

Committee: Council

Agenda Item

Date: 10 October 2017

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**Title: Revision to the Constitution: Definition of
“key decision”**

Author: Interim Head of Legal Services

Item for decision:
yes

Summary

1. This report recommends a change to the Council’s constitution to provide a clearer definition of a “key decision”. If a proposed decision is a “key decision”, the Council has a legal obligation to give (in most cases) 28 days’ notice that the decision is to be made. Also, a key decision taken by an officer is subject to “call-in” by the Scrutiny Committee.
2. The report was considered by the Governance, Audit and Performance Committee on 27 July 2017. The Committee considered a substantially similar report and resolved to recommend to Council that the proposed definition of ‘key decision’ is approved as set out in the appendix to this report.

Recommendations

3. That the Council amends the Constitution by replacing the current definition of a key decision with the proposed definition set out in the Appendix to this report.

Financial Implications

4. None.

Background Papers

5. The following papers were referred to by the author in the preparation of this report and are available for inspection from the author of the report.

“New council constitutions: guidance to English Authorities.” Office of the Deputy Prime Minister, 26 October 2000.

Impact

- 6.

Communication/Consultation	Clear rules on the nature of key decisions will help to ensure that they are publicised and allow members of the public to ask questions and make representations.
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Community Safety	None.
Equalities	None.
Health and Safety	None.
Human Rights/Legal Implications	Clear rules on the nature of key decisions will help to ensure that the Council complies with legal requirements for publicity.
Sustainability	None.
Ward-specific impacts	None.
Workforce/Workplace	Clear rules on the nature of key decisions will help officers to identify them and take appropriate steps to publicise them.

Situation

Key decisions

7. Key decisions are important decisions to be made either by the Cabinet, or by Cabinet members or officers when acting under delegated authority from the Cabinet.
8. Regulations made under the Local Government Act 2000 oblige local authorities to publish advance notice of “key decisions” they are planning to take. At least 28 days’ notice needs to be given of intention to make a key decision and the regulations specify the content of the notice. Notice is published on the Council’s website.
9. The regulations¹ define a key decision as follows:
 - (1) *In these Regulations a “key decision” means an executive decision, which is likely—*
 - (a) *to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or*
 - (b) *to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.*
 - (2) *In determining the meaning of “significant” for the purposes of paragraph (1) the local authority must have regard to any guidance for the time being*

¹ Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089

issued by the Secretary of State in accordance with section 9Q of the 2000 Act (guidance).

10. Guidance published in 2006 (“New council constitutions: guidance to English Authorities”) addresses the issue. It states:

7.16 Any decision in relation to an executive function which results in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates, is a key decision.

*7.17 It will be for the potential decision-maker to decide, in any one case, whether a decision to be taken is likely to involve significant expenditure. In order to assist potential decision-makers within a local authority reach consistent and demonstrative objective judgements and to ensure the public are clear about what is regarded as significant locally, **the local authority should agree as a full council limits above which items are significant. The agreed limits should be published.***

7.18 In setting such thresholds, a local authority will need to bear in mind the underlying principles of accountable decision-making that there should be a presumption towards openness so that local people have knowledge sufficiently in advance of all those decisions which will be of genuine concern to local communities. In particular, local authorities will need to ensure that there is a consistency of openness between neighbouring local authorities at the same tier. Thus, whilst there may be a higher threshold set for certain matters in a large metropolitan local authority than in a small shire district operating executive arrangements, there should not be a wide discrepancy of approach, for example, between similar districts within a county or between neighbouring metropolitan boroughs.

