

**The Constitution
of the
Ashford Borough Council**



ASHFORD
BOROUGH COUNCIL

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Part 1

Summary, Explanation and Glossary

Summary and Explanation

The Council's Constitution

The constitution 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, while others were chosen by the Council.

The Constitution is divided into 16 Articles which set out the basic rules governing the Council's business. More detailed procedures and Codes of Practice are provided in separate rules and protocols at the end of the document.

Defined terms are included in the Glossary in Part 1. They are shown in bold **like this**.

What's in the Constitution?

Article 1 sets out the purpose of the Constitution. Articles 2 – 16 explain the rights of citizens and how the key parts of the Council operate. These are:

- Members of the Council (Article 2)
- Citizens and the Council (Article 3).
- The Full Council (Article 4)
- Chairing the Council (Article 5).
- Overview and Scrutiny Committee (Article 6).
- The Cabinet (Executive) (Article 7)
- Regulatory and other Committees (Article 8)
- The Standards Committee (Article 9)
- Area Committees and Forums (Article 10).
- Joint Arrangements (Article 11).
- Officers (Article 12).
- Decision Making (Article 13).
- Finance, Contracts and Legal Matters (Article 14).
- Review and Revision of the Constitution (Article 15).

- Suspension, Interpretation and Publication of the Constitution (Article 16).

How the Council Operates

The Council is composed of 47 Councillors elected every four years. Councillors are democratically accountable to residents of their ward. The overriding duty of Councillors is to the whole community, but they have a special duty to the residents of their ward including those who did not vote for them.

Councillors have to agree to follow a Code of Conduct to ensure high standards in the way they undertake their duties. The Standards Committee trains and advises them on the Code of Conduct.

How the Council makes decisions

All Councillors meet together a number of times each year as the Full Council. Meetings of the Council are normally open to the public. The Full Council is responsible for setting the Budget and Policy Framework^a. The Budget and Policy Framework sets out the Council's key policies and agreed budget for each year. All decisions must be taken in accordance with these agreed documents. Only Full Council can change the Budget and Policy Framework.

At these meetings the Council will:-

- Elect the Chairman of the Council and the Vice Chairman of the Council who will have the titles of (ceremonial) Mayor and Deputy Mayor respectively. These persons may not be members of the Executive.
- Elect the Chairmen of the Council's Overview and Scrutiny Committee, Regulatory Committees, Statutory Committees and Ordinary Committees of the Council

The Full Council also appoints a number of **Committees** to deal with regulatory functions such as Planning and Licensing. All decisions at meetings of the Full Council are determined by a simple majority unless otherwise provided for by statute.

The Council has adopted a leader and cabinet "executive" form of governance pursuant to s.9E Local Government Act 2000, as inserted by the Localism Act 2011. This means that the Full Council appoints a **Leader** of the Council. The person elected as the Leader of the Council is the senior executive member and has responsibility for carrying out and/or organising the carrying out of the **executive functions** of the Council.

The Leader then appoints up to 9 other Members who, together with the Leader, form the **Cabinet**. Members that are not part of the Cabinet are largely responsible for the scrutiny of **executive decisions**.

^a The Budget and Policy Framework is defined in Article 4.01

Decision Making and the Executive

The 'Executive' is the collective term for the Leader of the Council, the Cabinet, individual Cabinet Members, and **Committees** of the Cabinet. The Executive is the part of the Council that is responsible for most day-to-day decisions. The Executive is responsible for taking **executive decisions** such as policy matters including recommending the Budget and Policy Framework to the Full Council and implementing the Council's **Budget and Policy Framework** once adopted.

The **Cabinet** is made up of the **Leader** and up to 9 additional Councillors, all of whom are appointed by the Leader. . Under the arrangements approved by the Leader, the Cabinet will ordinarily carry out all of the **executive functions** unless the Leader decides to discharge them personally or allocate them to an individual **Cabinet Member**, a Committee of the Cabinet, Officers, an Area Committee or under **executive Joint Arrangements**. The Leader may make such a determination, and give written notice of the same, at any time in accordance with the Executive Procedure Rules at **Part 4**.

Each Member of the Cabinet is responsible for a particular area of the Executive's activities (called "portfolios"). Cabinet Members are also sometimes called portfolio holders. Details of how the Cabinet operates and the current Cabinet portfolios can be accessed online.

The **Executive** has to make decisions which are in line with the Council's **Budget and Policy Framework**. If it wishes to make a decision which is outside the Budget and Policy Framework, this must be referred to the Full Council to decide. This is subject to the urgency provisions contained in the Procedure Rules in **Part 4** of the Constitution.

