency and the Council agree to consider the business.

## **9 THE POWERS AND DUTIES OF THE PROVOST**

- CS** 9.1 At all times, Members of the Council will respect the authority of the Provost. If the Provost speaks, any Member who is speaking to the Meeting will stop.
- CS** 9.2 The Provost's duty is to preserve order and ensure that Members are given a fair hearing by the Council. If two or more Members try to speak at the same time, the Provost will decide who is to speak first.
- CS** 9.3 The Provost will decide all matters of order, competency, relevancy and urgency and that ruling will be final.

### **What might happen if a Member misbehaves**

- CS** 9.4 If a Member persistently misbehaves by disregarding rulings by the Provost, or behaves improperly or offensively, or wilfully obstructs the business of the Council, the Provost may take any of the following courses of action either separately or in sequence –
  - 9.4.1 Warn the Member about her/his behaviour;
  - 9.4.2 Tell the Member not to speak during the remainder of the debate on the item being discussed.

- 9.4.3 Move that the Member should not speak again during the meeting. The motion will not require to be seconded, and will be decided without discussion; if the motion is carried the Member will not speak again during that meeting;
- 9.4.4 Move that the Member should be suspended for the remainder of the meeting. The motion will not require to be seconded, and will be decided without discussion; if the motion is carried the Member will leave the meeting immediately;
- 9.4.5 Adjourn the meeting for a short time as seems reasonable to the Provost in the circumstances.

- CS** 9.5 If there is disorder at any meeting of the Council, the Provost will be entitled to adjourn the meeting to another time the same day, or to another date and time as she/he may decide then or afterwards, and leaving the Chair in these circumstances will mean that the meeting is adjourned immediately.

## **10 RULES OF DEBATE**

### **How motions and amendments are moved and decided on**

- CS** 10.1 Every motion and amendment must be moved and seconded. The terms of all motions and amendments will be stated immediately when they are proposed and before the Member speaks to the motion or amendment. When a recommendation is on the papers before Members, preliminary discussion of the proposal is allowed. However it is open to the Provost at any time during that discussion to give three minutes warning that he requires any motion and amendments to be placed before him or the discussion will be brought to a close. If the Provost decides, a motion or amendment will be written down, signed by the mover and seconder, and given to the Executive Director with responsibility for Legal and Regulatory Support Services who will read it to the meeting.
- CS** 10.2 When a motion and one amendment only are before the meeting a vote will be taken between the motion and the amendment and the proposal receiving a majority of the votes will become the decision of the Council.
- CS** 10.3 When a motion and two or more amendments are before the meeting, and if one of the proposals implies that no action or no immediate action be taken, a first vote will be taken between for and against “no action” or “no immediate action” as the case may be. If the proposal for “no action” or “no immediate action” is carried it shall become the decision of the meeting. If the proposal for “no action” or “no immediate action” is not carried a further vote will be taken amongst the remaining proposals as set out in 10.4 below.



- CS** 10.4 When a motion and two or more amendments (none of which implies that no action or no immediate action be taken) are before the meeting, the vote will be taken on all the proposals, each Member having one vote. If a proposal receives the support of an overall majority of the Members taking part in the vote, that proposal will become the decision of the meeting. In the event that none of the proposals receives the support of an overall majority of the Members voting, the proposal which has received the fewest votes will be dropped and a fresh vote will be taken on the remaining proposals and so on until one proposal has received the support of a majority of the Members voting. That proposal will become the decision of the meeting. In the event of the votes for two or more proposals being equal, the Provost will have a second or casting vote which s/he may use to decide which of them is to be dropped.
- CS** 10.5 Motions or amendments which are not seconded will not be discussed or recorded in the minutes. Except when the vote is taken by roll call, any Member who has moved a motion or amendment and who is in a minority of one will, if she/he asks, have her/his dissent from the eventual decision recorded in the minutes.
- CS** 10.6 A motion or amendment may be withdrawn by the mover if her/his seconder and the Council agree. Such a motion or amendment will not be inserted in the minutes.
- 10.7 A motion for the approval of a report of or a minute of a Committee or Short Life Working Group will be considered as an original motion and any proposal involving alteration or rejection of the report or minute will be dealt with as an amendment.
- 10.8 The Chairman of a Committee or short Life Working Group, if present, has the right to move approval of the report of or minute of that Committee.
- 10.9 In respect of any item on a committee agenda marked as for noting only, then the only competent motion [other than to note] will be for the matter to be referred to the next meeting of the committee as a substantive item. If such a motion is put to the meeting there shall be no other procedure than a vote for or against the terms of the motion. If the motion is carried then it will stand referred if it is lost then the item is noted.

#### **When a Member can speak and for how long**

- CS** 10.10 It is open to the Provost at any time to rule that, due to pressure of business and the number of Members wishing to speak to an item, no Member who had already spoken may speak again except on a point of order.

- CS** 10.11 A Member moving or seconding a motion or amendment will not speak for more than three minutes unless the Provost allows more time. Other Members will not speak for more than two minutes.
- CS** 10.12 The mover of an amendment and the mover of the original motion each have a right of reply, in that order, for not more than three minutes.
- CS** 10.13 When the mover of the original motion has replied, the Provost will close the debate, and no other Member will be allowed to speak. The Executive Director with responsibility for Legal and Regulatory Support Services or the Provost will announce the terms of the motion and amendment(s) and take the vote.

## **11 HOW VOTES ARE TAKEN**

- CS** 11.1 Except where the law or the Standing Orders say something different, all questions coming or arising before the Council will be decided by a majority of the Councillors present and voting on that question.
- CS** 11.2 Where an ordinary meeting is held on a wholly virtual basis by electronic means or in circumstances whereby some Councillors attend in person and others take part on a virtual basis a vote will be taken by calling the roll.

In meetings where all members are present in the same physical location a vote will be taken by a show of hands except in the following circumstances.

### **Calling the roll**

- CS** 11.3 A Member may ask for a vote to be taken by calling the roll. If a quarter of the Councillors present agree then the vote will be taken in that way and the names of those voting for or against the motion or amendment will be taken down and recorded in the minutes.

### **What happens if votes are equal**

- CS** 11.4 In the case of an equality of votes, the Provost will have a second or casting vote except where the matter which is the subject of the vote relates to the appointment of a Councillor to any particular office or Committee in which case the decision will be decided by lot [which means a process whereby chance will determine the decision].

### **Different arrangements apply to appointments**

- CS** 11.5 When Councillors are to be appointed to any positions to be filled by the Council, and where the number of candidates nominated exceeds the number of vacancies, the Councillors to be appointed will be determined by a vote or votes in each of which Members will be entitled to vote for as many candidates as there are vacancies; but they may not cast more than one vote for any candidate. The name of the candidate having fewest votes will be deleted from the list and a fresh vote, or votes, will be taken. This process of elimination will be continued until the number of candidates equals the number of vacancies.
- CS** 11.6 Where only one vacancy requires to be filled, and any candidate has an absolute majority of the votes, the candidate will be declared appointed. Otherwise, the name of the candidate having fewest votes will be deleted from the list. This process of elimination will be continued until one candidate has a majority of the votes.
- CS** 11.7 If in any vote among more than two candidates there is equality of votes among the candidates having the least votes, the candidates whose names will be eliminated will be determined by an additional vote. The candidate having fewest votes will be deleted from the list. Where in any additional vote there is equality in votes, the candidate to be eliminated will be determined by lot.
- CS** 11.8 The provisions of the preceding paragraphs will apply in the case of the appointment of any other person (other than a Councillor) except that where there is an equality of votes the Provost will have a second or casting vote.

### **Whipping**

- CS** 11.9 Paragraphs 11.10 and 11.11 will apply on any occasion when an item of business is the subject of consideration at any meeting and that business –
- (1) has been the subject of prior discussion at a meeting of a political group; and
  - (2) at the meeting of the political group there has been an agreement that the group whip is applied to that business.
- CS** 11.10 At the commencement of the consideration of the item of business the Leader, or another member of the group present, will disclose to the meeting that the group whip has been applied to members of the group who are present, and will specify the particular matter or matters in respect of that business to which the whip applies.

- CS** 11.11 The Leader, or the other member, will give notice in writing to the Executive Director with responsibility for Legal and Regulatory Support Services, at the time the disclosure is made in terms of paragraph 11.10, setting out the information disclosed, and the Director will –
- record in the minutes of the meeting the information disclosed; and
  - Keep a register of notices given to him, which register will be open to inspection by any person.

## **12 PROCEDURAL MOTIONS**

- CS** 12.1 The Provost may adjourn a meeting for a reasonable interval if s/he decides there is a good reason to do so.

- CS** 12.2 The Council may adjourn any meeting for a reasonable interval or to another date as the Council may agree then, or that failing, the Provost may decide then or afterwards. The vote on such a motion, on being seconded, will be taken without amendment or discussion and by roll call vote. A similar motion to adjourn to another day will not be competent within a period of one hour after the decision on the earlier motion.

### **Closing debate**

- CS** 12.3 The following closure motions will be permitted during discussion of another motion provided the Member moving the closure motion has not spoken during the debate. They will be moved, seconded and voted on without discussion. The Provost will proceed as follows –

#### 12.3.1 “That the question be now put”

If the Provost considers the matter has not been sufficiently discussed, she/he may refuse to accept the motion; if the motion is accepted it will be put to the vote. If the motion is carried, the movers of any amendment and of the original motion will be entitled to a right of reply and the Provost will then put the original motion and amendment to the vote. If the closure motion is not carried, a similar motion may be made after every three additional Members have spoken.

#### 12.3.2 “That the meeting do now adjourn”

If the Provost is satisfied that the matter before the meeting has been well enough discussed, s/he may refuse to accept this closure motion and instead put the motion “that the question be now put”. If the Provost is of the opinion that the matter has not been sufficiently discussed and cannot reasonably be discussed any longer on that occasion, the adjournment motion will be put to the vote without giving the mover of the original motion or amendment a right of reply; if the adjournment motion is carried, the original motion and remaining business will stand over until a resumed meeting of the Council. If this closure motion is not carried, a similar motion will not be competent within a period of one hour after the decision on the previous closure motion.

### **13 HOW A MEMBER SUBMITS A MOTION FOR THE NEXT MEETING**

The requirements for written notification at 13.1 and 13.2 shall also be satisfied by an email of the motion being submitted by individual members via their Council email account.

**CS** 13.1 If a Member wishes a motion to be considered at a meeting (other than one on a matter of urgency under Standing Order 14) it must be written down, signed by the Member and countersigned by another Member, and given or sent to the Executive Director with responsibility for Legal and Regulatory Support Services to be received by her/him at least 10 clear days [clear days excludes the day of submission of the Motion and the day of the Meeting but includes Saturdays, Sundays or Public Holidays] before the next ordinary meeting of the Council. This is called giving notice of a motion.

**CS** 13.2 These notices of motion will be included on the agenda for the next meeting in the order in which the Executive Director with responsibility for Legal and Regulatory Support Services receives them. If the Provost considers that more than one of these motions deals with the same subject, only the motion received first will be considered.

The requirements for written notification shall also be satisfied by an email of the motion being submitted by individual members via their Council email account.

**14 HOW A MEMBER SUBMITS AN URGENT MOTION**

- CS** 14.1 A motion which does not relate to the business which is included on the agenda for a meeting may be considered at the end of a meeting even if a Member has not given notice of it under Standing Order 13. It will only be considered if the Provost is of the opinion that it is a matter of urgency because of special reasons, which will be recorded in the minutes, and the Council agree to consider the motion. However, if a Member wishes a motion considered as a matter of urgency, it must be given to the Executive Director with responsibility for Legal and Regulatory Support Services not later than two hours before the start of the meeting. It will be read to the meeting by the Director at the point stated at Standing Order 8.1.3. If the Provost considers that the motion is not urgent then it will be included as an item of business for the next ordinary meeting, unless it is disposed of in some other way before then.

The requirements for written notification shall also be satisfied by an email of the motion being submitted by individual members via their Council email account.

**15 A MEMBER MAY ALSO SUBMIT QUESTIONS FOR A MEETING**

- 15.1 A Member may put a question to the Leader or to a Policy Lead Councillor at any ordinary meeting of the Council. The question, which may comprise a series of component parts about the same subject, must be about any relevant and competent business which is not included on the agenda for the meeting. The Member must give the question in writing to the Executive Director with responsibility for Legal and Regulatory Support Services not later than 48 hours before the start of the meeting.
- 15.2 The person who is being asked to answer a question will decide whether to answer it in writing or orally at the meeting. Questions and any written answers, numbered in the order in which they have been received, will be tabled at the start of the meeting.
- 15.3 Arising from each answer given, the Member who asked the question may ask one supplementary question to clarify the answer given.
- 15.4 No discussion will be allowed, and it will not be competent to move any motion arising from a question or the answer given.
- 15.5 A Member may not submit more than two written questions for any one meeting. If the Provost is of the opinion that a question is out of order for any reason, it will not be answered.

- 15.6 Written questions and any written answers will be recorded in the minutes.

## **16 CAN A DECISION OF THE COUNCIL BE CHANGED**

- CS** 16.1 No motion which seeks to alter or revoke a decision of the Council or has that effect will be considered within a period of 6 months of the original decision.
- CS** 16.2 However, it will be competent to review a decision before the end of the 6 month period, provided –
- 16.2.1 That notice has been given on the agenda that the previous decision may be altered or revoked, unless it is inherent in the terms of a report of or minute of a Committee submitted to the Council; and
- 16.2.2 The Provost is satisfied that a material change of circumstances has occurred. This means that the Provost must decide first whether there has been a new development which has a bearing on the original decision or that some important piece of information was not available when the original decision was made. Secondly, the Provost must decide whether this change is material, which means that if the change had taken place before the Council took their decision, or they had known all the facts on which the decision was based, the change of circumstances would have influenced their judgement and they might reasonably have taken a different decision.

## **17 MINUTES OF MEETINGS**

- CS** 17.1 Minutes of meetings of the Council and its Committees, Sub Committees and Short Life Working Groups will be prepared by the Executive Director with responsibility for Legal and Regulatory Support Services and will be included on the agenda for the next ordinary meeting of the Council, its Committees, Sub Committees or Short Life Working Groups as appropriate. At that meeting they will be considered, corrected if need be, and where they are held to be a correct record of the meeting, they will be signed by the person presiding at that next ordinary meeting.
- CS** 17.2 No discussion or amendment will be competent on minutes submitted other than an amendment to the effect that they are not a correct record. Any amendment will include the words of the alteration which is proposed to the minutes. An objection to the correctness of a minute will be dealt with by way of an amendment to a motion approving the minutes.

- CS** 17.3 Only Members of the Council who were present at the meeting to which the minutes relate may vote on the correctness of these minutes.
- CS** 17.4 A written summary prepared by the Executive Director with responsibility for Legal and Regulatory Support Services in terms of the relevant law will not constitute part of the minutes and will not be subject to the preceding paragraphs of this Standing Order. [The relevant law in this case is Section 50C(2) of the Local Government (Scotland) Act 1973.]

## **18 DEPUTATIONS**

- CS** 18.1 Subject to what is said in Standing Order 18.2 below the Council or any Committee or Sub-Committee may hear deputations, of not more than 3 persons on any matter that is included within their terms of reference and delegation, other than where they are exercising a statutory function to determine an application by any person.
- CS** 18.2 Where a matter is the subject of consideration by more than one Committee, Sub-Committee or Short Life Working Group, or by one or more of those and the Council, or at more than one meeting of the same body, a request by a deputation to be heard will be considered only at the meeting where it is anticipated that matter will be finally determined (as distinct from being the subject of preliminary consideration or the subject of a recommendation). It will not be competent to consider a request to be heard on the same matter within a period of six months of the original decision, unless the Provost is satisfied that a material change of circumstances has occurred: always provided that where a matter may be the subject of consideration on more than one occasion the Provost will, in her/his sole discretion, determine whether on each occasion the issue to be discussed is so closely related as to be regarded as the same matter.
- CS** 18.3 Every application for a deputation must be in writing, signed by a representative of the organisation or group wishing to be heard, indicating whether they wish to be present in person or virtually, and setting out the matter on which they wish to be heard and delivered to the Executive Director with responsibility for Legal and Regulatory Support Services no later than three working days before the meeting concerned; but the Provost (i) may, at her/his sole discretion allow an application to be considered at shorter notice and (ii) will determine whether a deputation will be held in person or virtually.

The requirements for written notification at 18.3 shall also be satisfied by an email of the deputation being submitted by individual members via their Council email account.



- CS** 18.4 When an application is considered whether to hear a deputation, the merits of the matter itself will not be discussed. Unless the meeting agrees unanimously to hear or to refuse to hear the deputation, a vote will be taken without discussion on whether to hear the deputation.
- CS** 18.5 A deputation will have 10 minutes to present its case. If the meeting decides to hear more than one deputation on the same subject, the deputations will be heard together, and the Provost will decide how much time to allow, up to a maximum of 10 minutes each.
- CS** 18.6 Any Member may put one question to the deputation that is relevant to the subject, but the merits of the case must not be discussed by Members whilst the deputation is being heard.
- CS** 18.7 It will not be competent to move any motion arising from the subject matter raised by a deputation, unless the matter is included as an item of business on the agenda for the meeting, and discussion will be reserved until that item is reached.

## **19. COMMITTEES AND SUB-COMMITTEES**

- 19.1 Committees and Sub-Committees will be appointed in terms of the Scheme of Administration and Delegations which is referred to in Standing Order 26.
- 19.2 Standing Orders marked CS will apply to meetings of any Committee, Sub-Committee and Short Life Working Group with suitable modification.

## **20. ARRANGING MEETINGS OF COMMITTEES AND SUB-COMMITTEES**

- 20.1 The dates of ordinary meetings of Committees will be decided by the Council on the basis of a programme of meetings which will normally be decided each year.
- 20.2 The Chair of a Committee (or in whose absence the Vice-Chair) may for good cause cancel or alter the date, time, place or virtual/hybrid arrangements for a meeting of a Committee, but not after the summons for the meeting has been issued. The Chair (or in whose absence the Vice-Chair) may call a meeting of the Committee on dates in addition to those already decided by the Council.
- 20.3 The Chair (or in whose absence the Vice-Chair) of a Sub-Committee will call meetings of the Sub-Committee as these are required.

- 20.4 The dates of meetings of a Short Life Working Groups will be decided by the Group. The Chair of a Short Life Working Group (or in whose absence the Vice-Chair) may for good cause cancel or alter the date, time, place or virtual/hybrid arrangements for a meeting, but not after the summons for the meeting has been issued.

**21. HOW MANY MEMBERS MUST BE PRESENT AT COMMITTEES AND SUB-COMMITTEES**

- CS** 21.1 No business will be considered at a meeting of a Committee or Sub-Committee unless at least a quarter of the whole number of voting Members are present; and there must, in any case, be at least three voting Members present.
- 21.2 In the case of the Council when it is dealing with the functions of the Council as education authority, the Members appointed because they are persons interested in the promotion of Religious Education will be treated as voting Members. For the avoidance of doubt the Teacher Representatives are not to be treated as voting members.
- 21.3 In the case of the Audit and Scrutiny Committee any persons appointed who are not Councillors will be treated as voting Members.

**CS22. ATTENDANCE OF COUNCILLORS AT COMMITTEES ETC**

- 22.1 Any Councillor may be present at a meeting of a Committee or Sub-Committee of which the Councillor is not a Member. The Councillor will be entitled to take part in the discussions generally, without giving notice, but is allowed to speak and vote only on any particular issue affecting the Members' Ward which is delegated to the Committee or sub-committee provided written notification is given to the Executive Director with responsibility for Legal and Regulatory Support Services and is received by him/her not later than 24 hours prior to the time at which the meeting is scheduled to commence. The Chairman will decide whether, in the circumstances of any matter, the provisions of this Standing Order will apply to the Member who has given notice, and the Chairman's ruling, which will be given as soon as possible after the start of the meeting, will be final.
- 22.2 A Councillor cannot speak and vote in terms of the provisions at 22.1 above at a meeting of the Planning, Protective Services and Licensing Committee when it is considering an application for planning permission, nor in similar circumstances when a Local Review Panel is considering an appeal in respect of an application for planning permission.

22.3 Notwithstanding the provisions of paragraph 22.1 a Councillor cannot be present at a meeting of a Committee or Sub-Committee of which she/he is not a Member when:-

- The public have been excluded from the meeting; and
- The meeting is considering a matter where the decision may affect the interests of any person as an individual; and
- The decision is made after a hearing by the Committee or Sub-Committee where the person has a right in terms of any law, Standing Order or administrative procedure, to be heard in person or by a representative

22.4 If a Committee or Sub-Committee has a hearing:-

- On a matter where the decision may affect the interests or rights of any person as an individual; and
- Where the person has a right in terms of any law, Standing Order or administrative procedure, to be heard in person or by a representative;

Members of the Committee or Sub-Committee may only take part in or vote on the matter if they have attended the entire proceedings of the hearing.

#### **OTHER MATTERS**

### **CS23 INTERESTS OF MEMBERS IN CONTRACTS OR OTHER MATTERS**

23.1 The Ethical Standards in Public Life etc. (Scotland) Act 2000, together with the Code of Conduct for Councillors and the Dispensation Note to Local Authorities make it a requirement for Members, in relevant circumstances, to declare an interest.

23.2 A Member will give a notice of all registerable interests, financial or non financial, to the Executive Director with responsibility for Legal and Regulatory Support Services.

23.3 The Executive Director with responsibility for Legal and Regulatory Support Services will maintain a Register of Declarations of Interests made by Members. An Elector for the Council's area may look at the register.

- 23.4 The Code of Conduct issued by the Standards Commission for Scotland, under the Ethical Standards in Public Life etc (Scotland) Act 2000 makes provisions about how Members should conduct themselves as Councillors. The Code applies to Members of the Council. Any other persons, who are not members, who may be appointed or co-opted to any Committee or Sub-Committee or Short Life Working Group will, as a condition of appointment, require to accept the provisions of the Code and agree to be bound by its terms and in regard to any breach, or alleged breach, of the Code be subject to investigation by the Monitoring Officer, in accordance with the Council's Public Interest Disclosure Policy and otherwise as the Monitoring Officer in his statutory power may determine.
- 23.5 If a Member has a financial or non financial interest which is required to be declared in terms of the Code of Conduct, and is present at a meeting where the relevant matter is being considered, she/he must disclose the fact at the beginning of the meeting or as soon as the interest becomes apparent to her/him.
- 23.6 When a Member declares an interest they must specify whether that interest is declared as a financial or non-financial interest in terms of The Code of Conduct. If the matter is a financial interest then before discussion takes place on the matter in which the Member has declared an interest, the Member will leave the room in which the meeting is taking place. If the matter is a non financial interest then, where in the particular circumstances, and having regard to all the relevant facts, the Member considers that a member of the public acting reasonably would consider that the Member might be influenced by the interest in the Member's role as a councillor then before discussion takes place on the matter in which the Member has declared an interest, the Member will leave the room.
- 23.7 In regard to the Register of Interests maintained by the Executive Director with responsibility for Legal and Regulatory Support Services, the Director will incorporate into that register disclosures relating to financial or non-financial interests declared at any meeting from time to time.

#### **CS 24. DISCLOSING INFORMATION**

- 24.1 Information whether contained in a document or otherwise which is confidential information within the meaning of the relevant law will not be disclosed to any person. (The relevant law in this case is Section 50A(2) of the Local Government (Scotland) Act 1973) unless required to do so under the Freedom of Information (Scotland) Act 2002.

- 24.2 Any part of a document marked “Not for Publication by Virtue of Paragraph ... of Part 1 of Schedule 7A to the Local Government (Scotland) Act 1973” will not be disclosed to any person unless and until disclosure has been authorised by the Council, Committee, Sub-Committee or Short Life Working Group or unless required to do so under the Freedom of Information (Scotland) Act 2002.
- 24.3 Any information discussed at a meeting of the Council, Committee, Sub-Committee or a Short Life Working Group, from which the public have been excluded will not be disclosed to any person unless disclosure has been authorised by the Council, Committee, Sub-Committee or Group or unless required to do so under the Freedom of Information (Scotland) Act 2002.
- 24.4 In addition to what it says in 24.2 and 24.3, no Member will disclose to any person any information coming to her/his knowledge by virtue of her/his office as a Councillor where such disclosure would prejudice the interests of the Council unless required to do so under the Freedom of Information (Scotland) Act 2002.

**CS  
25.**

**SCRUTINY OF THE POLICY AND RESOURCES, COMMUNITY SERVICES AND ENVIRONMENT, DEVELOPMENT AND INFRASTRUCTURE COMMITTEES**

- 25.1 Where on the consideration by the Policy and Resources, Community Services and Environment, Development and Infrastructure Committees of any item of business, not fewer than nine Members of the Council, at least four of whom are elected Members of the relevant Committee, require immediately at the time the decision is taken (but not otherwise) that the decision should be subject to scrutiny by the Council then, subject to paragraph 2 below, the decision shall be treated as a recommendation to the Council for consideration and determination.
- 25.2 Paragraph 1 above shall not apply to any decision which arises on an item of business –
- (a) Where –
    - (i) the Committee has considered a matter where the decision may affect the interests of any person as an individual; and
    - (ii) the decision is made after a hearing by the Committee where the person has a right in terms of any law, standing order or administrative procedure, to be heard in person or by a representative, or
  - (b) Where, in the opinion of the Chairman, there is a requirement that the decision be given effect to before the next ordinary meeting of the Council.

**CS 26. SUSPENDING OR ALTERING STANDING ORDERS**

26.1 A Standing Order can only be suspended at a meeting of the Council, or a Committee, Sub-Committee or Short Life Working Group if at least two-thirds of the Councillors present agree.

26.2 None of these Standing Orders can be cancelled or altered unless:-

- A resolution to do so is passed after notice is given at a previous ordinary meeting of the Council; or
- A report is made to the Council by the Executive Director with responsibility for Legal and Regulatory Support Services proposing such cancellation or alteration.

26.3 Standing Orders 26.1 and 26.2 cannot be suspended.

**27. SCHEME OF DELEGATION**

27.1 The Council may make a Scheme of Administration and Delegation including for the purpose of arranging for the discharge of any of the functions of the Council by a Committee, Sub-Committee, Group or Officer.

27.2 A Scheme of Delegation will form part of the Constitution, and Standing Order 25.2 will apply to any alteration to the Scheme of Delegation as it applies to these Standing Orders.

**28. CONTRACT STANDING ORDERS AND FINANCIAL REGULATIONS**

28.1 The Council will make Contract Standing Orders and Financial and Security Regulations for the regulation of contracts and for the proper planning and control of its financial and related affairs.

28.2 Contract Standing Orders and Financial and Security Regulations will form part of the Constitution and Standing Order 25.2 will apply to any alteration of them as it applies to these Standing Orders.

28.3 Contract Standing Orders and Financial and Security Regulations will apply to Committees, Sub-Committees, Groups, Members of the Council, Officers and Agents of the Council as appropriate.

## Appendix 1

### PROTOCOL FOR VIRTUAL & HYBRID MEETINGS

**The following protocol shall be adopted in relation to the conduct of any meeting which the Council has determined can be held on a hybrid or virtual basis using electronic means. Participation via remote link will be permitted as determined from time to time by the Provost/Chair of the Meeting.**

**For the avoidance of doubt Council has determined that the following meetings can be considered for operation on a virtual/hybrid basis where technology permits:**

List:

- Council
- Policy and Resources Committee
- Community Services Committee
- Environment, Development and Infrastructure Committee
- Harbour Board

The Area Committees:-

- (a) Mid Argyll, Kintyre and the Islands
- (b) Oban, Lorn and the Isles
- (c) Bute and Cowal
- (d) Helensburgh and Lomond

- Planning, Protective Services and Licensing Committee
- Audit and Scrutiny Committee
- Appeals Committee
- The Policy and Resources Asset Transfer Sub-Committee
- Short Life Working Groups

The Executive Director with responsibility for Legal and Regulatory Support Services will, from time to time, issue guidance on matters relating to the arrangements for the conduct of hybrid and virtual meetings.







**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART C**

**SCHEME OF ADMINISTRATION AND DELEGATIONS**



**ARGYLL AND BUTE COUNCIL****SCHEME OF ADMINISTRATION AND DELEGATIONS**

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## **INTRODUCTION**

The Council accepts the principle that in the discharge of its statutory functions, decisions should be made at the lowest and the most local level consistent with the nature of the issues involved. An important element in the practical implementation of this principle is an effective Scheme of Delegations encompassing all major levels of decision making below that of the Council itself.

The delegations in this Scheme are made having regard to the terms of Section 56 of the Local Government (Scotland) Act 1973, and are subject to any alterations made necessary by the introduction of new, or amendments to existing, legislation, regulations, or codes of practice as through decisions of the Council itself.

## SECTION ONE

### 1.1 POLITICAL MANAGEMENT ARRANGEMENTS

1.1.1 The Council's political management arrangements will comprise the following bodies (hereafter referred to as "bodies of Members")

- (1) Policy and Resources Committee
- (2) Community Services Committee
- (3) Environment, Development and Infrastructure Committee
- (4) Harbour Board
- (5) The following Area Committees:-
  - (a) Mid Argyll, Kintyre and the Islands
  - (b) Oban, Lorn and the Isles
  - (c) Bute and Cowal
  - (d) Helensburgh and Lomond
- (6) Planning, Protective Services and Licensing Committee
- (7) Audit and Scrutiny Committee
- (8) Appeals Committee
- (9) The Policy and Resources Asset Transfer Sub-Committee
- (10) Northern Roads Collaboration Joint Committee

1.1.2 The Council may appoint such other bodies of Members as they may from time to time consider are required to discharge any of its functions and in so doing will specify the terms of reference and delegation to any such body.

### 1.2 SHORT LIFE WORKING GROUPS

1.2.1 A Short Life Working Group may be appointed from time to time by the Council for the purpose of advising on any matter and in appointing such a Group the appointing body will specify the matters on, and the timescale within which the Group is to provide advice.

### 1.3 CONSTITUTION

1.3.1 For the purpose of having regard to geography the Council recognises the division of the Council's area into the following four sub-areas:-

- (a) Mid Argyll, Kintyre and the Islands: comprising Electoral Ward 1 (South Kintyre); EW2 (Kintyre and the Islands); EW3 (Mid Argyll).
- (b) Oban, Lorn and the Isles: comprising EW 4 (Oban South and the Isles); EW5 (Oban North and Lorn).
- (c) Bute and Cowal: comprising EW 6 (Cowal); EW7 (Dunoon); EW 8 (Isle of Bute).

- (d) Helensburgh and Lomond: comprising EW 9 (Lomond North); EW10 (Helensburgh Central); EW11 (Helensburgh and Lomond South).

1.3.2 The Constitution of the various bodies referred to in paragraph 1.1.1 will be as follows:-

Strategic Committees

- (1) Policy and Resources Committee

Sixteen members, the Leader and Depute Leader to be Chair and Vice Chair of the Committee. The composition of which will have regard to geographic and political balance in so far as practicable.

- (2) Community Services Committee and Environment, Development and Infrastructure Committee shall have sixteen members.

- (3) When the Community Services Committee is considering matters relating to the Education function of the Council also:-

- three persons interested in the promotion of religious education who shall be voting members
- two non voting teachers elected by teaching staff employed in local authority schools in the Council's area

- (4) Harbour Board

The Harbour Board shall have 8 members and will have regard to relevant Area representation.

- (5) Mid Argyll, Kintyre and the Islands Area Committee

Nine members being the members representing the electoral wards within the area defined at paragraph 1.3.1(a).

- (6) Oban, Lorn and the Isles Area Committee

Eight members being the members representing the electoral wards within the area defined at paragraph 1.3.1(b)

- (7) Bute and Cowal Area Committee

Nine members being the members representing the electoral wards within the area defined at paragraph 1.3.1(c)

- (8) Helensburgh and Lomond Area Committee

Ten members being the members representing the electoral wards within the area defined at paragraph 1.3.1(d)

(9) Planning, Protective Services and Licensing Committee

Fifteen members

(10) Audit and Scrutiny Committee

Seven members, none of whom shall be a Policy Lead.

One Member who is not a Councillor, who will be the Chair of the Committee and the Vice-Chair shall be a Councillor appointed by the Council from time to time.

(11) Appeals Committees

(a) *Placing Appeals – Special Educational Needs*

Two Members plus one person from a Parent Council of another school

(b) *Education Appeals and Bursaries*

Three Members

(c) *Social Work Complaints Review*

Three persons drawn from the list of non-councillors maintained for this purpose.

(d) *Access to Personal Files Review*

Three Members

Notwithstanding any other provision in this Scheme the Members to be appointed on any occasion will be so appointed by the Executive Director with responsibility for Legal and Regulatory Support from a cohort of 15 members appointed by the Council, and in so appointing those Members the Executive Director will select them by lot.

(12) The Policy and Resources Asset Transfer Sub-Committee

6 Members one of which will be the Vice-Chair of the Policy and Resources Committee who shall Chair the Sub-Committee.

## (13) Appointments Panel

Executive Director – 6 Elected Members plus Chief Executive as a voting Member (4 from the Administration and 2 from the Opposition)

Head of Service – 3 Elected Members (2 from the Administration and 1 from the Opposition) plus Executive Director and Chief Executive as voting Members.

## (14) Appointments Panel – HSCP

Chief Officer - Interview Panel of 6 – IJB Chair, Vice Chair, Council Leader and Chair of NHS Highland (or their nominated substitutes), Chief executive of NHS Highland, Chief Executive of Argyll and Bute Council. Nominated substitutes for the Council will be politically balanced.

Heads of Service – Interview Panel of 5 – 4 IJB Members (2 Council and 2 NHS Highland – Chair and Vice Chair, Council Leader and NHS Board Chair (or nominated substitutes) plus the Chief Officer as a voting member.

**1.4 GENERAL PROVISIONS REGULATING MEMBERSHIP, ETC**

1.4.1 The general role, duties and obligations of a Member are set out in Appendix 1 of Part A of the Constitution.

**Executive Positions**

1.4.2 (1) For the purposes of this Scheme, an executive position is any one of the following:-

- (a) The Provost of the Council
- (b) Leader of the Council
- (c) Depute Leader of the Council
- (d) Depute Provost
- (e) Policy Lead
- (f) Chair of the Planning, Protective Services and Licensing Committee
- (g) Chair of an Area Committee

(2) Except where otherwise provided by any enactment or statutory order, or otherwise by this Scheme, the Members to be appointed to any one or more executive position will be so appointed at the first meeting of Council following each ordinary election of Councillors.



- (3) Subject to the provisions of the next following sub-paragraph, so long as s/he remains a Member of the Council, a Member appointed to an executive position will hold such office, until the next ordinary election of Councillors.
- (4) A Member appointed to an executive position may be removed from such office at any time by resolution of the Council, provided the agenda for the meeting contains notice to that effect or an item of business is included on the agenda for the meeting arising out of the consideration of which the removal of a member from an executive position might reasonably be anticipated.
- (5) For the avoidance of doubt holding an executive position does not allow such a member to take forward decisions on behalf of the Council on an individual basis.

### **Memberships and Period of Office**

- 1.4.3 (1) Except where otherwise provided by any enactment or statutory order, or otherwise by this Scheme, the Members of a body of Members specified in this Scheme will be so appointed at the first meeting of Council following each ordinary election of Councillors.
- (2) Subject to the provisions of this Scheme, in appointing members to the bodies specified in this Scheme the Council will, where the Members of the Council are divided into different political groups, have regard to the distribution of Members amongst these groups.
- (3) Subject to the foregoing, so long as they remain Members of the Council the members of a body specified in this Scheme or any other body set up under it shall hold office, unless otherwise determined by the Council at any time, until the next ordinary election of Councillors.
- (4) When appointing a body of Members and so far as not provided for otherwise in this Scheme the Council will appoint two of the members to be respectively the Chair and Vice Chair of the body and they will hold office unless otherwise determined by the Council at any time for so long as they remain Members of the Council.

### **Casual Vacancies**

- 1.4.4 (1) Casual vacancies occurring in any Executive position, in the chairmanship or vice chairmanship or in the membership of a body will be filled as soon as may be by the Council after the vacancy takes place.

- (2) Provided a quorum remains a body of Members established in terms of this scheme may act, and its proceedings will not be invalidated by any defect in the appointment of any person to it.

## **1.5 ADMINISTRATION OF DELEGATED AND REFERRED FUNCTIONS**

1.5.1 In the administration of any delegated or referred function, a body of Members appointed in terms of this scheme will give effect to any instruction of the Council and to the following:-

- (1) The approved estimated expenditure in respect of the Service to which that function relates will not be exceeded unless otherwise authorised by the Council or in accordance with the this Scheme or the Financial Regulations; and
- (2) The directions, policies, and procedures set out in any part of this Constitution, or otherwise laid down by the Council will be complied with.
- (3) Decisions or actions taken in the proper exercise of powers delegated in terms of this Scheme will be binding on the Council.
- (4) Each body established in terms of this Scheme will submit a report to the Council (or the body which appointed it) on any matter which it either does not have, or does not wish to exercise, a delegated power to deal with the business which is the subject of the report.
- (5) A body established in terms of this scheme will furnish any information which the Council may from time to time require.
- (6) Every meeting of the Council, and any body established in terms of this scheme, and such other bodies as the Council may direct from time to time, will be regulated by the Council's Standing Orders and the provisions of Section 50 of the Local Government (Scotland) Act 1973 and will, except where otherwise provided by those Standing Orders, that Section, or Council direction, be open to the public.
- (7) Minutes of Committees – items that are marked with an asterisk in the Minutes of Committees or Sub-Committees are items for the approval of the Council and all other items are submitted for the information of the Council.

- 1.5.2 Where an Area Committee refers (with or without recommendation) any matter for consideration at a meeting of the Council or a Strategic Committee the matter will, subject to the following provisions, normally be included on the agenda for the next ordinary meeting;
- (1) Provided that the next ordinary meeting referred to is not less than 21 days after the date of the meeting of the Area Committee making such referral; unless the Provost (in regard to a referral to the Council) agrees to dispense with the said period.
  - (2) Where the matter relates to the annual process of developing the Council's Corporate and Service plans, estimates of Revenue expenditure or Capital programme the matter will be referred to the appropriate meeting of the Council or Policy and Resources Committee dealing with that process; unless the Provost (in regard to the Council) or the Chair in respect of the Policy and Resources Committee agrees to the matter being considered at an earlier stage.
  - (3) Where the matter relates to the development of any strategy or policy that is already the subject of ongoing consideration by the Council or a Strategic Committee the matter will be referred to the appropriate meeting dealing with such strategy or policy.

## SECTION TWO

### 2.1 TERMS OF REFERENCE AND DELEGATION

2.1.1 The following terms of reference and delegations are to be read in conjunction with provisions contained in the Standing Orders for Meetings; the Contract Standing Orders, and the Financial and Security Regulations and are subject to those provisions.

#### General Delegations

- 2.1.2
- (1) A body established in terms of this scheme will be free to incur expenditure on any function delegated to it up to the limit for which provision has been made in the Council's approved Estimates of Revenue or Capital Expenditure.
  - (2) Subject to the provisions of the Local Government (Scotland) Acts 1973 and 1994 and of any Regulations made there under, and to the specific delegations, exceptions and limitations provided for in this Scheme and in the Standing Orders for meetings, the Financial and Security Regulations and the Contract Standing Orders, there is delegated to the Council in relation to all the functions of the Council, all the matters, services or undertakings, including the acquisition, construction, holding, maintenance and disposal of any land or buildings or works.
  - (3) A body established in terms of this scheme may exercise and perform on behalf of and in the name of the Council all powers and duties of the Council in relation to any function, matter, service or undertaking delegated by the Council to it.
  - (4) A matter on which the body discharges any power or duty is one which has application only within the delegation to that body; a matter having application across or which affects the terms of reference of more than one body will be referred to the Policy and Resources Committee who may give such advice as may be appropriate or refer the matter to the Council. For the avoidance of doubt this provision will have no effect in relation to any matter delegated to the Argyll and Bute Health and Social Care Partnership.

#### Exclusions from Delegations

2.1.3 The following are excluded from the delegation to any body established in terms of this scheme:-

- (1) Determining the overall Goals, Values and Policy Framework Documents as referred to in Part A, Part I paragraph 3(1) of the Constitution or matters of new policy/strategy or variation of existing policy/strategy which may be inconsistent with those Goals, Values or Policy Framework Documents.
- (2) The approval of any plan which is part of the Policy Framework and any other plan which introduces new policies of major significance or varies existing plans or policies to a material extent.
- (3) The approval of plans which are part of the Council's Planning and Improvement Framework; and the Estimates of Revenue and Capital Expenditure.
- (4) The power to fix the Council Tax, and the levels of charges for any services.
- (5) The power of incurring any expenditure not provided for in the Annual Estimates of Revenue and Capital expenditure.
- (6) The appointment to a body established in terms of this scheme of a person who is not a Member of the Council, without the prior approval of the Council.
- (7) Matters reserved to the Council by Statute, Standing Orders and other schemes approved by the Council from time to time.
- (8) All proposals for the promotion of or opposition to private legislation.
- (9) The making, alteration or revocation of any part of the Council's Constitution.
- (10) The determination of planning applications which in terms of the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2008 are (1) National and the undertaking of Pre-Determination Hearings in respect of all national applications; (2) Major Developments and the undertaking of pre-determination Hearings where in the case of the latter there would be a significant departure from the development plan, were the application to be approved.
- (11) Admission of honorary free men.
- (12) The appointment of Members to Statutory Joint Boards or to the Licensing Board.
- (13) The dismissal of the Chief Executive.

