

## **(4) Protocol on Decision Making**

### **Introduction**

1. One of the objectives of the Government's programme of reform set out in the Local Government Act 2000 is to make individual local politicians more clearly responsible and accountable for the decisions which they make on behalf of their local communities. Another is to speed up the process of decision-making.
2. Members of the Cabinet will be collectively responsible for decisions made by the Cabinet and Cabinet members will be individually responsible for decisions which they make individually.
3. The high degree of personal visibility of the new system makes it all the more important that the processes by which decisions are made, both collectively by the Cabinet and individually by Cabinet members, are transparent, robust and clearly documented.
4. The purpose of this protocol is to protect the interests of the County Council and of individual members in a situation in which decisions are being made in new ways. In this protocol, Cabinet members are referred to as "Cabinet Members" when exercising powers given to them to take Cabinet decisions in accordance with the list maintained by the Leader under Article 7.06 of the County Council's constitution ("the constitution").

### **Principles of Decision-Making**

5. In the general public interest and specifically to guard against the possibility of successful legal challenge to decisions made by the Cabinet or by individual Cabinet members, we need to be able to demonstrate:
  - (1) that relevant matters were fully taken into account in decision-making;
  - (2) that nothing irrelevant was considered;
  - (3) that the principles of decision making set out in Article 13.01 of the constitution were complied with;
  - (4) that the other provisions of the constitution have been complied with including:
    - (a) that all the relevant procedure rules set out in Part 4 of the constitution have been complied with (namely Council, Access to Information, Budget and Policy Framework, Cabinet, Overview and Scrutiny, Financial and Procurement and Contract Standing Orders respectively);

(b) that the Cabinet or Cabinet member had the benefit of advice from all Chief officers and/or other responsible officers, the proper officer and other statutory officers;

(c) that the member concerned considered whether he or she had an interest in the particular item;

(d) that in the case of a Cabinet member the power is within the list prepared by the leader under Article 7.06 of the constitution;

(e) that the decision was properly recorded and published, together with declarations of interest and background papers.

6. This means that a clear audit trail of decision-making must be maintained and kept available for future reference. The importance attached to these matters by the Government is emphasised by its proposal to make it a criminal offence not to record properly an Executive decision.

7. The Deputy Chief Executive is responsible for advising members and officers on these issues, to ensure that the County Council's decision-making processes meet the requirements of the law and of good government, and for the proper implementation of these procedures. He/she will issue such further guidance as is necessary from time to time to ensure that the procedures are clearly understood and complied with by members and officers.

### **Decision-Making by the Cabinet and by Individual Cabinet Members**

8. The general principle set out in the constitution is that, before decisions are made, the member or members making them must receive a written report setting out:

(1) the name of the Chief or other responsible officer making the recommendation;

(2) the issue to be decided;

(3) whether the report contains exempt information (that is, information which justifies the exclusion of the press and public);

(4) the justification for the recommendation and any other options;

(5) any legal requirements and legal advice from the Deputy Chief Executive including the Crime and Disorder Act/ Human Rights Act implications;

(6) personnel advice and advice from the Chief Operating Officer on ICT and Property implications and the Chief Finance Officer on financial implications;

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(7) any planning advice from the Director of Communities, Economy and Transport;

(8) any comments from the Corporate Management Team;

(9) any advice from the Chief Executive or the Monitoring Officer or Chief Finance Officer;

(10) any County Council policy relating to the issue;

(11) implications for other County Council activities and/or cross-service priorities;

(12) any relevant national or regional guidance;

(13) any consultations undertaken, including with borough, district, town and parish councils and other organisations;

(14) the electoral division(s) affected and confirmation that the local member(s) has been consulted (local members will also be sent a copy of the report to be considered by the Cabinet or Cabinet member).

9. The Deputy Chief Executive as Monitoring Officer will issue procedural guidance to assist officers submitting reports.

10. The chief officer or responsible officer originating a draft report to the Cabinet will also, at an early stage, discuss the issues with the relevant Cabinet member(s), and will ensure that the views of the Cabinet member(s) concerned are taken into account in the report. Consultation under this paragraph will also involve any other Cabinet members whose areas of responsibility are affected by the proposal, for example, the member responsible for resources.

11. Exceptionally (for example, on a politically contentious matter or when the chief officer or other responsible officer does not wish to support the recommendation to Cabinet), at the chief officer's request the report may appear over the name of the relevant Cabinet member(s) rather than that of the chief officer or other officer.

12. Members of the Cabinet will meet informally with the Corporate Management Team to discuss the agendas for future Cabinet meetings and the draft reports which are proposed for consideration as appropriate.

13. Exceptionally, in contentious or 'political' cases where the Leader or other Cabinet member(s) with responsibility for taking a decision believe(s) the whole Cabinet should be aware of the issue and participate in the decision, or the chief officer is unhappy to take the decision because of public controversy or sensitivity, or where the chief officer takes a different view of the proposal and feels unable to be associated with it, the item will be submitted to the Cabinet. (See also Table 3 in Part 3 of this Constitution dealing with decision making by

individual members in situations where a member has a conflict of interest). The agenda and papers for the Cabinet or notice of the intention of an individual Cabinet member to consider a matter will be sent to all members of the County Council and, subject to restrictions in relation to confidentiality, circulated within the organisation.

### **Access to Information and Due Notice Procedures**

14. The requirements and time limits in the Access to Information and other relevant procedures in the Constitution and statutory rules will be complied with. Decisions taken by Cabinet members individually will be properly documented. Cabinet members will have regular meetings with chief officer(s) and other relevant officers to discuss recommendations and make decisions, possibly on a selected day each week so as to comply with the relevant procedures and enable attendance of members with local or other interests and petitioners.

15. The Deputy Chief Executive as Proper Officer will publish information to all members via e-mail and place on the website information on decisions to be made by Cabinet members in advance of the decision(s) being taken.

### **Record of Decision**

16. These will be made under paragraph 18 of the Access to Information Procedure Rules and paragraph 20 of the Overview and Scrutiny Procedure Rules and made public and published by email indicating when the decisions made will become effective. This will enable members to consider whether they wish to seek the call-in of any decisions made by the Cabinet or by individual Cabinet members.

17. Once a decision becomes effective, a formal decision record will be published and retained for future reference. Formal minutes of Cabinet decisions will be published for the next Cabinet meeting.

### **Urgent Decisions**

18. The procedure for dealing with urgent decisions and decisions of special urgency is set out in paragraphs 15 and 16 of the Access to Information Procedure Rules and paragraph 4 of the budget and Policy Framework Procedure Rules. Decisions taken in this way will not be subject to call-in, although it will be open to an overview and scrutiny committee to scrutinise such a decision. Urgent decisions are subject to the provisions of those paragraphs which will ensure the use of the procedure should be rare and itself open to scrutiny. There is an obligation on everyone involved not intentionally to delay matters so that the urgent action procedure has to be used. Breach of this duty could constitute maladministration.

**Call-in of Decisions by Cabinet or Individual Cabinet Members**

19. Decisions made by the Cabinet and by individual Cabinet members may be called-in for consideration by the relevant overview and scrutiny committee. The procedures where a decision is contrary to the policy framework are set out in paragraph 7 of the Budget and Policy Procedure Rules. The procedures in relation to other decisions are set out in paragraphs 19 and 20 of the Overview and Scrutiny Procedure rules.

20. The Cabinet or Cabinet member's decision is final (except for those matters reserved to Council) provided it is not contrary to the policy framework or contrary to or not wholly consistent with the budget.