

## Appendix 4 Part 7: Decision Making Procedure Rules

### ~~The framework for Cabinet decisions~~

~~7.1~~—The Council approves the Budget and Policy Framework as set out in Appendix 3 (~~non-Executive decisions~~). Once a budget or a policy ~~or~~ strategy within the Policy Framework is in place, it is the responsibility of the Leader to ensure its implementation (~~Executive decisions~~).

### ~~Process for developing approving or amending athe Policy Framework document~~

~~7.21~~ The process for ~~proposing approving~~ or amending a policy or strategy within the Policy Framework is:

~~(1a)~~ The Leader will ensure a timetable is published for the adoption or change of any policy or strategy that forms part of the Policy Framework, and arrangements for consultation on those proposals. ~~In the case of the plans and strategies requiring Council debate and approval, publication will be to the Members of the Scrutiny Committee; in all other cases publication will be to the Members of the relevant Cabinet Committee.~~

~~(2b)~~ The relevant Cabinet Committee will consider and make comments on the draft document before it is further considered by Cabinet and finally approved by the Council.

~~Before commenting to the Leader, Cabinet or Cabinet Member on the topic and proposals the Scrutiny Committee or the relevant Cabinet Committee may:~~

~~(a)~~—take evidence from Cabinet Members and officers

~~(b)~~—commission research within budgeted resources

~~(c)~~—consult Kent organisations and electors or other organisations and persons.

~~(3c)~~ Having considered any report by ~~the Scrutiny Committee or~~ the relevant Cabinet Committee, the Leader, Cabinet or Cabinet Member shall agree proposals for submission to the Council. The submission shall state how any recommendations from the ~~Scrutiny or~~ relevant Cabinet Committee have been taken into account.

~~(4d)~~ A Cabinet Committee in considering a submission may:

~~(ai)~~ endorse the proposals as submitted

~~(bii)~~ make recommendations for amending proposals to the Leader or relevant Cabinet Member

~~(5e)~~ The Council will consider proposals for those plans and strategies that require its approval under the Policy Framework and any proposals referred to it by a Cabinet Committee and may:

~~(ai)~~ adopt them

~~(bii)~~ amend them

~~(eiii)~~ refer them back to the Leader for further consideration

(div) substitute its own proposals in their place.

(6f) In considering the matter, the Council shall have before it the report from the Leader, Cabinet or Cabinet Member, which incorporates any views of the relevant Cabinet Committee, including any minority views expressed in that Committee's debate.

~~(7) The Council's decision will be published and a copy shall be given by the Clerk to the Leader. The notice of decision shall be dated and shall state either that:~~

~~(a) the decision shall be effective immediately (if the Council accepts the proposals without amendment or if the Leader has consented to any amendments during or following the debate) or~~

~~(b) (if the proposals are not accepted without amendments to which the Leader has consented) the Council's decision will become effective on the expiry of five clear working days after the publication of the notice of decision, unless the Leader objects to it in that period.~~

~~(8) The Leader may object to the decision of the Council by giving written notice to that effect to the relevant Senior Manager and the Monitoring Officer prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection. The proposals will then be reconsidered by the Council at its next meeting. The Council shall at that second meeting make its final decision on the matter on the basis of a simple majority. The decision shall be published and shall take effect immediately.~~

~~(9) In approving any part of the Policy Framework, the Council may also specify the extent to which the decisions may be taken by the Leader or Cabinet at variance from the Policy Framework.~~

~~(10) Senior Managers may amend the text of approved documents to update information, reflect changes in the law or other matters not affecting the substance of the policy or strategy subject to prior notification of such changes to the Leader, any relevant Cabinet Member and the Chairman and spokesmen of the relevant Cabinet Committee.~~

### ***Process for developing the Budget***

7.23 The process for proposing the Budget, Council Tax level, Capital Programme and Borrowing Policy is:

(1a) the Leader will publish to all Council Members each year a review of the issues relating to the Budget for the next financial year;

(2b) The Cabinet Committees will consider matters within the published review of issues relating to the Budget for the next financial year which fall within their remit and make recommendations to the Leader;

(3c) the Leader will publish a draft Budget no later than three weeks before the Budget meeting of the Council;

(4d) the Leader will ensure external consultation is carried out;

(5e) the Cabinet Committees and the Scrutiny Committee may consider the draft Budget, question the Leader and such Members of the Cabinet and officers as it wishes, and comment to the Cabinet;

(6f) as part of each Cabinet Committee's consideration of the draft Budget, it should assess whether adequate resources have been allocated to take account of the endorsed recommendations of its own Select Committees. If it does not believe that these recommendations have been correctly taken into account, then it should recommend to the Leader and Council appropriate changes to the draft Budget;

(7g) the Leader will consider any report from the Cabinet Committees, including any minority views, before reporting to Cabinet and making a final recommendation to the Council. He will also report to Council on how he has taken into account any recommendations from the Scrutiny Committee.

