

# CONSTITUTION - PART 4 - RULES OF PROCEDURE

## Budget and Policy Framework Procedure Rules

### **1. THE FRAMEWORK FOR EXECUTIVE DECISIONS**

The Council will be responsible for the adoption of its budget and policy framework as set out in Article 4. Once a budget or a policy framework is in place, it will be the responsibility of the executive to implement it.

The rules set out below apply to the plans and strategies listed in Article 4 and forming the policy framework and to “the budget” as defined in Article 4 of this Constitution. For the purpose of these rules a plan or strategy for the control of the Council’s borrowing or capital expenditure is treated as part of the policy framework together with other plans or strategies and not as part of the budget.

### **2. PROCESS FOR DEVELOPING THE FRAMEWORK**

2.1 The process by which the budget and policy framework shall be developed is:-

#### **(a)(i) General Provisions:**

At least three months before any plan/strategy which forms part of the policy framework needs to be adopted, the executive will publish initial proposals having first canvassed the views of local stakeholders as appropriate and in a manner suitable to the matter under consideration. Any representations made to the executive shall be taken into account in formulating the initial proposals, and shall be reflected in any report dealing with them. If the matter is one where the overview and scrutiny commission has already carried out a review of policy, then the outcome of that review will be reported to the executive and considered in the preparation of initial proposals.

#### **(ii) The Budget:**

In the case of the budget constraints outside the Council’s control preclude proposals being issued three months before the budget must be set in February. Accordingly budget proposals will be published early in January for the ensuing financial year and available for overview and scrutiny during January. However, the medium term financial strategy including the requirements for income and efficiency savings will be issued in July of each year and will be subject to scrutiny as a plan or strategy under these rules.

**(iii) The Development Plan:**

The General Provisions of paragraph (a)(i) shall not apply to policies and proposals which form part of the development plan prepared by other authorities or bodies and where Harrogate Borough Council is the consultee. Such policies and proposals will be considered by the Cabinet and their views must be taken into account by the District Development Committee which will respond to the relevant authority or body on behalf of the Borough Council. A copy of the draft minute of the committee shall be sent to the Leader of the Council within two working days of the committee meeting. In the event that the Leader of the Council believes that the District Development Committee has failed to take proper account of the views of the Cabinet in reaching its decision the conflict resolution procedure set out for plans and strategies in rule 3 below shall apply with appropriate amendments.

**(b)(i) General Provisions:**

The executive's initial proposals shall stand referred to the overview and scrutiny commission for further advice and consideration. The overview and scrutiny commission will canvass the views of local stakeholders, if it considers it appropriate, having particular regard not to duplicate any consultation carried out by the executive. The overview and scrutiny commission will report to the executive on the outcome of its deliberations.

- (ii) The overview and scrutiny commission shall have six weeks to respond to the initial proposals of the executive unless the executive considers that there are special factors which make this timescale inappropriate. If it does, it will inform the overview and scrutiny commission of the time for response when the proposals are referred to it. The budget timescale will always be less than 6 weeks because of external constraints.

**(iii) The Development Plan:**

In the case of the development plan initial proposals will automatically stand referred to a joint meeting of the Planning Committee and District Development Sub-Committee though separate decisions will be taken by each body on the proposals. The bodies attending the joint meeting must respond to the proposals within six weeks of the initial reference or such other time limit as may be set. The Overview and scrutiny commission is not concerned in the review of any development plan proposals

**(c)(i) General Provisions:**

Where the budget proposals or initial proposals on a plan or strategy are referred to overview and scrutiny commission a relevant Cabinet Member has

the right to attend any and all meetings of the Commission which consider those proposals, both to be questioned by members of the committee and to contribute to the discussion. The Cabinet Member will decide whether relevant officers should also attend. Attendance of the Cabinet Member or Officers will be as of right and not on summons in these circumstances. Cabinet Members will be expected to attend but may choose not to do so. If their attendance is required the overview and scrutiny committee may issue a summons under the overview and Scrutiny Procedure Rules but the time limits in those rules need not apply.

**(ii) The Development Plan:**

Where the plan or strategy forms part of the development plan the provision of paragraph (c)(i) shall apply with the Cabinet Member (Planning) and Officers attending the Planning Committee and District Development Sub-Committee meetings in the place of the overview and scrutiny commission.

