

Guide to Maidstone Borough Council's Constitution

**Contents**

Purpose of the Constitution	Page 2
Structure of the Constitution	Page 2
How the Council Operates	Page 3
Members of the Council	Page 4
How Decisions are made	Page 4
The Council's Officers	Page 5
Public Participation	Page 7
Member Rights	Page 6

**FAQs** Page 7

- What is a key decision?
- What is the administration's programme?
- What is the Budget and Policy Framework?
- What is the difference between Policy Advisory Committees and Overview and Scrutiny Committees?
- What is Call-in?
- Why is some information exempt or confidential?

## **Purpose of the Constitution**

The constitution is the key governance document for the Council it sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. Some of these processes are required by law and others are a matter for the Council to choose.

This guide is intended to give an introduction to the issues covered by the Constitution. The Constitution brings together all of the Council's governance documents including standing orders, schemes of delegation, financial regulations, code and protocols in one place and using consistent terminology. This document cross-references to key parts of the Constitution for easy-reference where further reading may be required.

## **Structure of the Constitution**

The constitution has been structured in parts as explained below:

**Part A**, sets out the higher-level principles and core provisions of the constitution. The constitution is a hierarchical document, where there is conflict between Part A and another part of the constitution, Part A shall prevail.

**Part B**, contains provisions on responsibilities for carrying out the functions of the Council and for making decisions.

**Part C**, sets out various rules of procedure on how certain proceedings of the Council are regulated and how decisions are made.

**Parts D & E**, sets out respectively the Codes and Protocols followed by the Council.

**Part F**, contains final provisions such as the statutory Scheme of Allowances.

Within any Chapter, a reference to a numbered Provision, Rule or Clause shall refer to the contents of that Chapter of the Constitution unless specified otherwise. Within an Appendix to a Chapter, references to a numbered Paragraph shall likewise refer to the contents of that Chapter.

The contents of this Part A, and also Parts B, D, E & F are correctly referred to as Provisions (e.g. "Provision 4.2"), save for any appendix whose content is correctly referred to as Paragraphs.

The individual chapters of Part C may be referred to by Chapter number (e.g. "Chapter C1") or by their title (e.g. "Council Procedure Rules"). Within these particular chapters, the contents are correctly referred to as Rules (e.g. "Rule 2" or "Council Procedure Rule 2").