When **key decisions** are to be discussed or made, special notice procedures must be followed. Usually 28 days' public notice is required although there are special rules where this is not possible. These procedures are set out in the Access to Information Procedure Rules in **Part 4**.

It is the duty of the **Executive** to work constructively and openly with all other Members of the Council and Officers, and to comply with the Executive Procedure Rules and Overview and Scrutiny Procedure Rules in **Part 4**.

Where the **Cabinet** intends to discuss any matter in private, a notice will usually be published 28 days before the meeting and a further notice will be published when the agenda for the meeting becomes available, although there are special rules where this is not possible.

Some decisions, as a matter of law, are not **executive decisions**. These decisions include Planning, Licensing and Personnel matters. The Council has standing regulatory and other **Committees** to deal with these matters.

The Overview and Scrutiny Committee

To achieve enhanced accountability and transparency of the decision making process, effective Overview and Scrutiny is essential. The Council has therefore constituted an Overview and Scrutiny Committee which monitors and may 'call-in' decisions of the **Executive** or **key decisions** made by Officers, by an Area Committee or under **executive Joint Arrangements**, which have been made but not yet implemented. This enables the Overview and Scrutiny Committee to consider whether the decision is appropriate and may recommend that the decision taker reconsider the decision or ask the Council to consider it before referring it back to the decision taker. In examining these decisions Overview and Scrutiny Committee can hold the decision takers to account or review and recommend policy. In this regard they may invite members of the public, other Councillors who are not on the Committee undertaking the review and Council Officers to give evidence. This allows citizens to have a greater say in Council matters by holding public inquiries into matters of local concern. These lead to reports and recommendations which advise the Executive and the Council as a whole on its policies, budget and service delivery.

The Overview and Scrutiny process is therefore about Councillors working together with local people, service partners and community groups to improve policies and services.

Task Groups

Task Groups can be set up by the Council, **Executive** and the Overview and Scrutiny Committee. Task Groups will be established for a specific purpose and then will be disbanded once the task has been completed.

Area Committees and Forums

In order to give local citizens within the Urban largely unparished area of the Borough a greater say in Council affairs, the Council will, where possible and appropriate, establish urban forums. These will be built on current community activity galvanising existing local enthusiasm and Leadership. The Forums will initially be consultative and assist in the development of the Community Strategy in so far as it relates to those separate areas. They will also make recommendations and comment on any other issues which affect them. The Council see the role of local Members as pivotal in leading upon the establishment of forums. Officers will lead, advise and support their efforts as appropriate. In time it is thought that some community forums might seek Parish Council status. This is seen as a natural and positive progression which the Council is prepared for.

The Council's Staff

The Council employs Officers to give advice, implement decisions and manage the day-to-day planning and service delivery of a wide range of functions. Some Officers have a specific duty to ensure that the Council acts within the law and uses its resources wisely. A Protocol governs the relationship between Officers and Councillors.

Citizens' Rights

Citizens have a number of rights in their dealings with the Council. These are set out in more detail in Article 3. Some of these are legal rights, whilst others depend on the Council's own processes. The local Citizens' Advice Bureau can advise on individuals' legal rights.

Where members of the public use specific council services, for example as a council tenant, they have additional rights. These are not covered in this Constitution.

Citizens have the right to:

- vote at local elections if they are included upon the current Electoral Register;
- contact their local Councillor about any matters of concern to them;
- obtain a copy of the Constitution;
- attend decision-making meetings of the Council, the **Cabinet** and **Committees** except where, for example, exempt or confidential matters are being discussed;
- petition to request a referendum on a Mayoral form of Executive;
- participate in Council Meetings and in **Cabinet** and all other **Committee** meetings by the presentation of petitions, the asking of questions and the making of general comments, provided such action is in accordance with the Scheme of Public Participation. A copy of the Scheme is set out in Appendix 2 to the Access to Information Procedure Rules as contained in Part 4 of this Constitution.
- contribute to investigations and the development of Council Services by the Overview and Scrutiny Committee;
- find out, from the Schedule of Key Decisions, what **key decisions** are to be considered by the **Executive**, Officers, by an Area Committee or under **executive Joint Arrangements** and when;
- see reports and background papers, and any record of decisions made by the Council, its **Committees**, the **Executive** and **key decisions** taken by Officers unless it is considered that exempt or confidential information may be disclosed;
- complain to the Council about the provision of any of its services; a copy of the Council's Complaints Procedure can be obtained from the Reception Desk at the Civic Centre, or the Tenterden Gateway, or on the Council's website;
- complain to the Local Government Ombudsman, if they think the Council has not followed its procedures properly. They should only do this, however, after using the Council's own complaints procedure;

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- complain to the Council's Monitoring Officer if they have evidence which they think shows that a Councillor has not followed the Council's Code of Conduct; and
- inspect the Council's accounts and make their views known to the external auditor.