- (14) Approval of any annual investment strategy or annual investment report required by any consent issued by the Scottish Ministers by virtue of Section 40 of the Local Government in Scotland Act 2003.

### **Limitations on Delegations**

2.1.4 Delegations to a body established in terms of this scheme will be subject to the following restrictions and conditions:-

- (1) A body will, in carrying out the functions, powers and duties referred to or delegated to it, observe and comply with this Scheme, the Standing Orders of the Council, the Financial and Security Regulations, and the Contract Standing Orders, and with any resolutions, directions, or instructions given by the Council with reference to its business generally or to the delegations to any particular body.
- (2) A body may, in any case, decide that any matter delegated to it be referred to the Council with or without a recommendation.
- (3) Where a function of the Council is delegated, any delegation of that function by one body to a subordinate body will be subject to the approval of the Council and a specific delegation so approved will supersede a previous delegation; provided that the Planning Protective Services and Licensing Committee, or an Area Committee may, without the approval of the Council, delegate to a Sub-Committee of not less than three of their number any routine matter of business or, for final adjustment and settlement, any other matter falling within the delegation to any of these bodies if such matter has been approved generally by the body; or for the purpose of holding a hearing which may be required arising out of any statute, regulation or administrative procedure of the Council.
- (4) A body established in terms of this scheme will have the powers and duties set out in the Terms of Reference in respect of that body save that any function which is referred or delegated to any body will be exercised subject to the powers and functions vested in the Council.

### **Area Committees**

2.1.5 The delegations to an Area Committee will be subject also to the following:-

- (1) A matter on which an Area Committee discharges any power or duty is one which has application only within the Council's sub-area for which that Committee has responsibility.

- (2) The exclusions and limitations on delegations set out in paragraphs 2.1.3 and 2.1.4 of this Scheme and in addition:-
  - (a) A matter having common application in more than one sub-area of the Council's area.
  - (b) The approval of or allocation of any expenditure on any matter will be so approved or allocated only within any framework or criteria approved by the Council or as otherwise directed by the Council.
  - (c) The approval of any service delivery arrangements will be so approved only within any framework or criteria approved by the Council, or as otherwise directed by the Council.
- (3) The powers and duties of an Area Committee will be exercised subject to the powers and duties of the Council and any resolution of an Area Committee will be of no effect in the event that the Council directs that the matter which was the subject of the resolution is referred to it or to the Council for consideration, and no step will be taken to give effect to any such resolution of an Area Committee while the implementation of the resolution is suspended in consequence of such a direction.

## **2.2 Strategic Committees**

### **Policy and Resources Committee**

#### 2.2.1 General

- (1) To determine strategic policy objectives and priorities for the Council; unless such matters are otherwise delegated under a statutory scheme.
- (2) To determine and implement the Council's policies in relation to communication.
- (3) To consider matters arising from or in connection with any local government associations.
- (4) To exercise the functions of the Council in relation to Community Councils.
- (5) To exercise the functions of the Council as local Registration Authority for the purposes of the Registration of Births, Deaths and Marriages (Scotland) Act 1965, and all associated legislation.

#### 2.2.2 Voluntary Organisations

To develop co-operation between the Council and the voluntary sector and to assist and promote the work undertaken by the voluntary sector.

2.2.3 Financial Assistance

To consider requests from external bodies and implement the Code of Guidance on External Bodies and Following the Public Pound.

2.2.4 Equalities & Diversity

To determine and implement the Council's policies in relation to the promotion of equality of opportunity, in relation to both the functions of the Council and the wider community in Argyll and Bute and to promote initiatives to combat discrimination.

2.2.5 Financial Resources

- (1) To oversee the management of the Council's financial resources.
- (2) To advise the Council on the Revenue Budget, Capital Plan and Council Tax.
- (3) To consider the draft version of the Council's accounts.
- (4) To approve adjustments to Management budgets in so far as not delegated to officers within the terms of the financial regulations
- (5) To ensure effective supervision of Treasury Management activities, strategy and policies.
- (6) To make arrangements for the collection of the Council Tax and other monies due to the Council.
- (7) To oversee the arrangements for all insurances.

2.2.7 Corporate Asset Management

- (1) To determine and implement the Council's policies in relation to the strategic management of its asset streams in relation to Property, Greenspace, Roads, Fleet and Information systems and Technology.
- (2) To develop and implement the Council's Corporate Asset Management Plan.
- (3) To oversee the management of the Council's Property, Fleet and Information Systems and Technology Assets.



- (4) To consider the acquisition and disposal of the Council's assets, in so far as not delegated to area committees.

2.2.8 Human Resources

To oversee the management of the Council's human resources.

2.2.9 Civic Services

To deal with all policy matters relating to civic heritage and ceremony (including town twinning).

2.2.10 Community Planning

To determine and implement the Council's policies in relation to its statutory role in relation to Community Planning.

2.2.11 Continuous Improvement

- (1) To determine and implement the Council's policies in relation to the achievement of Best Value.
- (2) To consider the Best Value Review and Inspection Programme.
- (3) To consider Best Value Reviews from Services as appropriate.
- (4) Without prejudice to the duties and responsibilities and delegated authority of other Committees, to review the performance and effectiveness of all the Council's work and the standards and level of service provided, to review the need to retain existing services, and to co-ordinate where necessary all the matters referred to in this sub-paragraph in respect of the Committees and Services of the Council.
- (5) To ensure that the organisation and management processes of the Council make the most effective contribution to the achievement of the Council's objectives, to keep them under review in the light of changing circumstances, making recommendations as necessary for change in either the Committee or management structure, or the distribution of functions and responsibilities and to determine any matter not delegated to another Strategic Committee or reserved to the Council in terms of this Constitution.

2.2.12

- (6) To determine any matters under the Community Empowerment Act, not otherwise delegated to an officer, including without prejudice to the foregoing generality Asset Transfer requests and Participation requests.

**2.3 Community Services and Environment, Development and Infrastructure Committee**

- 2.3.1
- (1) Advise the Policy and Resources Committee and the Council in the development of service objectives, policies and plans concerned with service delivery within the functional areas noted below and manage performance.
  - (2) Monitor and review achievement of key outcomes in the Service Plans within the functional areas noted below by ensuring best value in the use of resources to achieve these key outcomes is met within a performance culture of continuous improvement and customer focus.
  - (3) Subject to the exclusions from and limitations of delegations set out in this scheme, and the terms of reference and authority of the Policy and Resources Committee, each Committee is authorised to discharge the powers and duties of the Council within the functional areas noted below in accordance with the policies of the Council, and the relevant provisions in its approved revenue and capital budgets.
  - (4) Undertake community engagement in terms of Council's community engagement strategy in respect of their service area.

**Community Services Committee**

All of the functional areas relating to the delivery of all aspects of Education and Lifelong Learning not otherwise reserved to the Council or the Policy and Resources Committee including, without prejudice to the foregoing generality, the following:-

**Education and Lifelong Learning**

The relevant functional areas relating to schools education, educational psychology, early learning and childcare, youth services and lifelong learning.

For the avoidance of doubt, it shall discharge the powers and duties as education authority, and in relation to those functions, the dismissal of a teacher whose contract of employment incorporates the Strathclyde Regional Council Conditions of Service for Teachers in Day Schools.

## Communities and Culture

To comment on and offer advice to the Leisure Trust in respect of the operation of Libraries, halls, arts and culture.

## Community Planning

To scrutinise performance and contract management arrangements in respect of Community Learning and Development and the operation of all services transferred to the Live Argyll Trust and to consider and comment on any policy proposals in respect of these services.

The Council's Education Service will undertake the client role and remain as the key contact for liaison with Education Scotland, Live Argyll will be responsible for ensuring that the four statutory obligations, as set out in the Community Learning and Development (Scotland) Regulations 2013, are met.

In respect of the following matters now delegated to the Argyll and Bute Health and Social Care Partnership to consider any policy proposals in respect of the following areas and to offer comment thereon:-

## Children and Families and Adult Social Work Services

The relevant functional areas relating to children and families and adult social work services, criminal justice services, child and adult protection, corporate parenting, school hostels and community justice social work services.

## Performance Review

Receiving the quarterly performance reports in relation to the relevant functional areas listed above in line with the Planning and Improvement Framework.

The scrutiny of external inspection reports relating to the functional areas listed above, except where the receipt of such reports and their outcomes are reserved for Council or Policy and Resources Committee.

Performing the scrutiny and performance review function on behalf of the Council in relation to Police Scotland, Scottish Fire and Rescue and the Argyll and Bute Health and Social Care Partnership (Integrated Joint Board).

## **Environment, Development and Infrastructure Committee**

All of the functional areas within the development and infrastructure department not otherwise reserved to the Council, the Policy and Resources Committee or the Planning Protective Services and Licensing Committee including, without prejudice to the foregoing generality, the following:-

### **Economic Development**

The relevant functional areas relating to strategic regeneration, housing and homelessness, development and transport planning, economy and business, energy, agriculture, fisheries, renewables and tourism.

### **Environment and Transport**

The relevant function areas relating to the natural environment, roads transport, harbour and ferry services and environmental services.

## **Harbour Board**

The Harbour Board is authorised to discharge the powers and duties of the Council as a Single Harbour Authority in respect of general and specific statutory duties subject to the provisions of this Scheme.

The Board is responsible for providing policy direction to officers/others involved in operational management and use of the facilities and for scrutinising implementation of these.

## **2.4 Area Committees**

- 2.4.1
- (1) Subject to the exclusions and limitations set out in paragraphs 2.1.3, 2.1.4 and 2.1.5 of this Scheme, an Area Committee is authorised to discharge the powers and duties of the Council set out in this paragraph in respect of matters which have application only within the sub-area for which that Committee has responsibility.
  - (2) To develop and maintain Area Scorecards within the Council's Planning and Improvement Framework (PIF) and Corporate Plan framework outcomes.
  - (3) To monitor and review the local delivery of key services by ensuring -
    - (a) appropriate performance measures are in place, and to monitor the relevant PIF Area scorecard
    - (b) best value in the use of resources to achieve these key outcomes is met within a performance culture of continuous improvement and customer focus.

- (4) To approve expenditure as follows:-
    - (a) revenue or capital expenditure within any allocation and criteria delegated to an Area Committee by the Council
    - (b) in response to applications for financial assistance within any framework and criteria approved by the Council
  - (5) Subject to the terms of reference or delegation to any other body of Members or an officer in terms of this scheme, to determine issues of a local and non strategic nature relating to all of the Council's services and functions within any framework and criteria approved by the Council from time to time.
  - (6) To support, and encourage effective collaboration and co-ordination between and within community based organisations operating in the local area.
  - (7) To lead the Council's participation in the Area Community Planning Group
  - (8) To give effect to the Community Engagement Strategy at a local level
  - (9) The regulatory functions of the Council under the Road Traffic Regulation Act 1984 and Roads (Scotland) Act 1984 including to introduce, make, review, amend or revoke any order, or give any direction or notice for application only within the sub-area for which the Committee has responsibility.
  - (10) To play a lead local role in the formation of the Local Development Plan (LDP), within any framework and criteria approved by the Council from time to time.
  - (11) To undertake pre application consultations in respect of relevant designated applications for planning permission, within any framework and criteria approved by the Council from time to time.
- 2.4.2 To authorise the acquisition, sale or lease of land or buildings within the area not otherwise delegated provided in the case of an acquisition there is budget for the costs of doing so, and provided that the transaction is deemed to be in accordance with any relevant Council policy.

- 2.4.3 To allocate, in accordance with criteria agreed by the Council, the additional income generated through Council tax on empty properties, provided that in doing so it will not create an ongoing revenue cost for the Council, without the approval of the Policy and Resources Committee.
- 2.4.4 To develop, implement and oversee any existing or future capital projects within their area, provided that a business case for the implementation of each project has been submitted to and approved by the Policy and Resources Committee before any tender award is made, and the project is within the scope of the agreed business case.
- 2.4.5 To determine applications for bridging finance from voluntary groups in accordance with criteria to be agreed by the Council from time to time and subject to the approval of the Policy and Resources Committee if the decision is contrary to the recommendation of the Chief Financial Officer.

## **2.5 Planning, Protective Services and Licensing Committee**

- 2.5.1 Subject to the provisions of this Scheme and what is set out below, the Committee is authorised to discharge the powers and duties of the Council in relation to any of the undernoted regulatory and similar functions of the Council.
- 2.5.2 The Committee is authorised in respect of the functions referred to in paragraphs 2.5.3 and 2.5.8 below:-
  - (a) to introduce, make, review, amend or revoke any order, rules or bye-law or give any direction or notice.
  - (b) to determine any application for any permission or licence (including the holding of any hearing which may be required arising from any statute, statutory regulation or administrative procedure of the Council) and the enforcement of the relevant legislation in respect of the Council's functions in relation thereto.
  - (c) to take any other steps in relation to any of the functions which the Committee may consider necessary or desirable.
- 2.5.3 Functions referred to in 2.5.2 above are -

- (a) To enable the PPSL to determine applications which have been subject to a pre-determination hearing for
  - (1) a major development which would be a significant departure from the development plan or
  - (2) a National development to align with alteration in legislation removing requirement for these to be determined by Full Council.
- (b) To determine any Masterplan that is submitted to become Supplementary Guidance.
- (c) To determine applications for planning permission defined in the Town and Country Planning (Hierarchy of Development) (Scotland) Regulations 2019 as “local developments”, which are not otherwise delegated to the Executive with responsibility for /Development and Economic Growth ie (1) where there has been a significant body of objections ie more than 10 individual objections on planning, policy or land use grounds, (2) or where the application is one which is required by legislation or regulation to be determined by the Committee.
- (d) To determine applications not falling under the ambit of Section 43a of the Planning Etc (Scotland) Act 2006 eg [Listed Building Consent, Conservation Area Consent, Hazardous Substance and Advertisement Consents] where there have been a significant body of objections ie more than 10 individual objections on planning policy or land use grounds.
- (e) To determine the imposition of a Fixed Penalty Notice under the Planning Etc (Scotland) Act 2006 Section 25 and temporary stop notices under Section 26.
- (f) To determine whether to take enforcement action on any matters on which the Executive Director with responsibility for /Development and Economic Growth has decided not to exercise his/her delegated authority.
- (g) To determine all consultative applications and assessments of a technical nature including to raise objections where the Executive Director with responsibility for /Development and Economic Growth has decided not to exercise his/her delegated authority to determine them.
- (h) To undertake, either as a committee or sub committee, the preparation for and determination of any application which is subject to a local review entitlement ie a local application where the decision has been made by an officer.

2.5.4 Functions referred to in 2.5.2 above are functions under various public protection legislation including:-

- the Civic Government (Scotland) Act 1982, the Gaming Acts, the Cinematography Acts and other related or amended legislation
- the control, investigation and mitigation of epidemic, endemic and infectious diseases and related nuisances.
- food safety
- health and safety and other legislation affecting public safety
- water quality, environmental protection and pollution control
- caravan sites and houses in multiple occupation
- animal health, welfare and control, including pest and dog control
- consumer protection, fair trading and trading standards
- poisons, explosives, and petroleum

- 2.5.5 The regulatory functions of the Council under the Road Traffic Regulation Act 1984 and Roads (Scotland) Act 1984 not otherwise delegated.
- 2.5.6 The functions of the Council under the Criminal Justice and Public Order Act 1994.
- 2.5.7 Applications for a High Hedge Notice where the Head of Development and Economic Growth is recommending that a Notice be issued under Section 6(5)3 of the High Hedges Act 2013.
- 2.5.8 Any other power or duty of the Council under any enactment in relation to the regulation of any activity, or the protection of the public or sections of the public.

## **2.6 Short Life Working Groups**

SLWGs will be appointed in terms of the Scheme of Administration and Delegations which is referred to in Standing Order 26.

Standing Orders 2.1, 2.3, 2.4, 3.1 – 3.5, 7.1 – 7.4 and 17.1 will apply to meetings of any Short Life Working Group.

### **2.6.1 Meetings of SLWGs**

Without prejudice to the general right of the Council, to appoint a SLWG at any time, a minimum of any six Members may propose that a SLWG should be established; the following procedure will apply to the establishment of a Group on its proposal by Members.



- 2.6.1.1 The Members concerned will set out in a notice to be given to the Executive Director with responsibility for Legal and Regulatory Support the matters on which it is proposed the Group should be asked to provide advice, together with such other relevant material as the members concerned consider the Council might usefully require in order to reach a decision whether or not to establish such a Group.
- 2.6.1.2 The Executive Director with responsibility for Legal and Regulatory Support will include the proposal, together with the written material provided by the Members, on the agenda for the next following ordinary meeting of the Council.
- 2.6.1.3 In considering a proposal (whether or not submitted in terms of sub-paragraph (1) above) to establish a SLWG, the Council may (a) determine that, instead of appointing a Group, the matter contained in the proposal may be added to the Terms of Reference of an existing Group or (b) in the circumstances where (a) does not apply the Council shall resolve either to require a report from the appropriate officer on the implications of establishing such a group in respect of the resources required to take forward the work of the group, the current status (if any) of Council policy on the matter and any other matters relevant to their deliberations to a future meeting of the Council or (c) decline to establish such a group without further deliberation.
- 2.6.1.4 When a SLWG is established, the Council will appoint the Members of the Group, appoint two of those Members who are Councillors to be the Chair and Vice-Chair of the Group respectively, specify the matters on which the Group is to provide advice, specify the timescale within which the Group is to submit its report or recommendations and any other ancillary matters regarding the operation of the Group as may be desirable.
- 2.6.1.5 Whilst normally a SLWG will report and provide advice to the Council, the Council when establishing a Group may direct that the SLWG reports, instead or in addition, to another constituent part of the Council.
- 2.6.1.6 At the end of the period mentioned in sub-paragraph (4) of this Standing Order the Group will cease to exist unless before the end of that period the appointing body has substituted a revised period.
- 2.6.1.7 It will be open to the Council at any time in the event that it considers the resources available to support the work of SLWGs are insufficient, to agree that no further Groups should be established or that the number in total should be limited. If such a decision is made no proposal to establish a SLWG Group which would be contrary to the Council resolution shall be considered unless and until the Council has altered or rescinded that resolution.

- 2.6.2 The arrangements for meetings of SLWGs will be a matter for the Group concerned, but the chair of a Group may for good cause cancel or alter the place, or virtual/hybrid arrangements, date or time for a meeting of a Group and may call a meeting of a Group on dates in addition to those already decided by the Group, but not after the summons for the meeting has been issued.
- 2.6.3 In addition to any report or paper submitted by an Officer of the Council, any Member of a SLWG may, in relation to any research which she/he may have undertaken, submit a report or paper for consideration by the Group, provided that report or paper is made available in time for inclusion with the agenda of business for the meeting, and any other Member of the Council may similarly submit such report or paper and may speak to the SLWG in relation to that report or paper.
- 2.6.4 In addition to the consideration of any report or paper submitted by a Member or Officer, a SLWG may seek and/or consider a report, paper or presentation from other persons, whether inside or outside the Council, but such persons shall not participate as Members of the Group.
- 2.6.5 While the minimum quorum for an effective meeting of a SLWG to take place will be three Members of the Group, the report or reports of the Group which contain the advice and recommendations of the Group will require to be considered at a meeting of the Group at which at least half of the Members of the Group are present.
- 2.6.6 The content of the advice or recommendations which any Group provides will be reached if possible by consensus amongst the Members of the Group, and in the event of any difference of view which will be determined in accordance with these Standing Orders as they would apply to a meeting of a Committee of the Council, the report or reports of the Group will in addition to the advice and recommendations of the Group include a note setting out the views of those Members who may not concur with that advice or those recommendations. Other decisions by the Group relating to their procedure and operation will be reached in accordance with these Standing Orders as they would apply to a meeting of a Committee of the Council.

## 2.7 Audit and Scrutiny Committee

The Committee's Terms of Reference are generally to promote good, internal control, financial and risk management, governance and performance management, in order to provide reasonable assurance of effective and efficient operation, and compliance with laws and regulations, including the Council's Financial and Security Regulations, Contract Standing Orders and accounting codes of practice.

The Audit and Scrutiny Committee in carrying out its scrutiny functions will take a discursive, collegiate and non-political approach to carry out methodological consideration of a wide range of evidence and perspectives, with the aim of providing viable and well-evidenced solutions to support the delivery of services.

The specific Terms of Reference are as follows –

### 2.7.1 Key Activities

- To agree the internal audit strategic plan, oversee and review action taken on internal audit recommendations;
- To consider the annual report, opinion, and summary of Internal Audit activity including the level of assurance it can give over the Council's corporate governance arrangements internal control and risk management system; and to consider other specific Internal Audit reports.
- To consider the External Auditor's Annual Audit Plan, Annual Letter, relevant reports, and the report to those charged with governance and other specific External Audit reports;
- To comment on the scope and depth of External Audit work and to ensure it gives value for money;
- To commission work from Internal, External Audit and third parties where appropriate;

- To consider the performance of Internal and External Audit;
- To facilitate training to support the role of Audit and Scrutiny Committee Members;
- To develop a culture of compliance within the Council to ensure the highest standards of probity and public accountability;
- To support best practice in the financial administration of the Council;
- To review the Council's financial performance as contained in the Annual Report, and to report annually to the Council on the internal control environment;
- There should be a least one meeting a year, or part thereof, where the Audit and Scrutiny Committee meets the Internal and External Auditors separately from management;
- The Committee will prepare an annual work plan setting out meeting dates for the financial year and anticipated internal audit, external audit, management reports and scrutiny topics expected to be covered at each meeting; and
- The Committee shall prepare an annual report to the Council covering its activities and key findings each year. This report will be considered at the Council meeting that agrees the External Auditor's annual audit letter.
- To oversee the arrangements for Risk Management.

### 2.7.2 **Regulatory Framework**

- To maintain an overview of the Council's Constitution in respect of contract procedure rules, and financial regulations;
- To monitor and seek assurance with regard to risk control measures through the review of the effectiveness of risk management systems and corporate governance in the Council;
- To monitor the Anti-fraud and corruption strategy and the Council's arrangements for dealing with any allegations of fraud or similar improper behaviour; and
- To consider the Council's compliance with its own and other published standards and controls.
- To monitor the Council's compliance with the Public Interest Disclosure Act and the Bribery Act in the discharge of its functions.

### 2.7.3 **Financial Accounts and Governance**

- To examine the activities and accounts of the Council and exercise a governance role over management efforts to ensure that:
  - (a) The expenditure approved by the Council has been incurred for the purposes intended;
  - (b) Services are being provided efficiently and effectively;
  - (c) Value for money is being obtained, all in accordance with Best Value requirements; and
  - (d) The Council has appropriate information and advice available to them to make decisions.

- To review the annual statement of accounts. Specifically to consider whether appropriate accounting policies have been followed and whether there are concerns arising from the financial statements or from the audit that need to be brought to the attention of the Council;
- To oversee the production of the Council's Governance and Internal Control Statement; and
- To consider the External Auditor's report to those charged with governance on issues arising from the audit of the accounts.

#### 2.7.4 **Other Monitoring**

- To assess the effectiveness of the Council's Performance Management System;
- To consider performance and inspection reports from internal audit, external audit and other relevant scrutiny bodies;
- To commission specific reviews to be carried out where necessary;
- To review Best Value arrangements and outcomes, with consideration of both external and internal Best Value reports, strategy/plans and outcomes from Best Value reviews; and
- To review the impact of national performance reports from external bodies such as Audit Scotland and consider their impact on future audit plans in terms of audit work to be undertaken by both external and internal audit.
- The Chief Executive will attend one meeting per annum to report on how the Council is addressing its key strategic risks and other matters of interest.

#### 2.7.5 **Scrutiny**

- To oversee and co-ordinate the scrutiny function including approval of the scrutiny framework and associated policies or procedures.
- To scrutinise the performance of the Council in relation to the achievement of policy objectives and performance targets in relation to all functions of the Council.
- To develop and approve the scrutiny workplan in relation to the performance of the Council and funded third party organisations.
- To consider and make recommendations in respect of scrutiny reports brought to the Committee for consideration.
- To monitor the implementation of scrutiny recommendations accepted by the Council.
- To provide an annual report to the Council on the work of the scrutiny function.
- To periodically review the scrutiny function to ensure it is operating effectively.
- To receive the Council performance report.

Note that the responsibility for scrutiny at service committee level will be incorporated into the service committee terms of reference.

## **2.8 Appeals Committees**

### **2.8.1 Placing Appeals/Special Educational Needs**

The hearing and determination of appeals against the refusals of placing requests in terms of Section 28A-H of the Education (Scotland) Act 1980, and appeals in terms of Sections 63 to 65 of the 1980 Act and Paragraph 5 of Education{Additional Support for Learning}{Scotland} Act 2004 in relation to special educational needs.

### **2.8.2 Education Appeals and Bursaries**

The hearing and determination of appeals relating to further education and higher school bursaries, under Section 49 of the 1980 Act, and the access to or amendment of pupil or student records.

### **2.8.3 Social Work Complaints Review**

The hearing and determination of complaints in terms of the complaints procedure in terms of Section 5B the Social Work {Scotland} Act 1968 as amended by National Health Service and Community Care Act 1990.

### **2.8.4 Access to Personal Files Review**

Appeals under the Access to Personal Files Act 1987 and Access to Personal Files (Social Work) (Scotland) Regulations 1989

## **2.9 Policy and Resources Asset Transfer Sub Committee**

To determine matters relevant to any Asset Transfer where the Officers recommendation is to refuse the request.

## **2.10 The Northern Roads Collaboration Joint Committee**

The Northern Roads Collaboration Joint Committee is a Joint Committee established by Aberdeen City Council, Aberdeenshire Council, Angus Council, Argyll and Bute Council, Comhairle nan Eilean Siar, The Highland Council and Moray Council (the “Constituent Authorities”) under sections 56 and 57 of the Local Government (Scotland) Act 1973.

The Joint Committee undertakes to appoint two named representatives from each Constituent Authority to its membership. The creation of the Joint Committee represents the joint commitment of the Constituent Authorities to work collaboratively for the joint discharge of road and road-related functions, including ports and harbours (the “Roads Collaboration”).

In particular it shall have the following powers:-

1. To identify suitable projects and initiatives for Roads Collaboration and to make recommendations to Constituent Authorities.
2. To make recommendations to Constituent Authorities in respect of resource contribution, funding arrangements and budget setting for projects and initiatives for Roads Collaboration.
3. To manage resources and approve operational expenditure within agreed Joint Committee budgets for Roads Collaboration.
4. To monitor the effectiveness of the Roads Collaboration and to identify potential improvements and efficiencies.
5. To approve and annual performance report and financial statement for the reporting year on Roads Collaboration.
6. To approve and amend Standing Orders for the Joint Committee and any of its sub-committees.
7. To appoint the Chair and Vice Chair of the Joint Committee and any of its sub-committees.
8. To make arrangements for the provision of business support services for the Joint Committee and any of its sub-committees.

## **SECTION THREE**

### **DELEGATIONS TO OFFICERS**

The functions, powers and duties delegated to the Chief Executive and each Executive Director are also exercisable by such Officers as are designated by them, subject to the provision of any law, and provided the designated Officers are suitably qualified.

#### **3.1 Limitation of Delegations to Officers**

3.1.1 Delegations to Officers set out in this Section are subject always to the following:-

- (1) Officers will exercise the authority delegated to them having regard to and in accordance with the policies adopted by the Council from time to time; and will act in the interests of the Council;
- (2) Officers will comply with any appropriate departmental practice or procedure, of any managerial instruction given, and of any other similar consideration.
- (3) Officers will exercise the authority delegated to them in accordance with any relevant provisions contained elsewhere in the Council's Constitution;
- (4) Officers will have the right to consult with the Chief Executive on any matter, even though it has been specifically delegated to

that Officer, or to refer the matter to an appropriate body of Members established in terms of this Scheme;

- (5) Officers will consult the Chief Executive or any relevant Executive Director where appropriate to do so on issues of a corporate nature or which may have a significant impact on the Council or other Services or on issues which are sensitive or complex;
  - (6) Officers will consult the Leader or Policy Lead or Chair of the appropriate Committee on issues which are sensitive or complex, or otherwise where consultation appears to be appropriate.
  - (7) Officers will consult Ward Councillors where a proposed decision or action is likely to affect significantly the constituency interests of those Councillors.
- 3.1.2 Officers will ensure that they make suitable arrangements to record decisions taken and actions authorised in relation to the discharge of any functions powers and duties delegated to them, and will submit such reports as may be required from time to time.
- 3.1.3 Where an applicant for a service provided by the Council is a Councillor or an employee, the Officer within whose delegated authority it is to determine the application will, before exercising that authority, give consideration to the need to consult with the Chief Executive who may if she/he considers it appropriate require the Officer to refer the application to the appropriate Committee for determination.
- 3.1.4 Where an applicant for employment with the Council is related to a Councillor, or to a Chief Officer of the Council, the Officer within whose delegated authority it is to make the appointment to the post in question will, before exercising that authority, consult with the Chief Executive who may if she/he considers it appropriate require the Officer to refer the appointment to her/him for decision.
- 3.1.5 Where an applicant for employment with the Council is related to an employee of the Council the Officer within whose delegated authority it is to make the appointment to the post in question will, before exercising that authority, consult with their Executive Director who may if she/he considers it appropriate require the Officer to refer the appointment to her/him for decision. In the case of an appointment by an Executive Director they should refer the matter to the Chief Executive.

## **3.2 General Delegations to Officers**

The Chief Executive and Executive Directors of Service are authorised to –



- 3.2.1 Appoint employees as required by them to discharge the functions of the services for which they are responsible, within the overall budget approved by the Council for their Service. To dismiss employees, including in the delegation to the Chief Executive, Executive Directors of Service.
- 3.2.2 Apply and implement the terms of National and Local Agreements on Salaries and Conditions of Service to any post or posts and take such other decisions in relation to such posts and the employees who occupy them as they consider necessary in the interests of the effective operation of the Council's Services.
- 3.2.3 Conduct Disciplinary and Grievance proceedings and make appropriate determinations in accordance with the Council's approved Disciplinary and Grievance Procedures.
- 3.2.4 Select tenderers and award contracts in compliance with the Contract Standing Orders.
- 3.2.5 To take such measures as may be required to enable the Council to respond to an emergency situation, subject to advising as appropriate (a) the Leader, (b) the relevant Policy Lead, and where the emergency is likely to affect significantly a particular part of the Council's area (c) the Chair of the relevant Area Committee and (d) Ward Councillors, reporting to the Council as soon as possible thereafter, on any items of expenditure for which approval would normally be necessary.
- 3.2.6 To authorise suitably qualified officers to discharge functions set out in this Constitution on their behalf, and to sign and to issue –
- (a) statutory notices on behalf of the Council under all relevant legislation applicable to the functions of their office
  - (b) authorisations to Officers to exercise statutory powers (including, where appropriate, the right to enter land and premises in connection with discharge of their duties), and
  - (c) identity cards, and such other similar authorisations as may be required, to Officers.
- 3.2.7 To pay valid claims for damage to, or loss of, property of employees occurring during the course of their employment or of members of the public, arising from the work of the Service concerned, up to £10,000 in respect of any one claim, subject to the approval of the Chief Executive in respect of any higher amount, and subject also to the requirement to ensure that appropriate notification is given and/or claims made on the relevant Council Insurance Policies.

- 3.2.8 To act as Proper Officer in terms of Sections 50(D) (1) (a) and 50(D) (5) of the Local Government (Scotland) Act 1973 (Background Papers).
- 3.2.9 To review and ensure compliance with the requirements of existing and new legislation and statutory regulations, and the Council's policies in respect of those matters.
- 3.2.10 Each Executive Director is authorised, in terms of arrangements made from time to time by the Chief Executive, to exercise the functions of the Chief Executive in her/his absence.
- 3.2.11 Each Executive Director, in respect of premises for which he/she has responsibility, is authorised to permit voluntary groups or others offering to execute on an ex gratia basis construction or improvement works within the curtilage of those premises subject to -
- (a) she/he being satisfied as to the nature, extent and timetable of the works
  - (b) Public Liability/Employers Liability/Professional Indemnity Insurance for appropriate levels to the satisfaction of the Executive Director - Customer Services.
  - (c) the specification of the nature and extent of works, methodology, health and safety assessment, and qualifications/experience of those undertaking the works to the satisfaction of the Executive Director – Development and Infrastructure Services who will also assess the level of supervision and monitoring of the works which may be required.
- 3.2.12 There shall be delegated to each Executive Director the power to respond to consultations which are reasonably considered by that officer to be of a technical nature without reference to Committee .In the event that a Consultation is received with a return date prior to the next ordinary meeting of the relevant committee then the Executive Director shall, after consultation with the Chair and Vice Chair of the Committee, determine whether to consult all members of the relevant committee. Once that consultation has been undertaken the response shall be submitted by the officer who in the event of there being a range of views expressed by members, or otherwise at their discretion, may consult with the Chair.

### **3 Specific Delegations to Officers**

#### **(A) CHIEF EXECUTIVE**

The Chief Executive's powers and duties enable her/him to carry out the following functions, and without prejudice to all statutory duties,

responsibilities and powers exercisable by her/him, authorise her/him to exercise the following –

- 1 The Chief Executive is Head of the Council's paid service in terms of Section 4 of the Local Government and Housing Act 1989.
- 2 The Chief Executive is principal advisor to the Council on all matters of policy and strategic direction and is responsible for the implementation of Council aims and priorities, including leading the delivery of Best Value and Community Planning.
- 3 The Chief Executive provides leadership, direction and motivation for staff and is responsible for the management of other resources to ensure that the Council's policies and priorities are delivered in an efficient and effective manner.
- 4 To give a direction on the applicability of the Scheme of Delegations to an officer in any specific case, and power in special cases to direct that any official shall not exercise a delegated function except where –
  - (a) the officer concerned is exercising a statutory responsibility, or
  - (b) the officer concerned is exercising professional discretion or judgement
- 5 Power in an emergency to instruct executive action on any matter after consultation with the Leader or, in her/his absence, Depute Leader of the Council.
- 6 To determine gradings of categories of posts in implementation of review processes initiated within or out with the Council or to correct anomalies in the Council's salary structure as a consequence of review processes, within the limits of existing budgets.
- 7 To exercise the discretions available to the Council as employers in terms of the Local Government Pension Scheme after consultation with the Leader or, in her/his absence, the Depute Leader of the Council.
- 8 Where s/he considers that it would be in the interests of the Council to do so, to authorise visits by officers of the Council and others representing the Council out with the United Kingdom.
- 9 To designate (a) suitably qualified officer(s) to act as Trustees of the Group Life Assurance Scheme
- 10 To act as, or appoint a suitably qualified person to be, the "proper officer" for the purposes of Sections 34 of the Local Government (Scotland) Act 1973.
- 11 To authorise, in appropriate circumstances, reports to the Procurator Fiscal or Police on matters not otherwise covered within the Council's regulatory frameworks.

- 12 To act as Returning Officer in respect of Parliamentary and Local Authority elections and to discharge the functions in Section 18 of and act as “proper officer” in terms of Section 82 of the Representation of the People Act 1983 (as amended).
- 13 To secure the provision of the electoral registration functions of the Council.
- 14 To appoint a suitably qualified officer to each of the following from time to time and to advise the Council on any such appointments made [a] Chief Social Work officer [b] Chief Education officer [c] Chief Planning Officer
- 15 To make arrangements to fulfil the Council’s duties in terms of the Counter Terrorism Act 2015 and to nominate and appoint officers to any required role or function in that regard.

**(B) EXECUTIVE DIRECTOR OF CUSTOMER SERVICES**

The Executive Director – with responsibility for:

Legal and Regulatory Support Services  
Commercial Services  
Education Services

- 1 To approve **Market Value** disposals, acquisitions, leases, sub-leases, assignments, licences, variations, extensions, rent reviews and agreements (including rent free periods) for property both from and to the council.
- 2 To approve **less than Market Value** disposals, acquisitions, leases, sub-leases, assignments, licences, variations, extensions, rent reviews and agreements (including rent free periods) where the reduction is equated with works / contributions / community benefit being made by the tenant; or where the Market Value is restricted by conditions within the agreement; and in any case in regard to disposals, only in the case where the best consideration that can be reasonably obtained is less than the threshold or marginal amounts as set out in the Local Gov (Sc) Act 1973 and consequent regulation.
- 3 To enter into wayleaves, servitudes and leases with statutory bodies and other providers of utility services who require rights over property for a particular purpose.
- 4 To terminate leases sub-leases, licences and agreements and take appropriate action to regain or surrender possession of the property. To allow the surrender of leases where a business intends to expand into larger council premises or where a business runs into trading difficulties.
- 5 To maintain and update list of wheelchair accessible vehicles for licensed taxis and private hire cars within the Council’s area for the

purposed of section 165 of the Equality Act 2010 and to consider and determine where medical evidence has been produced applications for exemptions from drivers' duties under section 165 of the Equality Act 2010.

- 6 In consultation with the Chair and Vice Chair of the PPSL Committee, to immediately suspend a licence in terms of paragraph 12(1) of Schedule 1 of the Civic Government (Scotland) Act 1982 if they determine that the circumstances of the case justify immediate suspension, on the grounds of undue public nuisance or a threat to public order or public safety.
- 7 To act as Proper Officer in terms of Sections 33A, 50B(2), 50C(2), 50F(2) and 231 of the Local Government (Scotland) Act 1973 and otherwise in relation to the arrangements for the conduct of business arising at any meeting of the Council, a Committee or Sub-Committee.
- 8 To act as Proper Officer in terms of Section 206 of the Local Government (Scotland) Act 1973 and to have custody of all archives and regalia, and, in consultation with the Provost, to determine all matters relating to the flying of flags on Council buildings.
- 9 To determine applications for charitable collections under Section 119 of the Civic Government (Scotland) Act where no objections are received.  
  
To determine applications for public processions under Section 63 of the Civic Government (Scotland) Act where no objections are received.
- 10 To maintain a panel of representatives for appointment in connection with the interests of any child in connection with any proceedings before the Sheriff, in terms of the Curator ad Litem and Reporting Officers (Panels)(Scotland) Regulations, and to determine fees in accordance with Council policies.
- 11 To act as Proper Officer in terms of Section 30 of the Local Government & Housing Act 1989 and the relevant provisions of the Local Governance (Scotland) Act 2004 and related regulations regarding Councillor remuneration and expenses.
- 12 To act as Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989.
- 13 To act as or to designate a suitably qualified officer to act as Clerk to the Licensing Board in terms of the Licensing (Scotland) Act 2005.
- 14 To act as or to designate a suitably qualified officer to act as the "proper officer" in terms of Sections 92, 145, 190, 191, 193, 194, 202 and 204 of the Local Government (Scotland) Act 1973 and to sign and arrange as necessary for the affixing of the Common Seal of the Council to all deeds and other documents which require to be sealed with the Common Seal of the Council.

- 15 To act as or to designate a suitably qualified officer to act as Solicitor to the Council and as such to sign missives and other similar documents binding the Council, except where otherwise provided for in this Scheme.
- 16 To engage private legal firms or Counsel for Court and other legal work if and when she/he may consider this to be necessary to enable the legal work of the Council to be carried out and appoint Parliamentary Agents.
- 17 To arrange for the Council to be represented in relation to any type of judicial and quasi judicial proceedings before any Court, Tribunal or other body and in that regard to initiate, enter, defend and withdraw from such proceedings.
- 18 To settle without reference, claims arising in terms of the Land Compensation (Scotland) Act 1973, in respect of Home Loss Payments following compulsory acquisitions and also to settle any discretionary payments arising from acquisitions by voluntary agreement, provided that the statutory requirements have been met.
- 19 To settle, without reference, up to a maximum of £100,000, any claims against the Council which involves or is likely to involve action against the Council in any Court or statutory tribunal.
- 20 To authorise payments to account to sellers of property to the Council in cases where negotiations are protracted for any reason, up to a value of 90% of the valuation.
- 21 To authorise payments to account to sellers of property to the Council in cases where conveyancing procedures are protracted for any reason subject to the exhibition of a good title and the grant of appropriate undertakings.
- 22 To terminate on behalf of the Council any contract which the Council is entitled to terminate under the appropriate conditions of contract where, after consultation with the appropriate Executive Director, she/he is satisfied that it is in the interest of the Council to do so.
- 23 In respect of Insurance -
  - (1) to take out the necessary insurances to protect the interests of the Council.
  - (2) to make arrangements with insurance companies concerning settlement of claims.
  - (3) in respect of claims not settled by or on behalf of the Council to settle up to a maximum of £100,000.
- 24 To consider and determine, where unopposed, applications under Parts I, II and III and V of the Civic Government (Scotland) Act 1982; and to keep under review, where appropriate, the levels of fees charged for

particular licences, and the level of taxi fares throughout the area of the Council.