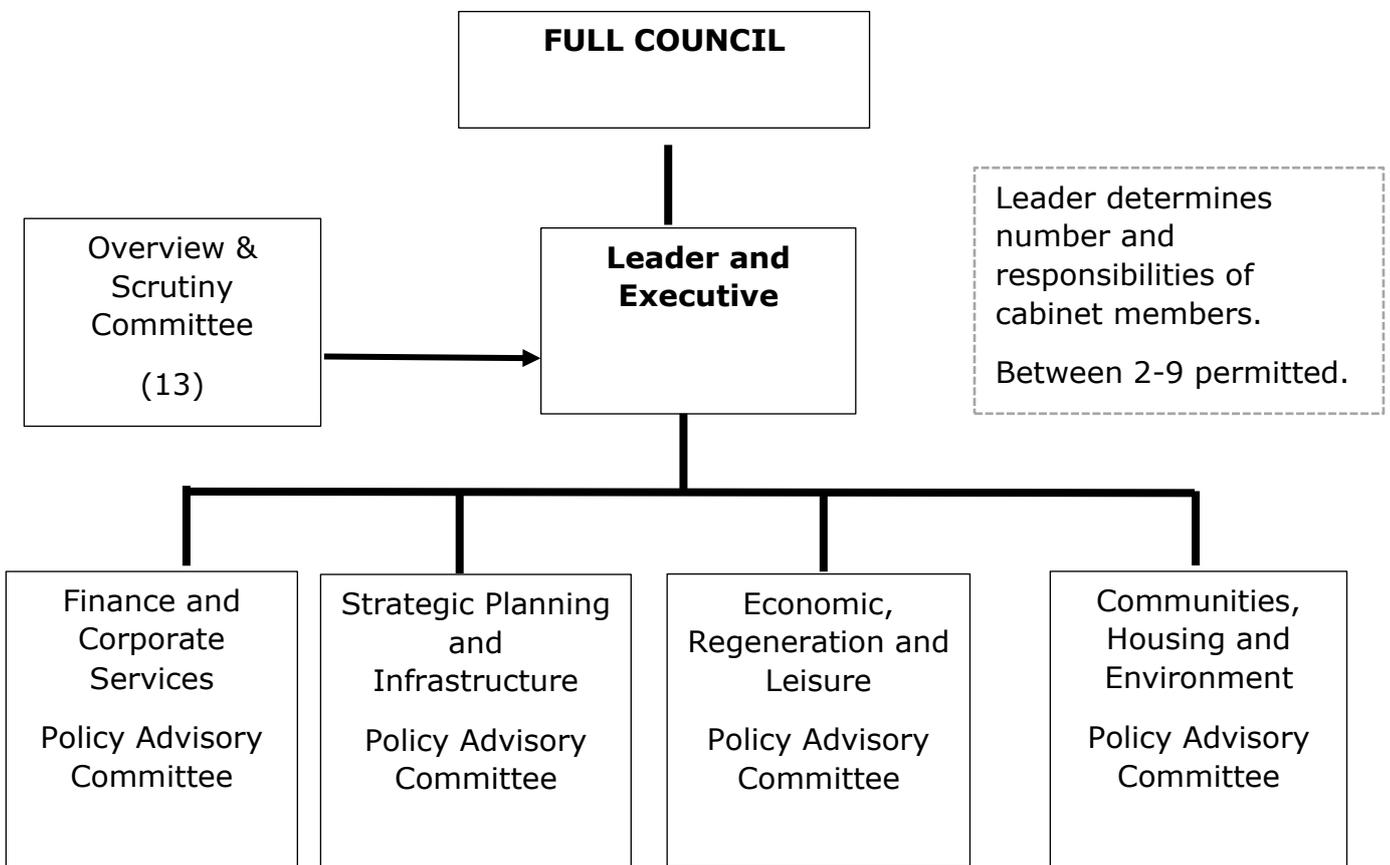
**How the Council Operates**

The council comprises 55 Members with one-third elected three years in four. Councillors are democratically accountable to the residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to their ward constituents, including those that did not vote for them.

Councillors agree to follow a Local Code of Conduct (Part D1) to ensure they uphold high standards when undertaking their duties. The Audit, Governance and Standards Committee is responsible for training and advising on the code of conduct.

All Councillors meet together at Full Council Meetings. The law reserves certain functions to the Council meeting. The Council Meeting [Part C1] is responsible for deciding the main policies and setting the budget each year. The Council Meeting also appoints the Leader of the Executive. The Leader of the Executive appoints the Deputy Executive Leader and the other members of the Executive, and allocates responsibilities ("portfolios") within the Executive. The Leaders also makes nominations to the Policy Advisory Committee for the role of Chairman of those Committees.

The Council operates an Executive Model of governance with one Overview and Scrutiny Committee and four Policy Advisory Committees. The diagram below does not include regulatory or other committees of the council.



## **Members of the Council**

The Council is led by directly elected Members. Members of the Council have a complex role acting as community advocates and leaders elected to make decisions and set the strategic direction for the Council, its services, and policies. There are a number of Member roles on the Council that have special responsibilities including the Leader of the Council, Members on the Executive, Chairs of Planning and Licensing Committees and the Overview and Scrutiny Chair.

## **How Decisions are made**

### Executive

The Council elects a Leader who appoints between 2 and 9 other Councillors (including a Deputy Leader) to form an Executive. It is responsible for implementing the policies of the Council in accordance with the agreed budget. Most decisions in relation to Council services are taken by the Cabinet or, in the case of day to day operational decisions, by officers. This is set out in Part B of the constitution.

All decisions to be taken or considered by the executive will be published in advance in the Executive's Forward Plan, (Part C4, 11.4), in so far as they can be anticipated. If these decisions are to be considered at a meeting by the Executive or an Individual Executive Member that meeting will generally be open to the public, unless exempt or confidential matters are to be discussed.

If the Executive wishes to make a decision that is outside the Policy Framework or Budget this must be referred to the Council Meeting to decide.

### Ordinary Committees

Certain Council functions, notably regulatory functions and those which involve dealing with applications from individuals e.g. development control and licensing, are not the responsibility of the Executive and are dealt with by Ordinary Committees.

### Overview and Scrutiny (Part B4, 1.2)

There is one Overview and Scrutiny Committee that acts as a check and balance on the Executive. Overview and Scrutiny Committees are not allowed to make decisions; however, they can ask the Executive or an Executive Member to reconsider a decision through a call-in process and they can express views on Council decisions.

They allow local residents to have a greater say in Council matters by holding public inquiries into areas of concern. They can also commission reports and undertake reviews which advise the Executive on specific aspects of policy and its implementation.

The Overview and Scrutiny Committee will not carry out pre-decision scrutiny of any decisions that are considered by Policy Advisory Committees.

### Policy Advisory Committees (Part A2, 6.2 and B4 1.1)

To ensure greater cross party involvement in the decisions and policy development of the Council, there are four Policy Advisory Committees these committees may be changed to reflect the Executive Portfolios. All decisions taken by the Executive apart from those that relate to the pledges made in the annual administration programme will go through a Policy Advisory Committee so they can advise to the Executive.

### **The Council's Officers**

The Council employs officers to give advice, implement decisions and manage the day to day planning and delivery of the wide range of functions undertaken. Some officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. There are a number of senior officers with specific responsibilities and these are set out in Part A2. A code of practice governs the relationships between officers and Councillors.

### **Public Participation**

Residents have a number of rights in their dealings with the Council. These are set out in more detail in Part A2, 1.1. Some of these are legal rights, whilst others depend on the Council's own processes. Where members of the public use specific Council services, they have additional rights. These are not covered in this Constitution.

**Voting.** Eligible Local Residents on the electoral roll have the right to vote in elections of the Members, and in local referendums or polls.