(8h) the Council will consider the Leader's proposals and may:

- (i) adopt them
- (ii) amend them
- (iii) refer them back to the Leader for further consideration
- (iv) substitute its own proposals in their place.

(9i) In considering the matter, the Council shall have before it the report from the Leader or the Cabinet, any reports from the Cabinet Committees and Scrutiny Committee and a report of any minority views expressed in those Committees' debates.

7.3 For both approving or amending a Policy Framework document or developing the Budget the following shall apply:

(10a) the Council's decision will be published ~~and a copy shall be given by the Clerk~~ to the Leader and on the Council's website and made available for inspection at County Hall no later than ~~three~~ three working days following the Council meeting. The notice of decision shall be dated and shall state that either:

(ai) the decision shall be effective immediately (if the Council accepts the proposals without amendment or if the Leader has consented to any amendments during or following the debate);

or

(bii) (if the proposals are not accepted without amendments to which the Leader has consented) the Council's decision will become effective on the expiry of five clear working days after the publication of the notice of decision, unless the Leader objects to it in that period.

(14b) the Leader may object to the decision of the Council by giving written notice to that effect to the relevant Senior Manager and the Monitoring Officer prior to the date upon which the decision is to be effective. The written notification must state the reasons for the objection together with any changes proposed by the Leader and the reasons for those changes. The proposals will then be reconsidered by the Council at a meeting to be held on the sixth clear working day after the original meeting. The Council shall at that second meeting make its final decision on the matter on the basis of a simple majority. The decision shall be published and shall take effect immediately.

7.4 Following the adoption of the Council's budget and the documents which make up the Policy Framework, responsibility lies with the Cabinet and individual Cabinet Members to take Executive decisions to implement them.

## **Decisions at variance from the Budget, Policy Framework or Resource Management Rules**

7.45 The Leader, the Cabinet, its committees, Cabinet Members and any officers, Joint Committees or bodies discharging executive functions under joint arrangements may only take decisions which are not in accordance with:

- (a) the Budget and Policy Framework
- (b) any specification by the Council on the permissible extent of variance from the Budget or Policy Framework
- (c) the provisions of the Resource Management Responsibilities Statement (Appendix 5) and other Resource Management Rules, including Financial Regulations and procedures
- (d) the provisions of the other Resource Management Rules

~~by complying with the following procedure.~~

~~7.65 If the Leader, the Cabinet, an individual Cabinet Member or an officer discharging executive functions want to make a decision that they consider might be contrary to the Budget and Policy Framework, they must take advice from the Monitoring Officer (in the case of the Policy Framework) and/or Chief Finance Officer (in the case of the Budget) as to whether the decision they want to make would be contrary to or not wholly in accordance with the Policy Framework or the Budget. It is the responsibility of the relevant Senior Manager to advise whether a proposed decision is not in accordance with the matters listed in 7.4, above. In any case of doubt, advice shall be sought from the Monitoring Officer and/or the Chief Finance Officer whose decision will be final.~~

~~7.7 If, following consultation with the individual or body proposing to take the decision and the Senior Officer, the advice of either the Monitoring Officer or Chief Finance Officer is that the decision would not be in line with the existing Budget and/or Policy Framework, then the proposed decision must be referred by the Leader or Cabinet to the Council, unless the decision is a matter of urgency, in which case the provisions in 7.8-7.11 below (urgent decision at variance to the Budget and Policy Framework) will apply.~~

7.86 The procedure to be followed for such decision is as follows:

(a1) If the decision is one that would otherwise be taken by an officer it shall instead be referred to the Leader, Cabinet or relevant Cabinet Member;

(b2) The Leader or Cabinet may will refer the matter with hisa recommendation to the Council to decide:-

~~(3) Unless the Leader refers the matter to the Council, the proposed decision shall be referred to the Scrutiny Committee, which shall (after any questioning and debate in accordance with the Procedure Rules) resolve by a majority vote:~~

~~(a) to make no comments~~

~~(b) to express comments to the Leader but not require reconsideration of the decision~~

~~(c) to require implementation of the decision to be postponed pending reconsideration of the matter by the Leader (or whoever else took the decision) in the light of the Committee's comments~~

~~(d) — to refer the matter to the full Council.~~

~~(4c) If the Leader or the Scrutiny Committee refers the~~The matter to the full Council, it shall will be considered at the next meeting of the Council when the Council may:

- (i) agree the decision be taken
- (ii) amend the Budget or Policy Framework to reflect the decision
- (iii) reject the proposed decision
- (iv) ask the Leader to reconsider the matter.