- 25 To carry out of prosecutions under Section 43(2) of the Education (Scotland) Act 1980, where he/she considers it appropriate.
- 26 To determine applications for House Loans and other financial assistance under Part XII of the Housing (Scotland) Act 1987 after consultation with the Executive Director – Development and Economic Growth and the Chief Financial Officer.
- 27 To act as the proper officer for the Statutory Functions and obligations of the Council under all current, relevant legislation relating to Freedom of Information, Regulation of Investigatory Powers Act and Regulation of Investigatory Powers (Scotland) Act and Data Protection. To determine requests for review of refusal, or partial refusal, to provide information, or any procedural matter relating to a request for information in terms of the Freedom of Information (Scotland) Act 2002 or the Environmental Information Regulations.
- 28 To authorise reports for submission to the Procurator Fiscal with a view to the initiation of proceedings under all relevant delegated legislation.
- 29 To provide a valuation and estates service in respect of the valuation and management of heritable property.
- 30 To approve the terms for the lease or disposal of property surplus to the requirements of the Council within the terms of the Contract Standing Orders.
- 31 To maintain a list of all heritable property owned or leased by the Council and to appeal rating assessments in respect of council property and determine the conduct and settlement of any such appeal.
- 32 To issue decision notices on reviews determined by a Local Review Body under the terms of the Town and Country Planning (Scheme of Delegation and Local Review Procedure) (Scotland) Regulations 2013.
- 33 To undertake all building maintenance work within approved expenditure either by directly employed staff direct labour or by the use of maintenance contractors subject to the provisions of the Contract Standing Orders.
- 34 To inspect, assess, instruct and supervise repairs and maintenance of Council property.
- 35 To arrange for any necessary alterations or adaptations, up to a value of £25,000 on any one project for the purpose of realising the service potential or commercial potential of a property owned or leased by the Council, subject to provision being available within the relevant budget.

- 36 To arrange and provide cleaning services in Council property as required within approved expenditure, either by directly employed staff or by the use of contractors.
- 37 To arrange and provide a catering service for the relevant services of the Council within approved expenditure either by directly employed staff or the use of contractors.
- 38 To review the Asset Management Plans prepared by Services and co-ordinate these into an overall Council Asset Management Plan.
- 39 To act or appoint a suitably qualified Chief Inspector of Weights and Measures and to act as the proper officer for the statutory functions of and obligations of the Council under all current legislation for Trading Standards and Monetary Advice.
- 40 To determine applications for the provision of footwear and clothing for pupils at public schools, in terms of Section 54 of the Education (Scotland) Act 1980.
- 41 To arrange programmes of in-service training for teachers.
- 42 To arrange in-service courses for Chaplains to schools as and when considered desirable.
- 43 To carry out the functions of the Council as Education Authority in relation to the provision of education for children or young people with additional support needs in terms of the Education (Additional Support for Learning) Scotland Act 2004.
- 44 To implement rates of fees for educational establishments used by the Council outwith the Council's area.
- 45 To carry out the administration, assessment and award of any education bursaries or other related forms of assistance.
- 46 To fix the levels of any tuition fees, examination expenses, and determine rates of pay to examination invigilators.
- 47 To approve the participation of school pupils and supervising staff in cultural, social and recreational visits in and outwith the United Kingdom and the reception of visiting pupils and staff.
- 48 To approve temporary exchange visits by teaching staff in and outwith the United Kingdom.
- 49 To make grants to pupils to enable them to attend courses and conferences and to undertake educational visits and excursions at home and abroad.



- 50 To make the necessary arrangements for the boarding out of pupils and for the allocation of hostel accommodation.
- 51 To issue licences in terms of the Children (Performances and Activities) (Scotland) Regulations 2014.
- 52 To determine applications received from schools for arrangements to be made for visits during school terms.
- 53 To provide courses in educational training for outside agencies and to negotiate appropriate charges for these services.
- 54 To ensure that requisite provision is made for any pupil entitled in terms of Section 53(3) of the Education (Scotland) Act 1980 to receive refreshment in the middle of the day.
- 55 To make grants to pupils from schools within the Council's area or normally resident within the area who are selected to join national youth orchestras or similar national music, drama or dance companies in respect of fees and attendance at courses.
- 56 To increase, in cases of hardship, and at his discretion, the amount of grant awarded to school pupils attending part-time courses at the Royal Conservatoire of Scotland and the Scottish Ballet School up to a maximum of the cost of fees and travelling expenses.
- 57 To exercise the powers available to the Council as Education Authority, in terms of Section 23 of the Education (Scotland) Act 1980, with regard to the provision by the Council of education for pupils belonging to the areas of other Education Authorities and incur outwith area fees and to pay the approved COSLA rate to any other Education Authority which has provided education for pupils normally resident in the area of the Authority but who are, for various reasons, placed in Schools outwith the Authority.
- 58 To apply to the Ministry of Agriculture, Fisheries and Food for and to accept any allocation made to the Council from the EEC national quota of levy-free foods administered by that Ministry under the General Agreement on Tariffs and Trade.
- 59 To consider and determine all placing requests under Section 38 of the Standards in Scotland's Schools etc. Act 2000, in accordance with the guidelines formulated by the Council.
- 60 To consider and determine all placing requests under Section 28 of the Education (Scotland) Act 1980 as amended by Section 43 of the Standards in Scotland's Schools Act 2000 and School Education (Scotland) Act 2004 in accordance with the guidelines formulated by the Council.

- 61 To accept placing requests in terms of the Education (Scotland) Act 1980 and to make whatever transport arrangements are deemed to be appropriate, in individual cases brought to his attention where supporting documentation satisfies him that the child concerned has serious physical, emotional or psychological problems.
- 62 In cases where the parent changes residence and in terms of the Education (Scotland) Act 1980 makes a placing request that her/his child remain in the school attended prior to that change, to accept that request provided that (1) the parent agrees to comply with the Council's policy on transport arrangements and costs, and (2) in all the circumstances the Executive Director considers it is appropriate to accept the request.
- 63 To exercise, at his discretion, the powers available to the Council as Education Authority in relation to the exclusion of pupils from schools.
- 64 Where not otherwise determined by a Parent Council, to determine the dates of occasional local school holidays after consultation with any appropriate Parent Council.
- 65 To accept and administer any Educational Trusts or small endowments which may be offered to the Council for schools in its area.
- 66 To carry out the functions of the Council in terms of Section 58 of the Education (Scotland) Act 1980 relating to the cleanliness of pupils at schools.
- 67 To exercise the functions of the Council in terms of Section 50 of the Education (Scotland) Act 1980 and Section 35 of Children (Scotland) Act 1995, (provision of travelling facilities and accommodation in exceptional circumstances).
- 68 Where a teacher is compulsorily transferred to authorise payment of the cost of removal expenses in terms of the Council's Scheme or, where appropriate, reasonable daily travel expenses subject to the relevant provisions of the Conditions of Service for teachers in Day Schools.
- 69 To carry out the education functions of the Council under Part X of and Schedule 9 to the Children Act 1989.
- 70 To determine requests for access to and amendment of records in terms of the Pupil Educational Records (Scotland) Regulations 2003.
- 71 To exercise the functions of the Education Authority in relation to the irregular attendance of pupils at schools under their management all in terms of Sections 36-41 of the Education (Scotland) Act 1980 after consultation with the appropriate Local Attendance Council.

- 72 To approve attendance by employees on authorised Youth Exchange visits overseas where the employees, as part of their duties, are required to accompany the group undertaking the exchange.
- 73 To authorise Head Teachers in Schools to approve appointments, where considered necessary and where budgetary provision exists, of temporary non-teaching staff in schools.
- 74 To determine school staffing levels within the limits of resources provided by the Council.
- 75 To authorise the use of budgetary resources in conjunction with partner organisations in the pursuit of agreed corporate policies.
- 76 To authorise the distribution of the educational hypothecated resources received from the Scottish Government within the policies determined for this purpose by the Council.
- 77 To secure the right of every child of school age to be provided with school education by, or by virtue of arrangements made, or entered into on behalf of the education authority.
- 78 To secure improvement in the quality of school education with a view to raising standards of education.
- 79 To prepare the annual statement of education improvement objectives.
- 80 To authorise Head Teachers to prepare an annual school plan which will identify the principal achievement targets to be sought in the following academic year and a report on the implementation of the plan as defined in the Standards in Scotland's Schools etc. Act 2000.
- 81 To secure the provision of pre-school education for those children whose parents request such provision all in terms of Sections 32 to 34 of the Standards in Scotland's Schools Etc. Act 2000.
- 82 To authorise the provision of school transport as described in Section 37 of the Standards in Scotland's Schools Etc Act 2000 within the financial limits agreed by the Council.
- 83 To exercise or to designate a suitable qualified officer to exercise the powers and duties of the Council and of an Inspector and authorised Officer (including powers of entry, inspection, sampling, seizure and initiating prosecutions, where appropriate) under any relevant legislation.
- 84 To authorise reports for submission to the Procurator Fiscal with a view to the initiation of proceedings under all relevant delegated legislation.

**(C) CHIEF OFFICER – HEALTH AND SOCIAL CARE**

- 1 To act as, or manage a suitably qualified officer as, Chief Social Work Officer, in terms of Section 3 of the Social Work (Scotland) Act 1968, for the purposes of the Council's functions under the:
- (a) Social Work (Scotland) Act 1968;
  - (b) The enactments in Section 5(1B) of the same Act;
  - (c) The Adults with Incapacity (Scotland) Act 2000; and
  - (d) Duties or powers bestowed upon a Chief Social Work Officer under any other Act or regulation enacted from time to time by the UK or Scottish Parliament.

To designate the Chief Social Work Officer to act as the proper Officer, in accordance with any policy approved by the council:

- i To promote social welfare by making available advice, guidance and assistance under Section 12 of the 1968 Act, on such a scale as may be appropriate for its area. The delegation in terms of this Section shall include authority:
  - (a) to make loans or grants to any person or family;
  - (b) to give any other appropriate assistance, including provision for the storage of property in cases of emergency.
  - (c) The Chief Officer of Health and Social Care is authorised, in accordance with any policy approved by the Council.
- ii To assist in the disposal of produce of work undertaken by persons in need under Section 13 of the 1968 Act.
- iii To provide care at home and laundry facilities for persons in need, etc. under Section 14 of the 1968 Act. subject to the recovery by the Executive Director on the appropriate scale as may be determined by the Council; but subject also to the Executive Director being empowered to abate or waive care at home/home help charges to avoid hardship according to the personal and financial circumstances of the client.
- iv To receive and keep in care in certain circumstances any child in need under Section 17 and 25 of the 1995 Act.
- v To make an application for a permanence order in respect of a child under Section 80 of the Adoption and Children (Scotland) Act 2007.

- vi To ensure that, in reaching any decision relating to a child in the care of the Council, consideration is given to Section 17 of the 1995 Act.
- vii To provide accommodation for a looked after/care experienced child in certain circumstances, under Section 25 of the 1995 Act.
- viii To provide accommodation under Section 26 of the 1995 Act for a child looked after by the Council and to remove any child from a residential establishment under Section 32.
- ix To grant financial assistance to persons who meet the criteria set out in Section 30 of the 1995 Act, to enable them to meet expenses in connection with their accommodation, maintenance, education or training, in accordance with Section 30.
- x To provide aftercare under Section 29 of the 1995 Act in respect of any child who meets the criteria therein.
- xi To make arrangements for the burial or cremation of any person where the criteria under Section 87 of the Burial and Cremation (Scotland) Act 2016 are met, The Council may recover expenses incurred under this section from the estate of the deceased.
- xii To pay the expenses incurred in attending a funeral where the criteria set out in Section 88 of the Burial and Cremation (Scotland) Act 2016 are met.
- xiii To give effect to a compulsory supervision order made by a Children's Hearing for its area under Section 144 of the Children's Hearing (Scotland) Act 2011.
- xiv To authorise the emergency transfer of placement of a child subject to a compulsory supervision order in terms of Section 143 of the Children's Hearings (Scotland) Act 2011.
- xv To seek review by a Children's Hearing of a compulsory supervision order, in certain circumstances, under Section 131 of the Children's Hearings (Scotland) Act 2011.
- xvi To arrange or assist in arranging holidays or other absences appropriate to the needs of the child, of any child in the care of the Council.
- xvii To carry out the functions of the Council under Section 48 of the National Assistance Act 1948 relating to the temporary storage of property in certain circumstances on behalf of certain persons.

- xviii To appoint Mental Health Officers in terms of S. 32 of the Mental Health (Care and Treatment) (Scotland) Act 2003.
  - xix To provide aids and adaptations for the homes of disabled persons within the budget available for this purpose.
  - xx To carry out the functions of the Council in relation to the Adoption of Children in terms of the Adoption and Children (Scotland) Act 2007 and the Children Act 1995.
  - xxi To carry out the functions of the Council under the Looked After Children (Scotland) Regulations 2009.
  - xxii To determine assistance with legal fees (in consultation with the Executive Director with responsibility for Legal and Regulatory Support Services) and medical expenses in relation to adoptions.
  - xxiii To determine applications for the revision of maintenance rates for private/voluntary sector homes outwith the provisions of the National Health Service and Community Care Act 1990.
  - xxiv To determine fees for curators ad litem, foster parents and community carers.
  - xxv To exercise the functions of the Council in relation to the National Health Service and Community Care Act 1990 for the purpose of implementing the Council's policies in relation to financial assessment systems for chargeable services within packages of community care.
  - xxvi To enter into contracts with private and voluntary agencies for the provision of services relative to the Council's policies in relation to the discharge of its functions under the National Health Service and Community Care Act 1990.
  - xxvii To authorise the Chief Officer – Health and Social Care to make direct payments in terms of the Social Care (Self-directed Support)(Scotland) Act 2013 and any further provisions made by the Scottish Ministers in terms of s. 15 of that Act to an eligible supported person for the purpose of enabling the person to arrange for the provision of support by any person.
- 2 To designate the Chief Social Work Officer to act as the proper Officer, and serve any notice and take any action on behalf of the Council in accordance with any policy approved by the Council, in relation to the Council's functions in regard to -

- i The Chronically Sick And Disabled Persons Act 1970 and the Disabled Persons (Services Consultation And Representation) Act 1986.
  - ii Part IV of the Criminal Procedure (Scotland) Act 1995.
  - iii The National Assistance Act 1948
  - iv The Disabled Persons (Employment) Act 1958.
  - v The Matrimonial Proceedings (Children) Act 1958.
  - vi The Adults with Incapacity (Scotland) Act 2000.
  - vii Sections 51 and 217 of the Criminal Procedure (Scotland) Act 1995 and S. 14 of the Criminal Justice and Licensing (Scotland) Act 2010.
  - viii The Children (Scotland) Act 1995.
  - ix The Adoption and Children (Scotland) Act 2007.
  - x Sections 21 to 23 of the Health And Social Services And Social Security Adjudication Act 1983.
  - xi The Mental Health (Care and Treatment) (Scotland) Act 2003.
  - xii The Foster Children (Scotland) Act 1984.
  - xiii Sections 38(b) of the Housing (Scotland) Act 1987.
  - xiv The Crime and Disorder Act 1998
  - xv The Management of Offenders (Scotland) Act 2005
  - xvi The Childrens' Hearings (Scotland) Act 2011.
3. To exercise the housing functions delegated to the Integration Joint Board under –
- I. Section 71 (1) (b) Housing (Scotland) Act 2006 (assistance for housing purposes) only in so far as it relates to an aid or adaption.
  - II. Section 92 Housing (Scotland) Act 2001 (assistance for housing purposes) only in so far as it relates to an aid or adaption.

**(D) EXECUTIVE DIRECTOR OF DEVELOPMENT & INFRASTRUCTURE SERVICES**

The Executive Director with responsibilities for:-

Financial Services  
Customer Support Services  
Road and Infrastructure Services  
Development and Economic Growth

- 1 To determine all applications which are defined as local developments in accordance with the hierarchy regulations, including for the avoidance of doubt any Area Capacity Evaluation required as part of the process of approval or refusal.

But excepting from that generality the following types of applications:

- P(a) Any category of application which Ministers direct in terms of Section 26(a)(3) of the Planning Etc Scotland Act 2006 be not determined by an officer;
- L(b) Any application, which attracts a significant body of objection ie more than 10 individual objections on planning policy or land use grounds;
- P(c) Any application made by an elected Member of the Planning Authority.

For the avoidance of doubt any determination under the foregoing section of the Scheme of Delegations will be subject to local review provided that the decision on the application has been made by the "Appointed Officer" including the right of an applicant to seek a review on a non determination of such a category of application within the time periods specified in the relevant regulations.

- P2 To determine applications for major developments which in the opinion of the Executive Director with responsibility for Development and Economic Growth would not be a significant departure from the development plan and for which there had been no significant body of representation ie 10 or less objections on planning policy or land use grounds.
- L3 To determine applications for variation of planning consents under Section 64 of the Town and Country Planning (Scotland) Act 1997.
- L4 In consultation with the Executive Director with responsibility for Legal and Regulatory Support Services to determine that a public local inquiry be held in connection with any particular appeal against refusal of planning permission or similar procedure, and in that respect to determine the Council's position on any appeal against a non determination of an application.
- L5 To determine certificates of lawfulness in terms of Section 150 and 151 of the Town and Country Planning (Scotland) Act 1997.



- L6 To determine all consultative applications and assessments of a technical nature under Delegated Legislation including the power to raise objections.
- L7 To determine prior notifications included in and introduced by the Town and Country Planning (General Permitted Development) (Scotland) Order 1992 and revocations and modifications to planning permissions under Sections 65, 66, 67 of the Town and Country Planning (Scotland) Act 1997 where there are no significant objections ie ten or less objections on planning policy or land use grounds.
- L8 To determine hazardous substances consents in terms of the Planning (Hazardous Substances) (Scotland) Act 1997 where there are no significant objections, ie 10 or less objections on planning policy or land use grounds.
- L9 To determine applications for Listed Building and Conservation Area consents in terms of the Planning (Listed Building and Conservation Area) Scotland Act 1997 and applications under the Town and Country Planning (Control of Advertisement) Scotland Regulations 1984, where there are no significant objections, ie 10 or less objections on planning policy or land use grounds.
- L10 In regard to s75A of the Town and Country Planning (Scotland) Act 1997 (as amended) to (i) determine applications, and (ii) determine that a planning obligation can be modified or discharged by agreement in writing. Determination under this paragraph L10 shall not be permitted where there has been an earlier determination `by the PPSL Committee in relation to the planning obligation unless the determination relates to either (i) a planning obligation which has become obsolete either by means of being related to an expired and unimplemented planning permission; or (ii) where, in terms of planning, the obligation can be demonstrated to have been met in full and where there is no longer-term requirement (i.e. road safety, site restoration, ongoing management of land) for the burden on the land being retained.
- L11 Determination of applications for a Periodic Review of Mineral Planning Permissions under Schedule 10 of the Town and Country Planning (Scotland) Act 1997 (as amended) –where conditions are agreed with the applicant.
- L12 To exercise the powers to serve “Contravention Notices” in terms of Section 125 of the Town and Country Planning (Scotland) Act 1997 prior to formal enforcement action.
- L13 To exercise the powers to take action against fly posting in terms of Section 187 of the Town and Country Planning (Scotland) Act 1997.

- L14 To exercise the power to approve or refuse all proposed works to trees in Conservation Areas and trees protected by Tree Preservation Orders.
- L15 To refuse applications which were the subject of Section 75 Agreements when the applicant had not concluded the Section 75 Agreement within 4 months of being notified of the requirement to do so.
- L16 To deal with enforcement complaints where after investigation no breaches of planning control have been identified.
- L17 Service of a Breach of Condition Notice.
- L18 To undertake and determine screening and scoping opinions of planning applications under the Environmental Impact Assessment (Scotland) Regulations and under the Town and Country Planning (Development Management Procedure (Scotland) Regulations 2019.
- L19 To determine whether to institute enforcement proceedings on (1) any breach of planning control under all relevant legislation and to make service of any relevant notice or order, and under the High Hedges Scotland Act 2013.
- L20 To act as the proper officer for the statutory functions of the Council under all relevant legislation relating to the functions of the Council as Planning Authority, and to issue all necessary decision notices or other statutory documents as may be required.
- L21 To appoint as inspectors and authorised officers for the purpose of the administration and enforcement of the legislation referred to in the foregoing paragraphs such officers as he/she may deem necessary and appropriate.
- L22 In terms of Part 1 of the Land Reform (Scotland) Act 2003 –
  - (a) i To sign and issue statutory written notices;
  - ii To deal with enforcement complaints where after investigation breaches of Sections 14 or 23 or any bye-law made under Section 12 have been identified;
  - iii To authorise officers to enter on to land not owned or under the control of the Council to carry out remedial works under Sections 14, 15 and 23;
  - iv To authorise reports for submission to the Procurator Fiscal;
  - v To approve or refuse all applications for a one to five day Land Exemption Orders;

- vi To recommend approval to Scottish Ministers for six day to two year Land Exemption Order applications and amendment, revocations and re-enactment of Orders previously granted where no significant objections are received;
  - (b) To determine any requirement for a stopping up/relocation of a core path and to take all necessary steps to give effect to such decision under the Town and Country Planning (Scotland) Act 1997 Section 208.
- 23 To grant applications and issue completion and other related Certificates, and refuse unappealed applications under the Building (Scotland) Acts. To issue an order under the said Acts in terms of demolishing or making good a dangerous building, including notices under Section 13 of the Building (Scotland) Act.
- 24 To determine the award of assistance under the terms of Schemes of Business Development, including Business Gateway, or Employment Support approved from time to time by the Council.
- 25 To determine tenders and approve public and school transport contracts of under £200k.
- 26 To act jointly with the Chief Constable in the provision of road safety.
- 27 For the avoidance of doubt, that in respect of delegations to determine local applications in terms of the Town and Country Planning (Schemes of Delegation and Local Review Procedure) (Scotland) Regulations 2013, to authorise the Executive Director with responsibility for Development and Economic Growth to appoint the Head of Development and Economic Growth and/or such other Officers as he may determine, from time to time, to exercise the functions of the Council in making such determinations, in accordance with said regulations.

**NOTE 1**

The delegations marked with a (P) are ostensibly made under Section 43 of the 2006 Act, the delegations marked with an L are made under the 1973 Act, but nothing contained herein shall limit the Council's statutory authority to take such delegated action simply because of a challenge to which section of the relevant Act is referred to.

- 28 To determine applications for registration under the Private Landlord Scheme and applications for licences for Houses in Multiple Occupation in terms of the Mandatory Schemes under Part 3 of the Housing (Scotland) Act 2014.

- 29 To determine applications for licences and registrations under the Petroleum Acts, the Explosives Act, the Poisons Act and similar legislation.
- 30 To determine applications for a range of licensing within the Regulatory Services functions including animal boarding and horse riding establishments, the keeping of dangerous wild animals, the operation of pet shops and zoos, and the breeding of dogs.
- 31 To undertake the statutory duties under the Water (Scotland) Act 1980 including regulation and enforcement, and the delivery of an improvement grant scheme for private water supplies.
- 32 To act as or appoint a suitably qualified officer to act as Access Officer, Head of Food Safety and Local Authority Public Health Competent Person, Animal Welfare Officer.
- 33 To act as the proper officer for the Statutory Functions and obligations of the Council under all current, relevant legislation relating to Environmental Health, Animal Welfare, Fire Precautions.
- 34 To exercise or to designate a suitably qualified officer to exercise the powers and duties of the Council and of an Inspector and authorised Officer (including powers of entry, inspection, sampling, seizure of goods and services, opening containers, seizure and initiating prosecutions, where appropriate) under any relevant legislation.
- 35 To determine applications for licences in respect of caravan sites.
- 36 To carry out the following functions of the Council in terms of the Roads (Scotland) Act 1984:-
  - (1) Under Section 13 the service of appropriate notices in relation to the imposition on frontagers of the requirements to make up and maintain private roads;
  - (2) Under Section 15 in relation to the completion of necessary work in private roads occasioned by an emergency (other than an emergency constituted by a danger as defined in Section 91);
  - (3) Under Section 16(1)(b) in relation to the consideration and determination of applications for the adoption of private roads as public;
  - (4) Under Section 18 in relation to the adoption of footpaths associated with development;
  - (5) Under Section 21 in relation to applications for construction consent for new roads built by a person other than the Roads Authority;

- (6) Under Section 23 in relation to stopping up or temporarily closing any new road constructed by a person other than the Roads Authority, without consent or in contravention of, or in non-compliance with, a condition imposed by a construction consent;
- (7) Under Section 31(3) in relation to the service of notices in connection with the drainage of public roads or proposed public roads, on the owner and occupier of the land affected;
- (8) Under Section 35(1) and (4) and after giving notice in terms of Section 35(5) in relation to the provision of road lighting and related structures;
- (9) Under Section 51 in relation to the authorisation and withdrawal of authorisation for the planting and maintenance of trees, shrubs, grass and other plants by a person other than the Roads Authority within the boundaries of a public road;
- (10) Under Section 56 in relation to the authorisation of works and excavations in or under a public road;
- (11) Under Section 57 in relation to the prevention or termination of dangerous works or excavations in or under a public road;
- (12) Under Section 58 in relation to the granting of permission for the deposit of building materials on roads;
- (13) Under Section 59 in relation to the control of obstructions in roads;
- (14) Under Section 60 in relation to the marking, lighting and fencing of obstructions or roadworks and for shoring buildings requiring protection in similar circumstances;
- (15) Under Section 61 in relation to granting permission to place and thereafter maintain apparatus in or under a public road;
- (16) After consultation with the Chief Constable under Section 62 in relation to the temporary prohibition or restriction of traffic on roads for reasons of public safety or convenience;
- (17) Under Section 63 in relation to the imposition of the requirement to construct new accesses across road verges or footways where appropriate;
- (18) Under Section 64(2) in relation to the issue of consent to statutory undertakers for work on footways, footpaths or cycle tracks in connection with their apparatus in terms of Section 64(1)(b);

- (19) Under Section 66 in relation to enforcing maintenance of vaults, arches, cellars, tunnels and related structures within the vicinity of a road;
- (20) Under Section 67 in relation to enforcing safety provisions countering outward opening doors, gates, window shutters or bars interfering with the safety or convenience of road users;
- (21) Under Section 78(2) in relation to the service of notices prior to the diversion of waters where necessary in connection with the construction, improvement or protection of a public road;
- (22) Under Section 79, to negotiate terms and enter into agreements with bridge owners in relation to future maintenance obligations;
- (23) Under Section 83 in relation to the prevention of obstruction of the view of road users at or near corners, bends and junctions;
- (24) Under Section 85 in relation to granting permission for the location of Builders' skips on roads;
- (25) Under Section 86 in relation to the removal or repositioning of any Builder's skip which is causing or is likely to cause, a danger or obstruction;
- (26) Under Section 87 in relation to the removal from roads of unauthorised structures and the consequent reinstatement of the site;
- (27) Under Section 88 in relation to the removal of projections interfering with safe or convenient passage along a road;
- (28) Under Section 89 in relation to the removal of accidental obstructions from roads;
- (29) Under Section 90 in relation to the granting of consent for fixing or placing over, along or across a road any overhead bridge, beam, rail, pipe, cable, wire or other similar apparatus;
- (30) Under Section 91 in relation to the prevention of danger to road users and the prevention of obstructions caused by roadside vegetation, fences or walls;
- (31) Under Section 92 in relation to granting consent for planting trees or shrubs within five metres of the edge of the made-up carriageway;
- (32) Under Section 93 in relation to the protection of road users from dangers near a road;

- (33) Under Section 94 in relation to the infill of dangerous ditches adjacent to or lying near a road;
  - (34) Under Section 99(2) in relation to the issue of consent to persons undertaking works or excavations necessary to ensure compliance with Section 99(1) (prevention of the flow of water, filth, dirt or other offensive matter on to the road);
  - (35) Under Section 99(3) in relation to the service of notices on owners or occupiers requiring works or excavations to be undertaken to ensure compliance with Section 99(1);
  - (36) Under Section 140 in relation to authorising persons to enter land to take any action or execute any work authorised or required to be taken or executed by the Roads Authority under the Roads (Scotland) Act 1984;
  - (37) Under Section 30 in relation to the serving of notices subject to Section 31(3), in connection with carrying out works for protecting roads against hazards of nature;
  - (38) To exercise the functions of the Council under Section 152(2) to re-determine the means of exercise of a public right of passage over a road;
  - (39) To act as the “proper officer” to issue a Certificate as provided in Section 96(1);
  - (40) To add and remove from the list of public roads under the Roads (Scotland) Act 1984.
- 37 To make, revoke, or vary Orders and Schemes under the Road Traffic Regulation Act 1984; and Sections 68, 69, 70 & 71 of the Roads (Scotland) Act 1984 and to commence and complete the statutory procedure set out in the Local Authorities Traffic Order (Procedure) (Scotland) Regulations 1999 and undertake all necessary preparation prior to making orders and to make and sign temporary and permanent traffic orders and implement them where the statutory/public consultation process yields no objections or, where objections have been received & maintained, the orders have gained the appropriate committee approval.
- 38 To grant wayleaves in respect of public utilities;
- 39 To deal with all requests for information in connection with grant applications made under Section 8 of the Railways Act 1974 (Grants to assist the provision of facilities for freight haulage by rail);

- 40 To carry out the functions of the Council under the Public Utilities Street Works Act 1950 and the New Roads & Street Works Act 1991 in relation to roads for which the Council is responsible;
- 41 To exercise the functions of the Council under Section 12 of the Roads (Scotland) Act 1984 in relation to the stopping up or diversion of highways crossing or entering routes of proposed new highways;
- 42 To agree terms for Bridge Agreements with the British Railways Board and terms of discharge of the Council's liability for annual maintenance and renewal charges in that connection;
- 43 After consultation with the Chief Constable to consider and, where acceptable in road safety terms, approve locations for advertisements on road safety barriers and similar structures;
- 44 To make arrangements for the management of piers, harbours, car parks, jetties, aerodromes and landing strips etc. This includes, for the avoidance of doubt, the general duties and powers of the Duty Holder in respect of the Port Marine Safety Code and to act as or designate a suitably qualified officer to discharge responsibilities in respect of the Code and general and statutory duties as a Single Harbour Authority.
- 45 To carry out the following functions of the Council in terms of the Coast Protection Act 1949:-
  - (1) Under Section 4 to enter into an agreement with any other person for the carrying out by that person or the Council of any coast protection work which the Council has the power to carry out;
  - (2) Under Section 5 to arrange for the publication of notices relating to proposed works in local newspapers and the serving of notices on affected harbour authorities;
  - (3) Under Section 8 to arrange for the publishing of notices relating to works schemes and the serving of Notices on affected harbour authorities;
  - (4) Under Section 12 to serve notice on owners of land where protection works are required;
  - (5) Under Section 25 in relation to the authorisation of persons taking entry to land for the purposes specified therein;
- 46 To accept invitations to carry out road and footpath lighting works;



- 47 To enter objections on behalf of the Council to applications for Goods Vehicle Operators' Licences, under Section 12 of the Goods Vehicles (Licensing of Operators) Act 1995.
- 48 To carry out the functions of the Council in terms of the Strathclyde Regional Council Order Confirmation Act 1990 -
- (1) Under Section 5 in relation to the carrying out of works on public roads, recovery of costs thereof and the giving of assistance to the promoters of the Rally;
  - (2) Under Section 7 in relation to the removal or the arranging for the removal and custody of vehicles on the Rally route and the recovery of the costs of so doing from the owner of such vehicle; and
  - (3) Under Section 6(9) in relation to requiring the promoter to stop the Rally in the case of emergency and to enter upon such part of a road closed for the purposes of the Rally with any necessary vehicles, plant and equipment for the purpose of exercising any of the Council's functions in relation to the emergency;
- 49 To manage the parks, gardens, playing fields, open spaces and other recreational facilities, swimming pools and public halls provided or operated by the Council and to take such action as may be necessary;
- 50 To manage and operate burial grounds and crematoria, and be responsible for the records in relation thereto and to undertake the allocation of lairs on such terms and conditions as may from time to time be approved by the Council:
- 51 To authorise such members of staff as he/she thinks fit to issue fixed penalty notices in terms of Section 88 of the Environmental Protection Act 1990.
- 52 To act as appointed officer in terms of the Dutch Elm Disease (Local Authorities) Order 1984.
- 53 To authorise reports for submission to the Procurator Fiscal with a view to the initiation of proceedings under all relevant delegated legislation.
- 54 To exercise the functions of the Council under the Environmental Protection Act 1990, as amended by the Environment Act 1995 and regulation, as they relate to the Statutory Obligations incumbent on the Council in respect of waste management.

- 55 To exercise the functions of the Refuse Disposal (Amenity) Act 1978, as amended by any subsequent legislation, relating to any matter referred to therein and inter alia abandoned vehicles.
- 56 To arrange for street cleaning, the provision of public conveniences and the provision of a school crossing patrol service.
- 57 To act as, or arrange for the appointment of, a suitably qualified officer to be the Council's Oil Pollution Officer.
- 58 To make grants to householders for the purpose of making good fabric and decoration in houses affected by work carried out by the Council under the Noise Insulation (Scotland) Regulations 1975 at the rates and on conditions which may be prescribed from time to time by the Council;
- 59 To determine Applications under the High Hedges Scotland Act for a high hedge Notice where no action is proposed to be taken.
- 60 To carry out the whole functions of the Council in relation to decriminalised parking scheme within Argyll and Bute as constituted by the Road Traffic (Permitted Parking Area and Special Parking Area) (Argyll and Bute Council) Designation Order 2014 and related legislation including without prejudice to the foregoing generality:
- (a) To set the level of penalty charges and other related charges in accordance with any guidance given by the Scottish Ministers whether such guidance is given to the Council as parking authority or to local authorities generally.
  - (b) To authorise such members of staff as he/she thinks fit to be parking attendants with the full powers of parking attendants as provided for in the relevant legislation including *inter alia* the power to issue Penalty Charges Notices in appropriate circumstances.
  - (c) To take such steps as are competent and necessary to recover all sums that may become due following the issue of such Penalty Charge Notices.
- 61 To determine applications under Section 97 of the Civic Government Scotland Act 1982 where there are no objections to the proposal.
- 62 To manage and factor houses provided by the Council on the Education Account;
- 63 To determine and issue approvals for private sector housing grants for repairs work;

- 64 To make payments by way of compensation in cash or in kind as may competently be made by the Council in exercise of their statutory housing functions;
- 65 To take such action as necessary in the allocation of emergency accommodation as may from time to time be the statutory obligation of the Council;
- 66 To determine applications under Part II of the Housing (Scotland) Act 1987 as amended by the Housing (Scotland) Act 2001 and the Homelessness etc (Scotland) Act 2003 relating to homeless persons;
- 67 To be responsible for implementation of the provisions of Part IV of the Housing (Scotland) Act 1987 relating to sub-standard houses;
- 68 To be responsible for the implementation of chapter 5 of the Housing (Scotland) Act 2006 relating to the repair, improvement and demolition of houses;
- 69 To be responsible for implementation of the provision of Part VI of the Housing (Scotland) Act 1987 relating to Closing and Demolition Orders;
- 70 To be responsible for implementation of Part VII of the Housing (Scotland) Act 1987 relating to overcrowding.
- 71 To be responsible for the amendment of Housing Provision and the preparation of a Local Housing Strategy in accordance with the Housing (Scotland) Act 2001.
- 72 To carry out the Council's functions under the Disabled Persons (Badges for Motor Vehicles) Regulations 1982 and subsequent legislation.
- 73 To designate a suitably qualified Officer to administer the Car Leasing Scheme.
- 74 To determine applications for licences under the Cinematograph Act 1909 and the Theatres Act 1963, where unopposed.
- 75 To act as, or arrange for the appointment of, a suitably qualified officer to be the Council's vehicle operator and to hold a vehicle operators licence in respect of the Council in terms of the Goods Vehicles (Licensing of Operators) Act 1995 and any regulation thereunder.
- 76 To act as the Council's Chief Financial Officer in terms of Section 95 of the Local Government (Scotland) Act 1973 as amended, and as such is authorised to, or designate a suitable Officer to, discharge:- (1 to 12 as set out on pages 108/109).

**(E) CHIEF FINANCIAL OFFICER**

The Council's Chief Finance Officer is responsible for advising the Council, its Committees and its Departments on all financial matters and is authorised to

–

1. Determine the detailed form of Capital and Revenue Estimates consistent with the directions of the Council;
2. Determine all accounting procedures and financial records of the Council and the principles to be followed;
3. Prepare and submit to the Controller of Audit in accordance with Section 96 of the Local Government (Scotland) Act 1973 the Annual Abstract of Accounts and advertise and make them available for public inspection;
4. Act in terms of Section 95 of the Local Government (Scotland) Act 1973 as the proper officer responsible for the administration of the financial affairs of the Council;
5. Exercise all the other powers and duties as set out in and in accordance with the Financial and Security Regulations as approved by the Council from time to time;
6. To discharge all the Treasury Management functions of the Council in accordance with the Financial and Security Regulations, including exercising voting rights on any stock held in the name of the Council.
7. To act as the proper officer in terms of the Local Government (Scotland) Acts 1973 and 1975, the Abolition of Domestic Rates Etc.(Scotland) Act 1987, the Local Government Finance Act 1992 and associated legislation for all purposes including the preparation and issue of Council Tax and Rates Notices, the collection of Council Tax and Rates, the receiving and settling of claims for any exemption, the handling of objections to any amount levied and the abatement, remission or repayment of any Rates or Council Tax under the various statutory provisions.
8. Determine applications for mandatory or discretionary relief of Rates in accordance with the council's policies; and to be responsible for the collection of relevant charges and for the administration of housing and Council tax benefits.
9. Enter into arrangements with the Water Authority in relation to the collection of water and sewerage charges.
10. Enter into arrangements with others concerning the collection of Rates, Community Charge or Council Tax on behalf of the Council and to make arrangements with each agent as to suitable collection points.
11. Make the necessary arrangements concerning terms and commissions payable for services rendered to the Council by other agents with regard

to the collection of Rates, Community charge and/or Council Tax and the administration of any Community Charge or Council Tax rebate or discount schemes etc.

12. To exercise the Council's powers to initiate sequestration proceedings.

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART D**

**FINANCIAL AND SECURITY REGULATIONS**

**Appendix 1 – Internal Audit Terms of Reference**

**Appendix 2 – Anti Fraud Strategy**





**ARGYLL AND BUTE COUNCIL****FINANCIAL AND SECURITY REGULATIONS****1 STATUS OF FINANCIAL AND SECURITY REGULATIONS**

- 1.1 The Financial and Security regulations provide the framework for managing the Council's financial affairs. Every Committee, Sub-Committee, Councillor, Officer and Agent of the Council to whom these Regulations apply will observe their provisions. It is the duty of each Director to ensure that all employees and agents of the Council are made aware of the Regulations and the requirement to comply with them.
- 1.2 All Councillors and officers have a general responsibility for taking reasonable action to provide for the security of the assets under their control, and for ensuring that the use of these resources is legal, is properly authorised, provides value for money and achieves best value.

**2 FINANCIAL MANAGEMENT**

- 2.1 Financial management covers all financial accountabilities in relation to the running of the Council, including the policy framework and budget.

**Council**

- 2.2 The Council is responsible for adopting the Council's Constitution and for approving the budget. It is also responsible for approving the Council's code of corporate governance.
- 2.3 The Council is responsible for regulating and controlling the finances of the Council to comply with these Regulations. The Council will keep under review the state of the Council's finances generally.
- 2.4 The Council will be responsible for determining and monitoring the corporate and service planning framework and may provide any Committee, Sub-Committee, Councillor, or Officer (whether individually or collectively) with such guidance as may be considered appropriate in relation to the preparation of corporate and service plans and the estimates of revenue and capital expenditure.

**Audit and Scrutiny Committee**

- 2.5 The terms of reference of the Audit and Scrutiny Committee are set out in Part C of this Constitution.

**Chief Executive**

- 2.6 The Chief Executive is responsible for the corporate and overall strategic management of the Council. He or she will report to and provide information to the Council relating to the Performance Improvement Framework of the organisation.

**Chief Financial Officer**

- 2.7 The Chief Financial Officer is the proper officer, for the purposes of Section 95 of the Local Government (Scotland) Act 1973, under the general direction of the Council and the Chief Executive.
- 2.8 The Chief Financial Officer has statutory duties in relation to the financial administration and stewardship of the Council. S/he is responsible for the proper administration of the Council's financial affairs and setting and monitoring compliance with financial management standards.
- 2.9 In addition to what is set out in these Regulations, the Chief Financial Officer may issue financial instructions to amplify or clarify these Regulations. Other Executive Directors may also issue financial instructions relating to the functions and operation of their Services, following consultation with the Chief Financial Officer.