11. The Council’s Constitution follows the statutory definition without setting limits above which expenditure will be treated as “significant. This is not in accordance with usual practice and the advice referred to in paragraph 10. Limits for other councils in Essex are as follows:

Council	Key decision definition: financial threshold of “significance”.
Basildon	Committee system. No longer has a definition for key decisions.
Braintree	£50,000 for revenue expenditure and £100,000 for capital expenditure.
Brentwood	£100,000 for goods and services and £500,000 for works.
Castle Point	A threshold for savings and expenditure of £100,000;
Chelmsford	A threshold for expenditure and savings of £200,000 or a decision which would result in an

	increase or decrease of a least 20% in the relevant expenditure or income budget for a particular service.
Colchester	A threshold for savings and expenditure of £500,000;
Epping Forest	A threshold for expenditure and savings of £250,000 which are currently within budget and policy; or £100,000 or above which are NOT currently within budget and policy;
Harlow	A threshold for savings and expenditure of £50,000
Maldon	Committee system. No definition for key decisions.
Rochford	<p>A threshold for savings and expenditure of £50,000, excluding:</p> <p>Decisions relating to borrowing and investment within the Council's treasury management strategy;</p> <p>Decisions relating to the engagement and payment of staff, unless the Chief Executive determines otherwise;</p> <p>Decisions relating to the sale and purchase of land or property below £250,000;</p> <p>Decisions about the acquisition of and payment for vehicles, plant, machinery, goods, supplies and services where these can be dealt with within budget and in accordance with existing Council policy, Contract Procedure Rules and Financial Regulations, and where the cost does not exceed £250,000;</p> <p>Decisions about capital schemes where these are already contained within the approved capital programme, and can be dealt with in accordance with existing Council policy, contract standing orders and financial regulations, and where the contract does not exceed £250,000.</p>
Tendring	A threshold for savings and expenditure of £100,000 or savings and expenditure which is significant having regard to the local authority's budget for the service or function to which the decision relates.
Essex	A threshold for savings and expenditure of £2m except as otherwise determined under financial regulations

12. It is evident from the table that there is a range of levels of threshold beyond which a decision is treated as being "key". It may be that the lower figures have not been reviewed for some time.

13. In determining whether a decision is “key”, the financial value of the decision is not the only factor. Its impact on Uttlesford residents is also, of course, important.
14. In setting a limit for UDC, it is a matter of balancing transparency with minimising bureaucracy. Taking a midway approach, the definition of a key decision set out in the Appendix is proposed for UDC:

Risk Analysis

15.

Risk	Likelihood	Impact	Mitigating actions
Report writers fail to identify decisions that should be treated as “key” and/or fail to comply with statutory publication requirements.	3	2	The adoption of a clear definition of a “key decision”. Raising awareness with officers of the definition and the publication requirements.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.

Appendix

1. Current definition of a key decision in UDC's Constitution

Key decisions - "key decisions" are decisions of the executive which are likely to result in expenditure or savings which are significant having regard to the budget for the service or function to which the decision relates or are significant in terms of the effects on communities living or working in an area comprising two or more wards in the district.

2. Proposed definition of a key decision to replace the current definition.

Key decisions.

A "key decision" means a decision by or on behalf of the Leader or Cabinet (including decisions by officers acting under delegated powers) which meets one or more of the following conditions:

1. The decision is likely to result in the Council incurring expenditure or making savings in excess of £100,000, subject to the following:
 - Decisions on the acquisition or disposal of land or of an interest in land will be key decisions if their value exceeds £500,000.
 - The following are not key decisions:
 - Loans or borrowing decisions made in accordance with the Treasury Management Policy.
 - Decisions relating to the engagement of staff unless falling within paragraph 4.
 - Contract awards or renewals for vehicles, plant, machinery, goods, supplies and services where budget provision has been made and the award or renewal is within budget.
 - Contract awards where the decision to let the contract has already been treated as a key decision.
2. The decision is likely to be significant in terms of its effects on communities living or working in Uttlesford.
3. The decision relates to the adoption or revision of plans and policies which would have a significant impact on the way in which the Council carries out its statutory functions.
4. The decision relates to consideration by the Cabinet of proposals which would have a significant impact on the provision of services to the public or on the operational management of the Council.

In considering whether a decision is likely to be significant, a decision-maker will need to consider the strategic nature of the decision and whether the outcome will have an impact, for better or worse on the amenity of the community or quality of service provided by the Council to a significant number of people living or working in the locality affected.