~~(5d) In the event of a decision being referred back to the Leader or the Cabinet by either the Scrutiny Committee or the full Council, the Leader (or other decision taker) Cabinet shall~~must reconsider the matter on the basis of a report setting out the comments expressed and confirm, rescind or amend the decision in the light of those comments. The written record of that reconsidered decision will be published and sent to all members of the Scrutiny Committee reported back to the full Council for further consideration. The reconsidered decision will then take effect and may be implemented with immediate effect taken by the full Council will be final.

7.97 A decision will not take effect until the process set out in Rules sub-paragraphs (a4)-(5d) above has been completed.

### **Urgent Decisions At Variance to the Budget and Policy Framework**

7.10 If a decision at variance to the Budget and Policy Framework has to be taken for reasons of urgency before the procedures set out above would otherwise be completed, it may be taken provided that the Chairman and Group Spokesmen on the Scrutiny Committee have been consulted and the following procedure is followed:

- (a) The Chairman of the Scrutiny Committee or, if that person is unable to act, the Chairman of the Council or, in their absence, the Vice-Chairman, agrees that the decision needs to be made as a matter of urgency
- (b) The relevant Corporate Director or Senior Manager agrees that the decision cannot reasonably be deferred
- (c) The individual or body by whom the decision is made must submit, as soon as reasonably practical after the decision has been made, a report to the full Council giving details of:
  - (i) the decision;
  - (ii) the reasons why it was urgent;
  - (iii) the reasons for the decision;
- (d) If agreement is not obtained as in (a) above, the matter must be referred to the full Council for decision

### **Interim Changes to the Policy Framework**

7.11 Amendments, modifications or variations to any plan or strategy which form part of the Policy Framework can be made by the Leader, Cabinet or Cabinet Members in the following circumstances:

—where such a change is necessary for giving effect to requirements by the Secretary of State or a Minister of the Crown in relation to a plan or strategy submitted for his approval;

(a) or

(b) where the full Council, when approving or adopting the plan or strategy, has authorised the Leader, Cabinet or Cabinet Members to make such changes

### **Decisions in accordance with the Budget and Policy Framework**

7.128 Decisions taken in accordance with, and in order to implement, the Budget and Policy Framework by the Leader, Cabinet, Cabinet Members or officers are called Executive Decisions and are subject to certain statutory and local procedure rules set out in Appendix 4 part 6 of the Constitution. All decisions taken by the Executive or an individual with delegated authority, on behalf of the Executive have a statutory requirement to be open to Scrutiny. At Kent County Council decisions are also shared with Cabinet Committees at the proposal stage. Decisions taken by the Leader, Cabinet, Cabinet Members or Cabinet committees are open to scrutiny by the Scrutiny Committee.

### ***Decisions by Cabinet, Leader and Cabinet Members***

7.9—The record of any decision taken by the Cabinet, Leader, or individual Cabinet Member will be published and publication notified to all Members of the Council in accordance with Procedure Rules 6.21-23.

### **Cabinet Committee process**

7.13 The relevant Cabinet Committee should consider all Executive decisions relevant to its terms of reference before they are taken, unless a decision is urgent and the relevant procedures for urgency set out in rules 6.10 – 6.13 or 6.16 have been complied with, or where the Cabinet Committee has determined that it need not consider a matter about which a decision is forthcoming.

### **Scrutiny Committee process**

#### *Call-in criteria*

7.149 Any two Members of the Council from more than one political group may give notice to the Clerk/Head of Democratic Services within five clear working days from the publication of a decision taken by the Cabinet or a Cabinet Member of their wish to call-in the decision.

7.154 Members are able to call-in a decision for one or more of the following reasons

(a) The decision is not in line with the Council's Policy Framework

(b) The decision is not in accordance with the Council's Budget

(c) The decision was not taken in accordance with the principles of decision-making set out in Article 12 of the Constitution

(d) The decision was not taken in accordance with the statutory and local arrangements set out in Appendix 4 Parts 6 & 7A—decision may only be called in once during the decision-making process.