**Executive Director with responsibility for Legal and Regulatory Support Services**

- 2.10 The Executive Director with responsibility for Legal and Regulatory Support Services is the Council's Monitoring Officer in terms of Section 5 of the Local Government and Housing Act 1989. S/he is responsible for maintaining and monitoring compliance with the Council's Corporate Governance, Ethical Standards and Strategic Risk Management frameworks, and for maintaining a system of record keeping in relation to all Council decisions.
- 2.11 The Chief Executive and all Executive Directors are responsible for ensuring the Council is advised of the financial implications of all proposals and that the Chief Financial Officer has been consulted on all such proposals.

**3. FINANCIAL PLANNING**

- 3.1 The Council is responsible for agreeing the Council's strategic policy framework, revenue budget and capital programmes.

- 3.2 The inclusion of items in approved revenue or capital budgets will constitute authority to the relevant officer, in terms of the Scheme of Delegation or Contract Standing Orders, to incur that expenditure.

### **Service Planning and Revenue Budget**

- 3.3 The Chief Financial Officer will report to the Council on the level of financial resources likely to be available in each financial year and will keep the Policy and Resources Committee informed about the Council's overall finances and financial performance, and other officers will provide such information as is required to the Chief Financial Officer.
- 3.4 In each financial year the Policy and Resources Committee will from time to time consider such frameworks and detailed procedural arrangements for the preparation of the arrangements for the preparation of the Revenue Budget. The detailed form of revenue estimates and the programme for their preparation will be determined by the Chief Financial Officer.
- 3.5 Each year draft estimates of expenditure and income will be considered by the Council at a meeting to be held not later than the date prescribed by law. The Council will revise these plans and estimates as they consider appropriate, approve them on that basis, authorise the expenditure, determine the Council Tax, and pass any other resolutions which may be appropriate.

### **Capital Programme**

- 3.6 The Chief Financial Officer will report to the Council on the level of financial resources likely to be available to support the capital programme in each financial year and will keep the Committee informed about the overall financial position on the capital budget.
- 3.7 The Council will have regard to the CIPFA Prudential Code for capital finance in local authorities. The key objectives are to ensure that capital investment plans are affordable, prudent and sustainable; that treasury management decisions are taken in accordance with good professional practice; that capital planning is supported by proper business case development and option appraisal. The Code sets out minimum prudential indicators which must be used and factors that must be taken into account.
- 3.8 In each financial year the Policy and Resources Committee will from time to time consider procedural arrangement for the preparation of the capital programme. The detailed form of the capital programme and

arrangements for its preparation will be determined by the Chief Financial Officer.

- 3.9 The draft Capital Programme will be considered by the Policy and Resources Committee which will advise the Council on any matter relating thereto. The Council will revise the programme as they consider appropriate, approve it on that basis, authorise the expenditure and pass any other resolutions that may be appropriate.

### **Budget Monitoring and Control**

- 3.11 Each Executive Director will monitor and control expenditure within the financial allocation provided in the revenue and capital Budgets.
- 3.12 The Chief Financial Officer will provide Executive Directors with access to the Corporate Financial Information Systems and will provide statements of income and expenditure on a regular basis to Directors.
- 3.13 Where it is forecast that the total income or expenditure for a Service or a capital project is likely to vary significantly from the approved financial allocation, the relevant Executive Director, after consultation with the Chief Financial Officer, will inform the Council and take any action necessary to avoid exceeding the budget allocation for a service or a capital project.

### **Virement**

- 3.14 Virement is the process of transferring budget between cost centres, services or departments or between capital projects.
- 3.15 Virement in the Revenue Budget arises at a number of levels:-
- i) Between cost centres within a head of service.
  - ii) Between heads of service within a department.
  - iii) Between departments

Virement may be exercised as outlined below, provided some or all of the following apply as detailed below –

- (a) the Chief Financial Officer has been notified in advance;
- (b) the virement does not create an additional financial commitment into the following financial year;
- (c) there has been advance consultation with the Leader and/or Depute Leader and the relevant Policy Lead

Virement between cost centres can be approved by the Head of Service up to a level of £25,000. Virement above this level requires

approval of the relevant Executive Director and compliance with (a) and (b) immediately above

Virement between services must be approved by the Executive Director up to a level of £100,000 together with compliance with (a) and (b) immediately above.

Virement between services or Departments from £100,000 to a level of £200,000 must be approved by the Executive Director or Executive Directors together with compliance with paragraphs (a), (b) and (c) immediately above.

Virement above £200,000 requires approval of the Council.

3.16 Virement in the Capital Budget arises at the following levels –

- (a) Between projects within a service
- (b) Between services within a department
- (c) Between departments

Virement between projects within a service can be approved by the Director up to level of £200,000.

An Executive Director may exercise virement within the Departmental Capital Budget, provided -

- (a) the Chief Financial Officer has been notified in advance;
- (b) there has been advance consultation with the Leader and/or Depute Leader and the relevant Policy Lead;
- (c) the virement arises from a need to ensure the continuation or completion of a project already begun within the capital programme or the virement is to, or in respect of, a project within the approved Departmental Capital Programme;
- (d) the amount of any individual virement does not exceed £200,000, otherwise the proposed virement will be reported to the Council.

3.17 An Executive Director may exercise virement in either the Service Revenue or Capital Budget to meet any immediate need created by a sudden emergency subject to advising the Chief Executive and the Leader and/or Depute Leader and relevant Policy Lead of the action taken and to reporting to the Council as soon as possible in respect of

items which otherwise need to be reported in terms of these Regulations.

- 3.18 Where there is a proposal to forego income or to incur revenue or capital expenditure for which there is no budgetary provision, and it is not proposed to meet that expenditure by virement, the proposal will be considered by the Policy and Resources Committee.

## **4 RISK MANAGEMENT**

- 4.1 The Policy and Resources Committee is responsible for approving the Council's risk management plan and the effectiveness of risk management. A strategic risk register and operational risk registers will reflect the regular assessment of risks which will inform the development of the Council's Corporate and Service plans, revenue budget and capital programme.
- 4.2 The detailed arrangements for preparation, maintenance and monitoring of the strategic and operational risk registers will be determined by the Chief Financial Officer.

### **Internal Control**

- 4.3 Internal Control refers to the systems of control devised by management to help ensure the Council's objectives are achieved in a manner that promotes economic, efficient and effective use of resources and that the Council's assets and interests are safeguarded.
- 4.4 The Chief Financial Officer is responsible for advising on effective systems of internal control. These arrangements need to ensure compliance with all applicable statutes and regulations, and other relevant statements of best practice. They should ensure that public funds are properly safeguarded and used economically, efficiently and in accordance with the statutory and other authorities that govern their use.
- 4.5 It is the responsibility of directors to establish sound arrangements for planning, appraising, authorising and controlling their operations in order to achieve continuous improvement, economy, efficiency and effectiveness and for achieving financial and other performance targets.

### **Audit**

- 4.6 The Chief Financial Officer will arrange to secure continuous and effective internal audit of the accounting, financial and other operations of the Council and, in doing so, those conducting that audit will not be subject to the control or direction of any person, and, in addition to

reporting as otherwise required by the Council's Codes of Practice to the Chief Executive, the Chief Financial Officer or the Executive Director with responsibility for Legal and Regulatory Support Services, a report may be submitted to the Audit and Scrutiny Committee, which Committee may give such advice and guidance as it may consider appropriate within its Terms of Reference.

- 4.7 The Chief Financial Officer will prepare and the Audit and Scrutiny Committee will endorse terms of reference for and programmes of internal audit.
- 4.8 The Chief Financial Officer or a person authorised by her/him has authority on production of identification, to -
- (a) enter at all reasonable time any Council premises or land:
  - (b) have access to all records, documents and correspondence including any data held on computer storage media, which relate to the operation, administration and financial transactions of the Council:
  - (c) require and receive such explanations, from any Councillor, employee, agent or other person, which are considered necessary concerning any matter under examination;
  - (d) require any Councillor, employee or agent of the Council to produce cash, stores or any other Council property under their control or to which they have access.
- 4.9 Executive Directors are required immediately to notify the Executive Director with responsibility for Legal and Regulatory Support Services, as Monitoring Officer, the Chief Financial Officer of all financial irregularities or of any circumstances that may suggest the possibility of irregularity, including those affecting cash, stores, contracts or property. The Executive Director with responsibility for Legal and Regulatory Support Services in consultation with the Chief Financial Officer will take whatever steps she/he may consider necessary to investigate and will immediately inform the Chief Executive in all cases where it appears that there may be a crime or offence involved. The decision as to reporting any matter to the police will be made in accordance with the Council's Anti-fraud Strategy, which is attached at appendix 2.

## **Insurance**

- 4.10 The Executive Director with responsibility for Legal and Regulatory Support Services will effect all insurance cover, negotiate and settle all claims in consultation with the Chief Financial Officer and other Executive Directors as necessary.
- 4.11 Executive Director / Chief Officer will provide prompt notification to the Executive Director with responsibility for Legal and Regulatory Support Services of all new or increased risks, property, vehicles, equipment and other assets which require to be insured and of any alterations affecting existing insurance.
- 4.12 Executive Directors will advise the Executive Director with responsibility for Legal and Regulatory Support Services of any activities within their Service remit which might result in any person or body having a claim against the Council, and where the risk of such an event could be covered by insurance.
- 4.13 Executive Directors will notify immediately the Executive Director with responsibility for Legal and Regulatory Support Services of any loss, liability or damage or any event likely to lead to a claim, and will inform the police where there is a legal liability to do so, or where, after consulting the Executive Director with responsibility for Legal and Regulatory Support Services, they have been advised to do so. In the case of incidents involving any vehicle the appropriate Director will also notify the Executive Director with responsibility for Road and Infrastructure Services.
- 4.14 All appropriate employees of the Council will be included in a suitable fidelity guarantee insurance.
- 4.16 The Executive Director with responsibility for Legal and Regulatory Support Services will review all insurances in consultation with other Directors as appropriate.
- 4.17 Executive Directors will consult the Executive Director with responsibility for Legal and Regulatory Support Services regarding the terms of any indemnity which the Council is requested to give, or which the Council may require from any other party.

#### **Preventing Fraud and Corruption**

- 4.18 The Executive Director with responsibility for Legal and Regulatory Support Services is responsible for the development and maintenance of an anti-fraud and anti-corruption policy.

### **5. ASSET MANAGEMENT**



**Council Resources**

- 5.1 The Policy and Resources Committee is responsible for approving the Council's Capital Investment Strategy for reviewing the effectiveness of asset management. The Executive Director with responsibility for Commercial Services is responsible for the detailed development and review of the corporate asset management strategy.
- 5.2 Inventories will be maintained on a continuous basis by all Services and these will contain an accurate description of furniture, fittings and equipment, plant and machinery. The extent to which property of the Council will be recorded and the form in which inventories will be kept will be determined by the appropriate Executive Director in consultation with the Chief Financial Officer.
- 5.3 The Council's property will not be removed otherwise than in accordance with the ordinary course of the Council's business or used otherwise than for the Council's purposes except in accordance with specific directions issued by the Executive Director concerned from time to time.
- 5.4 The care, custody and level of equipment and stock in any Service will be the responsibility of the Executive Director concerned who will ensure that -
  - (a) Adequate arrangements have been made for the proper and secure storage of all equipment and stock;
  - (b) Stock levels are maintained at the minimum level sufficient to meet the operational requirements of the Service;
  - (c) All equipment and stock received, issued, or otherwise disposed of are accounted for;
  - (d) All stocks are checked in accordance with arrangements approved by the Head of Financial Services.
- 5.5 Any significant deficiencies found on stock taking or at any other time must be investigated by the relevant Executive Director who consulting as necessary with the Chief Financial Officer or the Executive Director with responsibility for Commercial Services may take whatever action she/he considers appropriate, and may write off losses of stock where she/he considers there are good and sufficient reasons for doing so.
- 5.6 Redundant and surplus stocks and items of equipment will be disposed of by competitive tender under arrangements approved by the Chief Financial Officer, except where the Executive Director concerned is of

the opinion that the income likely to accrue from the disposal is less than £10,000, in which case the Executive Director concerned may dispose of the surplus so as to ensure that any reasonable value which the stock may have may be realised.

- 5.7 The Executive Director with responsibility for Roads and Infrastructure Services will have overall responsibility for ensuring that all vehicles, plant and equipment are maintained in a satisfactory state of repair, and will take whatever appropriate steps are necessary by way of action or advice to ensure that all legal and safety requirements in respect of their operation are complied with.
- 5.8 All vehicles and mobile plant and equipment will be used only for the purposes of the Council, and by such persons and under such arrangements as the appropriate Executive Director will approve from time to time.
- 5.9 No employee may take a vehicle home unless officially rostered for duty or stand-by and the vehicle is required in connection with that purpose, or the prior permission of the Executive Director concerned has been granted, which permission will only be given if the use of the vehicle is required for, or arising from, the conduct of Council business. The unofficial or unauthorised use of a vehicle, including the carrying of unauthorised passengers, is prohibited.
- 5.10 If any vehicle is involved in an accident, whether or not there is injury to any person or damage to any other vehicle or property, the person in charge of the vehicle at the time of the accident will, in addition to any other requirement of law, not later than the end of the current work period, or earlier if the nature of the accident so warrants, inform the Executive Director of Service concerned and will complete an accident report which will be forwarded immediately to the Executive Director with responsibility for Legal and Regulatory Support Services.
- 5.11 All use of vehicles will be recorded in such forms or log books as the Executive Director with responsibility for Road and Infrastructure Services in consultation with the appropriate Executive Director, may agree.
- 5.12 All vehicles surplus to the requirements of the Council will be disposed of by competitive tender under arrangements approved by the Executive Director with responsibility for Road and Infrastructure Services.
- 5.13 The corporate asset management strategy will provide for the maintenance of an asset register of all heritable properties owned or

leased by the Council recording the holding Service, purpose for which held, location, extent and plan reference, purchase details, valuation, particulars or nature of interest, rents payable and particulars of any tenancies granted.

- 5.14 The Executive Director with responsibility for Legal and Regulatory Support Services will have custody of all title deeds and other leases and agreements in respect of all heritable properties owned or leased by the Council.
- 5.15 Each Executive Director is responsible for maintaining proper security at all times of all buildings, stocks, stores, furniture, equipment and cash under their control. The Executive Director with responsibility for Commercial Services will be consulted in any case where security is thought to be defective or inadequate, or that special security arrangements may be required.
- 5.16 Each Executive Director will advise the Chief Financial Officer of all circumstances within the Service where cash is held or is otherwise under the control of employees of the Council, and will ensure that all amounts of cash so held or controlled do not exceed amounts which may be agreed with the Chief Financial Officer.
- 5.17 Keys to safes and similar receptacles containing cash or valuable documents or articles will be carried on the person of those responsible or be kept secure otherwise. The Executive Director concerned will in each case determine the person responsible or approve the arrangements for keeping keys secure. A register of all key holders will be kept in each Service and the loss of any keys will be reported immediately to the Head of Service concerned.

### **Security and Protection of Private Property**

- 5.18 All employees who may be required to receive or hold cash or property on behalf of the Council, or who may be required or likely in the course of their normal duties to enter private property or otherwise confirm their identity and such other employees as a Executive Director may direct, will be given an identity card bearing a photograph of the holder, and must produce the card to any person having reasonable grounds to know the identity of the holder.
- 5.19 Each Executive Director will be responsible for ensuring that proper privacy and security is maintained in respect of information held in any medium including on any computer storage medium, and the requirements of the Data Protection Act 2018 and the Freedom of Information (Scotland) Act 2002 and the General Data Protection

Regulations 2016/679 and any other relevant legislation are complied with.

- 5.20 Each Executive Director will ensure that the information held in any medium and the use to which that information is put is confined solely to the purposes of the Council and in compliance with Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002 and any other relevant legislation and no person will communicate any information so held to any other person except where the information is being communicated where the person receiving the information is entitled to receive it and the Council has an obligation to provide it.
- 5.21 In each case where it is known that the Council assumes a legal responsibility to prevent or mitigate loss of or damage to moveable private property, the Executive Director concerned will ensure that arrangements exist so that in each case an itemised inventory will be prepared in the presence of two officers.
- 5.22 Any valuable such as jewellery, cash or documents will be deposited for safe custody in accordance with arrangements approved by the Chief Financial Officer.
- 5.23 Any person who, by virtue of employment with the Council, is responsible for the custody or management of cash or property belonging to a third party will, in so doing, employ standards of stewardship no less than those laid down in these Regulations and elsewhere for cash and property belonging to the Council.
- 5.24 Any employee will, if required by the Chief Financial Officer or the relevant Executive Director concerned provide immediately a full and proper account of all cash and property received from, or on behalf of, a third party, and will, if so directed by the Executive Director transmit that cash or property to any other specified person.

## **6 TREASURY MANAGEMENT, INVESTMENTS AND TRUSTS**

- 6.1 The Policy and Resources Committee will have responsibility for the overall investment of money under the control of the Council. All investments of money under the control of the Council will be made in the name of the Council or in the name of nominees approved by the Council; Bearer Securities will be excepted from this regulation but any purchase of such securities will be reported to the Council.
- 6.2 All heritable securities which are the property of, or in the name of the Council or its nominees and the title deeds of all property in the ownership of the Council will be held in the custody of the Executive

Director with responsibility for Legal and Regulatory Support Services or an officer appointed by him/her.

- 6.3 The Council will comply with the CIPFA Code of Practice for Prudential Borrowing. The Council will approve on an annual basis a set of prudential code indicators. The Chief Financial Officer will keep these under review and report any exceptions in the first instance to the Council.
- 6.4 The Policy and Resources Committee will keep under review the level of borrowing.
- 6.5 All borrowing and lending will be effected in the name of the Council and will be in accordance with the CIPFA Code of Treasury Management. The Policy and Resources Committee will approve from time to time a Treasury Policy Statement. The Policy and Resources Committee will approve, annually, a Treasury Management Strategy. Implementation and monitoring of its Treasury Management Policies and Practices will be the responsibility of the Policy and Resources Committee. The execution and administration of Treasury Management decisions will be the responsibility of the Chief Financial Officer, who will act in accordance with the Council's Policy Statement and Treasury Management Practices and CIPFA's Standard of Professional Practice on Treasury Management.
- 6.6 All funds in the hands of the Council will be aggregated for the purposes of Treasury management as defined in the CIPFA Code and will be under the control of the Chief Financial Officer.
- 6.7 All executive decisions on borrowing, investment or financing will be delegated to the Chief Financial Officer and/or other officers designated by her/him, who all will be required to act in accordance with the CIPFA Code of Treasury Management in Local Authorities.
- 6.8 A Treasury Policy Statement will be adopted by the Council, and Treasury Management Strategy will be the overall responsibility of the Council.
- 6.9 The Chief Financial Officer will present to the Council an Annual Report and such other reports on the Treasury Management Operation and on the exercise of delegated treasury management powers.
- 6.10 The Chief Financial Officer will be the Council's registrar of stocks, bonds and mortgages granted by the Council and will maintain records of all borrowing of money by the Council.

- 6.11 All trust funds administered by Members and/or officers acting as trustees by virtue of their official position will wherever possible be in the name of the Council. Except as provided in regulation 16.2 all office bearers acting as trustees by virtue of their official position will deposit all securities etc. relating to the trust with the Chief Financial Officer unless the trust deed provides otherwise.

## **7 SYSTEMS AND PROCEDURES**

- 7.1 The Council will ensure that there are in place sound systems and procedures and an effective framework of accountability and control.
- 7.2 Executive Directors will ensure that a proper scheme of delegation has been established within their department and is operating effectively. The scheme of delegation should identify staff authorised to act on the Executive Director's behalf in respect of payments, income collection and placing orders together with the limits of their authority.

### **Accounting Records**

- 7.3 The Chief Financial Officer will consult other Executive Directors about the procedures and records to be maintained in each Service. All accounting procedures and all accounting and related records of the Council will be decided by the Chief Financial Officer.
- 7.4 All accounts and accounting records of the Council will be compiled by or under the direction of the Chief Financial Officer.
- 7.5 Executive Directors should ensure that all accounting records and other documentation are held for the periods as required by statute or as advised by the Chief Financial Officer.
- 7.6 The following principles will be observed -
- (a) the duties of providing information about sums due to or by the Council and of calculating, checking and recording these, will be separated as completely as possible from the duty of collecting or disbursing them.
  - (b) officers charged with the duty of examining and checking the accounts of transactions will not so far as possible themselves be involved in managing these accounts.
- 7.7 Executive Directors should ensure that their relevant staff receive relevant financial training that has been approved by the Chief Financial Officer.

**Procurement**

All procurement of works, goods, and services will be in terms of the Contract Standing Orders, the Council's Procurement Strategy and guidance provided by the Executive Director with responsibility for Legal and Regulatory Support Services.

- 7.8 Official orders will be in a form approved by the Chief Financial Officer in consultation with the Head of Legal and Regulatory Support Services. Each Executive Director will ensure that proper procedures exist for the custody, control and authorisation of official order forms.
- 7.9 Official orders will be issued for all work, goods or services to be supplied to the Council except -
- (a) work, goods or services which are covered by a prior written agreement or contract which prescribes that payment will be made at certain intervals or under certain conditions;
  - (b) specified categories of goods or services which may be purchased in accordance with and subject to the terms of any scheme approved by the Council involving an agreement with any bank to extend credit to the Council for such purchases by way of corporate credit cards;
  - (c) the metered element of utility services, but not the installation, alteration or repair of such services;
  - (d) periodic payments such as rates or water and sewerage charges;
  - (e) purchases in cash for which reimbursement is made through an imprest account;
  - (f) where the specific approval of the Head of Legal and Regulatory Support Services has been obtained;
  - (g) in an emergency, an oral order may be given under arrangements approved from time to time by each Executive Director but will be confirmed in writing immediately thereafter.
  - (h) where training courses, seminars or conferences are being booked the order form supplied by the Company organising/running the event may be used.
- 7.10 All orders will, by way of authorisation, either -

- (a) be signed by the appropriate Executive Director or by a person designated by the Executive Director to do so, and the names and specimen signatures of such persons will be supplied to the Head of Legal and Regulatory Support Services and will be amended on the occasion of any change; or
  - (b) be issued electronically through an eProcurement system by a person designated by the appropriate Executive Director, and where the names of such persons and authorisation limits have been notified to the Head of Legal and Regulatory Support Services. or
  - (c) be issued utilising a corporate credit card to a person designated by the appropriate Executive Director.
  - (d) under such other arrangements as may be approved by the Head of Legal and Regulatory Support Services.
- 7.11 The person authorising any order will ensure that the expenditure to be incurred is legal, that funds have been provided in the budget to cover the expenditure, and that the order indicates clearly the nature and quantity of goods or services to be supplied, and any contract or agreed price.
- 7.12 A copy of any order form will, if so required on any occasion, be supplied to the Head of Legal and Regulatory Support Services.

### **Payment of Accounts**

- 7.13 All payments of money due from the Council (except interest payments under Regulation 8.30) will be by cheque or other instrument drawn on, or by the automated transfer of funds from, the Council's main bank accounts.
- 7.14 An Executive Director issuing an order is responsible (except as otherwise specifically arranged with the Head of Legal and Regulatory Support Services) for examining, verifying and certifying the related invoice(s) and similarly for any other payments generated within the Service which may not be supported by an invoice or voucher from a third party. Such certification will be a signature by or on behalf of the Executive Director. The names of the officers authorised to sign such records will be sent to the Head of Legal and Regulatory Support Services by each Executive Director together with specimen signatures, and will be amended on the occasion of any change.



Where an order has been issued electronically through an eProcurement system and been authorised by a person nominated by the relevant Executive Director, invoices should be sent directly by the supplier to the Head of Legal and Regulatory Services. Provided delivery of the order has been receipted and the invoice has been matched to the receipts order for price and quantity by a person nominated by the relevant Executive Director, no further certification is necessary prior to payment of that invoice by the Head of Legal and Regulatory Support Services.

- 7.15 Before certifying an invoice or other payment document, the certifying officer will (except to the extent that the Head of Legal and Regulatory Support Services may otherwise determine) be satisfied that -
- (a) the work, goods or services to which the invoice relates have been received, carried out, examined and approved:
  - (b) the prices, extensions, calculations, discounts, other allowances, credits, and VAT and other taxes are correct:
  - (c) the relevant expenditure has been properly incurred:
  - (d) appropriate entries have been made in inventories, stores records or stock books as required:
  - (e) the invoice has not previously been passed for payment:
  - (f) the invoice is in the name of the Council or an integral part of it:
  - (g) the charge is a proper liability of the Council
  - (h) any guidance issued by the Chief Financial Officer or the Head of Legal and Regulatory Support Services has been complied with.
- 7.16 Where contracts stipulate that payment must be made against a consolidated statement, certifying officers may approve such statements where they are not satisfied that all the provisions of paragraph 8.15 are fulfilled provided that they immediately invoke contract procedures for the rectification of those charges, such rectification to be included on a subsequent statement.
- 7.17 Duly certified invoices will be passed without delay to the Head of Legal and Regulatory Support Services for payment and may be examined to the extent that s/he considers necessary. The Head of Legal and Regulatory Support Services will be entitled to make such

enquiries and to receive such information and explanations as s/he may require.

- 7.18 Every Executive Director will as soon as possible after 31 March notify the Chief Financial Officer, by a date which may be specified each year, of all significant outstanding expenditure relating to the previous financial year.

### **Salaries and Wages**

- 7.19 Each Executive Director will keep the records and information about salaries, wages and other emoluments as the Chief Financial Officer and the Head of Financial Services may require, and will be responsible for the accuracy and authenticity of that information.
- 7.20 The payment of all salaries, wages, pensions, compensations and other emoluments to all employees or former employees of the Council and all other payments made to employees as a consequence of their employment by the Council will be made under arrangements made by the Head of Financial Services and approved by the Chief Financial Officer.
- 7.21 Each Executive Director will notify the Head of Financial Services as soon as possible of all matters affecting the payment of emoluments, and in particular -
- (a) appointments, including temporary and casual appointments, resignations, dismissals, suspensions, secondments and transfers;
  - (b) absences from duty for sickness or other reason, apart from approved annual and other leave which has no effect on wages or other emoluments;
  - (c) changes in remuneration, other than normal increments and pay awards and agreements of general application;
  - (d) information necessary to maintain records of service for pension, income tax, national insurance and the like purposes.
- 7.22 The Chief Executive, Chief Financial Officer and the Head of Financial Services, as appropriate, will keep all Executive Directors informed about changes in conditions of service, pension benefits and regulations and other similar matters.

- 7.23 All time sheets, expense claims and other documents which form the basis of a payment to an employee of the Council will be in a form agreed with Head of Financial Services and the Head of Customer Support Services. The names of officers authorised to sign these documents will be sent to the Head of Financial Services by each Executive Director together with specimen signatures and will be amended on the occasion of any change.

### **Travelling and Subsistence**

- 7.24 All claims for payment of car allowances, subsistence allowances, travelling and incidental expenses will be submitted to the Chief Financial Officer, certified in an approved form, and made up to a specified day each month. The names of officers authorised to sign or approve these documents will be sent to the Chief Financial Officer by each Executive Director together with specimen signatures and will be amended on the occasion of any change. All claims by an Executive Director will be approved by the Chief Executive or the Chief Financial Officer. All claims by the Chief Executive will be approved by the Chief Internal Auditor. All claims by the Chief Financial Officer will be approved by the Chief Executive.
- 7.25 Certification by or on behalf of an Executive Director will be taken to mean that the certifying officer is satisfied that the journeys were authorised, the expenses properly and necessarily incurred and that the allowances are properly payable by the Council.
- 7.26 Employees claims submitted more than six months after the expenses were incurred will be paid only with the express approval of the relevant Executive Director.
- 7.27 Employees and Councillors using their own cars for official journeys are responsible for ensuring that motor insurance is in place that is appropriate for the use of the vehicle on Council business.
- 7.28 Payments of remuneration and reimbursement of expenses to Councillors, will be made by according to the relevant statutory regulations under arrangements approved by the Chief Financial Officer.
- 7.29 Payments to Members of the Children's Panel, the Children's Panel Advisory Committee, to Safeguarders and to such other persons who from time to time are co-opted or required to attend as members of Committees, Sub-Committees, Panels or other Groups established by the Council, who are entitled to claim travelling or other allowances or expenses will be made by the Chief Financial Officer, following

submission of claims by those making the claim to the Executive Director with responsibility for Legal and Regulatory Support Services in the first instance.

### **Imprests**

- 7.30 The Chief Financial Officer will provide such imprests as may be appropriate for Officers of the Council who may need them for the purposes of defraying petty cash and other expenses.
- 7.31 Where appropriate, the Chief Financial Officer will open a bank account for use by the imprest holder who will not overdraw that account. Bank accounts will be opened only by the Chief Financial Officer, or under arrangements approved by the Chief Financial Officer.
- 7.32 Subject to the approval of the Chief Financial Officer, other Executive Directors may make arrangements for minor items of expenditure to be paid from imprest accounts. Payments will be supported by receipted vouchers whenever possible.
- 7.33 No income received on behalf of the Council may be paid into an imprest account but must be banked or paid to the Council as set out elsewhere in these regulations.
- 7.34 An Officer responsible for an imprest will, when requested, provide the Chief Financial Officer with a certificate as to the state of the imprest.
- 7.35 Officers will be personally responsible for imprests which they hold and on leaving the employment of the Council or otherwise ceasing to be entitled to hold an imprest, they will account to the Chief Financial Officer for the amount advanced. A formal record of this accounting will be retained in the Service concerned.
- 7.36 All imprest accounts will be maintained in accordance with guidance issued by the Chief Financial Officer.

### **Taxation**

- 7.37 The Chief Financial Officer is responsible for advising, in the light of guidance issued by appropriate bodies and relevant legislation as it applies, on all taxation issues that affect the Council.
- 7.38 The Chief Financial Officer is responsible for ensuring arrangements are in place to maintain the Council's tax records, make all tax payments, receive tax credits and submit tax returns by their due date as appropriate.

**Income**

- 7.39 As part of the process of developing service plans and budgets, charges relating to the provision of services will increase in line with inflation each year except where the charge is fixed by or under a statutory provision by a body other than the Council; or where on the recommendation of the relevant Executive Director the Council varies or rebates any charge. This process will include examining the means of increasing income and marketing the services.
- 7.40 Each Executive Director will notify the Chief Financial Officer of all money due to the Council and of contracts, leases and other agreements and arrangements which involve the receipt of money by the Council.
- 7.41 Except as otherwise agreed with the Chief Financial Officer the appropriate Executive Director will, in respect of matters for which there is a legal or administrative responsibility, render accounts for all work done, goods supplied, services provided, and all other amounts due, such accounts to be rendered in terms of guidance which may be issued by the Chief Financial Officer.
- 7.42 All receipt forms, books and other forms of accountable stationary used to record financial and related transactions will be in a form approved by the Chief Financial Officer and will be ordered, controlled and issued by, or under arrangements approved by, the Chief Financial Officer.
- 7.43 No officer will give a receipt for money received on behalf of the Council on any form other than an official receipt approved in terms of the preceding paragraph. This regulation will not apply to the Executive Director with responsibility for Legal and Regulatory Support Services for money received and for which a receipt is contained in a document issued by the Executive Director with responsibility for Legal and Regulatory Support Services. The Executive Director with responsibility for Legal and Regulatory Support Services will, however, advise the Chief Financial Officer of the issue of the document and the sum of money received.
- 7.44 All money received by an officer on behalf of the Council will without unreasonable delay be paid to the Chief Financial Officer or, in accordance with arrangements made by the Chief Financial Officer, direct to the Council's bank accounts. No deduction may be made from such money save to the extent that the Chief Financial Officer may specifically authorise.

- 7.45 Personal cheques will not be cashed out of money held on behalf of the Council, nor will personal cheques be substituted for cash collected on behalf of the Council.
- 7.46 Every transfer of money from one member of staff to another must be recorded in the appropriate departmental records by the signature of the receiving officer.
- 7.47 No debt in respect of an amount due to the Council, once correctly established, will be discharged otherwise than by payment in full. However the Executive Director with responsibility for Legal and Regulatory Support Services, may delegate authority to the Chief Financial Officer, or the Head of Legal and Regulatory Support Services to exercise a discretion to write off in whole or in part the debt where
- (a) as a result of the death, sequestration or liquidation of the debtor there are insufficient free funds to meet the Council's claim; or
  - (b) otherwise, there are good and sufficient reasons for doing so, having regard to the relative level of the debt and the prospects and costs associated with securing payment.

### **Banking Arrangements and Cheques**

- 7.48 All arrangements with the Council's Bankers will be made by or under arrangements approved by the Chief Financial Officer and they shall operate such bank accounts as s/he may consider necessary.
- 7.49 All cheques and other forms enabling payment to be made from any Council bank account, to include any corporate credit card, will be ordered only by the Chief Financial Officer, who will ensure that proper arrangements have been made for their safe custody and that adequate controls exist over the use and production of cheques.
- 7.50 Cheques and other instruments drawn on the Council's bank accounts will bear the facsimile signature of or be signed by the Chief Financial Officer or such other Officer as may be from time to time authorised by the Chief Financial Officer.
- 7.51 All arrangements for the receipt and payment of monies using the Clearing House Automated Payment System and the Bankers Automated Clearing Services will be made by or under arrangements approved by the Chief Financial Officer.

### **Significant Trading Operations**

- 7.52 It is the responsibility of the **Chief Financial Officer** to advise on areas of the Council's operations where the establishment of trading accounts in compliance with the Local Government in Scotland Act 2003 is required.
- 7.53 The relevant director responsible for each significant trading operation, in consultation with the Chief Financial Officer, will prepare three-yearly estimates of income and expenditure incorporating any statutory or Council financial targets.
- 7.54 The Chief Financial Officer will prepare periodic trading statements for each significant trading operation.

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## **APPENDIX 1 - TO THE FINANCIAL AND SECURITY REGULATIONS**

### **INTERNAL AUDIT -TERMS OF REFERENCE**

#### **OBJECTIVE**

Internal Audit is responsible for advising all levels of management and the Council (through its Audit and Scrutiny Committee), on the Council's systems of internal control. It is a review activity which continuously reinforces line management's responsibility for effective internal controls. The existence of internal audit is not a substitute for management's responsibility to ensure the existence of a sound framework of internal control. Internal audit supports:

- Management's organisational objectives
- The Audit and Scrutiny Committee's need for overall assurance on the quality and cost effectiveness of risk management and internal controls.

Internal Audit areas of focus include:

- Risk Management and Internal control effectiveness
- Statutory, procedures and control compliance
- Implementation of recommendations
- Corporate governance
- Systems development
- Process improvement
- Performance reporting
- Value for Money and Best Value

Over time it is envisaged that the function will increase the proportion of reviews of operational systems, value for money and contribute to Best Value.

#### **SCOPE**

Internal Audit's work provides assurance on the extent to which management controls ensure that:

- The Council's assets are safeguarded from significant losses, including those caused by fraud, waste, inefficiency and commercially unsound practices;
- Relevant laws, rules and regulations are complied with;
- Operations are conducted effectively, efficiently and economically;
- Operations are conducted in accordance with Council policies and procedures;
- Management information systems are reliable and secure;
- Systems under development are monitored, that appropriate internal controls are built in and are consistent with the organisations' needs;
- Significant Council risks are identified and effectively managed;
- Major Council projects achieve their objectives.

In addition, Internal Audit may perform special reviews requested by the senior management or the Audit and Scrutiny Committee. When plans are changed for such reviews, this is reported to the Audit and Scrutiny Committee so that it clearly understands the implications on resources and for the assurance it requires about internal controls, and any impact on the delivery of agreed plans.

## **INDEPENDENCE**

Internal Audit is independent of the systems and activities it reviews and will objectively report its findings to the appropriate level of management in order to ensure corrective action is taken on a timely basis. To this end, Internal Audit has the authority to require a timely written response to any findings and recommendations contained in assignment reports.

Wherever internal audit provides proactive consultancy advice it must be careful to maintain its independence from the operational activity concerned to preserve its ability to undertake an objective review at a future date.

Consultancy advice includes guidance regarding the controls designed for developing systems or the implications for controls of amendments to systems; guidance regarding risk management and internal control strategies; and guidance regarding the development of best practice corporate governance structures and processes.

## **AUTHORITY AND ACCESS**

Internal Audit has no responsibility for operational functions within the Council and no direct responsibility for, nor authority over any of the activities subject to internal audit review. Internal Audit derives its authority from the Council who enable them to have unrestricted access to all records, systems, documents, property and staff as required in the performance of its work.

Internal Audit has unrestricted access to the officer designated as responsible under Section 95 of the Local Government Act 1973, the Chief Executive and the Chair of the Audit and Scrutiny Committee.

## **INTERNAL AUDIT MANAGEMENT**

The Council's Chief Internal Auditor has responsibility for:

- Assisting directors and management with risk management;
- Developing a plan that is based on assessed Council risks and Internal Audit's objectives;
- Developing a programme based on the plan and which is flexible enough to meet changing organisational needs;
- Ensuring that resourcing arrangements are in place to deliver the plan and are flexible enough to cope with special requests;

- Providing regular progress reports to senior management and the Audit and Scrutiny Committee;
- Ensuring Internal Audit remains effective, credible, productive and focused on areas of most significance to the Council;
- Working with line management constructively to challenge and improve established and proposed practices and to put forward ideas for improving processes;
- Developing an appropriately skilled team, supported where necessary by external expertise, to meet best practice;
- Maintaining an open relationship with the external auditors; and
- Fostering a culture of joint-working with management leading to agreed solutions.

Internal Audit is not relieved of its responsibilities when areas of the Council are subject to review by others. It always needs to assess the extent to which it can rely upon that work, co-ordinate its audit planning with those other review agencies, e.g. external auditors, and decide what further investigations need to be carried out.

### **QUALITY AND SKILLS**

The Council's Chief Internal Auditor has responsibility for ensuring the skills of Internal Audit staff are developed and maintained through:

- Recruitment of appropriately qualified and experienced staff,
- Re-skilling and training Internal Audit staff e.g. in complex technical areas, in the use of technology, implementing best practice and in developing interpersonal skills such as communication;
- Techniques such as benchmarking to identify and adopt appropriate best practices;
- The engagement of external specialists as and when necessary and cost-effectively to meet changing Council needs; and
- Developing and monitoring appropriate internal audit performance measures, including mechanisms for continuous improvement.

Internal Audit must demonstrate objectivity and professionalism, including applying best practice and compliance with the Code of Practice for Internal Audit for Local Authorities in the UK.



## APPENDIX 2 - TO THE FINANCIAL AND SECURITY REGULATIONS ARGYLL AND BUTE COUNCIL

### Anti-Fraud, Corruption & Bribery Strategy

#### Contents

1. Introduction
2. Our Written Rules
3. How we Expect our Members and Employees to Behave
4. Preventing fraud and corruption
5. Detecting and Investigating Fraud and Corruption
6. Training
7. Conclusion

Annex 1 - Fraud Response Plan

Annex 2 – Anti Money Laundering Policy

Annex 3 - Guidance on Responding to an Anti Fraud, Corruption or Bribery situation

#### 1. **INTRODUCTION**

- 1.1 Argyll and Bute Council is a large organisation and the size and nature of our services puts us at risk of loss due to fraud, corruption and bribery both from within the Council and outside it.
- 1.2 We are committed to making sure that the opportunity for fraud and corruption is reduced to the lowest possible risk. Where there is the possibility of fraud, corruption and other problems, we will deal with it in a firm and controlled manner.
- 1.3 An important part of this approach is an anti-fraud, anti-corruption and Anti-bribery strategy, which we will use to advise and guide members and staff on our approach to the serious issues of fraud and corruption. This document provides an overview of our policy in this matter and includes a 'fraud response plan' which provides more detailed guidance on how to deal with fraud, corruption and bribery.
- 1.4 The main message is that we expect all members, employees, suppliers, consultants, contractors, and service users, to be fair and honest, and to give us any help, information and support we need to deal with fraud, corruption and bribery.
- 1.5 The strategy set out in this document covers the following areas:
  - ❖ Our written rules
  - ❖ How we expect our members and employees to behave
  - ❖ Preventing fraud and corruption
  - ❖ Detecting and investigating fraud, corruption and bribery
  - ❖ Training
  - ❖ Publicising our activities to prevent fraud
- 1.6 The Anti Fraud, Corruption and Bribery Strategy is compliant with

The Equality Act 2010.