**(d) General Provisions:**

Having considered the memoranda of report of the Overview and scrutiny commission or Planning Committee and the District Development Sub-Committee as appropriate the Cabinet, if it considers it appropriate, may amend the initial proposals before submitting them to the Council or the District Development Committee in the case of policies and proposals forming part of the Development Plan for consideration. It will also report on how it has taken into account any recommendations from the Overview and scrutiny commission, or the Planning Committee and District Development Sub-Committee in the case of the development plan, in framing the proposals submitted to the Council or the District Development Committee.

**2.2 Partnership plans:**

Where a plan or strategy has been developed with a partnership organisation it is inappropriate for it to be overturned in whole or in part by the Council where it has already been agreed by the partnership organisations. Accordingly Cabinet should ensure, before forwarding such a plan or strategy to the Council, that there has been effective and regular consultation between the executive, the relevant scrutinising committee and other members, including co-opted members, where appropriate, during the development of the plan or strategy.

**3. FINALISING THE PLAN/STRATEGY OR BUDGET AND CONFLICT RESOLUTION**

### **3.1 This rule applies before the Council:**

- (i) amends a draft plan or strategy;
- (ii) approves any plan or strategy (whether or not in draft form) for the purpose of its submission to the Secretary of State or any Minister of the Crown for approval or approves any part of such a plan or strategy which is required to be so submitted;
- (iii) adopts a plan or strategy with or without modification
- (iv) makes a calculation whether originally or by way of substitute in accordance with Section 32-37 or 43-49 of the Local Government Finance Act 1992 (“the budget estimates”).

### **3.2(a) Plans and Strategies:**

In considering the plan/strategy, the Council shall have before it the Cabinet’s proposals and any report from the overview and scrutiny commission, a Scrutiny Panel or Planning Committee and District Development Sub-Committee as appropriate.

(b) Unless the Council accepts the proposals of the Cabinet without amendment the Council’s view on a matter concerning the policy framework will be published by issuing a separate minute of the decision within two clear working days of the Council meeting. The Mayor shall be consulted to confirm the accuracy of the draft minute. A copy of the minute showing the date of the decision will be given to the Leader. The minute will:-

- (i) detail the Council’s objections and the reasons for objecting to the proposals or any part;
- (ii) instruct the Cabinet to reconsider their proposals in the light of the objections made by the Council;
- (iii) require the Cabinet to report back to the Council within 15 working days of the original Council meeting.

### **(c) Conflict Resolution**

- (i) The Leader may submit to the Council a revision of the draft plan or strategy together with the Cabinet’s reasons for the amendments made: and/or
- (ii) If the Cabinet disagrees with any objections of the Council, the Leader shall give written notice to the Head of Legal and Democratic Services to that effect, which must state the reasons for the disagreement.
- (iii) The Head of Legal and Democratic Services shall convene a further meeting of the Council to reconsider the plan or strategy within 15 working days of the original Council meeting and place on the agenda the Leader’s written response including the details set out in (i) and (ii) above.

- (iv) At that Council meeting, the view of the Council shall be reconsidered in the light of any revisions to the plan/strategy and any disagreement of the Cabinet with the Council's objections together with the reasons given for any amendments made by the Cabinet and the reasons for any disagreement with the Council's objections. All this information must be taken into account by the Council in reaching their final decision.
- (v) At the Council meeting;
  - (a) the Council may approve the revised plan/strategy; and/or
  - (b) the Council may change its earlier decision to reflect the disagreements of the Cabinet and if that resolution is made, even if it does not wholly and completely reflect the disagreements raised, the decision is final and may be implemented immediately; or
  - (c) the Council may confirm its original decision and that decision is final and may be implemented immediately.
- (vi) In relation to the development plan the Conflict Resolution Procedure (3.1 and 3.2 above) shall operate with the District Development Committee being substituted for the Council.

### **3.3(a) The Budget:**

The budget estimates for the following financial year shall be submitted by the Cabinet to the Council early in February in any year. In considering the budget estimates, the Council shall have before it the Cabinet's proposals and any report from the overview and scrutiny commission.