~~7.12 The call-in procedure shall not apply where the decision being taken is urgent in accordance with the rules for Urgent Decisions (at 7.18, below).~~

~~7.163 The reasons justifying the call-in of a decision shall be clearly set out. Should the reasons for call-in be considered by the Head of Democratic Services to be clear, correct and in line with 7.14-7.15 above, the decision taker will be notified—the call-in of a decision shall be clearly set out. Reasons must be legitimate and not designed to impede the proper transaction of business for vexatious, repetitive or other improper reasons.~~

~~7.14 If the Clerk is satisfied that the procedures set out above have been met, the decision taker will be notified of the call-in.~~

7.175 The Scrutiny Committee will consider the call-in at a meeting that will take place within ten working days of the decision to call the matter in.

7.186 A Member who called-in a decision may participate in the debate of that call-in by the Scrutiny Committee, irrespective of whether they are a Member of the Scrutiny Committee.

### *Scrutiny Committee meeting process*

7.197 When considering an Executive decision that has been called-in the Scrutiny Committee can:

(a) Make no comments

(b) Express comments but not require reconsideration of the decision

~~—Require implementation of the decision to be postponed pending reconsideration of the matter in the light of the Committee's comments by whoever took the decision~~

(c) or

(d) If the decision is deemed to be contrary to the Policy Framework or Budget, require implementation of the decision to be postponed pending consideration of the matter by the full Council.

7.20 If the Scrutiny Committee refers a decision to the full Council, it shall be considered at the next meeting of the Council when the Council may either:

(a) Agree the decision be implemented

~~—Express comments but not require reconsideration of the decision~~

(b) or

(c) Require implementation of the decision to be postponed pending reconsideration by the Cabinet of the matter, taking into account the Council's comments.

When considering any other matter:

~~7.2(1)~~ The Chairman and spokesmen on the Scrutiny Committee shall agree:

(a) which matters the Committee is to scrutinise, including

~~(i) any decisions that have met the criteria for call-in~~

~~(ii)~~(i) Any matter that is relevant to the functions of the committee referred to it by any member of the Council, with the exclusion of:

- a local crime and disorder matter within the meaning of section 19 of the Police and Justice Act 2006 (which should be dealt with by the Crime and Disorder Committee)
- any matter relating to a planning decision
- any matter relating to a licensing decision
- any matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment
- any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at, a meeting of the Scrutiny Committee or at a meeting of a sub-committee of that committee.

~~(iii)~~(ii) However, an allegation that a function for which the authority is responsible has not been discharged, or that discharge has failed or is failing on a systemic basis, does not count as an excluded matter, even if the allegation relates to a planning decision, a licensing decision, or a matter relating to a person in respect of which that person has a right of recourse to a review or right of appeal conferred by or under any enactment.

(b) the amount of time to be allowed for questioning and debate on each of these items

(c) which Members of the Cabinet and officers it requires to attend and answer questions

(d) which other witnesses it will ask to attend

~~(7.22)~~ The Scrutiny Committee will meet, question Cabinet Members and officers, debate the issues identified by the Chairman and Group Sspokesmen and resolve by a majority vote to either:

(a) make no comments

(b) express comments but not require reconsideration of the decision

(c) require implementation of the decision to be postponed pending reconsideration of the matter in the light of the Committee's comments by whoever took the decision or

(d) require implementation of the decision to be postponed pending consideration of the matter by the full Council.

~~(7.23)~~ If the Scrutiny Committee refers a decision to the full Council, it shall be considered at the next meeting of the Council when the Council may either:

(a) agree the decision be implemented



- (b) express comments but not require reconsideration of the decision or
- (c) require implementation of the decision to be postponed pending reconsideration by the Cabinet of the matter, taking into account the Council's comments.

~~(7.24)~~ In the event of a decision being referred back for reconsideration by either the decision maker or the full Council, the Cabinet shall first reconsider it on the basis of a report setting out the comments expressed and confirm, rescind or amend the decision in the light of those comments. A written statement of that reconsidered decision will be published and sent to all Members of the Council.

~~(7.25)~~ If the Scrutiny Committee requires implementation of a decision that has been called-in to be postponed or refers it to Council, it may not be implemented until the processes set out in ~~Rules paragraphs (7.23)~~ and ~~(7.24)~~ above have been completed.