## 2. **OUR WRITTEN RULES**

- 2.1 We have a number of procedures and rules to make sure that our financial, working and organisational procedures are properly controlled. These are an important part of our internal control process, and it is important that all members and staff know about them.
- 2.2 The most important of these are as follows:
- ❖ Council Standing Orders
  - ❖ Contract Standing Orders/Procurement manual
  - ❖ Financial and Security Regulations
  - ❖ Scheme of Delegation
  - ❖ Guidance-Code of Conduct for Employees
  - ❖ Protocol for Member / Officer Relations
  - ❖ Public Interest Disclosure (Whistleblowing) Policy
  - ❖ Employees' Conditions of Service

There is also the Councillors National Code of Conduct.

- 2.3 Individual departments have also introduced their own measures, which are designed to control their activities. Examples include accounting control procedures, working manuals and operating procedures.
- 2.4 Executive Directors must make sure that all staff have access to these rules and regulations and that staff receive suitable training. To facilitate this, Council wide training is available through the online training portal LEON.
- 2.5 Members and employees must make sure that they read and understand the rules and regulations that apply to them, and act in line with them.
- 2.6 If anyone breaks these rules and regulations we may take formal action against them. This may include ending their employment with the Council in respect of employees and, in respect of members, it will be the responsibility of the Executive Director with responsibility for Legal and Regulatory Support as Monitoring Officer to report matters to the appropriate authority.

## 3. **HOW WE EXPECT COUNCIL MEMBERS AND EMPLOYEES TO BEHAVE**

- 3.1 We expect all people and organisations who are in any way associated with us to be honest and fair in their dealings with us and our clients and customers. We expect our members and employees to lead by example in these matters.
- 3.2 Our Ethical Framework, or internal rules, for members and employees set out an approach to work that is both honest and fair. Members and employees must act in line with the Ethical Framework at all times.

The Council has also developed a Code of Corporate Governance which will assist in protecting the Council from fraud, corruption or bribery.

- 3.3 Our members and employees have an essential and integral part to play in dealing with fraud, corruption or bribery and we will encourage our staff and members to inform us if they suspect any such cases.
- 3.4 We will deal with all information fairly and confidentially. We will endeavour not to reveal the names of the people who gave us the information. Our Fraud, Corruption and Bribery Response Plan (Annex 1) and our Public Interest Disclosure (Whistleblowing) Policy (Section F) give more advice on this issue.
- 3.5 The Nolan Committee sets out the seven guiding principles that apply to people who serve the public. We will develop our working behaviour around these principles.
- 3.6 We expect our Chief Officers to deal firmly and quickly with anyone who is responsible for fraud or corruption. The Executive Director with Monitoring Officer responsibilities in consultation with the Chief Executive, the Head of Service within whose Department the fraud is alleged to have occurred and the Executive Director with Section 95 Officer responsibilities and the Chief Internal Auditor may refer matters to the police where they suspect any criminal activity has occurred.
- 3.7 We must ensure that any investigative process is not misused and, therefore, any abuse, such as raising unfounded malicious allegations against a colleague, will be dealt with as a disciplinary matter.
- 3.8 When awarding contracts the Council will undertake due diligence to ensure that they are not awarded to suppliers who have known involvement in serious organised crime or have been convicted of fraud.

#### **4. PREVENTING FRAUD, CORRUPTION AND BRIBERY**

- 4.1 We believe that if we are to beat fraud, corruption and bribery, we must prevent it from happening in the first place. It is essential that we have clear rules and procedures, within which members and employees can work. These include the main corporate rules, which are set out in section 2.
- 4.2 We must regularly review and update our written rules and to such end our review of these procedures will be no later than every three years.
- 4.3 Managing the risk of fraud is the responsibility of the Council's Executive Leadership Team. Executive Directors and their Head of Service must make sure that suitable levels of internal check are included in working procedures, particularly financial procedures. It is important that duties are organised so that no one person can carry out a complete transaction without some form of checking process being built into the system.

- 4.4 We must follow our procedures when employing new staff. If possible, we must check the previous employment records of anyone we are considering employing. This applies to both temporary and permanent staff.
- 4.5 We are committed to working and co-operating with other organisations to prevent organised fraud, corruption and bribery. Wherever possible, we will be prepared to help and exchange information, subject to the requirements of Data Protection, with other Councils and organisations to deal with fraud. We will participate in any national anti fraud initiatives.
- 4.6 This kind of work needs to be tightly controlled particularly in relation to data protection issues.
- 4.7 The Public Interest Disclosure (Whistleblowing) Policy provides a process for people to give us information which may be given in confidence that may prevent fraud and corruption.
- 4.8 We will make sure that full details of reporting facilities are widely published to the public, members and employees, and that all information we receive in this way is investigated and dealt with. This will include an online form for any person to report suspected fraud. Such referrals will be carefully handled to ensure that the process is not subject to abuse.

## **5. DETECTING AND INVESTIGATING FRAUD AND CORRUPTION**

- 5.1 You should read this section with our fraud, corruption and bribery response plan (Annex 1).
- 5.2 Employees must report any suspected cases of fraud, corruption and bribery to the appropriate line manager, or, may do so in terms of the Public Interest Disclosure (Whistleblowing) Policy to the Executive Director with responsibility for Legal and Regulatory Support. Reporting cases in this way is essential to the anti-fraud, corruption and bribery strategy and makes sure that:
- ❖ suspected cases of fraud, corruption and bribery are investigated properly,
  - ❖ the Fraud Response Plan is carried out properly,
  - ❖ there is a standard process for dealing with all suspected cases of fraud, corruption and bribery,
  - ❖ people and our interests are protected.
- 5.3 The Council's Public Interest Disclosure (Whistleblowing) Policy is intended to encourage and enable anyone to raise serious concerns. Employees reporting concerns in this way are afforded certain rights through legislation (Public Interest Disclosure Act 1998).
- 5.4 The Executive Director with Monitoring Officer responsibilities in consultation with the Chief Executive, and the Head of Service within



whose Department the fraud is alleged to have occurred will decide on the type and course of the investigation. This will include referring cases to the police where necessary. The alleged fraud will also be reported to the Executive Director with Section 95 responsibilities and the Chief Internal Auditor. We will prosecute offenders and we will carry out our disciplinary procedures where appropriate. We will ensure that any internal proceedings do not prejudice any criminal case.

- 5.5 The Chief Internal Auditor, whilst not participating in the investigation of the alleged fraud, will liaise with the Executive Director with Monitoring Officer responsibilities in their investigation of the alleged fraud and in particular;
- 1 Examine current Council policies, procedures and financial controls, their current working and effectiveness in relation to the alleged fraud;
  - 2 Report to the Executive Leadership Team in relation to the adequacy of current Council policies, procedures and financial controls in relation to the alleged fraud and make recommendations for their revisal;
  - 3 Provide advice and assistance to the Executive Director with Monitoring Officer responsibilities in relation to Council policies, procedures and financial controls and control issues relevant to the investigation of the alleged fraud.
- 5.6 In respect of any case of alleged fraud or corruption discovered by or referred to the Executive Director with Monitoring Officer responsibilities they shall;
- 1 Deal promptly and confidentially with the matter;
  - 2 Maintain full documentation of all evidence received and comply with the Data Protection Act 1998 and the Freedom of Information (Scotland) Act 2002 in relation to the release of information in relation to the alleged fraud;
  - 3 Ensure that the investigation is carried out having regard to the Councils policy under the Regulation of Investigatory Powers (Scotland) Act 2000 and it's obligations under the Human Rights Act 1998;
  - 4 Ensure that the evidence is sound and adequately reported;
  - 5 Report findings to the Executive Leadership Team;
  - 6 Liaise with the Chief Internal Auditor in accordance with paragraph 5.5 hereof.
- 5.7 The Accounts Commission has powers to request or carry out an investigation into fraud, corruption and bribery.

## 6. **TRAINING**

- 6.1 We understand that the key to introducing a successful anti-fraud, anti-corruption and anti-bribery strategy and making sure it continues to apply will depend on programmed training and the way all our employees respond.

- 6.2 We support the idea of providing training for our employees who are involved in or managing internal control systems to make sure that their responsibilities and duties are regularly reviewed and reinforced.
- 6.3 We are also committed to training and developing our employees who are involved in investigating fraud and corruption and we will provide suitable training.

**7. CONCLUSION**

- 7.1 We are committed to tackling fraud, corruption and bribery whenever it happens. Our response will be effective and organised and will rely on the principles included in this document.
- 7.2 We will continue to review our rules and procedures and will make sure that this strategy document is regularly reviewed to make sure it stays effective.

## Annex 1 to Anti Fraud, Corruption and Bribery Strategy

### Fraud, Corruption and Bribery Response Plan

#### 1. Introduction

- 1.1 Argyll and Bute Council is committed to the highest possible standards of openness, probity and accountability in all its affairs. It is determined to develop a culture of honesty and opposition to fraud, corruption and bribery.
- 1.2 In line with that commitment, the Council's Anti-Fraud, Corruption and Bribery Strategy outlines the principles we are committed to in relation to preventing, reporting and managing the investigation and prosecution of fraud, corruption and bribery.
- 1.3 This Fraud, Corruption and Bribery Response Plan reinforces the Council's robust approach by setting out the ways in which employees or members of the public can voice their concerns about suspected fraud, corruption or bribery. It also outlines how the Council will deal with such complaints.

#### 2. What Do We Want To Know About?

- 2.1 This Plan is intended to be implemented where suspicions of fraud, corruption or bribery have been raised.

Fraud is defined as:

"The intentional distortion of financial statements or other records by persons internal or external to the authority which is carried out to conceal the misappropriation of assets or otherwise for gain".

Corruption is defined as:

"The offering, giving, soliciting or acceptance of an inducement or reward, which may influence the action of any person".

Bribery is defined as:

"The offering, giving, receiving or soliciting of something of value for the purpose of influencing the action of an official in the discharge of his or her public or legal duties".

- 2.2 Concerns or allegations which fall within the scope of other, existing, procedures (eg child protection or discrimination issues) will normally be referred for consideration under those procedures.
- 2.3 Fraudulent, corrupt or bribery acts may include:

Systems Issues - i.e. where a process/system exists which is prone to abuse by either employees or public (eg Planning Applications).

Financial Issues - i.e. where individuals or companies have fraudulently obtained money from the Council (eg invalid invoices/work not done, Council Tax Reduction Scheme fraud).

Equipment Issues - i.e. where Council equipment is used for personal use, (eg personal use of Council vehicles).

Resource Issues - i.e. where there is a misuse of resources (eg theft of building materials).

Other Issues - i.e. activities undertaken by officers of the Council which may be:

- ❖ unlawful,
- ❖ against the Council's Standing Orders or policies,
- ❖ below established standards or practices,
- ❖ improper conduct (e.g. receiving hospitality).

This is not an exhaustive list.

### 3. Safeguards

Harassment or Victimisation – The Council recognises that the decision to report a concern can be a difficult one to make, not least because of the fear of reprisal from those responsible for the malpractice. The Council will not tolerate harassment or victimisation and will take action to protect those who raise a concern in good faith.

Confidentiality – The Council will do its best to protect an individual's identity when he or she raises a concern and does not want their name to be disclosed. It must be appreciated, however, that the investigation process may reveal the source of the information and a statement by the individual may be required as part of the evidence.

Anonymous Allegations – This policy encourages individuals to put their names to allegations. Concerns expressed anonymously are much less powerful, but they will be considered at the discretion of the Council. In exercising this discretion, the factors to be taken into account would include:

- ❖ the seriousness of the issues raised
- ❖ the credibility of the concern
- ❖ the likelihood of confirming the allegation from attributable sources

Untrue Allegations – If an allegation is made in good faith, but it is not confirmed by the investigation, no action will be taken against the originator. If, however, individuals make malicious or vexatious allegations, action may be considered against the individual making the allegation.

### 4. What Should An Employee Do If They Suspect Fraud, Corruption or Bribery?

4.1 Employees are often the first to realise that there is something seriously wrong within the Council. If they have serious concerns in relation to fraud, corruption or bribery within the council they should report this to their line Manager. However, they may not express their concerns in this way because they feel that speaking up would be disloyal to their colleagues or to the Council. They may also fear

harassment or victimisation. In these circumstances, it may be easier to ignore the concern rather than report what may just be a suspicion of malpractice.

- 4.2 The Council's Public Interest Disclosure (Whistleblowing) Policy is intended to encourage and enable staff to raise serious concerns within the Council rather than overlooking a problem or blowing the whistle to the media or other external bodies.
  - 4.3 A copy of the Public Interest Disclosure (Whistleblowing) Policy is attached at Section F.
5. What Should A Member Of The Public Do If They Suspect Fraud, Corruption or Bribery?
- 5.1 The Council encourages members of the public who suspect fraud, corruption or bribery to contact the Chief Executive or Executive Director with Monitoring Officer responsibilities in the first instance. Members of the public may report matters to the Executive Director with Monitoring Officer responsibilities in terms of the Public Interest Disclosure Policy. Both the Executive Director with Monitoring Officer responsibilities and the Executive Director with Section 95 responsibilities have obligations to maintain and review the Council's Financial and Security Regulations and any suspected breach of these may be reported to either of them.
  - 5.2 Argyll and Bute Council wishes to maintain procedures with the following aims:
    - ❖ To develop an anti-fraud culture
    - ❖ To deter, prevent, detect and investigate fraud and corruption
    - ❖ To see appropriate action against those who commit or seek to commit some sort of fraud, corruption or bribery
    - ❖ To obtain compensation in respect of any losses to the Council
  - 5.3 The possible courses of action taken by the Council are outlined below.
  - 5.4 The Executive Director with Monitoring Officer responsibilities can be contacted by phone on 01546 605522 or by writing to; The Executive Director with Monitoring Officer responsibilities, Kilmory, Lochgilphead, Argyll. In addition the Council has an online enquiry form to allow information to be submitted in this way also.
6. How Will Allegations Of Fraud Or Corruption Be Dealt With By The Council?
- 6.1 For issues raised by employees or members of the public, the action taken by the Council will depend on the nature of the concern. The matters raised may:
    - ❖ be investigated internally, and/or
    - ❖ be referred to the Police

6.2 Within 10 working days of a concern being received, the Chief Executive, Executive Director with Monitoring Officer responsibilities or designated officer will write to the complainant:

- ❖ acknowledging that the concern has been received indicating how it proposes to deal with the matter
- ❖ giving an estimate of how long it will take to provide a final response
- ❖ telling them whether any initial enquiries have been made telling them whether any further investigations will take place, and if not, why not

6.3 The Council accepts that those people who reported the alleged fraud, corruption or bribery need to be assured that the matter has been properly addressed. Thus, subject to any legal constraints, they will receive information about the outcomes of any investigation.

## 7. Alternative Methods for Taking A Complaint Forward

7.1 If either a member of the public or an employee feel it is right to take the matter outside these processes, the following are possible ways forward:

- ❖ your local Councillor – If you are unsure how to contact them, call the Council on 01546 605522 for advice.
- ❖ the Accounts Commission – who are the organisation appointed to scrutinise the Council's finances and performance. By law, they must be completely independent from the Council.
- ❖ your Trade Union – employees may invite their Trade Union to raise a matter on their behalf.
- ❖ the Police – suspicions of fraud or corruption may be reported directly to the Police.
- ❖ the Scottish Public Services Ombudsman– this is an independent body set up by the Government to deal with complaints against public bodies such as Councils in Scotland
- ❖ Public Concern at Work – this is a charity which provides free and strictly confidential legal help to anyone concerned about a malpractice which threatens the public interest. They operate a helpline on 0171 404 6609 or can be e-mailed at [whistle@pcaw.demon.co.uk](mailto:whistle@pcaw.demon.co.uk).
- ❖ The Department of Work and Pensions to report benefit fraud. To contact the National Benefit Fraud Hotline (NBFH) available on telephone 0800 854 4400 or report it online at; <https://www.gov.uk/report-benefit-fraud>

## Annex 2 - Anti Money Laundering Procedure

We will do all it can to prevent the Council and its staff being exposed to money

laundering, identify the potential areas where it may occur, and comply with all legal and regulatory requirements in regard to the reporting of actual or suspected cases.

### **Key Issues**

- ❖ The Council is committed to the prevention, detection and reporting of money laundering
- ❖ All employees must be vigilant for the signs of money laundering
- ❖ Any employee who suspects money laundering activity must report this promptly to the Money Laundering Reporting Officer (MLRO)
- ❖ Where the Council is carrying out relevant business then the Client Identification Procedure must be followed.

### **1. Introduction**

- 1.1 The Proceeds of Crime Act 2002 ('the Act') consolidated, updated and reformed the criminal law with regard to Money Laundering.
- 1.2 The Money Laundering Regulations 2007 came into force in December 2007 and required local authorities to put in place suitable anti-money laundering controls.
- 1.3 This policy has been designed to introduce safeguards to help identify and report on instances where money laundering is suspected and sets out procedures which must be followed to enable the Council to comply with its legal obligations.

### **2. Scope of the Procedure**

- 2.1 This procedure applies to all employees of the Council and aims to prevent criminal activity through money laundering.

**The key requirement on employees is to promptly report any suspected money laundering activity to the Money Laundering Reporting Officer (MLRO) using the reporting to money laundering reporting officer form.**

### 3. What is Money Laundering?

- 3.1 Money laundering means exchanging money or assets that were obtained criminally for money or assets that appear to be from a legitimate source.

Money laundering offences include:

- ❖ concealing, disguising, converting, transferring criminal property or removing it from the UK (Section 327 of the Act)
- ❖ entering into or becoming concerned in an arrangement which you know or suspect facilitates the acquisition, retention, use or control of criminal property by or on behalf of another person (Section 328 of the Act)
- ❖ acquiring, using or possessing criminal property (Section 329 of the Act)

There are also two secondary offences:

- ❖ failure to disclose any of the three primary offences above; and
  - ❖ 'tipping off' whereby somebody informs a person or persons who are, or who are suspected of being involved in money laundering, in such a way as to reduce the likelihood of their being investigated or prejudicing an investigation.
- 3.2 Any member of staff could be caught by the money laundering provisions, if they suspect money laundering and either become involved with it in some way and/or do nothing about it.
- 3.3 While the risk to the Council of contravening the legislation is low, it is important that all employees are familiar with their responsibilities as criminal sanctions may be imposed for breaches of the legislation.
- 3.4 Details of any cash payments of over £1000 must be reported to the MLRO.

### 4. The Money Laundering Reporting Officer (MLRO)

- 4.1 The officer nominated to receive disclosures about money laundering activity within the Council is the **Governance, Risk and Safety Manager – Iain Jackson**.

### 5. Reporting Procedures

- 5.1 Any employee who suspects money laundering activity must report their suspicion promptly to the MLRO, firstly by discussing their suspicion with the MLRO and then by submitting the report to the MLRO using the disclosure form – part 1, attached at Appendix A.
- 5.2 The employee must follow any directions given by the MLRO, and must not make any further enquiries into the matter or take any further steps in any related transaction without authorisation from



the MLRO.

- 5.3 The employee must not disclose or otherwise indicate their suspicions to the person suspected of the money laundering. They must not discuss the matter with others or note on the file that a report has been made to the MLRO in case this results in the suspect becoming aware of the situation.
- 5.4 The MLRO must promptly evaluate any disclosure report, to determine whether it should be reported to the National Crime Agency (NCA).
- 5.5 The MLRO must promptly report the matter to NCA, on their standard report form and in the prescribed manner.
- 5.6 The MLRO will commit a criminal offence if they know or suspect, or have reasonable grounds to do so, through a disclosure being made, that another person is engaged in money laundering and they do not disclose this as soon as practicable to the NCA.

## 6. Client Identification Procedure

- 6.1 Where the Council is carrying out 'relevant business' and as part of this
  - ❖ forms an ongoing business relationship with a client;
  - ❖ undertakes a one-off transaction involving payment by or to the client of £10000 or more;
  - ❖ undertakes a series of linked one-off transactions involving total payment by or to the client(s) of £10000 or more;
  - ❖ it is known or suspected that a one-off transaction (or a series of them) involves money laundering;
  - ❖ then the Client Identification Procedure (as set out below) must be followed before any business is undertaken for that client.

Unlike the reporting procedure, the client identification procedure is restricted to those operating relevant business i.e. Financial Services and Legal Services. This requirement does not apply if a business relationship with the client existed before 1st March 2004.

- 6.2 Where the 'relevant business' is being provided to another public sector body then you must ensure that you have signed, written instructions on the body's headed paper before any business is undertaken.
- 6.3 Where the 'relevant business' is not for a public sector body, then you should seek additional evidence of identity, for example: checking with the organisation's website to confirm their business address; conducting an on-line search via Companies House; seeking evidence from the key contact of their personal identity and position within the organisation.
- 6.4 With instructions from new clients, or further instructions from a client not well known to you, you may wish to seek additional evidence of the identity of key individuals in the organisation and of

the organisation itself - please see the Guidance Note for more information.

- 6.5 If satisfactory evidence of identity is not obtained at the outset then the business relationship or one off transaction(s) cannot proceed any further.

## **7. Record Keeping Procedures**

- 7.1 Where the 'relevant business' is carried out then the client identification evidence and details of the relevant transaction(s) for that client must be retained for at least five years.

## **8. Guidance & Training**

- 8.1 In support of this procedure, the Council will make all staff aware of the requirements and obligations placed on the Council and on themselves as individuals by the Anti Money Laundering legislation.

# Disclosure Form - Part 1

## Report to Money Laundering Reporting Officer

### DETAILS OF EMPLOYEE :

From \_\_\_\_\_

Service \_\_\_\_\_ Contact Details \_\_\_\_\_

Date \_\_\_\_\_

- 1. Are you dealing with a transaction which might be a prohibited act under sections 327-329 of the Proceeds of Crime Act 2002 and which requires appropriate consent from the SOCA?  
Yes/No

### DETAILS OF SUSPECTED OFFENCE :

- 2. Identities of the person(s) subject to the enquiry

Name \_\_\_\_\_

Address \_\_\_\_\_

Contact Details \_\_\_\_\_

- 3. Nature and details of activity

*(Please include full details of activity e.g. what, when, where, how. Continue on a separate sheet if necessary)*

- 4. Nature of suspicions regarding such activity:

*(Please continue on a separate sheet if necessary)*

- 5. To your knowledge has any investigation been undertaken?

*If yes please include details below.*

Yes/No

[Empty box]

**6. Have you discussed your suspicions with anyone else?**

*If yes please specify below with whom, explaining reasons for such discussion and the outcome of the discussion:*

Yes/No

[Empty box]  
*(Please continue on a separate sheet if necessary)*

**7. Have you consulted any supervisory body for guidance? (e.g. the Law Society) If yes please provide details:**

Yes/No

[Empty box]  
*(Please continue on a separate sheet if necessary)*

**8. Do you feel you have a reasonable excuse for not disclosing the matter to the SOCA? (e.g. are you a lawyer and wish to claim legal professional privilege) Yes/No**  
*If yes please set out below full details for not wanting to disclose the matter to NCIS ::*

[Empty box]  
*(Please continue on a separate sheet if necessary)*

**9. Please set out below any other information you feel is relevant :**

[Empty box]  
*(Please continue on a separate sheet if necessary)*

<b>Signed</b> _____	<b>Dated</b> _____
<p><b>Once completed please forward this form to your Money Laundering Reporting Officer. Please do not discuss the content of this report with anyone you believe to be involved in the suspected money laundering activity described. To do so may constitute a tipping off offence which carries a maximum penalty of 5 years imprisonment.</b></p>	

# Money Laundering Disclosure Form - Part 2

The following part of this form is for completion by the MLRO

## DETAILS OF MLRO

Name \_\_\_\_\_

Service \_\_\_\_\_ Contact Details \_\_\_\_\_

Date report received \_\_\_\_\_ Date report acknowledged \_\_\_\_\_

1. Has the report submitted been considered?

If no please state reasons

Yes/No

*(Please continue on a separate sheet if necessary)*

2. If you feel there are no grounds to suspect Money Laundering activity have you informed the employee to continue with the transaction?

Yes/No

3. If there are reasonable grounds for suspicion will a report be made to the SOCA or the Police?

Yes/No

If no please state reasons and go to question 5

**If yes has a report been made to NCA or the Police?**

Please confirm date of report to NCA \_\_\_\_\_

**Details of liaison with the NCA or the Police regarding the report**

Name of NCA person spoken to \_\_\_\_\_

Notice Period \_\_\_\_\_ to \_\_\_\_\_

Moratorium Period \_\_\_\_\_ to \_\_\_\_\_

4. Is consent required from the NCA to any ongoing or imminent transactions which would otherwise be prohibited acts? Yes/No

If yes has consent been obtained?

Name of NCA person spoken to \_\_\_\_\_

Contact Details \_\_\_\_\_

Date consent received from NCA \_\_\_\_\_

Date consent given by you to employee \_\_\_\_\_

5. If there are reasonable grounds to suspect money laundering but you do not intend to report the matter to the NCA please set out below the reason(s) for non-disclosure.

Date consent given by you to employee for any prohibited transactions to proceed \_\_\_\_\_

Signed \_\_\_\_\_ Dated \_\_\_\_\_

**THIS REPORT TO BE RETAINED FOR AT LEAST FIVE YEARS**

**Money Laundering Consent to Proceed Form - Part 3**

This form is for completion by the MLRO

**DETAILS OF MLRO**

Name \_\_\_\_\_

Service \_\_\_\_\_ Contact Details \_\_\_\_\_

**DETAILS OF EMPLOYEE :**

Name \_\_\_\_\_

Service \_\_\_\_\_ Contact Details \_\_\_\_\_

**DETAILS OF REPORT :**

Name of person involved \_\_\_\_\_

Contact Details \_\_\_\_\_

Date of Report \_\_\_\_\_

**OUTCOME :**

I can confirm that the above transaction/query can/cannot proceed

Signed \_\_\_\_\_ Date \_\_\_\_\_  
(MLRO)

**ANNEX 3 – GUIDANCE ON RESPONDING TO A FRAUD SITUATION**

<b>PART</b>	<b>TITLE</b>	
<b>A</b>	<b>WHAT YOU SHOULD DO</b>	
<b>B</b>	<b>INITIAL RESPONSE CHECKLIST</b>	
<b>C</b>	<b>HOW IS AN INVESTIGATION MANAGED?</b>	
<b>D</b>	<b>HOW SHOULD EVIDENCE BE OBTAINED AND KEPT?</b>	
<b>E</b>	<b>WHAT YOU SHOULDN'T DO</b>	



**ANNEX 3A****Guidance on responding to a fraud, corruption or bribery situation - what you should do****The golden rules for responding correctly**

*The ultimate golden rule is that evidence should be collected and handled without compromising it or a future criminal investigation and prosecution.*

<b>RESPOND APPROPRIATELY TO INITIAL SUSPICION</b>	If it is safe to do so, an initial investigation should be carried out to identify what further action is necessary. If there is an indication of fraud or anything requiring further investigation, this should be recorded and passed promptly to Internal Audit Services. <b>All staff should be made aware of and follow the guidance in Appendix 2.</b>
<b>CONFIDENTIALITY</b>	All information received as part of the fraud investigation should be treated as confidential and should only be shared with those who have a need to know.
<b>GET ADVICE</b>	Services should consult with HR before taking any action. Feel free at any point to contact Internal Audit for guidance or help. The Revenues and Benefits Counter Fraud Investigation Team may be able to provide further advice and / or assist the Internal Audit Team in investigating any corporate frauds that may arise.
<b>PLAN CAREFULLY</b>	Carefully evaluate evidence, assess risk and plan actions. Take the time to do this well. Again assistance can be provided by Internal Audit.
<b>REFER EFFECTIVELY</b>	If necessary agree with Internal Audit who will be responsible for the investigation. Internal Audit will be happy to act in an advisory capacity in a number of circumstances rather than lead the work.
<b>STAY IN CONTROL</b>	Investigation work should be well monitored and controlled with regular meetings with all parties involved to review progress and decide future actions. Controlling time and cost is also important.
<b>KEEP GOOD RECORDS</b>	Keep first class records, particularly where evidence of criminality is obtained. Evidence and documentation must be stored securely in its original condition.
<b>BE CAREFUL ABOUT INTERVIEWING</b>	Interviews, which should only be used for fact finding, should be carefully planned, undertaken and recorded. Interviews should always be carried out by two people. The interviewee should be allowed to be accompanied. A formal record should be kept of the interview. Never interview a criminal suspect before consulting the Police and giving them the opportunity to investigate. The Head of Legal and Regulatory Support Services will be happy to advise.
<b>STOP AT THE RIGHT TIME</b>	Referring the matter at the right time is essential to achieving a successful outcome. Guidance will be provided by Internal Audit.

<b>FOLLOW UP ACTION TAKEN</b>	Make sure that the Council learns from the experience and strengthens internal control.
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**ANNEX 3B****Initial response checklist****Being told about a fraud, corruption or bribery matter**

*All information received must be treated as confidential and should only be shared with those who have a need to know*

**1. Note details of the informant.**

- Name
- Address and telephone number
- Position
- Accept information that is provided anonymously, but encourage the person to give their details by suggesting this would help a future investigation if they can be contacted for further information.

**2. Be responsive to concerns raised.**

- Encourage an informant to voice concerns
- Assure them that their concerns will be taken seriously and properly looked into
- Make sure that the conversation is conducted privately and cannot be overheard inappropriately
- Listen carefully and attentively.

**3. Refer to an appropriate Manager.**

- If you are not the appropriate person it would be best to stop a conversation at a suitable opportunity so that they can be involved.
- If the informant has given contact details tell them that a senior member of staff will contact them.

**4. Ask questions to try to get as much information as possible.**

- Probe and clarify where necessary
- Find out if the informant has any evidence – e.g. documents
- Ask open questions – who, what, where, when, why, how.

**5. Check if the informant wants to make a Public Interest Disclosure Act 1998 (PIDA).**

- An informant may qualify to make a protected disclosure if they give their name and are an employee
- Tell them briefly about PIDA
- Ask them if they are making a disclosure or would like to do so
- Reassure the informant all information will be treated in confidence

## **Think you just found a fraud, corruption or bribery matter?**

### **Consider personal safety and leave immediately if at risk from a suspect.**

#### **1. As soon as possible make a note of your concerns ensuring this is kept secure and cannot be overseen.**

- Who
- What
- Where
- When
- Why
- How.

#### **2. Make copies of any documentation on site that may be relevant and is readily accessible.**

- Computer records and outputs – Seek support from Head of Legal and Regulatory Support Services to ensure evidence is protected from contamination and destruction and is collected correctly
- Financial documents such as invoices
- Procedure documentation
- Reports

#### **3. Convey your suspicions as soon as possible to the appropriate Manager.**

- Initial information and evidence obtained should be evaluated
- Further investigation work should be carefully considered and planned
- Involve Audit Services if necessary

### **Don't do these!**

#### **1. Don't unduly challenge and never ridicule an informant about the reliability of their information.**

- We want to know everything they know, even if it is wrong
- There will be time afterwards to evaluate what has been said and to determine what action should be taken
- Be open and approachable.

#### **2. Don't confront anyone suspected or accused.**

- A fraudster should not be alerted before the investigating parties are ready to take action
- Inappropriately interviewing a suspect can compromise a criminal investigation
- Wrongly accusing someone can do serious damage to careers, relationships and professional credibility.

#### **3. Don't tell anyone who does not need to know.**

## **ANNEX 3C**

### **How is an investigation managed?**

#### ***Objectives***

The objectives of an investigation are to:

- identify if fraud has taken place
- identify the dishonest persons
- estimate the financial loss and make recovery
- act fairly by collecting balanced evidence to support or disprove allegations and suspicions of fraud
- recommend and agree action to improve internal control
- consider taking formal action where needed.

#### ***How to investigate***

The approach to investigation work is summarised below:

When fraud is suspected:-

- Evaluate the information, evidence and sources
- Assess risk
- Plan and prioritise the work required
- Gather evidence from records, documents and enquiries
- Decide on further courses of action

At all stages consideration should be given to the cost and benefits of doing the work.

The first and second steps of evaluation and assessing risk should always be undertaken. These are essential to gain an adequate understanding of the circumstances, risks and possible courses of action.

Meetings should be held regularly to re-evaluate evidence gathered and to re-assess risk as the investigation progresses. In making the assessment of risk, try to anticipate the whole potential extent for fraud. Think of the worse case scenario. For example, if an employee is able to commit a fraud in one area, how many other areas might also be at similar risk and should be checked? This will help to identify the gaps in knowledge towards which further investigative enquiries need to be made.

The investigation cycle continues until the objectives of the investigation have been achieved or further useful evidence is unlikely to be available. The evidence that has been obtained can then be evaluated in its entirety and appropriate action considered.

**ANNEX 3D****How should evidence be obtained and kept?**

Evidence handling and record keeping must be excellent.

**Golden rules for evidence gathering and record keeping**

*The ultimate golden rule, here again, is that evidence should be collected and handled without compromising it or a future criminal investigation and prosecution. The guidance covers investigations which involve a team of staff. Most investigations in Services will be done by a single manager and not all the steps will be required.*

<b>ESTABLISH A FILING SYSTEM STRAIGHT AWAY</b>	Chronicle in an investigation logbook every action taken during the investigation. Also keep an exhibits record for evidence gathered.
<b>GET ENOUGH ADMINISTRATIVE SUPPORT</b>	Keep right up to date with filing and record keeping.
<b>OBTAIN ORIGINAL DOCUMENTARY EVIDENCE</b>	Obtain original documentary evidence (e.g. invoices) where possible. Give a receipt and a copy of what is taken.
<b>RECORD INTERVIEWS AND CONVERSATIONS</b>	Conversations, information received and actions taken should be recorded contemporaneously.
<b>MAINTAIN EVIDENCE SECURELY IN ORIGINAL CONDITION</b>	Make sure original documents or items are not marked or damaged in any way. Store securely and work on copies.
<b>GET ADVICE ABOUT OBTAINING AND USING IT AND FORENSIC EVIDENCE</b>	IT and forensic evidence requires specialist skills to meet criminal standards. Get advice from the Head of Legal and Regulatory Support Services.
<b>DON'T THROW ANYTHING AWAY</b>	File everything including rough notes and working papers to avoid potential allegations of destroying evidence.

**ANNEX 3E****What you shouldn't do**

This section looks at the main risks and how they can be avoided.

**The cardinal sins**

*The ultimate cardinal sin is to compromise a future criminal investigation by the Police or other agency and therefore the chances of a successful prosecution.*

<b>RUSH AN ILL PLANNED INVESTIGATION</b>	Poorly managed investigations may jeopardise criminal prosecution and other action. Investigations should be well planned and involve staff with appropriate skills and experience. If in doubt call Internal Audit.
<b>CONDUCT A CRIMINAL INVESTIGATION</b>	This is the responsibility of the Police. When reasonable suspicion of a criminal offence is established, report the matter to Internal Audit and discuss the way forward.
<b>INTERVIEW CRIMINAL SUSPECTS</b>	This is the responsibility of the Police. Stop any ongoing interviews once reasonable suspicion arises or a confession is made. Don't start any new interviews of suspects. Never try to interview under caution. Report the matter to Internal Audit and discuss the way forward.
<b>COMPROMISE EVIDENCE</b>	The courts expect the original evidence to be produced in its original condition. Make a copy to work on and keep the original in a secure and safe file.
<b>COMPROMISE COMPUTER EVIDENCE</b>	If you switch a computer on or off you immediately compromise the evidence it may contain. Taking evidence from a computer involves specialist skills to copy hard drives and access networks appropriately. Specialist advice must be obtained. Report this to Head of Legal and Regulatory Support Services and discuss the way forward.
<b>THROW EVIDENCE AWAY</b>	Keep everything. The law generally requires the prosecution to disclose all material evidence to the defence. This may include the audit files.
<b>MOUNT COVERT SURVEILLANCE</b>	Whilst the Council is a body to which the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) applies, we do not normally use covert surveillance. Don't follow people around or take pictures of them without their knowledge. This would be committing an offence.
<b>USE INFORMANTS</b>	Whilst the Council is a body to which the Regulation of Investigatory Powers (Scotland) Act 2000 (RIPSA) applies, we do not normally use covert surveillance. You cannot direct someone to find out information outside the normal course of the audit / investigation. So, for example, you cannot direct a member of the public "to keep an eye on things and let me know when it happens again". You can encourage them to contact you with further information which you are willing to take into account as part of the audit / investigation if they wish.

<b>INTERCEPT COMMUNICATIONS</b>	Accessing personal e-mail and post without the permission of the individual concerned can be illegal under <i>RIPSA</i> and / or the <i>Data Protection Act 2018</i> . Get legal advice about your proposed enquiries in advance of taking any actions of this nature.
<b>BREACH DATA PROTECTION REQUIREMENTS</b>	Under <i>Schedule 2, Part 1 of the Data Protection Act 2018</i> , data can be shared between organisations for purposes of preventing and detecting crime. However, obtain legal advice about the specific acquisition, use and sharing of computer data.
<b>BECOME AN EXPERT WITNESS</b>	The evidence should speak for itself and the expression of opinion should be unnecessary or properly limited. Always take legal advice if you are asked to make a statement to the Police or you have been called as a witness at trial. An ordinary witness states what they found, heard or saw. An expert witness offers professional opinion on the evidence and this should be avoided.

It is important to keep in mind that evidence gathered during an audit investigation may subsequently be called upon in a criminal prosecution, civil law action or disciplinary / dismissal case. The action that can be taken against a fraudster will be compromised if it is possible to highlight procedural weaknesses in the investigation or evidence gathering process which may lead to evidence being ruled inadmissible or otherwise discredited.

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART E**

**CONTRACT STANDING ORDERS**

## ARGYLL AND BUTE COUNCIL

### STANDING ORDERS RELATING TO CONTRACTS

#### DEFINITIONS

“Authorised Signatory” means an authorised signatory of the Council in terms of the Contract Standing Orders as more particularly described in the Authorised Signatories for Contracts List;

“Category Manager” means the manager of a particular category of contract for the categories Corporate & Education; Construction & Environment and Care & Housing;

“Contract Owner” means an officer from the Relevant Service who is responsible for the management of the Contract

‘Call-Off Contract’ means the terms and conditions under which specific purchases can be made under a Framework Agreement and/or a DPS and/or an arrangement established in terms of the light touch regime;

‘DPS’ means a dynamic purchasing system as defined in the European Procurement Regulations;

‘Framework Agreement’ means an agreement which sets out terms and conditions under which specific purchases (Call-Off Contracts) can be made throughout the term of the agreement;

‘Portal’ means the national portal established and maintained by Scottish Procurement for the purpose of publicising: (i) the seeking of offers, and (ii) the award of contracts, which may be found at <http://www.publiccontractsscotland.gov.uk>;

“Procurement Manual” means the Council’s procurement manual which sets out the procurement processes, templates and guidance which the Council requires to utilise when carrying out a public procurement;

‘Procurement Process’ means a procurement process approved by the Council’s Procurement Board and/or set out in the Procurement Manual in relation to the conduct of a procurement exercise;

‘Procurement Regulations’ means the Public Contracts (Scotland) Regulations 2015, the Procurement (Scotland) Regulations 2016, the Procurement Reform (Scotland) Act 2014 or such other Regulations as may be in force from time to time;

Regulated Procurement' has the meaning defined in the Reform Act and means contracts of or over £50k in value excluding VAT for goods and services and £ 2m for works ( excluding VAT let by public sector;

'Reform Act' means the Procurement Reform (Scotland) Act 2014 and any new legislation amending, substituting or replacing that Act;

"Relevant Service" means the service department of the Council with the particular operational requirement in any individual case for supplies, services or works on behalf of the Council (or for the disposal of surplus materials);

"SGN" means Supplementary Guidance Note forming part of the Procurement Manual;

"SPPNs" means Scottish Public Policy Notes issued by the Scottish Government.

## **1. PRELIMINARY**

### **General**

- 1.1 Argyll and Bute Council makes these Standing Orders in terms of section 81 of the Local Government (Scotland) Act 1973 and they apply to the arrangements made by or on behalf of the Council in relation to the supply of goods, provision of services and carrying out of works.

### **Compliance with General Principles**

- 1.2 These Standing Orders must be interpreted in accordance with the key principles of transparency, openness, fairness and non-discrimination.

### **Scots Law**

- 1.3 Except where otherwise agreed between the Executive Director of the Relevant Service and the Director of Legal and Regulatory Support, every contract entered into by the Council shall be in writing and shall be subject to Scots Law and the exclusive jurisdiction of the Scottish Courts.. They are also subject to Scottish Government guidance on public procurement that may be issued from time to time.

### **Extent**

- 1.4 Subject to Clause 1.5 and 1.6 below, these Standing Orders apply to all Council contracts (as appropriate) including but not limited to the award of contracts, the establishment of Framework Agreements, a DPS or an arrangement established in terms of the light touch regime and the award of Call off Contracts.