- (b) Any amendments to the budget estimates put forward at the Council meeting which are accepted by the Leader at the time will form part of the Cabinet's proposed budget in accordance with usual procedural formalities.
- (c) Before the Council finalises the budget estimates for the ensuing financial year, if it has any objections to those submitted by the Cabinet it must inform the Leader of such objections and give instructions requiring the Cabinet to reconsider the budget estimates, in the light of the objections of the Council.
- (d) Unless the Council accepts the estimates put forward by the Cabinet without amendment other than under (b) above, the Council's view on the estimates will be published to the Leader by issuing a separate minute of the decision within two clear working days of the Council meeting. The Mayor will be consulted to confirm the accuracy of the draft Minute.

### **(e) Conflict Resolution**

(i) The Leader will prepare a written report back to the Council by which means the Leader will:-

- (a) submit the budget estimates including revised estimates together with the Cabinet's reasons for those amendments; and/or
- (b) inform the Council of the Cabinet's disagreement with any of the Council's objections and the reasons for such disagreement.

(ii) The Head of Legal and Democratic Services shall call a further meeting of the Council within 15 working days of the original Council meeting and place on the agenda the written report of the Leader in response to the view of the Council from the original Council meeting.

(iii) The Council meeting which receives the Leader's report referred to at paragraph (e) above must take into account every aspect of the Leader's report in making its decision. Provided that it does so, the Council may:-

- (a) approve the Leader's report and set the Council's budget for the ensuing financial year which may be on the basis of the original budget estimates or estimates, revised in whole or in part; or
- (b) subject to any report which may be made by the Chief Finance and/or Monitoring Officers and to having put its objections in detail to the Leader at the original Council meeting, set the estimates based on the view expressed at the original meeting.

### **3.4 In year changes and Virement limits:**

In approving the budget and/or policy framework, the Council will also specify the extent of virement within the budget and degree of in-year changes to the policy framework which may be undertaken by the executive, in accordance with rules 5 and 6 of these Rules (Urgent decisions outside the budget or policy framework and Virement and supplementary estimates) and the Executive Procedure Rules unless no change is proposed. Subject to rule 7 below any other changes to the budget and policy framework are reserved to the Council.

## **4. DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

4.1 Subject to the provisions of rule 6 (Virement and supplementary estimates) and the Executive Procedure Rules, executive powers may only be exercised in line with the budget and policy framework. If an executive decision maker wishes to make a decision which is contrary to the policy framework, or contrary to or not wholly in accordance with the budget approved by full council, then that decision may only be taken by the Urgency Committee or the Council, subject to Rule 5 below.

If the executive, want to make such a decision, they shall take advice from the monitoring officer and/or the chief financial officer as to whether the decision they want to make would be contrary to the policy framework, or contrary to or not wholly in accordance with the budget and not in compliance with the Executive Procedure Rules. If the advice of either of those officers is that the decision would not be in line with the existing budget and/or policy framework and the Executive Procedure Rules, then the decision must be referred to the Council for decision, unless the decision is a matter of urgency, in which case the provisions in Rule 5. (Urgent decisions outside the budget and policy framework) shall apply.

## **5. URGENT DECISIONS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

5.1 The Leader and relevant Cabinet Member acting together may take a decision which is contrary to the Council's policy framework or contrary to or not wholly in accordance with the budget approved by full Council if the decision is a matter of urgency. However, the decision may only be taken:

- i) if neither the Leader nor the relevant Cabinet Member wishes to refer the matter to Urgency Committee or Council; and
- ii) if both the Leader and the relevant Cabinet Member are available to make the decision themselves; and
- iii) if the Chair of the overview and scrutiny commission agrees that the decision is a matter of utmost urgency;

The consent of the Chair of the overview and scrutiny commission to the decision being taken as a matter of utmost urgency must be noted on the record of the decision. In the absence of the Chair or Vice Chair of the Overview and scrutiny commission the consent of the Mayor should be obtained.

Following the decision, the Leader will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of utmost urgency.

5.2 A decision to spend beyond the £20,000 supplementary estimate permitted under Rule 6 is a matter for the Urgency Committee or Council under all circumstances.

## **6. VIREMENT AND SUPPLEMENTARY ESTIMATES**

6.1 The rules on virement in the exercising of executive or other powers are set out in the Financial Regulations of the Council called the Financial Procedure Rules which are in this part of the Constitution. Brief details of the ability to vire are set out below. The powers of the Cabinet are set out also in the Executive Procedure Rules.