~~(7.26)~~ Nothing in the above rules prevents a Member of the Scrutiny Committee from exercising their legal right to propose discussion and/or postponement of any decision taken by the Leader, the Cabinet or a Cabinet Member. The agenda for the meeting of the Scrutiny Committee shall include an item for this purpose.

### ***Rules for Urgent Decisions***

~~7.18 (1) There will inevitably be occasions when a decision, although not required to be taken under the urgency procedures below, nevertheless needs to be taken by a Cabinet Member between meetings of the relevant Cabinet Committee. In these circumstances, the relevant Cabinet Committee Chairman and Group Spokesmen on the Cabinet Committee will be consulted prior to a decision being made and their views recorded on the Record of Decision. The decision will be published to all members of the Cabinet Committee and Scrutiny Committee and reported for information to the following meeting of the relevant Cabinet Committee.~~

~~(2) If a decision has to be taken or implemented for reasons of urgency before the procedures set out above have been completed, it may be taken and implemented provided that:~~

~~(a) the Chairmen and Group Spokesmen of the relevant Cabinet Committees and the Scrutiny Committee have been consulted (unless the circumstances render this impractical) and~~

~~(b) both the relevant Senior Manager and (in the case of a key decision that ought to be included in the Forward Plan) the Chairmen and Group Spokesmen of the relevant Cabinet Committee and the Scrutiny Committee agree that the making of the decision is urgent and cannot reasonably be deferred until after the next diarised meeting of the relevant Cabinet Committee and Scrutiny Committee~~

~~(3) If any of the Chairmen and Group Spokesmen of the relevant Cabinet Committee and the Scrutiny Committee are unable to act, the Chairman or Vice Chairman of the Council may be consulted instead.~~

~~(4) The reasons why it was not practical to comply with the relevant procedures and the agreement and any comments of the relevant Senior Manager and Chairmen and Group Spokesmen of the relevant Cabinet Committee must be included and published in the written statement of the decision.~~

~~(5) — The relevant Cabinet Member shall report to the next meeting of the Cabinet Committee giving details (including particulars of the matters in respect of which decisions were made) of any decisions that were taken as an urgent matter since the last Committee meeting.~~

### **Decisions by Officers and Council Committees**

7.1927 The Scrutiny Committee may resolve (or the Chairman and Group Spokesmen may agree) to consider any decision taken by an officer or by a Committee exercising functions delegated to it by the Council. It (or they) may request, but not require, that implementation of any such decision be postponed. The agenda for each meeting of the Scrutiny Committee shall include an item for this purpose. Following such consideration, the Scrutiny Committee may:

- (1) comment to the relevant Senior Manager
- (2) report to the Council
- (3) refer any issues arising from its debate for consideration by a Cabinet Committee, Cabinet Member or the Cabinet.

### **Decision Making Procedure Rules – Virement**

#### **Revenue**

7.289 Transfers between revenue budget headings can take place as follows, provided they do not involve new policy or policy change and do not involve an increasing commitment in future years that cannot be contained within existing approved budget allocations:

- (a) Virement within a portfolio for which a Cabinet Member is responsible:
  - (i) Up to £200,000: the relevant Senior Manager in consultation with the relevant Cabinet Member and the Chief Finance Officer;
  - (ii) Between £200,000 and £1m: the relevant Cabinet Member in accordance with the decision making Procedure Rules and after consultation with the Cabinet Member for Finance;
  - (iii) Above £1m: the Leader or Cabinet in accordance with the decision making Procedure Rules.
- (b) Virement between portfolios:
  - (i) Up to £200,000: the relevant Senior Managers in consultation with the relevant Cabinet Members and the Chief Finance Officer;
  - (ii) Between £200,000 and £1m: the relevant Cabinet Members in accordance with the decision making Procedure Rules and after consultation with the Cabinet Member for Finance;
  - (iii) Above £1m: the Leader or Cabinet in accordance with the decision making Procedure Rules.

#### **Capital**

| 7.294 Resources may be vired from one capital project or heading to another as follows, provided that such transfers do not result in an overall increased commitment of capital resources and do not involve new policy or policy change:

- (i) Up to £50,000: the relevant Senior Manager;
- (ii) Between £50,000 and £200,000: the relevant Senior Manager in consultation with the relevant Cabinet Member and the Chief Finance Officer;
- (iii) Between £200,000 and £1m: the relevant Cabinet Member in consultation with the Cabinet Member for Finance; and
- (iv) Above £1m - the Leader or Cabinet.