- 1.5 These Standing Orders shall not apply to any contracts made on behalf of the Council by any central purchasing body with whom the Council has made arrangements for the award of works, supplies or services contracts on its behalf.
- 1.6 These Standing Orders do not apply to any of the following:
- 1.6.1 contracts of employment;
  - 1.6.2 contracts relating to the disposal of heritable property; and
  - 1.6.3 contracts for the execution of works, the supply of goods and materials, or the provision of services which are, in the reasonable opinion of the Executive Director whose service are arranging the contract (hereinafter referred to throughout as “the relevant Executive Director) urgently required for the immediate prevention of risk to life or damage to property.
  - 1.6.4 such other contracts that the relevant Executive Director and the Executive Director with responsibility for Legal and Regulatory Support Services shall agree may legitimately be excluded from all or part of the provisions of the Standing Orders, by reason of the circumstances relating to the requirement for such contracts.

### **Procurement Manual**

- 1.7 These Standing Orders must be read in conjunction with the Council’s Procurement Manual (including relevant SGNs). Where there is any discrepancy between the Standing Orders and the Procurement Manual, consultation will be undertaken with the Head of Legal and Regulatory Support Services and the Manager of the Procurement, Commercial and Contract Management Team to agree precedence. All Council employees must comply with these Standing Orders and the Council’s Procurement Manual (including any procedure, supplementary guidance note (SGN), or manual or template made under or in conjunction with the Procurement Manual) and failure to comply may result in disciplinary proceedings. The Council’s Procurement Manual is an Operational document and will be updated from time to time to reflect relevant thresholds, legislative documents and guidance.

### **Compliance with Procurement Strategy**

- 1.8 The appropriate Executive Director shall carry out all Regulated Procurements, so far as reasonably practicable, in accordance with the Procurement Strategy applicable to the financial year during which the procurement exercise commenced.

## **Sustainable Procurement Duty**

- 1.9 In carrying out any Regulated Procurements (other than Call Offs and contracts for Social Care Services which may be awarded without advertising) the appropriate Executive Director will comply with the Sustainable Procurement Duty.
- 1.9.1 In complying with the Sustainable Procurement Duty the appropriate Executive Director must comply with the Reform Act, any guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Head of Legal Services and/or Head of Finance considers appropriate and any relevant procurement process.
- 1.9.2 In complying with the Sustainable Procurement Duty the appropriate Executive Director will so far as possible within the law and where relevant and proportionate to do so encourage fair work first practices including payment of the living wage and the discouragement of use of inappropriate use of 'zero hours' contracts.

## **Internal Arrangements**

- 1.10 Any action taken on the Council's behalf under these standing orders must also be in terms of the Council's Scheme of Delegation, Financial Regulations and the Standing Orders on Procedures

## **2. CONTRACT REGISTER**

- 2.1 The relevant Executive Director will maintain and publish a register of all Contracts awarded. The Contract Register is maintained and published by the PCCMT and all awards, modifications and terminations should be included in the said Contract Register and sent to PCCMT inbox ([procurement@argyll-bute.gov.uk](mailto:procurement@argyll-bute.gov.uk))

## **3. THRESHOLDS**

### **Regulatory Thresholds**

- 3.1 Where a relevant Service is preparing to enter a contract under these Standing orders, regard shall be had to the regulatory thresholds set out section 1 of the Procurement Manual (or as directed by the Scottish Government from time to time). Where a contract is subject to the regulatory thresholds the relevant regulations and guidance must be followed.

### **Local Thresholds**

- 3.2 Where a relevant Service is preparing to enter a contract under these Standing orders, regard shall be had to the regulatory thresholds set out section 1 of the Procurement Manual. Where a contract is subject to the Local Thresholds the relevant procurement routes as set out in 1.8 of the Procurement Manual must be followed.

### **Public Contracts**

- 3.3 All public works contracts are to be tendered and awarded in accordance with the Public Contracts (Scotland) Regulations 2015 or the Procurement (Scotland) Regulations 2016 by the Council having an estimated contract value exceeding of £2 million or such figure as may be advised by the Scottish Government from time to time, whichever is lower, and all contracts for the supply of goods and services having an estimated contract value exceeding £50,000 will be advertised on the Portal, and, unless the circumstances of the particular contract require otherwise, it shall be a requirement that all tenders and other responses are submitted electronically through the Portal, where there is the technical capability to do so. The relevant Executive Director shall ensure that once awarded the required contract details are entered upon the Portal.
- 3.4 When the Council proposes to award a public works contract which has an estimated value which is below the threshold in paragraph 3.1 but exceeds £50,000, or where a proposed public works contract is otherwise exempt from the requirement for prior publication of a contract notice, the relevant Executive Director will ensure a degree of advertising which is sufficient to enable open competition and meet the requirements of the principles of equal treatment, non-discrimination and transparency and complies with the thresholds set out in the Council's Procurement Manual.

### **Procedure for Award**

- 3.5 The procedure for the award of any contract depends upon the estimated value of that contract and any related contracts over their intended duration. Detailed provisions in relation to the tendering award of contracts and contract management activity are contained in the Procurement Manual and all Council employees should refer to the Procurement Manual for guidance. Where a contract is tendered and awarded, the guidance, templates and standardised processes set out in (or supplementary to) the Procurement Manual must be used. If there is any doubt as to the relevant guidance, templates and standardised process this should be clarified in consultation with the Manager of the Procurement, Commercial and Contract Management Team

### **Community Benefit**

- 3.7 In carrying out any Regulated Procurement (including any Call Off Contract and excluding any contracts for Social Care Services which are awarded without advertising) where the estimated value of the contract is equal to or exceeds £100,000 for Supplies and Services or £2,000,000 for Works (or other amount set out in Supplementary Guidance Note 3 from time to time) the appropriate Executive Director will comply with the Community Benefit Requirement. In complying with the Community Benefit Requirement the appropriate Executive Director must comply with the Reform Act, any guidance issued by the Scottish Government under the Reform Act, any guidance and requirements as the Head of Legal and Regulatory Services and/or Head of Finance considers appropriate

#### **4. CONTRACT MANAGEMENT**

##### **4.0 The Role and Responsibilities of Executive Directors**

Each Executive Director has responsibility for all contracts tendered and let by their Directorate and is accountable to the Council for their performance of their duties in relation to contract letting and management, as follows:

- 4.0.1 to ensure compliance with these Standing Orders, the Procurement Manual and SGN 17 Contract and Supplier Toolkit;
- 4.0.2 to put in place arrangements for the efficient contract and Supplier management including the identification of a Contract Manager/Owner and management of benefits and performance, for the entire duration of the contract or Framework/DPS.

For Frameworks/DPS call off or contracts used by more than one Directorate the arrangements for contract and supplier management shall be made by the Executive Director for the Directorate with the largest spend or anticipated spend in respect of the same.

##### **Form of Contract**

- 4.1 Every contract will be in writing and will specify:
- 4.1.1 the work, materials, matters or things to be provided, had or done, (including any appropriate technical specifications(s));
- 4.1.2 the price to be paid with a statement of discounts or other deductions, together with the arrangements for payment,
- 4.1.3 the time or times within which the contract is to be performed, including the financial consequences of non-compliance;

- 4.1.4 any other relevant matter relating to the due performance of the contract.

### **Signing**

- 4.2 All contracts entered into in terms of and in accordance with these Standing Orders shall be signed by the relevant Authorised Signatory in line with the Scheme of Authorised Signatories and Pecos Users on the Hub as also set out at section 2.4 of SGN 15. If there is doubt about the Authorised Signatory for a contract consultation should be undertaken with the PCCMT or Head of Legal and Regulatory Services.

### **Contract Modification**

- 4.3 A contract, Framework Agreement, DPS, arrangement established in terms of the light touch regime or Call Off Contract may be modified during its term without a new procurement exercise being carried out provided the requirements the Procurement Regulations are met (this means that there should be no material changes during the lifetime of a contract. If in doubt seek advice from PCCMT legal). This Standing Order will apply to all contracts, Framework Agreements, DPS, arrangement established in terms of the light touch regime or Call Off Contracts where the estimated value exceeds £50,000
- 4.4 The decision to modify in accordance with this Standing Order shall be authorised by the appropriate Authorised Signatory as set out at 8.4 of SGN 17. If there is doubt about the Authorised Signatory for a contract consultation should be undertaken with the Manager of the PCCMT.
- 4.5 Prior to concluding any such extension or modification, Relevant Service (in consultation with the PCCMT) shall prepare-
- 4.5.1 A written Contract Modification report in the form set out at para 8.8 of SGN 17 demonstrating the legal basis for the extension or modification. The report shall be maintained on file by the Executive Director of the Relevant Service to provide an audit trail in each case. The Signatory for the Council approval should be in line with the signatories for Contract Award Recommendation Reports set out at the Scheme of Authorised Signatories List on the Hub and at 8.8 of SGN 17. If there is doubt about the Authorised Signatory for a contract seek advice from PCCMT.

### **Termination of Contract**

- 4.6 The decision to terminate any contract, Call Off Contract or a contractor's appointment to a Framework Agreement, DPS or arrangement established in



terms of the light touch regime shall be authorised by the appropriate Executive Director in consultation with the Head of Legal and Regulatory Support.

- 4.7 Prior to terminating a contract the Relevant Service (in consultation with PCCMT ) shall prepare a written Contract Termination Report in the form set out at para 8.7 which sets out the legal basis for termination the Signatory for the Council approval should be in line with the signatories for Contract Award Recommendation Reports set out the Scheme of Authorised Signatories at 8.8 of SGN 17, If there is doubt about the Authorised Signatory for a contract termination seek advice from PCCMT.

### **Best Value**

- 4.8 All contracts must secure Best Value and maintain an appropriate balance among:

- 4.8.1 the quality of the performance of the Council's functions  
4.8.3 the cost to the Council of that performance  
4.8.3 the cost to persons of any Council service provided for them on a wholly or partly rechargeable basis having regard to

- a) efficiency
- b) effectiveness
- c) economy
- d) the need to meet equal opportunity requirements
- e) the need to ensure sustainable development

### **Guidance Notes (SGNs) and SPPNs**

- 4.9 When entering into a contract, due regard must be given to any guidance issued by the Scottish Ministers in terms of the Local Government in Scotland Act 2003 and the Procurement Reform Act.
- 4.10 Guidance Notes (SGNs) and SPPNs on tendering procedures for any contract or type of contract entered into by or on behalf of the Council may be issued by the Manager of PCCMT with the approval of the Head of Legal Services and Regulatory Support. Any Practice or Guidance Notes or SPPNs issued under this Standing Order shall form part of these Standing Orders.

## **5. CONTRACT TERMS**

### **Assignment and Sub-Contracting**

- 5.1 In every contract for the execution of works or supply of goods material or services, a clause shall be inserted which shall have the effect of preventing a Contractor or supplier from transferring or assigning directly or indirectly, or

sub-contracting to any person or persons whatever, any portion of the contract without the written permission of the relevant Executive Director, or an officer authorised by that Executive Director.

Supplementary Guidance Note SGN 17 sets out how PCCMT can support the implementation of a consistent contract management process across the Council and achieve objectives:

- To build good working relationships between parties;
- Proactively anticipating future risks and appropriate dealing with them;
- Aiming for continuous improvement in performance over the life of the contract;
- Identifying and driving best value over the life of the contract;
- Delivering community benefits for our local community.

Following agreed processes and using the related templates where appropriate and working with the PCCMT will enhance officers' ability to manage Suppliers and deliver contract objectives on time and within budget.

### **Liquidated Damages**

- 5.2 A contract which is for the execution of works or the supply of goods or materials by a particular date or series of dates may provide for liquidated damages
- 5.3 Where completion of a contract is delayed beyond the contract period, it will be the duty of the relevant Executive Director to take appropriate action in respect of a claim for damages due under the terms of the contract.

### **Indemnities and Contract Security**

- 5.4 All specifications issued by or contracts entered into with the Council in connection with the carrying out of works or the provisions of services or supplies will specify that the contractor will be required to indemnify the Council and shall be insured with an insurance company approved by the Council or shall demonstrate to the satisfaction of the relevant Executive Director against -
- 5.4.1 liability at common law and/or under legislation including but not restricted to liability under Employers Liability Insurance;
- 5.4.2 any claim for injury or damage to the persons or property of third parties;
- 5.4.3 any claim which the Council may have or receive arising from the professional negligence of the contractor and the contractor will, when required by the relevant Executive Director produce satisfactory

evidence that there is Employers Liability. Public Liability and Professional Indemnity insurance against any such claims.

5.4.4. any other matters relevant to the contract being entered into to such levels specified in the Procurement Manual or as may be specified from time to time by the relevant Executive Director or by law.

5.4.5 The Council may ask for security on any contract for the carrying out of works, supply of goods or the provision of services (including any Call Off Contract) where it is in the opinion of the appropriate Executive Director and/or the Head of Financial Services in consultation with Head of Legal and Regulatory Services considered to be appropriate. Such security could include, but not be limited to, a parent company guarantee, performance bond (if the estimated value of the single contract or Call Off Contract is more than (£1 million) or where circumstances dictate it is prudent to do so. The terms of any security will be in a form approved by the Head of Legal and Regulatory Services.

### **Specification and Standards**

- 5.5 All tenders for the execution of works or the supply of goods, materials or services will be based on a defined specification appropriate to the requirements of the proposed contract.
- 5.6 All contracts issued by a UK Conformity Assessed (UKCA) approved Body or other Notified or Approved Body as may exist from time to time.
- 5.7 All contracts will contain provision for the compliance with all current Health and Safety legislation and the relevant Executive Director will satisfy himself as to the arrangements in place in this respect.

### **Prevention of Fraud**

- 5.8 In every contract a clause will be inserted to secure that the Council will be entitled to cancel the contract and to recover from the contractor the amount of any loss resulting from such cancellation if:

the contractor has offered or given or agreed to give to any person any gift or consideration of any kind as an inducement or reward for doing or for not doing or having done or not having done any action in relation to obtaining, or the execution of, the contract or any other contract with the Council, or for showing favour or disfavour to any person in relation to the contract or any other contract with the Council.

or if the like acts have been done by any person employed by the contractor or acting on the contractors behalf (whether with or

without the knowledge of the contractor).

or if in relation to any contract with the Council, the contractor or any person employed by, or acting on the contractor's behalf, (whether with or without the knowledge of the contractor) will have committed any offences under the Bribery Act 2010, or will have given any fee or reward the receipt of which is an offence under Section 68 of the Local Government (Scotland) Act 1973.

### **Contract Payment and Other Provisions**

- 5.9 The Council's agreed credit period is thirty (30) days. Payment of valid undisputed invoices will be made by the Council within thirty (30) days of the date of the invoice issued on or after delivery of the Goods or performance of the Service. The Contractors shall ensure a similar clause is included in any sub contract or any sub-sub contract.
- 5.10 Where contracts provide for payment to be made by instalments, arrangements will be made by the relevant Executive Director, for keeping a contract register to show the state of account on each contract between the Council and the contractor together with any other payments and related professional fees.
- 5.11 Payments to contractors by instalment will be made only on an authorisation issued by the relevant Executive Director (or other authorised officer) or by a consultant engaged by the Council for the purpose of supervising the contract.
- 5.12 Subject to the provisions of the contract, in each case, every extra provision or variation will be authorised in writing by the relevant Executive Director (or other authorised officer) or by a consultant engaged by the Council for the purpose of supervising the contract.
- 5.13 All such extra provisions or variations will, in respect of contracts where the contract value exceeds £50,000 for supplies and services and £2 million for works be reported to the Council as soon as practicable if the cumulative effect of these is to increase the value of the contract by the greater of 10% or £50,000, or where the effect is a material variation to the contract, regardless of the contract value.
- 5.14 Claims from contractors in respect of matters not clearly within the terms of any contract will be referred to the Executive Director with responsibility for Legal and Regulatory Support Services for consideration of the Council's liability and, where necessary, to the Head of Financial Services in respect of any significant financial consideration before a settlement is reached.

### **Freedom of Information (Scotland) Act 2002**

5.15 The Freedom of Information (Scotland) Act 2002 and Environmental Information (Scotland) Regulations 2004 give a statutory right of access to all information held by Scottish public authorities, except where an exemption can be applied. All invitations to tender, invitations to negotiate and pre-qualification questionnaires should, accordingly, give notice of this.

5.16 On occasions, parties with whom the Council contracts will seek to incorporate stipulations that all or some information is provided in confidence. No such provision should be accepted without the prior approval of the Executive Director with responsibility for Legal and Regulatory Support Services.

5.17 In all cases other than those specifically approved by the Executive Director with responsibility for Legal and Regulatory Support Services, all contract conditions should include the following provision:

“No terms of this Contract, whether express or implied, shall preclude the Council from making public, if required under the Freedom of Information (Scotland) Act 2002 (referred to in this Condition as the “2002 Act”) or the Environmental Information (Scotland) Regulations 2004 (referred to in this Condition as “the EIRS”) or both any information held relating to the Contract. In exercising its obligations under the 2002 Act and the EIRS, the Council shall have due regard to the commercial interests of the Contractor but without the prejudice to its duty to discharge its obligations under the 2002 Act or the EIRS. The interpretation of the Act by the Council and any exemptions therein, will be final and conclusive subject only to any decision or binding ruling on the matter made by the courts or the Office of the Scottish Information Commissioner. The Contractor will facilitate compliance by the Council with its obligations under the 2002 Act and the EIRS and comply with any requests from the Council for that purpose”.

5.18 The Public Records (Scotland) Act 2011 places an obligation on public authorities to ensure that all public records are managed in accordance with a Records Management Plan, as approved by the Keeper of Records of Scotland. Section 3(1) (b) of the Act defines public records as “records created by or on behalf of a contractor in carrying out the authority’s functions”. In the case of any function of the authority being delegated to a contractor, the contractor will comply with the Public Records (Scotland) Act 2011, and indemnify the Council in respect of any claims arising due to the contractor’s breach of that Act.

### **Equal Opportunity in Employment - Equalities**

5.19 Before entering into a contract, the Council shall obtain from the contractor an assurance in writing that, to the best of their knowledge and belief, they have complied with all statutory requirements in respect of the Equality Act 2010.

- 5.20 Contracts awarded by the Council will contain a condition obliging the Contractor to comply with all duties arising from the Equality Act 2010.

## **6. ENGAGEMENT OF CONSULTANTS**

- 6.1 It will be a condition of the engagement of the services consultant who is to be responsible to the Council for, or to be involved in, the process of obtaining or assessing tenders, or for the supervision of a contract on the Council's behalf, that in relation to that contract they will –
- (a) comply with the Contract Standing Orders.
  - (b) to ensure any necessary checks such as IR35 or Disclosure Scotland checks are carried out and any appropriate contract security documents are signed before the contract commences.
- 6.2 The Service engaging the consultant will ensure that effective contract management arrangements are established to ensure the delivery of cost effective consultancy services which meet the contract i.e. the work required is completed on time, within budget and to specification.

## **7 BREACH**

- 7.1 Any employee discovering a possible breach of these Standing Orders or the Council's Procurement Manual must report the matter immediately to the Executive Director with responsibility for Legal and Regulatory Support Services and to his or her own Executive Director. Failure by any employee to comply with the orders, or in the case of staff with appropriate supervisory responsibilities, failure to ensure the compliance with others, can be a serious matter, which may give rise to disciplinary consequences.



# **PROCUREMENT MANUAL**

## **2023**

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## **1.0 THE FIRST SECTION: AN OVERVIEW**

### **1.1 Overview**

Public procurement is the process by which public bodies acquire goods, services and works from third parties to meet customer and service user needs. Procurement covers all activities from identification of a requirement through to the end of the useful life or disposal of an asset.

The impact of procurement is far greater than this definition of a 'process'. As detailed in the Council's Procurement Strategy for 2020/21, strategic procurement arrangements can increase commercial excellence throughout the organisation, ensuring that our services deliver best value. Effective procurement arrangements can make significant contributions to a wide range of Council objectives including a successful local economy, a thriving voluntary sector, community involvement and environmental issues as well as delivering value for money. Strategic procurement recognises that it is essential that procurement decisions are taken with a focus on the outcomes that the Council is seeking to achieve.

### **1.2 Best Value**

All purchasing must take place in accordance with the Council's statutory duty to secure best value under the Local Government in (Scotland) Act 2003. This requires the Council to:

Secure continuous improvement in performance whilst maintaining an appropriate balance between quality and cost; and in making those arrangements and securing that balance, have regard to economy, efficiency, effectiveness, and equal opportunities requirements and to contribute to the achievement of sustainable development.

### **1.3 Savings**

[Savings from Procurement](#) should be recorded in line with the Scottish Government's Procurement Benefits Reporting Guidance.

### **1.4 Legal Context**

Underpinning the duty to achieve Best Value, there are several layers of procurement regulation that dictate how public procurement must be conducted by the Council:-

Much of Scotland's public procurement legislation comes from European Directives. Following the UK exit from the EU on 31<sup>st</sup> December 2020 – some technical changes are being made to the procurement regulations (addressed at point 1.5 below);

Scottish legislation and guidance (addressed at point 1.6 below);

Council Contract Standing Orders (addressed at point 1.8 below)

## 1.5 The European context and transition

The UK left the EU on 31 December 2020. It is important to note that most procurement processes and procedures have not changed. References to the EU and EU procurement legislation are being updated or removed nationally and throughout this Manual; any associated Guidance; templates and links to external websites. The powers to make the changes are included in the European Union (Withdrawal) Act 2018 – it should be noted that there are no powers to undertake a wider review of procurement legislation. The changes are largely technical in nature - our procurement procedures remain largely unchanged.

What has not changed - The basic requirements to advertise contracts, observe minimum timescales, and follow rules on technical specifications and award criteria, for example, will remain in place. The requirement to afford equal treatment to bidders from countries which are signatories to the World Trade Organisation's Government Procurement Agreement (the GPA) will also remain. PCS remains the main advertising portal for Scottish Public Bodies.

**What has changed** – changes are largely technical in nature - for example:

- Notices for procurements started after the end of the Transition Period will be routed to Find a Tender (FTS) rather than Official Journal of the European Union (OJEU)
- The ESPD has been renamed the Single Procurement Document (SPD) for new procurements and includes minor revisions to exclusion grounds to remove, for example, offences relating to fraud affecting the European communities financial interests.
- Scottish Ministers will be responsible for reviewing and revaluing the financial thresholds every two years – next review due 2022 which will be consistent across the UK and there is no scope to introduce threshold values that vary from the GPA or OJEU.

## 1.6 Scottish Legislation and Guidance

EU Directives were given effect by:

- The Public Contracts (Scotland) Regulations 2015 (the Regulations)
- The Procurement Reform (Scotland) Act 2014 (The Reform Act)
- Procurement (Scotland) Regulations 2016
- Concessions Contract (Scotland) Regulations 2016 and
- Utilities Contract (Scotland) Regulations 2016

## 1.7 Thresholds: Regulatory

### Procurement Threshold and Contract Value Estimation Changes

Post the UK exit from the EU, the UK is an independent member of the World Trade Organisation Agreement on Government Procurement (WTO GPA).

A new Scottish Policy Note [SPPN 8/2021](#) has been released to communicate threshold changes.

**The WTO GPA procurement thresholds changed on 1 January 2022.**

**From this date when you calculate the estimated value of your contract you must include VAT (if applicable) at the appropriate rate for your contract (or apply the standard UK VAT rate of 20%). More information is detailed below.**

The Procurement Reform (Scotland) Act 2014 threshold values for regulated procurements are not changing i.e. they remain at £50,000 (ex VAT) for Goods and Services and £2million (ex VAT) for Works.

The Public Contracts (Scotland) Regulations 2015 (the Regulations) have been increased commensurate with the addition for VAT. Unless you can show that your contract has no VAT or a lower rate of VAT, it is recommended best practice to add 20% to the net estimated value of your contract. 20% is the current standard rate of VAT. Adding this standard rate will:

- remove the risk of underestimating the contract value and therefore
- ensure you follow the correct procurement route and advertising requirements in line with the new procurement thresholds

If VAT is applicable you must include an allowance in your calculation of the estimated value of the contract to determine whether the contract equals or exceeds the new threshold values.

### Summary of Threshold Levels from 1<sup>st</sup> January 2022

<b>The Public Contracts (Scotland) Regulations 2015</b>	<b>New Threshold Value</b>	<b>Indicative Value excl 20% VAT</b>
<b>Supplies and services</b> (except subsidised services contracts)		
<b>Schedule 1 bodies</b>	£138,760	£115,633
<b>Others</b>	£213,477	£177,897
<b>Subsidised services contracts</b> (all bodies)	£213,477	£177,897
<b>Works</b> (including subsidised work contracts – all bodies)	£5,336,937	£4,447,447
<b>Light touch regime for services</b> (all bodies)	£663,540	£552,950
<b>Small lots</b> - Supplies and services	£70,778	£58,982
Works	£884,720	£737,267

## Summary of Threshold Levels from 1<sup>st</sup> January 2022

<b>The Utilities Contracts (Scotland) Regulations 2016</b>	<b>New Threshold Value</b>	<b>Indicative Value excl 20% VAT</b>
<b>Supplies and services</b> (all sectors)	£426,955	£355,795
<b>Works</b> (all sectors)	£5,336,937	£4,447,447
<b>Small lots</b> - Supplies and services	£70,778	£58,982
Works	£884,720	£737,267

<b>The Concession Contracts (Scotland) Regulations 2016</b>	<b>New Threshold Value</b>	<b>Indicative Value excl 20% VAT</b>
Concession Contracts	£5,336,937	£4,447,447

<b>The Procurement Reform (Scotland) Act 2014</b>	<b>New Threshold Value excl VAT</b>
Public Contract (other than Public Works)	£50,000
Public Works Contract	£2,000,000

### 1.8 Thresholds: Local - Contract Standing Orders

Argyll and Bute thresholds which include the current financial thresholds and recommended routes are as follows:

<b>Type</b>	<b>Value</b>	<b>Action</b>
Supplies	£0 - £999	Pricing agreement should be reached prior to purchase, can be done verbally but file note must be kept/ Quick Quote can be carried out if required
	£1,000 - £49,999	Quick Quote (single or dual stage tender if required), use Public Contracts Scotland
	£50,000 - £213,477- indicative value excluding 20% VAT £177,897	Regulated Contracts (single or dual stage tender)
	>£213,477- (indicative value excluding 20% VAT £177,897)	Tender – for procurement processes launched after 31 <sup>st</sup> Dec 2020 must be a Find a Tender (FTS) Notice (Open or Restricted tender)
Services - not including *health or social care contracts (see table below)	£0 - £999	Pricing agreement should be reached prior to purchase, can be done verbally but file note must be kept/ Quick Quote can be carried out if required
	£1,000 - £49,999	Quick Quote (single or dual stage tender if required), use Public Contracts Scotland
	£50,000 - £213,477 indicative value excluding 20% VAT £177,897	Regulated Contracts (single or dual stage tender)

Type	Value	Action
	> £ 213,477- indicative value excluding 20% VAT £177,897	Tender - must be a FTS notice (Open or Restricted tender)

\*\* From August until February 2024 for Property Services **only** the lower threshold for supplies and services shall be increased to £5,000 – and Property Services shall work with PCCMT to ensure relevant controls to ensure best value can be demonstrated.

Type	Value	Action
Works	£0 - £999	Pricing agreement should be reached prior to purchase, can be done verbally but file note must be kept/ Quick Quote can be carried out if required
	£1,000 - £2,000,000	Quick Quote (ITQ or ITT depending on value and scope of works), if applicable use Vendor Rating System (VRS) for distribution list. Use Public Contracts Scotland. Note: If no VRS or other objective method of selection for distribution list use single or dual stage tender from £50k to £2m
	£2,000,000-£5,336,937 Indicative value excluding 20% VAT £4,447,447	Regulated Contracts (single or dual stage tender)
	>£,5,336,937 Indicative value excluding 20% VAT £4,447,447	Tender – must be a FTS notice (Open or Restricted Tender)

\*\*\* From August until February 2024 for Property Services only the lower threshold for works shall be increased to £10,000 – and Property Services shall work with PCCMT to ensure relevant controls to ensure best value can be demonstrated.

The undernoted table summarises the different rules that apply to **health or social care contracts**

Value		
<b>£663,540 and above (Indicative value excluding</b>	Must be advertised in FTS and the light touch provisions in the Public Contracts (Scotland) Regulations 2015 apply	

Value		
<b>20%VAT £552,950</b>		
<b>£50,000 – £663,539 Indicative value excluding 20%VAT £552,950</b>	May award without seeking offers, but should consider the fundamental procurement principles where relevant. For contracts over £50,000, an award notice must be published on PCS and certain other rules apply ( <b>See Supplementary Guidance Note 18: Health and Social Care Contracts</b> )	May choose to seek offers: in which case all provisions of the Procurement Reform (Scotland) Act 2014 apply
<b>Below £50,000</b>	May award without seeking offers, but should consider the fundamental procurement principles where relevant. For contracts over £50,000, an award notice must be published on PCS and certain other rules apply ( <b>See Supplementary Guidance Note 18: Health and Social Care Contracts</b> )	Non-regulated procurement

Public Contracts Scotland (PCS) remains the main advertising portal for Scottish public bodies. This means that at the practical level there should be no changes in the way that we submit contract opportunity notices – they should still be submitted to PCS in the first instance.

In addition to publication of these notices on PCS, for procurements that have started but not concluded before the end of the Transition Period, notices will also require to be published on Tenders Electronic Daily (OJEU/TED) and will be routed there via PCS. Notices for procurements started after the end of the Transition Period will be routed to the Find a Tender (FTS).

The tables above reflect legal obligations and ensure that we demonstrate value for money and that public money is spent properly. It is important for those carrying out procurement activity to realise the agreed process are about legal compliance and to underpin the commercial approach for achieving value for money and efficiency.

Where compliance with the requirements of the tables referred in the preceding paragraph may not be possible or appropriate due to exceptional circumstances, decision making must be recorded via the following process: the completion of the agreed pro forma known as the justification for non-competitive action (JNCA); advice and involvement of the PCCMT is essential to ensure a clear audit trail and record the reasons for the justification and authorisation at senior level. The JNCA process is outlined in **Supplementary Guidance Note 18 – JNCA Process & FAQs**.

## 1.9 Timeframes

Where contract values exceed the threshold, there are also sets a [minimum timescale for tender returns](#). Timeframes in relation to the different routes of procurement are in **Supplementary Guidance Note 1 – Time Limits**.

## 1.10 Sustainability as Part of the Procurement Activity

Sustainable procurement means taking into account those social, economic and environmental considerations as part of the procurement process. As a matter of good practice sustainability needs to be built in to the earliest stages of the Journey, when requirements are being identified and specified. With the Procurement Reform (Scotland) Act 2014 the Sustainable Procurement Duty applies to all regulated procurements which commence on or after 1<sup>st</sup> June 2016. See **Supplementary Guidance Note 2 – Sustainable Procurement and Types of Community Benefits** for full details.

The aim of Argyll and Bute Council's Sustainable Procurement Policy is to ensure that the Council embeds the principles of sustainability within its procurement activities to ensure that only products and services which can be described as 'best value' are selected and that in all cases a balanced consideration of social, ethical, environmental and economic impacts are undertaken throughout the procurement process.

Argyll and Bute Council is one of the region's major purchasers and as such the PCCMT recognises that its purchasing decisions have social, economic and environmental implications, both locally and nationally, now and in generations to come.

### **1.11 External Bodies**

The Council can procure on behalf of external bodies and partner organisations, it is essential that procurement advice is sought prior to proceeding to ensure that: proper governance arrangements are applied; contracting parties are established and where appropriate an arrangement is in place for the recovery of the cost of procurement services.

Reference should be made to the process for External Bodies in **Template 1 – Procurement Procedures Template**, and **Template 15 – On Behalf of External Bodies Templates**.

### **1.12 Overview of the Key Stages of the Tendering Process:**

- Planning: Commodity Sourcing Strategy, market testing, stakeholder engagement etc.
- Advertisement on the Public Contracts Scotland website and/or Find a tender ( FTS )
- Supplier Selection to establish the resources and capability of bidders using the Single Procurement Document - SPD
- Invitation to tender
- Submission of tenders
- Evaluation of bids
- Award Decision
- Standstill (if relevant)
- Contract Award Recommendation Report
- Contract Management



### 1.13 The Procurement, Commercial and Contract Management Team - Contact Details

Name and Contact Details	Name and Contact Details
<p><b>Anne MacColl-Smith</b> Procurement, Commercial and Contract Management Team Manager Telephone: 01546 604194 Email: <a href="mailto:Anne.MacColl-Smith@argyll-bute.gov.uk">Anne.MacColl-Smith@argyll-bute.gov.uk</a></p>	<p><b>Margaret Moncur</b> Finance Manager Telephone: 01546 604427 Email: <a href="mailto:margaret.moncur@argyll-bute.gov.uk">margaret.moncur@argyll-bute.gov.uk</a></p>
<p><b>Moira Logan</b> Senior Solicitor Telephone: 01631 567948 Email: <a href="mailto:Moira.Logan@argyll-bute.gov.uk">Moira.Logan@argyll-bute.gov.uk</a></p>	<p><b>Elaine Appleby</b> Senior Procurement Officer Telephone: 01369 708594 Email: <a href="mailto:Elaine.Appleby@argyll-bute.gov.uk">Elaine.Appleby@argyll-bute.gov.uk</a></p>
<p><b>Michael Nicol</b> Solicitor Telephone 01546 604468 Email <a href="mailto:michael.nicol@argyll-bute.gov.uk">michael.nicol@argyll-bute.gov.uk</a></p>	<p><b>Samantha Torrie</b> Senior Procurement Officer Telephone: 01546 604145 Email: <a href="mailto:Samantha.Torrie@argyll-bute.gov.uk">Samantha.Torrie@argyll-bute.gov.uk</a></p>
<p><b>Kelsie MacAlister</b> Contract and Demand Management Officer Telephone: 01586 559080 Email: <a href="mailto:kelsie.macalister@argyll-bute.gov.uk">kelsie.macalister@argyll-bute.gov.uk</a></p>	<p><b>Elaine Madej</b> Contract and Demand Management Officer Telephone: 01631 567807 Email: <a href="mailto:elaine.madej@argyll-bute.gov.uk">elaine.madej@argyll-bute.gov.uk</a></p>
<p><b>Ashley MacKay</b> Contract and Demand Management Officer Telephone: 01546 604398 Email: <a href="mailto:Ashley.mackay@argyll-bute.gov.uk">Ashley.mackay@argyll-bute.gov.uk</a></p>	<p><b>Emma Graham</b> Category Management Officer Telephone: 01586 555205 Email: <a href="mailto:Emma.Graham@argyll-bute.gov.uk">Emma.Graham@argyll-bute.gov.uk</a></p>
<p><b>Christine Todd</b> Category Management Officer Telephone: 01546 604239 Email: <a href="mailto:Christine.Todd@argyll-bute.gov.uk">Christine.Todd@argyll-bute.gov.uk</a></p>	<p><b>Laura McNaughton</b> Trainee Purchasing Officer Telephone: 01586 555958 Email: <a href="mailto:Laura.McNaughton@argyll-bute.gov.uk">Laura.McNaughton@argyll-bute.gov.uk</a></p>
<p><b>Sophie Paice</b> Trainee Purchasing Officer Telephone: 01546 604363 Email: <a href="mailto:Sophie.Paice@argyll-bute.gov.uk">Sophie.Paice@argyll-bute.gov.uk</a></p>	<p><b>Mirela Simionov</b> Trainee Purchasing Officer Telephone: 01546 604564 Email: <a href="mailto:Mirela.simionov@argyll-bute.gov.uk">Mirela.simionov@argyll-bute.gov.uk</a></p>
<p><b>Liz Munro</b> Procurement Analyst Telephone: 01586 555232 Email: <a href="mailto:liz.munro@argyll-bute.gov.uk">liz.munro@argyll-bute.gov.uk</a></p>	<p><b>Euan Kennedy</b> Administration Officer Telephone: 01546 604458 Email: <a href="mailto:euan.kennedy@argyll-bute.gov.uk">euan.kennedy@argyll-bute.gov.uk</a></p>
<p><b>Rona McGillivray</b> Administration Officer Telephone: <b>01369 708580</b> Email: <a href="mailto:rona.mcgillivray@argyll-bute.gov.uk">rona.mcgillivray@argyll-bute.gov.uk</a></p>	

## 1.14 Procurement Team Responsibilities

### Category Responsibilities:

#### Corporate & Education:

- Category Management Officers: **Christine Todd, Emma Graham**
- Purchasing Officer: **Vacant**
- Trainee Purchasing Officer: **Laura McNaughton**
- Trainee Purchasing Officer: **Vacant**

#### Construction & Environment:

Areas covered by this Category include Building Works & Services; Infrastructure Works & Services; Construction-related Consultancy Services; Construction-related Supplies; and Environmental requirements (including Waste and Renewables). Council Services covered by this Category include Roads & Infrastructure, Commercial Services, and Development & Economic Growth. All requests for new procurements should be sent to the Senior Procurement Officer in the first instance.

- Senior Procurement Officer: **Elaine Appleby**
- Contract and Demand Management Officer: **Ashley Mackay**
- Trainee Purchasing Officer: **Mirela Simionov**

#### Care, Early Years & Housing:

- Senior Procurement Officer: **Samantha Torrie** (Category Lead/Procurement and Contracts)
- Trainee Purchasing Officer: **Sophie Paice** (Housing/Homelessness, Equipment and Collaborative/National Contracts)
- Contract & Demand Management Officer: **Kelsie Macalister** (Care at Home and Supported Living Contracts)
- Contract & Demand Management Officer: **Elaine Madej** (Residential Care, Children and Young People's Support and Unpaid Carers)

#### Commercial and Contract Management Team:

Providing legal advice on all commercial contracts, leading on development of contract management framework across Council services.

- Senior Solicitor – **Moira Logan**
- Solicitor – **VACANT**

**Procurement Staff by Specific Projects:****PROJECTS**

Spikes Cavell – Scottish Procurement Hub	Liz Munro
Sustainability	Elaine Appleby
Procurement Strategy and Annual Procurement Report	Anne MacColl-Smith Liz Munro
Procurement Manual	Anne MacColl-Smith
Procurement Training	Anne MacColl-Smith Moira Logan
Procurement Commercial Improvement Programme (PCIP) Assessment	Anne MacColl-Smith Liz Munro
PECOS/PECOS Training	Lynsey MacLennan Julie Galbraith Laura Cook
Public Contracts Scotland	Elaine Appleby
IKEN	Anne MacColl-Smith Liz Munro
Supplier Development	Anne MacColl-Smith
Procurements on behalf of external bodies	Moira Logan

## **2.0 THE SECOND SECTION: PROCUREMENT JOURNEY**

### **2.1 An overview of The Procurement Journey for Argyll and Bute**

The Procurement Journey for Argyll and Bute Council (“the Journey”) closely follows the Scottish Government’s Procurement Journey, a tool developed and promoted since 2011 as part of the Public Procurement Reform Programme. This tool has been adapted to provide detailed guidance which supports the policies and objectives of this Council.

The Journey is intended to support all levels of procurement activity where there is not already a contract in place. Following the Journey will help achieve best practice and expected contract outcomes. It will also facilitate procedural consistency throughout the Council making the procurement process easier for tenderers, commissioners, procurement staff and contract managers.

By providing guidance, templates and standardised processes, the Manual should provide the user with an end to end guide for the procurement process from planning to delivery.

### **2.2 Planning Your Procurement**

Planning is a critical success factor in any procurement. The earlier in the process that PCCMT are involved, the better to help avoid limiting options at too early a stage and achieve the outcomes that will best meet service needs and expectations.

### **2.3 Make or Buy Decisions**

For many purchases there is essentially no real “make or buy” decision to be made. The purchase will be for a good, service or work that is completely outside the scope of what the Council as an organisation, produces.

There will in other cases however, be a decision to be made over whether a purchase has to be made or whether there is internal capacity to deliver the goods, services or works required. In such cases it is extremely important that the “make or buy” decision is reached before a formal tendering process is undertaken.

Where a “make or buy” choice results in the decision to “make” then no purchase has been made and none of the procurement rules apply. Therefore in order to keep work “in house” the Council are not required under any procurement rules to make any value justification.

In terms of achieving overall Best Value for the organisation however, officers considering a “make or buy” decision will want to consider the following questions:

- Does the Council have available capacity to meet the requirements of the proposed purchase in house, to the required quality and within the required timescale?
- If so, does the Council's in-house resource deliver this at a competitive cost that is comparable with the cost of purchase?
- Can the Council deploy additional resources to meet the requirements at a cost that is comparable to the cost of purchase?

Other considerations can be taken into account when justifying a decision to deliver a requirement in-house, even if costs are above cost of purchase while still within a competitive market range, such as safeguarding staff resources within the Council, and any other strategic considerations of senior management.

For the above comparisons the cost of purchase should be estimated from previous purchases or should be arrived at through other research. No formal tendering exercise will have been carried out at this point.

If a fully costed "make" option is prepared and there is a wish to compare this to a later tender price then this should form a control bid, which should be communicated within the tender documents. In these situations it should be noted that the Council's "in-house" price is not prepared in competition with external prices and it is in the Council's overall interest if suppliers can submit successful bids in this situation.

From time to time, as part of an overall service review, the Council may wish to explore an option to have services delivered by another method. This may involve services that have previously been delivered by the Council itself, being opened up to competition from other sectors.

