

12. ARTICLE 12 – DECISION MAKING

12.1 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in chapter 3 of this Constitution.

12.2 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- Good decision making goes beyond observing the legal requirements to have regard to all relevant considerations and ignore all irrelevant factors. It also involves the realistic evaluation of alternatives and due consultation through effective access for the public to decision making and decision makers;
- Decision makers will have due regard to:
 - (a) proportionality (i.e. the action must be proportionate to the desired outcome);
 - (b) due consultation and the taking of professional advice from employees;
 - (c) respect for human rights (see below for further details);
 - (d) a presumption in favour of openness;
 - (e) clarity of aims and desired outcomes.

12.3 Types of decision

(a) Decisions reserved to Council

Decisions relating to the functions listed in para 4.2 of article 4 will be made by the Council and not delegated subject to the delegation in part 4 of chapter 3 of this Constitution.

(b) Key decisions

- (i) A key decision is an executive decision which is likely:

- to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or
 - to be significant in terms of its effects on communities living or working in an area comprising two or more wards in Medway.
- (ii) For the purpose of determining what is to be regarded as significant expenditure or savings, reference will be made to the financial and risk thresholds set out in the relevant parts of the Constitution which clearly set out what must be determined by the Cabinet or Full Council. These include the scheme of delegation, the section on financial limits and the financial and contracts rules.

A decision taker may only make a key decision in accordance with the requirements of the Leader and Cabinet rules set out in chapter 4 of this Constitution.

Generally, key decisions will only be made by the Leader/Cabinet, a committee of the Cabinet, a joint committee (or sub-committee thereof) or an area committee (if any).

*References: Chapter 7, DETR Guidance
Regulations made under section 22, Local Government Act 2000.*

12.4 Decision making by the Council

Subject to para 12.8 in article 12, the Council meeting will follow the Council rules set out in chapter 4 of this Constitution when considering any matter.

12.5 Decision making by the Cabinet

Subject to para 12.8 in article 12, the Cabinet will follow the Leader and Cabinet rules set out in chapter 4 of this Constitution when considering any matter.

12.6 Decision making by Overview and Scrutiny Committees

Overview and Scrutiny Committees will follow the Overview and Scrutiny Rules set out in chapter 4 of this Constitution when considering any matter.

12.7 Decision making by other Committees and Sub-Committees established by the Council

Subject to para 12.8 in article 12, other Council Committees and Sub-Committees will follow those parts of the Council rules set out in chapter 4 of this Constitution as apply to them.

12.8 Decision making by Council bodies acting as tribunals

The Council, a Councillor or an employee acting as part of a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

References:

Chapter 7, DETR Guidance

Deciding Rights – applying the Human Rights Act to good practice in local authority decision making, Local Government Association/JUSTICE fact sheet available from IDeA Publication Sales ISBN 1 84049 189 2 code no. CA116