**Information.** Local Residents shall have the right to: -

- (a) Attend meetings of the Council, the Committees and the Executive;
- (b) Make such recordings and records of such meetings as they wish;
- (c) Know via the Forward Plan what Key Decisions and Other Material Decisions will be taken by the Executive and when;
- (d) Copies of reports and background papers, and any records of decisions made;
- (e) Inspect the Council's accounts and make their views known to the External Auditor.

**Participation.** Local Residents shall have the right: -

- (a) At meetings of the Council, the Committees and the Executive,
  - To ask questions and to receive answers,

- To address the meeting, and
  - To present petitions in accordance with the Petition Scheme;
- (b) Via consultations, that where possible shall include an online option, to give their views;
- (c) To lobby their local Ward Members.

**Complaints.** Local Residents have the right to make complaints and to have these determined objectively by: -

- (d) the Council itself under its Complaints Scheme and arrangements as to Member conduct;
- (e) where applicable, the Local Government and Social Care Ombudsman.

### **Member Rights (Part A2, 3.5)**

As an elected Member of the Council, Members have a number of rights including:

- The right, together with four (4) others, to requisition an Extraordinary Meeting of the Council (Part C1, 2.2)
- The right to move amendments to any Motion by the Leader concerning the Administration's Programme for the Municipal Year (Part C1, 12)
- The right to move a Motion on Notice at a meeting of the Council (Part C1, 12)
- The right to ask Questions on Notice at meetings of the Council, the Committees and the Executive (Part C1, 9)
- The right to have a subject added to the agenda of a meeting of a Committee (Part A2)
- The right to refer the determination of a planning application affecting the Member's Ward to the Planning Committee (Part C2, 14)
- The right to refer a breach of planning control to the Planning Committee (Part C2, 17)
- The right, together with two (2) others, to refer a serious nuisance or a major service failing directly to the Executive (A2 7.6 and terms defined in glossary)
- The right, together with two (2) others, to call-in a decision of the Executive for scrutiny (Part B4, 6.3)
- The right to issue a Member Call for Action (p326)

## **Frequently Asked Questions**

### **What is a Key Decision?**

Decision making is covered in Part A2 at section 4 and within the procedure rules of the Council, Executive and Committees at C1, C2 and C3. The decisions have been further defined to identify procedural and decisions of less significance and other material decisions.

Significant Decisions:

- (f) *Key decisions will be those which:*
- i. *result in the Council incurring expenditure, or making savings, of more than £250,000; or*
  - ii. *are significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.*
- (g) Procedural and Minor Decisions are those decisions pertaining to procedural matters and those decisions of little or no policy significance where expenditure or loss is less than £5,000.
- (h) Other Material Decisions are those decisions not otherwise falling into (a) or (b).

### **What is the Administration's Programme?**

Every year the Leader will be required to present a programme of policy and decision making to the Council at the Annual Council Meeting or within 60 days of their appointment. The "Pledges" made in this speech can then be considered by the Executive without first going through the Policy Advisory Committees.

### **What is the Budget and Policy Framework?**

The Budget and Policy Framework means the Council's budget together with certain major plans and strategies as determined by the Government and the Council, namely the:

- (i) Crime and Disorder Reduction Strategy;
- (ii) Licensing Authority Policy Statement including any Cumulative Impact Policies;
- (iii) Local Development Framework - Plans and alterations which together comprise the Development Plan and Development Plan Documents;
- (iv) Sustainable Community Strategy;

- (v) Policies made under the Gambling Act (including any resolution relating to casinos);
- (vi) The Strategic Plan

The Budget includes the allocation of financial resources to different services and projects, proposed contingency funds, the Council Tax base, setting the Council Tax and decisions relating to the control of the Council's borrowing requirement, the control of its capital expenditure (including the Capital Strategy) and the setting of virement limits.

### **What is the difference between Policy Advisory Committees and Overview and Scrutiny Committees?**

Policy Advisory Committees consider matters before they go to the executive to offer advice to the Executive and involve more members in the decision making process, they are in effect undertaking pre-decision scrutiny. They can make recommendations, however they cannot make decisions. The Overview and Scrutiny Committee has responsibility for post decision scrutiny in the form of call-in whereby they can call-in and review an Executive Decision and recommend alternative action be taken. They cannot make decisions. They also have a role in developing policy and can advise the Executive.

### **What is Call-in?**

The Overview and Scrutiny Chairman or any three Members may call-in a decision of the Executive (Part C3, section 6) within five days of the decision being published. The request must be made in writing and state the reason for the call-in.

A meeting of the Overview and Scrutiny Committee will be called within five working days of the expiry of the call-in period. The Committee will consider the decision and may refer it back to the decision-making body for reconsideration or full Council if it has concerns regarding the decision.

### **Why is some information exempt or confidential?**

The starting point will always be in favour of publication of as much information as possible about the decisions the council takes, and only in limited circumstances should information be withheld, where there is a justification, in law, for doing so.

Items will only be considered in private where it is likely that it will involve the discussion of confidential or exempt information as defined in the Local Government Act 1972 ("LGA72") (Part C4), wherever possible a public report will be provided to accompany exempt or confidential reports.