If a make or buy decision is anticipated the basis for the decision should be noted using the process and template for decision making within **Template 2 – Make or Buy Approval Template** to ensure proper procedure is followed and an audit trail of decision making is available.

## 2.4 How to Plan

The planning process is captured in an overarching Category Strategy and Commodity Sourcing Strategy covers the planning of separate tenders and frameworks.

Please see **Supplementary Guidance Note 5 – Strategy Development** for full information on the Category and Commodity Sourcing Strategy process, and the contents of the templates. **Template 4 – Strategy Templates** provides the documents to be used in the strategy stage dependant on value. Each template provides full guidance notes for their completion.

Early engagement with the PCCMT at the planning stage should avoid any delay to the process and allow a proper consideration of all the options available. It is essential that time is allowed for relevant market testing and lead times in contracts should be assessed to ensure that there is sufficient time for handovers to be completed and contract requirements to be fulfilled.

This should be taken into account in producing the Commodity Sourcing Strategy. As an example of timescales a low value low risk procurement would use the Quick Quote process which can be carried out within a few weeks (depending upon the complexity and state of readiness of the specification) whereas a more complex tendering process takes around 9–12 months.

## 2.5 Is There An Existing Contract/Framework Provider?

Consider whether your requirement could be met through an existing Scottish, UK wide, sector led or local framework or contract which would provide best value. A framework contract is one where the main elements of the contract have been agreed and which set out the terms under which specific purchases (call-offs) can be made.

If not, and the contract value, including any recurring needs over a four year period, does not exceed £50,000 (for supplies and services)/ £2,000,000 (for works) then generally the 'Quick Quote' facility will be the appropriate advertising route.

All contract opportunities over £1,000 will be advertised on Public Contract Scotland (PCS) portal. Using PCS is a way of ensuring a degree of transparency and a consistent approach amongst public authorities and provides an essential audit trail.

## 2.6 Which Route?

The Procurement Journey guidance should be used to ensure you select the most appropriate Procurement Journey Route:

### 2.6.1 Route 1 – Pricing Agreements

For step by step guide please see Supplementary Guidance Note 7 – Route 1 – Procurement Processes Explained.

### 2.6.2 Route 1 – Quick Quotes

For supplies and services the Quick Quote procedure should be used where possible for purchases between £1,000 and £50,000 using the **Invitation to Quote (ITQ) Template** within **Template 5 – Route 1 – Pricing Agreement, ITQ, ITT & NCA Templates**. For works the threshold is higher and the Quick Quote procedure is applicable for purchases between £1,000 and £2,000,000 (for detailed requirement, see **Supplementary Guidance Note 7 – Route 1 – Procurement Processes Explained**).

For Route 1 procurements, at least 3 formal quotes are required for all purchases or contracts over £1,000 unless an in-house provider or existing framework or contract is available.

This route provides guidance for procurements of relatively low risk, low value, and of a non-repetitive nature i.e. you should not placing contracts for the same works, goods or services on a number of occasions over 4 years unless you already have a framework in place.

### 2.6.3 Route 1 – Single Stage Tender Process

This process should be used for supplies and services contracts up to the value of £50k and for works contracts up to the value of £2,000,000 where it has been decided that the Quick Quote process is not appropriate as there is a requirement to advertise the procurement (for example where there are insufficient suppliers identified to be included within a Quick Quote distribution list). For the detailed requirements of this process, see **Supplementary Guidance Note 7 – Route 1 – Procurement Processes Explained**.

### 2.6.4 Routes 2 & 3

For use of Route 2 & 3, it is assumed that individuals will have been trained in all relevant regulations, the Procurement Journey and our applicable local procurement policies, guidelines and governance arrangements.

The same planning stages at 2.4 above should be followed. Services should not proceed without PCCMT involvement. The Reform (Scotland) Act 2014 introduces thresholds for regulated procurements above £50,000 for goods and services and £2 million for works procedures set out here.

Routes 2 & 3 follow the stages below:

Stage	Title	Supplementary Guidance Note/Template
1	Develop Commodity Sourcing Strategy	<i>SGN 5 – Strategy Development; Template 4 – Strategy Templates</i>
2	Development of the procurement documents and issue	<i>SGN 8 – Routes 2 &amp; 3 – Tender Development; Template 6 – Routes 2 &amp; 3 – ITT Templates</i>
3	Open Tender Returns and Evaluate	<i>SGN 9 – Routes 2 &amp; 3 – Opening and Evaluating Returns; Template 7 – Police Check Template; Template 8 – Evaluation Matrix Templates;</i>
4	Post Tender Clarification and tender review	<i>SGN 13 – Post Tender Clarification and Post Tender Negotiation (PTN); Template 10 – PTN Templates</i>
5	Contract Award	<i>SGN 15 – Routes 2 &amp; 3 – Contract Awards; Template 11 – CARR Templates; Template 12 – Outcome Notice Templates</i>
6	Contract and Supplier Management	<i>SGN 16 – Contract and Supplier Management Toolkit; Template 14 – Contract and Supplier Management Templates</i>

The procurement function must operate within appropriate governance and risk management arrangements for the Council. The appropriate governance will help ensure probity, transparency and consistency of key procurement-related decisions. For large or politically sensitive projects following Routes 2 & 3 this will almost certainly mean setting up a UIG and having senior officer involvement. Consideration should be given to reporting mechanism and governance arrangements in the planning of the project.

## 2.7 Roles and Responsibilities

There are many stakeholders involved in procurement. The main roles of each are shown in ***Supplementary Guidance Note 4 – UIG Guide Roles and Responsibilities***. Where there is cross-service spend then the instructing customer will normally be the Service with the biggest spend (unless otherwise agreed) for the purposes of approvals, CARRs and contract management responsibilities.

## 2.8 Engaging the Market

### 2.8.1 Annual Procurement Report:

An Annual Procurement Report must be published by the Council on regulated procurement activities as soon as reasonably practicable after the end of the financial year. The report must include a look back at the procurement activity over the year and a forward look which should include a summary of the regulated procurements the Council expects to commence in the next two financial years.

### 2.8.2 Prior Information Notice (PIN):

Buyers may issue a Prior Information Notice (PIN) for early market engagement, to reduce procedural time limits and as a call for competition in restricted procedures or competitive procedures with negotiation, for regulated level procurements.

A PIN can also be used as a call for competition in regulated contracts:

- PINs will follow a standard form and will outline: who the buyer(s) is/are, what is required, the anticipated contract value, the type of contract, and when the requirement should be fulfilled

The following are some key notes about PINs:

- The PIN reduces the minimum timescales for the return of tenders
- The PIN is valid for a period of twelve months from issue.
- The PIN does not create any commitment from the Council to proceed with a tendering exercise.

### 2.8.3 Request for Information (RFI) – Market Tests:

RFIs are primarily used to gather market information to help make a decision on what steps to take next. In addition to gathering basic information, an RFI is often sent to a broad base of potential suppliers for the purpose of conditioning suppliers' minds, developing strategy, building a database, and preparing for a future tender.



## 2.9 Advertising the Contract

The Commodity Sourcing Strategy will identify the tender procedure to be used commensurate with the tables at section 1.8. The most commonly used procedures are listed at (a) to (f) below. The Regulations provide for the following procedures

- (a) Open Procedure
- (b) Restricted Procedure
- (c) Single Stage Procedure
- (d) Dual Stage Procedure
- (e) Closed/Quick Quote Procedure
- (f) Frameworks which includes reference to Mini competitions
- (g) Competitive procedure with negotiation- use when justifiable
- (h) Competitive Dialogue – use when justifiable
- (i) Innovation Partnership - use when justifiable
- (j) Negotiated Procedure without prior publication – only in permitted instances

The key differences between the commonly used award procedures adopted by Argyll and Bute Council are summarised below.

### 2.9.1 Open Procedure:

Relevant to regulated level procurements.

Under the open procedure all interested parties are entitled to request tender documents. In general the use of the open procedure is not recommended as best practice except in cases where the market is extremely restricted in the number of likely bidders.

Where the open procedure is used the capability is firstly assessed using the Single Procurement Document and if a pass achieved contract award criteria is thereafter evaluated on a Technical/Commercial basis, with the award going to the Most Economically Advantageous Tender (MEAT). This award criteria is the only way that procurements within the scope of Public Contracts (Scotland) Regulations 2015 may be carried out.

### 2.9.2 Restricted Procedure:

Relevant to regulated level procurements.

Under the restricted procedure, the Single Procurement Document (SPD) is used to allow suppliers to demonstrate their qualifications and how they are selected to bid. The SPD is mandated for use for all procurements with an estimated value of regulated threshold and above commenced on or after 18<sup>th</sup> April 2016. It is important to note that while a Technical/Commercial mix is used in tenders issued under the restricted procedure, no further judgements should be made on the bidder's ability or capacity to perform the contract. Having gone through a selection procedure the short listed bidders are deemed to be capable of carrying out the contract. Their approach to the contract may still be subject to scoring as part of a quality assessment.

### **2.9.3 Single Stage Procedure:**

Relevant to Regulated procurements.

This is the national equivalent of the open procedure – all interested parties are entitled to request tender documents. In general the use of the single stage procedure is not recommended as best practice except in cases where the market is extremely restricted in the number of likely bidders.

Where the single stage procedure is used the capability is firstly assessed using the Single Procurement Document and if a pass achieved contract award criteria is thereafter evaluated on a Quality/Price basis, with the award going to the Most Economically Advantageous Tender (MEAT).

### **2.9.4 Dual Stage Procedure:**

Relevant to Regulated procurements.

This is the national equivalent of the restricted procedure, the Single Procurement Document (SPD) is used to allow suppliers to demonstrate their qualifications and how they are selected to bid. It is best practice to use the SPD for regulated procurements below regulated thresholds.

It is important to note that while a Quality/Price mix is used in tenders issued under the dual stage procedure, no further judgements should be made on the bidder's ability or capacity to perform the contract. Having gone through a selection procedure the short listed bidders are deemed to be capable of carrying out the contract. Their approach to the contract may still be subject to scoring as part of a quality assessment.

### **2.9.5 Quick Quote Procedure:**

Under the quick quote procedure the tender documentation is to be issued to a restricted list of at least 3 suppliers with every effort normally being made to identify a minimum of 5 companies who may be interested in tendering. Whenever possible where the closed procedure is used the contract award criteria should be based on a quality / price mix, with the award going to the Most Economically Advantageous Tender (MEAT). In other cases, where quality is an absolute (mandatory or legislative), award can be made on the basis of lowest price, provided it meets the legislated threshold.

The Quick Quote should normally be issued via the 'Quick-Quote facility' on Public Contracts Scotland.

### **2.9.6 Framework Contracts:**

The Council is only allowed to participate in contracts that they have been named as part of from the offset, i.e. named on the contract notice during the advertising stage. If the service wishes to use a particular framework then they should contact their relevant purchasing officer in the first instance and they will check if the framework can be used.

A framework contract is often used where the extent of the purchase is not known or where it is anticipated that several suppliers will be engaged on the contract over a specific period of time. A framework contract may be let to either a single bidder or three or more bidders, but not two. It is possible that a framework can be tightly specified in terms of unit price and deliverables but this is not always the case. Where it is not possible to arrive at specific prices it is possible to apply only pricing to core items or indeed have quality only criteria for inclusion in the framework. In such case, selection to specific supply under the framework would be undertaken by mini-bid, which may itself be price only or quality of submission for a specific supply.

### **2.9.7 Mini competitions:**

Where frameworks are awarded to several economic operators there are two options for awarding call-off under the framework;

- (a) Apply the terms of the framework agreement (Direct Awards)
- (b) Hold a mini competition

Under option (a) – where it is possible to determine the Best Value supplier as the tender assessed as having submitted the most economically advantageous tender from the pricing and quality submitted to get onto the framework agreement then direct award is the only option available, i.e. there must not be further competition unless that first ranking supplier does not have capacity. If that supplier does not have capacity then the second ranking supplier may be approached.

Where the terms laid down in a framework agreement are not precise enough or complete for the particular call-off, a further or mini competition – option (b) - may be held with all those suppliers within the framework capable of meeting the particular need. It is important that all suppliers on a framework are invited to take part in the mini competition in the first instance; assumptions should not be made regarding their capability.

## **2.10 Other Considerations**

### **2.10.1 Benchmarking:**

The primary concern of benchmarking is measuring and assessing performance against identified best practice, with the aim of developing ways of matching or bettering that performance.

Competition is not always a perfect measure and the lack of a ready market for some services combined with barriers to entry in some industries, means that competition does not always ensure value for money. Key indicators that competition is not perfect may include;

- Few available bidders
- One or two dominant suppliers
- Lack of new entrants to bidding lists
- Demarcation between suppliers

Public Contracts Scotland portal can be used as a tool to aid benchmarking recent contract awards can be identified which might suggest a similar way of working. The Scottish Procurement Information Hub holds the procurement spend by supplier for every Scottish public sector body and those spends, either collectively or individually for named organisations, by commodity category can be compared to our own.

### **2.10.2 Demand Management:**

While procurement activity and strategic sourcing in particular focus on the price and quality of purchases that are made, demand management concentrates largely on the quantity that is purchased. The focus of demand management is on consumption.

#### **Managing Consumption:**

The greatest single cost saving that can be made from any procurement exercise is the single, simple decision made at the beginning of the process, not to make the purchase. This obviously is not a decision that is available on many purchases; otherwise saving money through procurement would be an extremely simple business.

While the Council will be initiating individual demand management programmes for areas of indirect expenditure the following principles should be applied generally to purchasing decisions. Some examples are provided below:

#### **Paper and Stationery:**

1. The Council purchases paper and stationery from national contracts. Ensure that you are using the contracted supplier for all purchases.
2. Ensure that the purchase is necessary and that no better alternatives are available from the large catalogue of stock that the contracted supplier has made available through the national contract.

#### **Office Equipment:**

1. Printing, scanning and photocopying devices (Multi-functional devices) are the largest items of office equipment used by the Council. The Council leases this equipment through a national contract. Please ensure that all purchases are made from the contracted supplier.
2. The national contract is designed so that the supplier benefits from the number of prints, scans or copies produced rather than the number of multi-functional devices deployed across the Council. Reducing the number of devices benefits the Council through reduced leasing charges and benefits the supplier through reduced capital and maintenance costs. Ask for assistance from the contracted supplier in deploying the machines as effectively as possible within individual offices.
3. Direct as much print as possible away from desktop printers to the contracted multi-functional devices and save money on print costs.

**ICT Hardware and Software:**

1. Ensure that purchases of IT hardware and software are only made to meet a defined business demand and that specifications are tailored to the most cost effective means of meeting that demand.
2. Always use the IT Service desk when purchasing IT hardware, software or peripherals to ensure that the specified equipment will be compatible with present and planned applications.

**Consultants:**

1. Can the project be delivered in- house. Never employ a consultant in order to deliver more bodies on the ground, whatever the task. The Council has a large workforce with diverse skills and has access to temporary recruitment agencies who can supply staff to work under Council management at competitive rates - access Guide to recruiting agency workers on the Hub.
2. Always have a clear specification of the work to be carried out and be aware of the clear advantages that the specialist skills of a consultant will bring to the task. Ensure the consultant is provided with a copy of the guide on engaging external consultants
3. Ensure that the contract has clear and specified deliverables and that it is clear that those have to be met in order for payment to be released.
4. Use **Supplementary Guidance Note 19 – Guide for Consultants Engaged with Argyll and Bute Council.**

**2.11 Lessons Learned**

Planning is a continual process and PCCMT should use lessons learned to inform current and future plans. Lessons learned reports should be prepared for all route 3 contracts, for route 2 contracts if there is a substantial issue in relation to quality, time or cost and a sample of route 1 contracts where considered appropriate by the Procurement Officer. The **Lessons Learned Template** within **Template 14 – Contract and Supplier Management Templates** can be utilised throughout the procurement process or at contract award stage

**2.12 Contract and Supplier Management (CSM)**

We are all experiencing increasing demands on our services as budgets are reducing and the Council needs to deliver significant savings as well as improving the quality and sustainability of what we provide. Procurement, and improved purchasing outcomes, are key in assisting the Council in delivering these objectives. Contract and supplier management (CSM) is a key component in ensuring that procured services provide best value for all stakeholders. The PCCMT has been rolling out a Project aimed at embedding CSM across all commercial contracts used by Services to ensure that this key component is met and best value achieved. To ensure effective contract management and compliance with Part E of the Council's Contract Standing Orders a Contract Manager /Owner should be identified for every contract tendered or awarded.

Supplementary Guidance Note SGN 17 sets out how PCCMT can support the implementation of a consistent contract management process across the Council and achieve objectives

- To build good working relationships between parties;
- Proactively anticipating future risks and appropriately dealing with them;
- Aiming for continuous improvement in performance over the life of the contract
- Identifying and driving best value over the life of the contract
- Delivering community benefits for our local community

Following agreed processes and using the related templates where appropriate and working with the PCCMT will enhance officers' ability to manage Suppliers and deliver contract objectives on time and within budget.

All contract implementation and management should be undertaken in line with ***Supplementary Guidance Note 17 – Contract and Supplier Management Toolkit***.

## Tables of Additional Documents

**Please Note** – Supplementary Guidance Notes and Templates are available from the Procurement, Commercial and Contract Management Team.

Supplementary Guidance Notes	Description
Supplementary Guidance Note 1	Time Limits
Supplementary Guidance Note 2	Sustainable Procurement and Types of Community Benefits
Supplementary Guidance Note 3	Argyll and Bute Council - Community Benefits Clauses in Procurement Guide
Supplementary Guidance Note 4	UIG Guide - Roles and Responsibilities
Supplementary Guidance Note 5	Strategy Development
Supplementary Guidance Note 6	Insurance Requirements in Procurements
Supplementary Guidance Note 7	Route 1 - Procurement Processes Explained
Supplementary Guidance Note 8	Routes 2 & 3 – Tender Development
Supplementary Guidance Note 9	Routes 2 & 3 - Opening and Evaluating Returns
Supplementary Guidance Note 10	Evaluators' Roles and Responsibilities Guide
Supplementary Guidance Note 11	Financial Checks
Supplementary Guidance Note 12	Abnormally Low Tenders Process
Supplementary Guidance Note 13	Post Tender Clarification and Post Tender Negotiation
Supplementary Guidance Note 14	Failed Procurements & Abandonment of Tenders
Supplementary Guidance Note 15	Routes 2 & 3 - Contract Awards
Supplementary Guidance Note 16	Savings & Benefits Collating & Reporting Methodology
Supplementary Guidance Note 17	Contract and Supplier Management Toolkit
Supplementary Guidance Note 18	JNCA Process & FAQs
Supplementary Guidance Note 19	Guide for Consultants Engaged with Argyll and Bute Council
Supplementary Guidance Note 20	Health and Social Care Contracts
Supplementary Guidance Note 21	Transactional Purchasing Team Guide
Supplementary Guidance Note 22	Mini Competitions
Supplementary Guidance Note 23	On Behalf of External Bodies
Supplementary Guidance Note 24	Grants, Services & SLAs
Supplementary Guidance Note 25	State Aid
Supplementary Guidance Note 26	Glossary
Supplementary Guidance Note 27	Health & Safety Approvals Process
Supplementary Guidance Note 28	Performance Bonds, Collateral Warranties and Retention

<b>Table of Templates</b>	<b>Description</b>
Template 1	Procurement Procedures Template
Template 2	Make or Buy Approval Template
Template 3	RFI & PIN Templates
Template 4	Strategy Templates
Template 5	Route 1 - Pricing Agreement, ITQ, ITT & NCA Templates
Template 6	Routes 2 & 3 - ITT & NCA Templates
Template 7	Police Check Template
Template 8	Evaluation Matrix Templates
Template 9	Abnormally Low Tender Templates
Template 10	PTN Templates
Template 11	CARR Templates
Template 12	Outcome Notice Templates
Template 13	Tender Review Form Template
Template 14	Contract and Supplier Management Templates
Template 15	On Behalf of External Bodies Templates



Version	Author	Date	Changes
3.1	ML	24/7/23	Update CSM section
3.0	RM	29/05/2023	SGN 28 added to table of additional docs
2.9	LM	28/04/2023	Updated PCCMT Contact Details/Roles – Pages 10-12
2.8	LM	31/08/2022	Updated PCCMT Contact Details
2.7	ML/LM	14/01/2022	Updated PCCMT Contact Details/Procurement Thresholds
2.6	ML	22/02/2021	EU Exit Arrangements
2.5	LM	11/09/2020	Format for Accessibility
2.4	AMS	22/06/2020	
2.3	ML/EA	22/01/2020	
2.2	ML/EA	04/09/2019	
2.1	ML/EA	23/05/2019	
2.0	ML/EA	25/09/2018	2018 Finalised Version
1.1	ML/EA	04/09/2018	Version Control Added

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## **ARGYLL AND BUTE COUNCIL**

### **CONSTITUTION**

#### **PART F**

### **ETHICAL FRAMEWORK**

This Section will be updated on an ongoing basis, as and when new versions of the Codes are published.

- (1) Standards Commission For Scotland - Councillors' Code of Conduct**
- (2) Standards Commission For Scotland - Guidance on the Councillors' Code of Conduct**
- (3) Council Employee Code of Conduct**
- (4) Monitoring Officer Protocol**
- (5) Public Interest Disclosure (Whistleblowing Policy)**

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART F (1)**

**COUNCILLORS' CODE OF CONDUCT**

- (1) **Standards Commission For Scotland - Councillors' Code of Conduct** (this section will be updated on an ongoing basis, as and when new versions of the Code are published)

[Councillors' Code of Conduct | The Standards Commission for Scotland  
\(standardscommissionscotland.org.uk\)](https://standardscommissionscotland.org.uk)

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART F (2)**

**GUIDANCE ON THE COUNCILLORS' CODE OF CONDUCT**

- (2) **Standards Commission For Scotland - Guidance on the Councillors' Code of Conduct** (this section will be updated on an ongoing basis, as and when new versions of the Code are published)

[Guidance Notes | The Standards Commission for Scotland  
\(standardscommissionscotland.org.uk\)](https://standardscommissionscotland.org.uk)

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Argyll and Bute Council

Employee Code of Conduct

Date of Implementation: 29 September 2022

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## 1. Introduction

- 1.1 The Council's Employee Code of Conduct was developed following the adoption by COSLA of the National Code of Conduct for Local Government Employees. The Code was initially introduced in 1998 and is subject to regular review and update.
- 1.2 The public expects a high standard of conduct from all local government employees in Scotland. The Council's Code of Conduct is one of the ways we put the Council's values into practice. It is built around the recognition that everything we do in connection with our work at the Council will be measured against these standards of conduct. Our commitment to these high standards helps us to recruit and retain great people and provide great public services.
- 1.3 This Code's purpose is to provide clear and helpful advice to employees on the standards of behaviour expected of them to avoid any breach of the Code of Conduct.
- 1.4 The Code of Conduct describes the standard of behaviour expected of all employees of the Council in their day-to-day duties, and communications with colleagues, managers, Councillors, service users, other organisations and members of the public. It also provides guidance where your conduct outside of work may impact on the employment relationship. These standards are the benchmark against which your behaviour will be assessed in the event of a complaint being made.
- 1.5 The Code does not affect your rights and your responsibilities under the law. Its purpose is to provide clear and helpful advice to you. Any employee who has difficulty in meeting any of the standards noted in the Code should contact their Line Manager, Employee Relations Advisors ([link to Hub contact details](#)) or Trade Union Officials ([link to Hub contact details](#)) can also be asked for advice. It is important to use good judgement in everything you do and to ask for help if you are ever unsure about the right course of action.
- 1.6 There are a number of Council wide and service level policies and procedures which provide more detail on expected practice and conduct. Council Wide policies are referred to at the end of this document. In addition to this, a number of professions engaged by the Council also require their members to adhere to professional codes of practice; e.g. the Scottish Social Services Codes of Practice (SSSC), GTCS the Code of Professionalism and Conduct (CoPAC), the GTCS Student Teacher Code and Chartered Institute of Public Finance and Accountancy (CIPFA). The Council expects the required standards to be upheld by employees falling under these provisions, However, it is for

these actual bodies to determine whether employees/former employees meet the standards set by them. This code is intended to complement all of these requirements and does not replace them.

- 1.7 As far as possible, you should also comply with the Code where you are appointed as a representative of the Council to any external board/organisation.
- 1.8 Importantly, the Code also provides you with guidance about your rights and duties at work. It is important for you to note that **any breach of the Employee Code of Conduct and/or relevant professional codes may lead to disciplinary action.**
- 1.9 The Local Government Ombudsman will use the National Code as a benchmark of good practice where a complaint of maladministration has been made.
- 1.10 The Council also has a Scheme of Delegation to Officials and Scheme of Proper Officer Appointments to ensure that the business of the Council is conducted within the law and proper standards, that money is safeguarded and properly accounted for and is used in such a way as to secure and demonstrate Best Value.

## **2 Seven Principles of Public Life**

- 2.1 The Code incorporates “The Seven Principles of Public Life”. These were identified by the Nolan Committee on Standards in Public Life for all public sector employees. These are listed below, altered slightly to place them in a local government context.

### **Selflessness:**

You should not take decisions which will result in any financial or other benefit to yourself, your family, or your friends. Decisions should be based solely on the Council’s best interests.

### **Integrity**

You should not place yourself under any financial or other obligation to an individual or an organisation which might influence you in your work with the Council. This means that you must never take any money or gift that could be thought of as a bribe for you to give a better level of service to that person or organisation.

**Objectivity**

Any decisions which you make in the course of your work with the Council, including making appointments, awarding contracts, or recommending individuals for rewards or benefits, must be based solely on merit.

**Accountability**

You are accountable to the Council as your employer. The Council, in turn, is accountable to the public.

**Openness**

You should be as open as possible in all the decisions and actions that you take. You should give reasons for your decisions and should not restrict information unless this is clearly required by Council policy or by the law.

**Honesty**

You have a duty to declare any private interests which might affect your work with the Council.

**Leadership**

If you are a manager, you should promote and support these principles by your leadership and example.

**3 Personal Conduct**

- 3.1 The Council expects the highest standards of personal conduct from its employees, both within and outwith the workplace. The public image of the Council is enhanced or diminished by the conduct of its employees. Employees should be aware that they are responsible for the actions they take and the decisions they make as part of their employment. They should work within the law and within Council policy and be aware that their actions may be scrutinised.
- 3.2 The Council's Disciplinary Procedures and Code of Practice provide guidance on what may be considered conduct and gross misconduct. Misconduct is generally conduct (behaviours, actions, attitudes) which breaks one or more rules. This could relate to Council policy or external standards (e.g. Health and Safety, professional codes of practice) for example:

- Timekeeping
- Absence
- Health and safety
- Use of organisation facilities
- Discrimination, bullying and harassment

Gross misconduct is generally misconduct which is so serious that disciplinary action could result in summary dismissal (dismissal without notice and without pay in lieu of notice). This usually relates to:

- Theft or fraud
- Physical violence or bullying
- Deliberate and serious damage to property
- Serious misuse of an organisation's property or name
- Deliberately accessing internet sites containing pornographic, offensive or obscene material
- Serious insubordination
- Unlawful discrimination or harassment
- Bringing the organisation into serious disrepute
- Serious incapability at work brought on by alcohol or drugs
- Causing loss, damage or injury through serious negligence
- A serious breach of health and safety rules
- A serious breach of confidence

3.3 In pursuing interests outside your Council employment, you must conduct yourself in a manner that will not bring your employment or the Council into disrepute as this may have a bearing on your employment with the Council.

3.4 If you are charged or convicted of a criminal offence you must inform your Executive Director immediately. Please see the section on Criminal Offences elsewhere in this document for further information.

## **4 Conflicts of Interest**

4.1 As a Council employee you must not allow any private interest to influence your decisions at work and you must not use your position to further your own interests or the interests of others who do not have a right to benefit under the Council's policies.

- 4.2 You may have a private interest which relates to the work of the Council. That interest may be a financial one or one which a member of the public might reasonably think could influence your judgement. In addition, close family members or people living in your household may have financial interests in the work of the Council. All such interests must be declared to your line manager.
- 4.3 You must ensure that where a direct or indirect interest and/or conflict arises, you declare your interest to your line manager and consider with your manager whether you will withdraw from any subsequent discussion on the issue in question.
- 4.4 During the hours of service required by your employment, you must devote your whole time and energies to your Council duties. With regard to your Council employment you are not permitted to receive any financial payment or benefit not specified in your contractual terms.
- 4.5 If you are a member of an organisation or a club, and membership might result in a conflict of interest in relation to any aspect of your work with the Council, you must declare this membership to your line manager. This applies equally to membership of organisations or clubs which are not open to the public.

## **5 Criminal Offences**

- 5.1 If you are charged or convicted of any criminal offence you must inform your Executive Director immediately.
- 5.2 Any employee charged with or convicted of a criminal offence or whose name is placed on the lists held by the Scottish Government of those disqualified from working with children or adults at risk *must* advise their Executive Director immediately. This requirement applies whether the listing is provisional or not and there should be no unreasonable delay in notification by the employee to the Council.
- 5.3 The Council will consider whether any action is necessary under the Council's Code of Disciplinary Procedures dependent on the nature of the charge, conviction or listing and the nature of the employment within the Council. The Council may take disciplinary action prior to the outcome of a court case.
- 5.4 See also section - Recruitment & Other Employment matters for information on Criminal Convictions and their impact on recruitment decisions.

## **6 Dress Code and Appearance**

- 6.1 Many Council employees provide valuable front line services and are therefore in regular contact with service users, other agencies and the public. In effect, they represent the public image of Argyll and Bute Council.
- 6.2 The Council requires employees to adopt certain dress requirements which are appropriate for the type of work they do. The Council recognises and embraces the diversity of cultures and beliefs of its employees and that this may require them to adopt certain dress codes. The Council further accepts that reasonable adjustments must be made for disabled employees, and this may relate to dress codes as well.
- 6.3 Council Services will advise employees of any specific requirements regarding personal appearance and dress standards and requirements to wear Personal Protective Equipment. Generally however, you are expected to keep to the following standards:
- Employees must show their identification when conducting duties out with the office areas e.g. on home visits. Unless agreed with their line manager for specific situations, name badges, where supplied, will be worn at all times.
  - Corporate wear, where provided, will be worn as required.
  - Personal protective equipment and clothing provided for an employee's safety should be worn as appropriate to the type of work being undertaken.
  - Employees working in a professional capacity representing the Council should be dressed as appropriate to the professional service that they are delivering.
  - Political symbols, offensive images or messages/slogans must not be worn or displayed.

## **7. Gifts, Hospitality and Services**

- 7.1 Generally no employee should accept the offer of gifts, hospitality or services from any service user, supplier/contractor or member of the public other than where it is of token value e.g. pens, diaries or small tokens of gratitude
- 7.2 If you are given a gift or offer of hospitality or service which you are unable to accept then you must politely explain your requirement to adhere to this Code
- 7.3 You must not accept personal gifts, loans, reward or advantage for doing or not doing anything or showing favour or disfavour in the course of your employment. It is important to note that it is a criminal offence to do so.



- 7.4 You should not accept repeated hospitality or frequent personal gifts from the same person or organisation.
- 7.5 All cash or monetary gifts must be respectfully refused, explaining your requirement to adhere to this Code. If the individual insists then alternatives may be suggested such as charitable donations.
- 7.6 If you know or suspect that you may be a beneficiary of a service user's will, you must notify your line manager and advice must be sought from Legal and Regulatory Support. The same applies if you are approached to be a witness or executor of a service user's will.
- 7.7 You should only accept offers to attend social or sporting events where these are clearly part of the life of the community, or where the Council would be expected to be represented and with approval from your Executive Director.
- 7.8 If through the course of your work you require to arrange or host a hospitality event you must follow these same principles and the event must be proportionate to the circumstances and be mindful of value for money principles.
- 7.9 When attending hospitality events you must remember that you are there as an ambassador of the Council and conduct yourself appropriately.
- 7.10 If you are making a visit to inspect equipment, vehicles, land or property you must ensure that the Council pays for the costs of these visits to avoid compromising subsequent purchasing decisions.

## **8 Relationships**

### **8.1 Employees, Workers and Others**

- 8.1.1 During the course of your work you must always communicate in an appropriate, open, accurate, constructive and straightforward way. You must show respect for others and you must not use offensive language.
- 8.1.2 The Council is committed to equality and diversity and therefore you must be inclusive and respectful to others.

## **8.2 The Public**

8.2.1 You may have contact with members of the public as users of services, clients or citizens. You must always be courteous, efficient, impartial and helpful. You must deal fairly, equitably and consistently with each member of the public.

## **8.3 Pupils, Students and Service Users**

8.3.1 Many Council employees have contact with service users, pupils and/or students on a regular basis as part of their employment. Staff engaged in these roles must ensure that they always communicate in an appropriate, open, accurate and straightforward way.

8.3.2 These staff are reminded of their Professional Codes of Practice e.g. the Scottish Social Services Codes of Practice (SSSC) and GTCS the Code of Professionalism and Conduct (CoPAC).

8.3.3 You must build and foster positive relationships with service users acting and behaving in a way that develops a culture of trust and respect for self and others. It is important that you recognise and use responsibly the power and authority you have when working with pupils/students/service users.

8.3.4 Close personal familiarity between employees and service users can affect impartiality and must be avoided. Any existing relationship, or one that develops, which may impact on the work you do or may possibly be perceived by others negatively as such must be discussed with your line manager. You must not form inappropriate relationships with service users/pupils/students. You must maintain appropriate professional boundaries and avoid improper contact.

8.3.5 You must be mindful that the internet and social media can quickly blur the professional boundary between yourself and pupils/students/service users. You must be alert to the risk that actions which might, on the face of it, seem quite innocent, but can be misunderstood and misconstrued by others. You must avoid inappropriate communication (including via social media) with service users/pupils/students and about them. Particularly you should not use personal social media accounts for communications relating to your employment.

8.3.6 Generally you must be mindful of your actions and not behave while in or outside work, in a way which would bring your suitability to work in the role into question.

8.3.7 You have a duty to raise any concern which you may have about the behaviour of any colleague or other person in connection with a child or vulnerable adult, using the appropriate procedures in place.

## 8.4 Elected Members

- 8.4.1 Both Councillors and employees are public servants and therefore they are indispensable to one another. Employees are responsible to the Council and they provide support and advice to the elected members and carry out the Council's work under the direction and control of the Council, their Committees and Subcommittees.
- 8.4.2 Mutual respect between Councillors and employees is essential to good local government. Close personal familiarity between individual Councillors and employees can damage the relationship and compromise the governance of the Council and should be avoided.
- 8.4.3 You must not approach Councillors on employment matters and Councillors via their own code should decline to discuss such issues. Employment matters should be raised either with your manager, Human Resources or your Trade Union representative.

## 8.5 Contractors/ Suppliers:

- 8.5.1 Current or previous business or private relationships with external contractors must be disclosed to your line manager and the Procurement, Commercial and Contract Management Team as per the Council Contract Standing Orders and Procurement Manual where you engage or supervise contractors.
- 8.5.2 Employees who engage or supervise contractors or have any other official relationship with contractors must familiarise themselves with the Council's Contract standing orders and financial regulations and must ensure that they are fully complied with. Advice must be sought regarding the Contract Standing Orders, Procurement Manual and/or the Financial Regulations where required at the earliest opportunity.
- 8.5.3 You must be open fair and transparent in your dealings with contractors, sub-contractors and suppliers. If you are involved in the tendering process you must follow the Council's procedures and rules about tenders and contracts.
- 8.5.4 You must notify the Council's Procurement, Commercial and Contract Management Team if you have any personal financial interest, whether direct or indirect, in a contract that has been, or is proposed to be, entered into by the Council of which you are / have become aware as per the Council Contract Standing Orders and Procurement Manual. This will require you to complete a declaration to confirm that you do not have a conflict of interest using an evaluator declaration form.

- 8.5.5 If you have access to confidential information on tenders or costs for either internal or external contractors you must not disclose that information to any unauthorised individual or organisation.
- 8.5.6 Orders and contracts must be awarded in a manner consistent with the Council's Standing Orders and Procurement Manual which will assess suppliers' competency in an open, fair and transparent manner consistent with procurement regulations.

## **9. Rights as a Citizen**

- 9.1 As a citizen, you are entitled to express your views about the Council, provided you do not make use of any confidential information gained through your work with the Council.
- 9.2 Employees in a politically restricted post should be careful not to speak in public in support of a particular political party.
- 9.3 You must not, in your work capacity criticise the Council or any of its members or officers or service users either through the media, social media or at a public meeting, or in any written communication with members of the public.
- 9.4 As a citizen, you are entitled to raise with your Councillor any complaint which you have about the services of the Council. If your complaint concerns any aspect of your work with the Council, however, you must make use of the Council's Grievance Procedures or raise the matter through your Trade Union.

## **10 Fair and Reasonable Treatment at Work**

- 10.1 You are entitled to expect fair and reasonable treatment from your colleagues, managers and from Councillors. You are also expected to treat others fairly and reasonably.
- 10.2 You are expected to forge and maintain professional relationships with colleagues, managers, Councillors and service users based on mutual respect.
- 10.3 If you feel that you have been unfairly treated or have been discriminated against, you are entitled to make use of the appropriate Council procedures.
- 10.4 Public Interest Disclosure Act 1998
- 10.4.1 There may be rare occasions when you feel that you have been required, by a colleague, a Councillor or a member of the public, or by an organisation, to act

in a way which might be illegal, improper or unethical, or which is otherwise in conflict with the principles of this Code of Conduct.

- 10.4.2 In other instances you may have information leading you to believe that an employee, Councillor or other person associated with the Council is behaving unlawfully or in some other improper manner.
- 10.4.3 The Public Interest Disclosure Act 1998 provides a process for employees to raise these concerns. Employees may report the matter to their line manager, a more senior manager in their Service or their Executive Director. If you feel you cannot raise the matter within your Service, it may be raised with the Executive Director (Monitoring Officer) who acts as the Council's monitoring officer for this process.
- 10.4.4 Once the matter is reported and following consultations, as appropriate, with the Chief Executive or other Senior Officers of the Council, you will be advised what action will be taken.
- 10.4.5 The Council recognises that it will sometimes be very difficult for employees to disclose their concerns, especially if they relate to fellow employees. Employees are assured, however, that they will not be penalised in any way for bringing forward genuine concerns even if they relate to events which occurred some time ago. Only if allegations proved to be malicious would any action under the Council's Code of Disciplinary Procedures be taken against the employee raising them.
- 10.4.6 The Council also recognises that employees will wish to feel that their concerns can be raised in a confidential manner. Your initial contact will always be dealt with in the strictest confidence and discussed only with other relevant persons for the purposes of seeking advice.
- 10.4.7 Employees must understand, however that the information or concerns you express may lead to you becoming involved in a number of processes, including a criminal investigation and/or the Council's Code of Disciplinary Procedures. In these circumstances, it may not be possible to guarantee anonymity to employees. You will, however be given as much support as possible throughout such processes.
- 10.4.8 Any employee considering making a disclosure out with the Council, e.g. to the press, should be aware that they may not automatically be protected by the Act. Before doing this, in their own interest, they should seek advice from their Trade Union or a legal adviser.

## **11 Fraud and Corruption**

- 11.1 We expect all people and organisations who are in any way associated with us to be honest and fair in their dealings with us and our clients and customers. We expect our members and employees to lead by example in these matters.
- 11.2 Our Ethical Framework, or internal rules, for members and employees set out an approach to work that is both honest and fair are based on the 7 Nolan Principles outlined at the beginning of this document. Members and employees must act in line with the Ethical Framework at all times.
- 11.3 Our employees have an essential and integral part to play in dealing with fraud and corruption and we will encourage our staff and members to inform us if they suspect a case of fraud.
- 11.4 Any employee discovered to have perpetrated a benefits fraud with the Council or any other public agency may also face action under the Disciplinary Procedures and Code of Practice which may lead to dismissal.
- 11.5 It is a serious criminal offence for you to corruptly receive or give any gift, loan, fee, reward or advantage for doing or not doing anything, or for showing favour or disfavour to any person, in the course of your work with the Council.

## **12 Openness and Disclosure of Information**

- 12.1 The Council endeavours to ensure that its decision-making process is as transparent and open as possible and that the public is provided with clear and accessible information about how it operates. It also has a complaints procedure in place for the public to use when things go wrong.
- 12.2 There are, however, exceptions to the principle of openness where confidentiality is involved, and information may be withheld if, for example, it would compromise a right of personal or commercial confidentiality. You must be aware of which information is open and that which is not, and act accordingly. If in doubt about any aspect of this provision you must seek advice from your manager or immediate supervisor. You must also ensure you adhere to requirements detailed in the Council's Data Protection Policy and Data Protection and Information Security Handbook.

