

## THE LEGAL FRAMEWORK GOVERNING BUDGET DECISIONS

1. The Council is required to set a Council Tax for 2005/06 before 11<sup>th</sup> March 2007. It may not be set before all precepts have been issued or before 1<sup>st</sup> March 2006, whichever is the earlier. This decision is reserved to Council and cannot be taken by the Cabinet or delegated to officers, although the Cabinet has to recommend a budget to the Council. Before setting the level of the tax, the Council must have agreed a balanced budget, differentiated by services, which is sufficient to meet estimated revenue expenditure, levies, contingencies, any deficit estimated to be brought forward from previous years, and any amounts required to be transferred between funds. The tax itself must be sufficient to cover the difference between the agreed budget less government grants credited to the consolidated revenue account, and any other expenditure which must be met from the Collection Fund, less any surplus (or plus any deficit) brought forward from previous years.
2. In addition, following the implementation of the Local Government Act 2003, the Council's Chief Financial Officer (under s151 Local Government Act 1972) is required to report to the Council on the robustness of the estimates made for the purposes of the calculations, and the adequacy of the proposed financial reserves. The Council must have regard to the report when making decisions about the calculations in connection with which it is made. The Chief Financial Officer is also obliged to report to the Council if in relation to the previous financial year it appears that a controlled reserve is or is likely to be inadequate. A controlled reserve is one where the Secretary of State has, by regulation, defined the appropriate minimum level of reserve. The s151 officer must report the reasons for that situation, and the action, if any, which he considers it would be appropriate to take to prevent such a situation arising in relation to the corresponding reserve for the financial year under consideration. No Regulations defining controlled reserves have been made.
3. In reaching decisions on these matters, Members are bound by the general principles of administrative law. Lawful discretions must not be abused or fettered and all relevant considerations must be taken into account. No irrelevant considerations may be taken into account, and any decision made must be one which only a reasonable authority, properly directing itself, could have reached. Members must also balance the interests of service users against those who contribute to the Council's finances. The resources available to the Council must be deployed to their best advantage. Members must also act prudently.
4. Among the relevant considerations which Members must take into account in reaching their decisions are the views of business ratepayers and the advice of officers. The duty to consult representatives of non-domestic ratepayers on the Council's expenditure plans is contained in Section 65 of the Local Government Finance Act 1992.
5. In considering the advice of officers, and the weight to be attached to that advice, Members should have regard to the personal duties placed upon the Director of Finance as Chief Financial Officer. The Council may take decisions which are at variance with his advice, providing there are reasonable grounds to do so. However, Members may expose themselves to risk if they disregard clearly expressed advice, for example as to the level of provision required for contingencies, bad debts and future liabilities.

6. The Director of Finance is required by Section 151 of the Local Government Act 1972 and by the Accounts and Audit Regulations 2003 to ensure that the Council's budgeting, financial management, and accounting practices meet relevant statutory and professional requirements. He is in addition subject to the requirements set out in paragraph 2 above. His advice on those requirements is set out in paragraph 5.1 of the report.
7. Members must also have regard to, and be aware of, the wider duties placed upon the Council by various statutes governing the conduct of its financial affairs. These include the distinction between revenue and capital expenditure, specified in the Local Government and Housing Act 1989. The law in relation to the Council's borrowing has been changed by the Local Government Act 2003. The previous regime of capital controls was abolished and the Council is now required to set prudential indicators in line with capital investment plans that are prudent, affordable and sustainable. The prudential indicators include the borrowing limits and Treasury Management Strategy that were formerly set by the Council as part of the budget process. The implications of this are explained more fully in the body of the report.
8. In setting the Council Tax for the next financial year and in agreeing the Council's budgetary requirements, the Council also needs to take into account the fact that the Government still has power to cap local authority budgets under the Local Government Act 1999. The Government may either set a maximum amount for the budget in the forthcoming year (2007/08) or put an authority on notice to set a maximum budget in the next financial year (2008/09). If the Government proposes to cap the authority, the authority will be given a short period to put its case. If the cap is then confirmed in the current year, this could require the authority to revisit its budget decisions and would be likely to require rebilling of Council Tax.
9. Section 106 of the Local Government Finance Act 1992 makes it a criminal offence for any Member with arrears of council tax which have been outstanding for two months or more to attend any meeting at which a decision affecting the budget is to be made, unless the Member concerned declares at the outset of the meeting that he or she is in arrears and will not be voting on the decision for that reason. The Member concerned must not vote but may speak. If a Cabinet Member has arrears outstanding for two months or more, they are prevented from taking any part in such a decision. The application of Section 106 of the 1992 Act is very wide and Members should be aware that the responsibility for ensuring that they act within the law at all times rests solely with the individual Member concerned.