



# **ARGYLL AND BUTE COUNCIL**

## **THE CONSTITUTION**

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## 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 Strategic Management 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;
  - Annual Service Plans and estimates of expenditure and income (the Budget) ;
  - Corporate Improvement Plan;
  - The Performance Improvement Framework
  - Argyll and Bute Outcome Improvement Plan (SOA / Community Plan)
  - The Children and Young Services Plan 2017-2020
  - The Community Care Plan;
  - The plans and strategies which together comprise the Development Plan;
  - The Anti Social Behaviour Strategy;
  - The Early Years Development Plan;

- The Food Law Enforcement Service Plan;
- The Carbon Management Plan;
- Argyll and Bute Council Biodiversity Duty Action Plan;
- The Local Transport Strategy;
- The Asset Management Strategy
- The Risk Management Strategy
- The Treasury Management and Investment Strategy
- The Local Housing Strategy
- The Strategic Housing Investment Plan
- The Economic Development Action 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 and Service Plans
- 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 Planning and Performance Management 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 in fulfilment of the provisions of the Council's Decentralisation Scheme.
- (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.

### **Strategic Management Team**

- (4) The Chief Executive, the Executive Directors, the Chief Officer – Health and Social Care, and the Heads of Service appointed by the Council collectively form the Council’s Strategic Management Team.
- (5) The Strategic Management Team is responsible –
  - for the operational management of the Council and its employees
  - for the delivery of the Council’s services
  - for advising the Council on overall strategic and corporate development
  - for achieving the outcomes contained in the Council’s strategic policies and plans

## **12. The Monitoring Officer**

- (1) The Executive Director - Customer 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 Head of Financial Services is the Council's chief finance officer in terms of section 95 of the Local Government (Scotland) Act 1973 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.

**9**

**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.