- (i) Business Unit Managers have the power to vire up to £5,000 between the cost centres of their Business Unit.
- (ii) Chief Officers have the power to vire up to £10,000 within a business unit or between business units within their Department.
- (iii) Virement over £10,000 and up to £25,000 or virement between departments must be referred to Corporate Management Team for authorisation.
- (iv) Requests for virement above £25,000 which are supported by Corporate Management Team must be referred to the relevant Cabinet Member for approval.

6.2 The Cabinet may authorise a supplementary estimate up to £20,000 on any matter at any time. Where a supplementary estimate in excess of £20,000 is sought then the determination must be referred to Council unless it is a matter of urgency when the decision of the Urgency Committee may be sought if it is within their terms of reference.

## **7. IN-YEAR CHANGES TO POLICY FRAMEWORK**

The responsibility for agreeing the budget and policy framework lies with the Council, and decisions by the executive must be in line with it. No changes to any policy and strategy which make up the policy framework may be made by the executive except those changes:

- (a) necessary to ensure compliance with the law, ministerial direction or government guidance;
- (b) specifically authorised at any time by Council to be made by the Cabinet.

## **8. DISPUTING DECISIONS AS OUTSIDE THE BUDGET OR POLICY FRAMEWORK**

(a) Where the overview and scrutiny commission is of the opinion that an executive decision is, or if made would be, contrary to the policy framework, or contrary to or not wholly in accordance with the Council's budget and outside virement powers under the Financial Procedures Rules or the Executive Procedure Rules or is otherwise outside the powers of the executive set out in this Constitution; then it shall seek advice from the Monitoring Officer and/or Chief Financial Officer.

(b) The Monitoring Officer and/or Chief Financial Officer shall respond to a request for advice acting within their statutory duties and no further action may be taken in respect of the decision by any Member or Officer until the statutory officers have reported. The only exception occurs when a decision has not been acted on, or has yet to be made and, in advance of a report of the monitoring officer and/or chief financial officer, the Leader is satisfied that the executive would be exceeding its powers, then he/she may so advise the Chair of the relevant Overview and scrutiny commission, the monitoring and/or chief financial officer and the executive

decision maker concerned and so resolve the dispute. The decision will then be dealt with in accordance with the Constitution.

(c) In respect of functions which are the responsibility of the executive, the Monitoring Officer's report and/or Chief Financial Officer's report shall be made to the Cabinet with a copy to every member of the Council. Regardless of whether the decision is delegated, the Cabinet must meet to decide what action to take in respect of such a report.

(d) If the decision has yet to be made, or has been made but not implemented, then:-

- (i) if on considering a report from the monitoring officer and/or chief financial officer the Cabinet accepts the report then the dispute will be resolved and the decision dealt with in accordance with the Constitution.
- (ii) if the advice from the monitoring officer and/or the chief financial officer is that the decision is or would be contrary to the policy framework or contrary to or not wholly in accordance with the budget, then, if the Cabinet wish the question to be considered by the Council, the matter will be referred to Council. In such cases, no further action will be taken in respect of the decision or its implementation until the Council has met and considered the matter.

(e) The Council shall meet within seven working days of the request by the Cabinet. At the meeting it will receive a report of the decision or proposal, the report of the monitoring officer and/or the chief financial officer and any views of the Cabinet. The Council may either:

- i) amend the council's budget or policy concerned to encompass the decision or proposal of the Cabinet and agree to the decision being made with immediate effect. In this case, no further action is required save that the decision of the Council be minuted and circulated to all councillors in the normal way; or
  - ii) accept that the decision or proposal is contrary to the policy framework or contrary to or not wholly in accordance with the budget, and not amend the existing framework or budget to accommodate it. In this case, the executive must act in accordance with the advice already received from the monitoring officer and/or chief financial officer.
- (f) (i) The Leader shall prepare a report to the next Council meeting in the event that the report of the Monitoring Officer or Chief Financial Officer concludes that a decision which has been acted on was a departure. The report will explain to the Council how the decision came to be made and implemented and the steps the Leader has taken or is taking to prevent a recurrence.

- (ii) The Executive may respond in writing to or by attendance at the Overview and scrutiny commission where the Monitoring Officer/Chief Financial Officer conclude that the decision was not a departure.