- 12.3 During the course of your work, you are likely to have access to information that is sensitive, private and confidential. You must recognise the importance of confidentiality. Unless required by law; you must not disclose information concerning any member of staff, councillor, service user or customer's private affairs to any person not employed by the Council and/or to any person not reasonably entitled to know. You must first obtain express consent from the individual and/or their guardian and/or the relevant line manager explaining your reasons for the disclosure. It is a breach of trust to use confidential information for personal advantage or the advantage of anyone known to you.
- 12.4 You must not pass on any confidential knowledge or information you may have gained during your work with the Council
- 12.5 It is accepted that under the Public Interest Disclosure Act, employees can raise certain matters publicly, after they have exhausted internal procedures. See section – Public Interest Disclosure Act 1993.
- 12.6 You may wish to attend public meetings and want to express views and opinions on a wide range of topics. It is important to make it clear in your communication that these views are personal and not given as a council employee. Please think about whether your actions at those meetings may impact on you as an employee, on your colleagues within and out with your service area, our councillors and/or our customers.
- 12.7 It should be noted that trade unions are not third parties and have the right of access to certain types of information subject to agreed data sharing agreements.
- 12.8 The above principles do not apply where there is a legal duty to provide information.
- 12.9 All confidential information and equipment you hold due to your employment must be returned to the Council before the end of your employment, or if that employment ends without notice, immediately after its end.
- 12.10 The Council is subject to certain legislation that governs its use and disclosure of information. These include:
- **Data Protection Act 2018 (DPA) and the General Data Protection Regulations 2016/679 (GDPR)**

The right of access to personal information held by the Council whether an employee or a service user/ member of the public is governed by the DPA. The DPA places strict requirements on the Council in respect of the security of information held, how it is used and when it may be disclosed. Again advice on the DPA may be accessed on the Council's intranet and employees should seek the advice of their Line Manager to ensure DPA requests are recorded and processed according to the legal requirements.

- **The Freedom of Information (Scotland) Act 2002 (FOISA)**

FOISA introduces a general right of access to information held by the Council unless it falls within the provisions of a series of exemptions. Additionally the Council maintains a Publications Scheme which sets out all the information it publishes, how it can be accessed and whether any charge applies. Details of FOISA and what actions to take when you receive a FOISA information request are held on the Council's intranet. Employees should seek the advice of their Line Manager in respect of FOISA to ensure it is recorded and processed according to the legal requirements.

- **Environmental Information (Scotland) Regulations (EIRS)**

The right of access to environmental information is governed by the EIRS. Again advice may be accessed on the Council's intranet and employees should seek the advice of their Line Manager to ensure EIRS requests are recorded and processed according to the legal requirements.

## **13 Contact with the Media**

13.1 The general policy of Argyll and Bute Council is that all contact with the media should only take place where this has been authorised by the Council. The Communications Team deals with all contact with press and media and any approaches or enquiries should be directed there in the first instance.

13.2 Any exception to this policy must be discussed and agreed with the appropriate Executive Director.

13.3 Where an accredited Trade Union official has contact with the media in relation to an employment issue they must be clear that they are communicating as a trade union representative and not as an employee.

## **14 Social Media**

14.1 Detailed guidance on the use of Social Media can be found in the 'Social



Media Policy' or by contacting the Communications Team. Employees must ensure they adhere to the Council's Social Media Policy and where relevant:

- 14.2 The General Teaching Council provides very clear guidance for teachers on the use of e-mail and internet sites in the Code of Professionalism and Conduct (CoPAC), the GTCS Student Teacher Code and the GTCS Professional Guidance on the Use of Electronic Communication and Social Media.
- 14.3 The Scottish Social Services Council provides similar guidance for Social Service Workers on Using Social Media.
- 14.4 The Council allows employees to represent the organisation on social media platforms where specific written authorisation from the appropriate Head of Service is in place.
- 14.5 Where you require to access and interact through internet sites in the course of your duties you must ensure that it is clear that you are doing so as part of your Council duties. You must ensure all communication is professional and in line with this and other Council policies and any professional codes of practice that may apply.
- 14.6 When using social media websites and chat forums on a personal basis, you must consider carefully any reference you make to any aspect of your employment to ensure your communication could not bring you in breach of this and other Council policies. You must ensure you do not communicate on these websites in a way that may be detrimental to any customer, pupil, employee, Councillor or the Council.

## **15 Use of Resources**

- 15.1 You and your colleagues serve the public, and you must remember this principle when you use Council equipment, materials and resources, in order to ensure value for money.
- 15.2 You must take proper care of property belonging to the Council, which is within your control or possession. Any deliberate or negligent failure to take proper care of Council property will be viewed as misconduct and will be addressed in accordance with the Disciplinary Procedures.
- 15.3 You may make use of the internet and email services as part of your work in accordance with the IT Acceptable Use Policy, but you must not use these systems to break the law, break Council policy or in any way cause distress,

harassment or harm to anyone.

- 15.4 Personal mobile telephones may be used for private purposes during working hours, but this use must be kept to a minimum, be reasonable and in no way interfere with your work unless in case of emergency e.g. unexpected changes required to caring arrangements of dependents.
- 15.5 You must not use Council equipment, materials or resources for personal use unless you have written approval. An example of permitted use would be the use of resources for personal development or study associated with your role in the Council. In such circumstances all reasonable care should be exercised with the equipment.
- 15.6 Council resources must not be used in connection with any other outside work undertaken by the employee.
- 15.7 Whilst the Council permits some personal use of IT equipment at their workplace e.g. access to internet, this should not affect their work and should only be used in accordance with the IT Acceptable Use Policy when the employee is appropriately clocked out on an unpaid break. Employees should be aware that telephone, email and internet usage can be monitored.
- 15.8 All Council equipment and resources must be returned to the Council at the end of your employment.

## **16 Recruitment & Other employment matters**

### **16.1 Staff appointments**

- 16.1.1 The Council has a Guide to Recruitment and you are expected to follow this policy (copies are available from Customer Support Services and on the Hub). All appointments must be made on the basis of merit.
- 16.1.2 If you are involved in the recruitment and selection process, and have any kind of relationship which might affect your ability to be impartial, that relationship must be declared to your line manager. The same procedure must be followed in other HR procedures such as grievance or disciplinary procedures or job evaluation.
- 16.1.3 You must not canvass a Councillor or another colleague, either directly or indirectly, to secure your own appointment or promotion, or the appointment or promotion of another person. If you have been approached by an applicant, another colleague, a Councillor or any other person, you must report the matter to your Line Manager or the Head of Customer Support Services.

## 16.2 **Criminal Records**

16.2.1 It is the Council's view that; having a criminal record will not necessarily debar an applicant from working with or on behalf of the Council. This will depend on the nature of the position, together with the circumstances and background of the offence(s)

## 16.3 **Professional qualifications, registrations and conduct**

16.3.1 If your employment with the Council is in a post which requires you to either be registered with a statutory and/or professional organisation, to hold membership of a professional body or hold any other qualification, it is your duty to ensure you are able to comply with the relevant obligation, including maintaining registration with that body. You may be requested to provide evidence of compliance to your manager. You must also comply with any duty you have to inform your professional body of a matter which may impact on your registration or membership. You must inform your line manager of the matter too.

16.3.2 You must ensure that the relevant code of practice is followed during the course of your duties, this includes formal reporting to the professional body on any matter where there is a duty to do so.

## 16.4 **Political Neutrality**

16.4.1 The public expects you to carry out your duties in a politically neutral way, and this must be respected by Councillors. The political activities of a small number of employees are "politically restricted" under the Local Government and Housing Act 1989 and they will have been advised of this restriction.

16.4.2 You must serve the corporate interests of the Council and all Councillors collectively, regardless of their political outlook. The Chief Executive and senior officers have ultimate responsibility to ensure that the policies of the Council are implemented.

16.4.3 Whether or not your post is politically restricted, you must follow every lawful expressed policy of the Council and must not allow your personal or political opinions to interfere with your work. You must not display political slogans in the course of your work and must not distribute political information / material using Council resources, including time.

16.4.4 You must implement the policies of the Council irrespective of your personal views. If you are asked by a Councillor to provide assistance with a matter

which is clearly party political or which does not have a clear link with the work of the Council, you should politely refuse and inform the Councillor that you are referring the matter to your Line Manager.

- 16.4.5 Some employees will have a close working relationship with Councillors of the majority political group (or groups) which form the administration of the Council. Political groups may sometimes seek advice from Council employees and in such circumstances the following principles should be followed:
- a. The office bearers (of the group) must first approach the Chief Executive;
  - b. The office bearers must advise the Chief Executive what type of advice they are seeking;
  - c. The Chief Executive will decide whether attendance at a meeting is appropriate and which employee or employees should attend;
  - d. Once the employee has given the advice to the group, the employee must leave the meeting before any decision is made.
  - e. Strict confidentiality must be observed by the employee. The discussion in one political group should not be disclosed to another political group or to any member of such a group

## 16.5 **Paid employment outside the Council**

- 16.5.1 The Council will normally allow you to undertake paid employment outside the Council unless there is a clear conflict of interest, or it is likely to have an adverse effect on the work carried out for the Council, or it is likely to have an adverse effect on the individual employee or would bring you in breach of the Working Time Regulations 1998. Further guidance on the Working Time Directive can be found on the hub or by contacting the HR Employee Relations Team.
- 16.5.2 If you want to undertake paid employment, including self-employment, outside the Council, you must first inform your line manager. If your line manager agrees this is appropriate written approval should be obtained and sent to HR.
- 16.5.3 For Executive Managers/Directors written permission must be sought from the Chief Executive. The Chief Executive must seek advice/guidance from the Leader of the Council before undertaking additional paid employment.
- 16.5.3 Where the Council has agreed that an employee can undertake other duties

and the Council's business changes causing a conflict of interest, or where it becomes apparent that the work out with is having a detrimental effect that wasn't previously identified, the Council reserves the right to withdraw any previous approval given.

- 16.5.4 It is anticipated that in most cases where you have one or more posts of employment that when unfit to attend work due to poor health then you would be unable to attend any employment. If however due to the nature of the ailment and / or the work involved you believe you may be fit to work in another job then you must seek the approval of your respective line manager(s) and retain evidence of this approval. Occupational health advice may also need to be sought.
- 16.5.5 If you are signed as unfit to work in one post (post 1) but you have approval to work in your other post (post 2) you must not work in post 2 during the normal working hours of post 1. This is applicable to employment both within and out with the Council.
- 16.5.6 This is also applicable to employees who have been suspended from work. In this situation, employees must not work in post 2 during the normal working hours of the post (post 1) which they have been suspended from.
- 16.5.7 Employees should not seek to gain business in the course of carrying out your Council duties e.g. by arranging to carry out private work.
- 16.5.8 These arrangements do not however prevent you from making your professional skills available to voluntary/charitable organisations of which you are a member/supporter or from holding office in such organisations, subject to you declaring, where relevant, your membership of such an organisation in accordance with the rules on "Conflicts of Interest" referred to above.
- 16.5.9 You are not permitted however to make use of the Council's equipment, materials or resources for the benefit of a voluntary/charitable organisation unless this is approved in accordance with the Council's procedures
- 16.5.10 You must not make or contribute to any publication, broadcast, speech or lecture where you would use official Council information without the written approval of the Chief Executive. Where such approval is obtained, any commission, fee or other payment made in respect of lectures, broadcasts, etc. given within normal working time (excluding out of pocket expenses) will be paid to the Council by arrangement with the Executive Director (Monitoring Officer). Otherwise, and still subject to approval, time taken for these activities must be set against the employee's annual leave. However, the fees may be retained in these circumstances. Fees may be retained by the employee for any lectures,

broadcasts, etc. out with normal working hours.

## **17 Health, Safety and Welfare**

- 17.1 The Council accepts and will meet its statutory obligations by making every reasonable effort to provide a safe and healthy working environment.
- 17.2 That all reasonable steps are taken to ensure that all activities are carried out with due regard to the Council's safety policies and standards.
- 17.3 All employees are expected to know and to follow all appropriate health and safety requirements. It is the responsibility of managers to arrange all appropriate training.

## **18 Risk Management**

- 18.1 Employees must not place the Council in a position where it has uncontrolled risk. All employees have a duty to comply with the Council's Health and Safety and Risk Management Policies.
- 18.2 Employees in charge of risk registers must ensure, through quarterly risk review, that the Council's corporate aims and objectives, and assets, are protected and any uncontrolled risk exposures are highlighted. Furthermore every employee has a duty to ensure that financial loss, disruption to services and reputation damage to the Council are avoided.

## **19 Alcohol and Drugs at work**

- 19.1 The Council is committed to ensuring the health, safety and welfare of its employees and those affected by its activities. It also acknowledges substance misuse as a health issue that affects an employee's performance, behaviour and attendance as well as impacting on relationships at work and home. The Council encourages staff who have a dependency on alcohol or drugs to seek help through the provisions of its separate Addictions Policy.

- 19.2 However, it is important to realise that the performance and image of the Council must not be undermined as a result of an employee's behaviour or related lifestyle induced by alcohol and/or drugs. Therefore:
- 19.2.1 You must not consume alcohol and/or misuse drugs or other substances during working hours (including breaks) whether within or outside the work place (for example when driving as part of work), or prior to arrival at work, where any intoxicating effect endures, or might reasonably be expected to endure, into working hours.
  - 19.2.2 The use of Council vehicles, equipment and machinery is prohibited when an employee is under the influence of alcohol, illegal drugs or prescribed medication that may affect their ability to drive or operate safely. Employees should advise their Line Manager if in doubt to allow for a risk assessment to be carried out.
  - 19.2.3 When on standby duties you must ensure that you are not unfit due to alcohol and / or substance misuse in case you are required to go to work.
  - 19.2.4 You must not take alcohol and / or substances into your workplace with an intention to misuse these.
- 19.3 In the least employee who does attend work under the influence of alcohol or drugs should understand clearly that they are liable to face action under the Council's Disciplinary Procedures and Code of Practice that may lead to dismissal.
- 19.4 The Council has an Addictions Policy and access to a confidential Employee Assistance Programme to assist employees with addiction problems.

## **20 Equality and Diversity**

- 20.1 The Council's Equality and Diversity Policy stresses its approach to tackling discriminatory practices and prejudice. Regardless of personal opinion, the Council expects all employees to behave appropriately to one another and to service users and the general public. Bullying, harassment, intimidatory or discriminatory behaviour or language is unacceptable in any form.
- 20.2 Argyll and Bute Council is committed to ensuring equality of opportunity and to combating discrimination. The Council has a duty under the Equality Act 2010 and the associated Public Sector Equality Duty to have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Equality Act 2010
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it
- c) Foster good relations between persons who share a relevant protected characteristic and those who do not share it.

20.3 The Council recognises those protected characteristics identified in the Equality Act 2010:

- Age
- Gender reassignment
- Disability
- Race
- Religion or Belief
- Sex
- Sexual Orientation
- Pregnancy and maternity
- Marriage and Civil Partnership

20.4 The Council's policy position on equalities is set out in the Equality and Diversity Policy, the Equalities Mainstreaming Report and the Dignity at Work Policy.

20.5 The Council will promote an ethos in which self-respect and respect for others are of the utmost importance. All individuals will be valued equally and therefore be given every opportunity to fulfil their maximum potential in society. The Council insists that those who suffer discrimination, whether direct or indirect, receive fair treatment and adequate remedies and affirms that it will address appropriately all sources of discrimination.

20.6 The Council has developed a range of employment policies to enable the Council to have the right people with the right skills in the right place at the right time to deliver excellent services across Argyll and Bute. Any instances of discrimination, harassment or victimisation at work will be viewed as a serious matter.

## **21 Raising Concerns/Grievances**

21.1 If you have a question, problem or concern or if you think you have been unfairly treated or discriminated against, in most cases your line manager should be your first point of contact. They are likely to be the best position to understand your concern and take the appropriate action. If you are uncomfortable speaking with your line manager or if you have already shared a concern and feel it's not being addressed appropriately, then you can contact a more senior manager or HR&OD for advice. You may also consider formally addressing your concern



through the Council's Grievance Procedures or Dignity at Work Procedure.

- 21.2 When you report concerns, you help the Council to handle issues properly, fix problems before they occur and remedy situations that have already happened. You also help to build trust with each other and with our service users and the community.

## **22 Disciplinary Matters**

- 22.1 Any employee who has a grievance resulting from the implementation and interpretation of this Code should seek resolution through the Council's grievance procedure.
- 22.2 Any employee who fails to act in accordance with this Code may be subject to disciplinary proceedings.
- 22.3 Employees will not be subjected to disciplinary action or to any other detriment simply because their complaint is not upheld.
- 22.4 The Council will not tolerate retaliation against anyone who makes a good faith report about possible misconduct or assists in an investigation of misconduct.
- 22.5 Employees should never knowingly make a false accusation, lie to investigators or refuse to cooperate in an investigation.
- 22.6 Employees will only be subject to disciplinary action if it is found that both the allegation is false and made in bad faith, that is, without an honest truth in its belief.

## **23 Relevant Argyll and Bute Council Policies and Procedures:**

All employee related policies and procedures can be found on the Hub/My Council Works.

- Recruitment and Selection Guidance
- Dignity at Work Policy: Eliminating Workplace Bullying and Harassment
- Disability Confident
- Equality and Diversity Policy

- Disciplinary Procedures and Code of Practice
- Grievance Procedure
- Reducing Stress in the Workplace Policy
- Addictions Policy and Procedure
- Wide range of guidance/policies/procedures on Occupational Health and Safety at work including; Health and Safety Policy, Personal Safety and Violence to Staff,
- Lone Working and Mobile Phone Use
- Data Protection Policy
- IT Acceptable Use Policy
- Fraud and corruption (Anti-Fraud and Public Interest Disclosure Policy)
- Risk Management Policy
- Procurement Strategy and Manual
- Ethical Framework

**ARGYLL AND BUTE COUNCIL  
MONITORING OFFICER PROTOCOL  
INTRODUCTION TO STATUTORY RESPONSIBILITIES**

1. The Monitoring Officer is a statutory appointment pursuant to section 5 of the Local Government and Housing Act 1989 and has a duty to:

- (a) submit a report to the full Council where it appears to the Monitoring Officer that any proposal, decision or omission by the Council, its committees or sub-committees or any officer or joint committee on which the Council is represented, has given rise to, or is likely to give rise to, a contravention of any legislation or rule of law or of any code of practice made or approved under any legislation or any maladministration or injustice which might give rise to a complaint to the Public Services Ombudsman;
- (b) consult as far as practicable with the Chief Executive as the Council's Head of Paid Service and the Chief Financial Officer as the Council's proper officer for the council's financial affairs, before submitting any report mentioned above;
- (c) appoint a depute(s) as is necessary to act in their absence as Monitoring Officer;
- (d) report on resources necessary to discharge Monitoring Officer responsibilities; and
- (e) provide advice and guidance on vires and maladministration issues.

2. In terms of Section 5 of the Ethical Standards in Public Life (Scotland) Act 2000, the Council has a duty to promote and ensure observance of the Councillors' Code of Conduct. The Monitoring Officer has as an important role in discharging this duty by:

- (a) establishing and maintaining registers of Councillors' interests, gifts and hospitality;
- (b) providing advice to Members on the Code on Conduct;
- (c) providing training on the Code of Conduct;
- (d) reporting alleged breaches by members of the Council's Ethical Framework, as contained in the Council's Constitution;
- (e) supporting the Council; and
- (f) liaising with the Standards Commission and Public Standards Commissioner, as necessary.

3. The Monitoring Officer is also responsible for (1) receiving declarations of acceptance of office of councillors and (2) maintaining a list of politically restricted posts within the Council.

- (1) Section 33A, Local Government (Scotland) Act 1973
- (2) Section 2, Local Government and Housing Act 1989

4. This Protocol provides information on how those statutory requirements will be discharged in the Council.

5. The current responsibilities of the Monitoring Officer role rest with the Executive Director with responsibility for Legal and Regulatory Support Services who aims to discharge the statutory responsibilities in a manner that enhances the overall reputation of the Council. In doing so, the Executive Director will provide appropriate and robust advice to Members so as to protect and safeguard, so far as is reasonably possible, Members and Officers, from legal difficulties and possible misconduct whilst acting in their official capacities.

6. The Monitoring Officer will be supported in exercising this role by such Depute Monitoring Officers as are appointed by him from time to time.

7. Generally, the Monitoring Officer's ability to discharge these duties and responsibilities will depend, to a large extent, on Members and Officers:

- (a) complying with the Council's Constitution and the law (including any statutory Codes of Conduct. This includes the Code of Conduct for Councillors);
- (b) complying with any guidance issued, from time to time, by the Council and/or advice of the Monitoring Officer;
- (c) making lawful and proportionate decisions;
- (d) adhering to the Council's approved procedures and having due regard to approved policies; and
- (e) not acting in manner that might bring the Council, their office or profession into disrepute.

8. Good working relations with Members and Officers will assist greatly in the discharge of the statutory responsibilities of the Monitoring Officer as will early discussion of any issues well in advance of any formal Council business (including Committees and sub-committees). Members and Officers should, therefore, co-operate fully with the Monitoring Officer (and staff).

9. The Monitoring Officer is available for Members and Officers to consult on any issues relating to the Council's legal powers, possible maladministration, impropriety or general advice on the Councillors' Code of Conduct.

## **CORPORATE RIGHTS OF THE MONITORING OFFICER**

10. In order to encourage good decision making and high standards of conduct amongst officers and elected members, the Monitoring Officer expects to be alerted at an early stage by Members and Officers as to any legal or procedural issues about which they may have concerns including, in particular, issues about the legal powers of the Council, ethical standards, probity, propriety, procedural or other governance issues that have arisen or that are likely to arise.

11. In order to perform the statutory role, the Monitoring Officer and staff shall:

- (a) have advance notice (including receiving Agendas, Minutes, Reports and related papers) of all relevant meetings of the Council at which a binding decision of the Council may be made at or before the Council, Committee meetings and/or Executive Leadership Team;
- (b) have the right to attend any meeting of the Council (including the right to be heard) before any binding decision is taken by the Council at or before the Council, Committee meetings and/or Executive Leadership Team;
- (c) in carrying out any investigation(s) have unqualified access to any information held by the Council and to any Officer who can assist in the discharge of his functions; and
- (d) have sufficient resources to enable him to address any matters concerning Monitoring Officer functions.

**CORPORATE RESPONSIBILITIES OF MONITORING OFFICER**

12. The Monitoring Officer will:

- (a) seek to ensure as far as practicable that the other statutory officers (the Chief Executive as Head of Paid Service and the Chief Finance Officer) are kept up-to-date with relevant information regarding any legal, ethical standards, procedural or other governance issues that are likely to (or do) arise;
- (b) report to the Council where required by law following consultation, as far as practicable, with the Chief Executive and Chief Finance Officer where to do so will not compromise his statutory responsibilities;
- (c) report to the Council, as necessary, on the staff, accommodation and resources required to discharge his functions;
- (d) seek to establish effective working relationships with all elected members, in particular those Members who hold positions of responsibility in the Council's political management structure so as to ensure the effective and efficient discharge of Council business;
- (e) maintain and keep up-to-date relevant statutory registers for the declaration of Members' interests, gifts and hospitality;
- (f) give robust advice to Members and Officers;
- (g) be responsible for preparing any training programme for Members on ethical standards and the Councillors' Code of Conduct issues;
- (h) act as the Council's point of contact by the Commissioner for Ethical Standards in Public Life in Scotland and/or the Public Standards Commissioner regarding complaints concerning alleged breaches of the Councillors' Code of Conduct;
- (i) seek to develop good liaison and working relationships with outside bodies relevant to the role of the Monitoring Officer, including the Commissioner for Ethical Standards in Public Life in Scotland and the Standards Commission for Scotland, the Council's external auditor, the Accounts Commission and the Scottish Public Services Ombudsman;
- (j) carry out such investigations as the Chief Executive may determine as relevant to the Monitoring Officer's role;
- (k) obtain, at his discretion, Counsel's opinion or other external specialist legal advice relevant to the Monitoring Officer's role;
- (l) appoint a depute(s) and keep them briefed on any relevant issues that may be required to be dealt with in the absence of the Monitoring Officer.
- (m) receive declarations of acceptance of office of councillor; and
- (n) maintain a list of politically restricted posts within the Council.

## **THE COUNCILLORS' CODE OF CONDUCT**

13. Whilst the Council has a statutory obligation to promote and ensure observance of the Councillors' Code of Conduct, and the Monitoring Officer has a pivotal role to play in discharging that obligation, it is important to note that enforcing compliance with the Code is strictly a matter for the Commissioner for Ethical Standards in Public Life in Scotland who has the power to investigate complaints against councillors.

14. The Monitoring Officer may assist the Commissioner with an investigation by commenting on and providing information on any complaint and making arrangements for interviewing witnesses.

15. The Monitoring Officer may also be involved in the handling of complaints made against Councillors in terms of the Council's own local procedures for dealing with such complaints.

16. The Monitoring officer may refer any alleged breach of the Council's Ethical Framework, as contained in the Council's constitution, to the Council to enable it to consider any such alleged breaches by members in regard to the reporting of any such alleged breach to the Commissioner for Ethical Standards in Public Life in Scotland.

## **PUBLIC INTEREST DISCLOSURE (WHISTLEBLOWING) POLICY**

### **1. INTRODUCTION**

1.1 Argyll and Bute Council is committed to the highest standards of openness, probity and accountability. These high standards are coupled with a positive approach to enabling employees and others who become aware of wrongdoing, improper conduct or other failures of a substantive nature to bring attention to their concerns. The Council's Public Interest Disclosure Policy is, therefore, designed –

- To set out a process for the investigation of certain disclosures of information which are made in the public interest;
- To provide protection from reprisal or victimisation for individuals who make such disclosures in good faith; and
- Thus to provide a genuine recourse for legitimate representations without encouraging a climate in which they become malicious, trivial or routine.

1.2 There are existing procedures in place which enable employees of the Council to raise a grievance relating to their own employment. The Public Interest Disclosure Policy is designed to deal with matters which fall outwith the scope of the Grievance or Disciplinary Procedures.

### **2. SCOPE**

2.1 In the context of the work of Argyll and Bute Council, a “qualifying disclosure” means any disclosure of information which, in the reasonable belief of the person making the disclosure, tends to show one or more of the following –

- (a) That a criminal offence has been committed, is being committed or is likely to be committed,
- (b) That a person has failed, is failing or is likely to fail to comply with any legal obligation to which he/she is subject,
- (c) That any person has failed, is failing or is likely to fail to comply with any obligation as to their conduct or otherwise imposed on that person by –
  - The Argyll and Bute Council Protocol governing relations between Members and Officers.
  - The Council's Standing Orders, Contract Standing Orders, Procurement Manual or Financial and Security Regulations.
  - The Argyll and Bute Code of Conduct for Officers.

- (d) That the health or safety of any individual has been, is being or is likely to be endangered.
- (e) That the Council has committed, is committing or is likely to commit to a course of action which is unlawful.
- (f) That the Council has taken, is taking, or likely to take a course of action, or there has been a corresponding failure, which is likely to give rise to a finding of maladministration on the part of the Council.
- (g) That information tending to show any matter falling within any of the preceding paragraphs has been, is being or is likely to be deliberately concealed.

A qualifying disclosure is made in accordance with this policy if the person –

- (a) Makes the disclosure in good faith
- (b) Reasonably believes that the information disclosed, and any allegation contained in it, are substantially true
- (c) Does not make the disclosure for purposes of personal gain
- (d) In all the circumstances of the matter, believes it is reasonable for the person to make the disclosure.

2.2 Any disclosure alleging a breach of the Councillors Code of Conduct issued under the Ethical Standards & Public Life Etc (Scotland) Act 2000 in respect of a Councillor should be referred by the person making the disclosure to Mr Bill Thomson, Commissioner for Ethical Standards in Public Life, Thistle House, 91 Clifton Terrace, Edinburgh EH12 5HE –  
email: [investigations@standardscommision.org.uk](mailto:investigations@standardscommision.org.uk)

### **3. SAFEGUARDS**

3.1 The Council recognises that taking a decision to report a concern of the type covered by this policy can be a difficult one, not least because of the fear of reprisal. The Council makes it clear that it will not tolerate any reprisals under any circumstances and will take action to protect a person who makes a qualifying disclosure.



- 3.2 If a disclosure is made in good faith but is not confirmed by subsequent investigation, no action will be taken against the person making the disclosure. The Council will, however, protect itself, its Members and Employees against malicious allegations and will take appropriate action against any person who makes such an allegation. The Council will also take such reasonable steps which may be open to it to minimise the impact on any of its Members or Employees of an allegation which is either malicious or unfounded.
- 3.3 Nothing in this Policy means that if a person is already the subject of any action or procedure against them (including in the case of employees, disciplinary procedures) that those procedures will necessarily be halted as a result of a disclosure made under this policy.

#### **4. CONFIDENTIALITY**

- 4.1 In a culture of openness, and against the Council's stated policy that it will protect a person who may make a disclosure in good faith and in the public interest, and to assist any investigative process, it is clearly desirable that the person who makes a disclosure should be prepared to do so on an attributable basis. The Council will, however, take reasonable steps, but cannot guarantee, to protect the identity of a person who makes a disclosure and does not wish his or her name to be disclosed, subject to the following factors –
- (a) The seriousness and nature of the issues raised
  - (b) The likelihood of confirming any allegation from other attributable sources
  - (c) The need for evidential statements as part of any investigation
  - (d) The credibility of the allegation, and, in all the circumstances, the need to allow a person against whom an allegation is made to test the veracity and substance of it
  - (e) The likelihood, in all the circumstances, of unwarranted reprisals being directed against a person who makes a disclosure.
- 4.2 The Officer conducting the investigation will, however, take all necessary steps to ensure that the name of a person who makes a disclosure is not disclosed to others within the Council except, strictly, on a need to know basis in order to further the due completion of the investigation and the Council's response to it. (See paragraph 5 below).
- 4.3 The Council will not disclose in any public document the name of any person who makes a disclosure, nor will the Council disclose that person's name to any third party outside the Council except –

- Where an offence may have been committed and there is considered to be an obligation to report that to the Police or Procurator Fiscal, or to co-operate with enquiries instituted by the Police or the Fiscal.
- Otherwise where there would be any failure on the part of the Council to comply with any legal obligation on them.

4.4 Allegations expressed anonymously will not normally be considered. In exercising any discretion to consider any anonymous allegation, the factors which will be taken into account are –

- The seriousness and nature of the issues raised
- The credibility of the concerns
- The likelihood of confirming the allegations from other attributable sources

## 5. DISCLOSURES AND THEIR INVESTIGATION

5.1 As noted earlier, this Policy is designed to provide recourse for legitimate representations to be made about wrongdoing, improper conduct or other failure of a substantive nature. Any person making a disclosure in terms of this Policy should do so to the Council's Monitoring Officer, the Executive Director with responsibility for Legal and Regulatory Support Services. The Monitoring Officer will decide –

- (a) Whether the matter is one which should be dealt with under the Council's Grievance or Disciplinary Procedures, and, if so, will refer the matter to the appropriate Officer.
- (b) Whether the matter is one which should be dealt with under any Complaints or other procedure of the Council, and, if so, will refer the matter to the appropriate Officer.
- (c) Whether the matter is one which should be investigated in terms of this Policy and, if so, will conduct an investigation in terms of this Policy.
- (d) In the absence of an investigation in terms of this Policy, what other action, if any, should be taken.

5.2 Notwithstanding and without prejudice to the statutory obligations placed on the Monitoring Officer, for the purposes of this Policy the function of the Monitoring Officer is to investigate a disclosure of information, and any allegation contained in it, relating to any matter contained in paragraph 2.1 of this Policy.

5.3 The purpose of an investigation under this Policy will be to determine which of the following findings is the case –

- (a) That there is no evidence of any failure to comply with any of the matters set out in paragraph 2.1 above,
  - (b) That no action needs to be taken in respect of the matters which are the subject of the investigation
  - (c) That any matter which is the subject of investigation can be remedied by compliance with any recommendations which are made in the report of the investigation
  - (d) That there is evidence of a failure on the part of a Councillor in relation to any of the matters referred to in paragraph 2.1 above in which case, with the exception of a matter in respect of which a criminal offence may have been committed, the report of the investigation will be submitted to the Council which will consider what action, if any, should be taken.
  - (e) That there is evidence of a failure on the part of a person, who is not a Councillor but has been appointed or co-opted to any Committee or Sub-Committee or Short Life Working Group of the Council, in relation to any of the matters referred to in paragraph 2.1 above in which case, with the exception of a matter in respect of which a criminal offence may have been committed, the report of the investigation will be referred to the Audit and Scrutiny Committee which will consider what action, if any, should be taken.
  - (f) That there is evidence of a failure on the part of an Officer of the Council in relation to any matter referred to in paragraph 2.1 above, in which case the report of the investigation will be referred to the Chief Executive who will determine what action, if any, should be taken.
  - (g) That there is evidence of a systematic or procedural failure on the part of the Council in relation to any matter referred to in paragraph 2.1 above, in which case the report of the investigation will be referred to the Chief Executive and /or the Council to determine what action, if any, should be taken.
  - (h) That otherwise the matters which are the subject of the investigation should be referred to the Council's Audit and Scrutiny Committee.
- 5.4 For the purpose of conducting an investigation in terms of this Policy, the Monitoring Officer –
- (a) May conduct the investigation personally, or may authorise another person to do so
  - (b) May obtain information from such persons and in such manner, and make such enquiries, as she/he thinks fit

- (c) May require any Officer or Member to provide such information or explanation as may be necessary for the purpose of conducting the investigation
  - (d) Must give any person who is the subject of any allegation which is being investigated the opportunity or opportunities to respond to and comment on any allegation and must, in the course of any interview, allow that person to be accompanied by any other person
  - (e) May require any Officer or Member holding or accountable for any document or record (held in any medium) relating to the investigation to give access to such document or record.
  - (f) May, to assist the investigation, obtain advice from any person inside or outside the Council who is qualified to give it.
- 5.5 A copy of any report of any investigation must be given to any Member or Officer of the Council who is the subject of the report before the report is finally disposed of by the Monitoring Officer as set out in paragraph 5.3 above.

## **6. DECISIONS AND RECOMMENDATIONS OF AUDIT AND SCRUTINY COMMITTEE**

- 6.1 The Audit and Scrutiny Committee shall decide whether or not there has been a failure on the part of any person who is the subject of a report in terms of Paragraph 5.3(e), with the exception of a matter in respect of which a criminal offence may have been committed until any criminal proceedings have been disposed of.
- 6.2 Where the Audit and Scrutiny Committee decides that there has been no such failure on the part of any such person it will give notice to that effect to the person concerned.
- 6.3 Where the Audit and Scrutiny Committee decides that there has been such a failure as is mentioned in Paragraph 6.1 above, the Committee must decide, having regard to the Statutory authority or basis on which that person has been nominated, appointed or co-opted, whether the nature of the failure is such that either –
- (a) The Council is to advise the person concerned that there has been a failure on his or her part, and specify the details of that failure; or
  - (b) Submit a report to Council, which report will be considered in public, advising that there has been a failure on the part of such a person concerned, specifying the details of that failure, which report may include a recommendation that any one of the following courses of action should be taken by the Council –

- (i) That the person concerned be afforded the opportunity of apologising to the Council in respect of the failure; or
  - (ii) That the person concerned should be the subject of a resolution of censure expressing the Council's disappointment that there has been a failure on the part of such a person concerned; or
  - (iii) That the Council remove the person concerned from any one or more positions to which the person was appointed by the Council or any of its Committees or Sub-Committees, and/or that the person be removed from membership of any one or more Committee, Sub-Committee, or Short Life Working Group of the Council;
  - (iv) That the Council request the persons nominating or appointing body to remove or withdraw their nomination or appointment and remove that person from any Committee, Sub-Committee, or Short Life Working Group of the Council;
- 6.4 Before submitting a recommendation in terms of paragraph 6.3(b) to the Council, the Audit and Scrutiny Committee will provide a copy of their report, including any recommendation contained in it, to the person concerned.
- 6.5 In considering a recommendation in terms of paragraph 6.3(b) the Council will afford an opportunity to the person concerned to make a statement to the Council, and it will not be open to the Council to pass a resolution which would, in respect of the person concerned, be more onerous than the course of action recommended by the Audit and Scrutiny Committee.

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**ARGYLL AND BUTE COUNCIL**

**CONSTITUTION**

**PART G**

**REMUNERATION AND EXPENSES**





**SCHEME OF APPROVED DUTIES**

*The following Members of Council are authorised, arising from and to further duties of their office, to undertake the duties set out below.*

1. Attendance by a Member at any meeting of the Council, a Committee or Sub-Committee and otherwise any meeting of a Short Life Working Group, or at a site visit, seminar or similar event, called or authorised by the Council or any Committee, Sub-Committee or Working Group.
2. Attendance by the Chairman and Vice-Chairman of a Committee, Sub-Committee or Short Life Working Group with the Chief Executive or a Director of Service or Head of Service or Area Manager for the purpose of consultation on matters likely to arise at a meeting of the Committee, Sub-Committee or Short Life Working Group concerned.
3. Attendance by a Member at a meeting of the group of Councillors of which she/he is a registered member.
4. Attendance by a Member who is appointed to represent the Council at meetings called by COSLA; and attendance by a Member at other meetings where COSLA authorises or appoints that Member to participate at that other meeting.
5. Attendance by a Member (or her/his substitute) who is appointed to represent the Council at meetings called by a Joint Board, or by any Joint Committee to which any of the functions of the Council have been delegated, and attendance by a Member at other meetings where the Joint Board or Joint Committee authorises or appoints that Member to participate at that other meeting.
6. Attendance by a Member at any conference or seminar or similar event where the Member is authorised to attend by the Council, or a Committee, Sub-Committee or Short Life Working Group of the Council, or under arrangements from time to time approved by the Council.
7. Attendance by any member at a meeting of an outside body to which that Member has been appointed by the Council.
8. Attendance by the Provost or Depute-Provost of the Council or the Leader or Deputy Leader of the Council or of any Policy Lead at any meeting, conference, or other event which the Monitoring Officer, in consultation with the Chief Executive, considers to be connected with the Council or its area, or local government business and where in their view it is in the interests of the Council to attend.
9. Attendance by any Chairman or Vice-Chairman of a Committee at any meeting, conference, or other event which the Monitoring Officer, in consultation with the Chief Executive, considers to be connected with the Council or its area, or local government business and where in their view it is in the interests of the Council to attend.

10. Attendance by the Provost or Depute-Provost of the Council or the Provost's nominee at a civic or other event being held by the Council or another body at which they consider it is appropriate that the Council be represented or at a funeral or other commemorative event to represent the Council.
11. Attendance by a Member at official openings of Council premises or at functions organised or supported by the Council where the invitation is from the Council or Provost of the Council, or a Committee or the Chairman of a Committee.
12. Attendance by a Member on not more than two days per calendar month –
  - (i) at appropriate centres for holding surgeries for consultation by constituents; or
  - (ii) to visit individual constituents where there are particular reasons which should be specified on the claim form.
13. Attendance by a Member at their nearest area Council office on not more than two days per calendar month for the purpose of dealing with matters raised with them by constituents.
14. Attendance at a meeting of a Primary School Board or Community Council within the Member's Ward, or as a nominated representative of the Council at a meeting of a Secondary Parent Council.
15. Attendance at a meeting of a Community Forum established by the Council.

### **Qualifications**

1. The rates of travel and subsistence allowance payable will be those determined from time to time by Government regulation or otherwise determined in accordance with arrangements approved by the Council from time to time.
2. Invitations from outside bodies or third parties to a Member in an individual capacity to attend any event does not constitute an approved duty, unless attendance is authorised by the Council or any Committee or Sub-Committee, but without prejudice to the provisions set out above applicable to the Provost or Depute-Provost of the Council, the Leader or Depute Leader of the Council, or a Committee Chairman or Vice-Chairman as the case may be.
3. Travel and subsistence expenses will only be payable in respect of an approved duty relating to any other body where that body does not itself pay travelling and/or subsistence allowances; if the body pays its own travelling and subsistence allowances, the Member should claim such allowances from the other body.

4. The performance of any of the foregoing approved duties is subject to the approval of the Leader of the Council in consultation with the Monitoring Officer and the Chief Executive in any particular case in respect of a journey outwith Scotland.
5. Travel by rail will normally be at 2<sup>nd</sup> Class (I) except in respect of travel by sleeper, (ii) otherwise unless it is only possible to make the journey by travelling 1<sup>st</sup> Class and no reasonable alternative exists, and (iii) if the Member is accompanying a representative of another agency who is travelling 1<sup>st</sup> Class. Any journey involving air travel will normally be at economy class.
6. Claims can be made for the reimbursement of actual costs in respect of travel and subsistence up to the maximum level of day or overnight subsistence. While it is not necessary to produce receipts in respect of day subsistence, Members are required to produce receipts for overnight accommodation and should endeavour at all times to book accommodation through the Council's travel agents to secure discounted rates and to facilitate the reclaiming of VAT. Where a Member fails to book through the Council travel agents a detailed receipt must be produced to the Head of Financial Services.

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