The Council welcomes participation by its citizens in its work. For further information on your rights as a citizen, see Article 3 of this Constitution. A copy of your rights to attend decision-making meetings of the Council, the **Cabinet** and **Committees** and to inspect and copy documents is contained in the Access to Information Procedure Rules and Appendix 1 in Part 4 of this Constitution.

Glossary

Budget	<p>All the financial resources allocated to different services and projects.</p> <p>With regards to the Council's budget, that means 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 and setting virement limits, as a whole.</p>
Budget and Policy Framework	<p>The Full Council is responsible for setting the Budget and Policy Framework. The Budget and Policy Framework sets out the Council's key policies and agreed budget for each year, as further described in Article 4. All decisions must be taken in accordance with these agreed documents. Only Full Council can change the Budget and Policy Framework.</p>
Cabinet	<p>The Executive committee comprising the Leader of the Council and up to 9 individual Cabinet members selected by the Leader.</p>
Cabinet Member	<p>A member of the Cabinet, with specific responsibilities (a 'portfolio') delegated by the Leader of the Council. Also known as 'portfolio holders' and Executive members.</p>
Call-In	<p>A mechanism which allows the Overview and Scrutiny Committee to examine and challenge decisions of the Executive, or key decisions made by Officers, by an Area Committee or under executive Joint Arrangements, which have been made but not yet implemented.</p>
Committee(s)	<p>A decision-making group of Members established by:</p> <ul style="list-style-type: none">(i) the Leader or the Cabinet and authorised to take executive decisions, or(ii) the Council and authorised to take non-executive decisions, <p>including any sub-committees the Council, the Leader, the Cabinet or the parent Committee has established.</p>

Executive		The collective term for the Leader of the Council, the Cabinet , individual Cabinet Members , and Committees of the Cabinet.
Executive (Functions/ Decisions)		These make up the majority of the Council's functions, which are the primary responsibility of the Leader of the Council. Functions that are not stated in the Local Authorities (Functions and Responsibilities) Regulations 2000 or in other legislation to be non-executive functions are, by default, executive functions . Under the arrangements approved by the Leader, the Cabinet will ordinarily carry out all of the executive functions unless the Leader decides to discharge them personally or allocate them to an individual Cabinet Member , a Committee of the Cabinet, Officers, an Area Committee or under executive Joint Arrangements . The Leader may make such a determination, and give written notice of the same, at any time in accordance with the Executive Procedure Rules at Part 4.
Executive Arrangements	Joint	The Leader may establish joint arrangements with one or more local authority Executives for executive functions . These Joint arrangements will normally take one of two forms: the appointment of a joint committee of two or more authorities, or the delegation of functions by one authority to another.
Joint Committee		A joint committee of two or more authorities appointed by the Leader for executive functions , or Full Council for non-executive functions .
Key Decision		An executive decision (that is, taken by the Leader , the Cabinet , individual Cabinet Members , any Committees of the Cabinet, or delegated to an Officer, Area Committee or under executive Joint Arrangements) 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, and/or is likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the Council. For these purposes, savings and expenditure are "significant" if they are equal to or greater than: <ul style="list-style-type: none">(i) £100,001 for all Revenue Services;(ii) £100,000 or 10% of net project costs, whichever is lower, for Capital Schemes; and

- (iii) £100,000 for decisions relating to redundancy and other termination payments (excluding pension costs).

For clarification, no treasury management decision shall constitute a key decision.

Local Choice Functions/Decisions) These are functions specified in regulation 3 and Schedule 2 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, issued under the Local Government Act 2000. “Local Choice” functions are those where the Council is free to decide whether they should be treated as **executive functions** or **non-executive functions**.

Non-Executive (Functions/Decisions) These are functions specified in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, issued under the Local Government Act 2000, and include functions such as those relating to Officers, Planning and Licensing. Non-executive functions may be delegated to Committees, Sub-Committees or Officers under Section 101 of the Local Government Act 1972 (“the 1972 Act”). Unless specified as a non-executive function, a function is presumed to be an **executive function**.

Non- Executive Joint Arrangements The Full Council may establish joint arrangements with one or more local authorities for **non-executive functions**. These Joint arrangements will normally take one of two forms: the appointment of a joint committee of two or more authorities, or the delegation of functions by one authority to another. If a joint committee is to discharge **non-executive functions**, it must be appointed by Full Council and appointments must reflect the political balance on the Council as a whole.