

MEETING:	COUNCIL
DATE:	18 NOVEMBER 2011
TITLE OF REPORT:	KEY DECISIONS AND THE FORWARD PLAN
REPORT BY:	ASSISTANT DIRECTOR LAW, GOVERNANCE AND RESILIENCE

CLASSIFICATION: Open

Wards Affected

County-wide

Purpose

To review which decisions are to be regarded as key decisions and included in the Forward Plan.

Recommendation

THAT the definition of a “Key Decision” in Part 8 of the Constitution be amended as described in the report and that the Monitoring Officer be authorised to make any further consequential amendments required

Key Points Summary

- The Forward Plan sets out the Executive’s programme of work for a coming period of four months and is produced monthly. It contains those decisions which fall within the definition of a “Key Decision”. The plan must be publicly available and is intended to engender a dialogue with the public and other stakeholders, for whom it is important that the definition of “Key Decision” is readily understood. This report reviews the existing definition of a key decision in the Constitution and suggests changes to achieve that purpose.

Alternative Options

1. Members may make whatever alternative solutions they believe might better achieve the purpose of the relevant legislation and guidance. Particular regard should be had to the defined levels of significant expenditure and saving.

Reasons for Recommendations

2. The objective is to produce a definition which enables potential decisions taken to reach consistent and objective judgements on what should be regarded as a key decision for the Forward Plan and enables the public to be clear about what is significant locally

Introduction and Background

3. Every local authority is required to produce a Forward Plan comprising its Key Decisions to be taken in a coming four month period. The plan is produced monthly on a rolling basis. It should have regard to the cycle of meetings of the Overview and Scrutiny Committee and its task and finish groups.
4. Statutory guidance produced by the former DETR upon the introduction of executive arrangements under the Local Government Act 2000 deals with Key Decisions and the Forward Plan (the paragraphs numbered 7.10 et seq below refer to paragraphs in the guidance.
5. 7.10 of the guidance stated “With a move to a new constitution, there should be greater dialogue between all councillors, the public and other stakeholders than has often been the case in the past. Wide participation is essential to an effective local authority. Local authorities will need to ensure that people know what decisions are planned and how they can influence these decisions. In addition, the executive will need to ensure that any decisions it takes are consistent with the agreed policy framework and take into account the needs and aspirations of the local community.”
6. 7.11 stated “ To underpin these principles of greater accountability and transparency, regulation 13 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 require the executive to set out its programme of work in the coming four months, as far as it is known, in a forward plan.”
7. 7.12 stated “The Regulations require the forward plan to be made publicly available and in particular a local authority executive should ensure that it is made available to the relevant overview and scrutiny committee at least two weeks in advance of the commencement of the period covered.”
8. The contents of the Forward Plan are prescribed by the regulation 14 of the Local Authority (Executive Arrangements) (Access to Information) (England) Regulations as:
 - a short description of matters under consideration and when key decisions are expected to be taken;
 - who is responsible for taking the decisions and how they can be contacted;
 - what relevant reports and background papers are available; and
 - how and when the decision maker intends to involve local stakeholders in the decision making process
9. The Councils Forward Plan complies with these requirements and decision makers are urged to pay particular regard to the requirement for consultation and to bring forward items for the Forward Plan at the earliest date to allow sufficient time for this, in accordance with the Government’s Code of Practice on Consultations.
10. Concerns have been raised about whether the Council’s arrangements appropriately reflect the guidance and legislation for defining a key decision. A key decision may comprise the following elements.
11. 7.17 states “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. A local authority is able to set different thresholds for different services or functions, bearing in mind the overall budget for those services and functions and the likely impact on communities of each service or function. A decision involving expenditure or saving above the limit for the service or function concerned would be a key decision.”

12. 7.20 states “ The second test for a key decision focuses on those decisions which are not likely to involve significant expenditure or savings but which nevertheless are likely to be significant in terms of their effects on communities. The Regulations require that a decision which is likely to have a significant impact on two or more wards or electoral divisions is a key decision. Nevertheless, local authorities should, unless it is impracticable to do so, specify that they will treat as if they were key any decisions which are likely to have a significant impact on communities in one ward or electoral division.”
13. 7.21 states “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 authority to a significant number of people living or working in the locality affected. Regard should again be given to the underlying principles of a accountable decision making in paragraph 7.3 of this guidance to ensure that there is a presumption towards openness.”
14. 7.22 provides that proposals to Council for changing the policy framework being developed by Cabinet should also be treated as if they were Key Decisions and included in the Forward Plan (although they would not be subject to call in as the final decision maker is Council not Cabinet).
15. The provisions of our constitution defining a key decision are shown in Appendix 1. A number of observations can be made:
 - It is difficult to reach clear and consistent and demonstrably objective judgements or for the public to really know what is significant locally
 - Our Constitution generally regards significant saving or expenditure as £500,000 but then goes on to allow lesser sums to be regarded as significant in certain circumstances, without saying who decides this. Whether the sum of £500,000 is appropriate for a unitary authority in the context of our budgets needs to be kept under review.
 - Decisions as to whether a decision is key can be made by the Leader of the Council, when he may not be the decision maker. The decision maker could be a single Cabinet Member or an officer acting under delegated powers.
 - Defining significance by reference to political controversy is a major departure from legalisation and the guidance and is a difficult criterion for “demonstrative objective judgements”

Key Considerations

16. Overall, the definition of a key decision in our constitution is opaque and deviates from the statutory guidance. It is better that the decision maker decides whether theirs is a key decision, that they do this as early in the process as possible and that the rationale is easy for the public to understand. The following definition is suggested:-

- ***Any decision in relation to an executive function which results 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 concerned. A threshold of £500,000 is regarded as significant.***

Any other decision which in the opinion of the Monitoring Officer is likely to be significant in terms of its effect on

- ***Two or more wards or electoral divisions***
- ***One ward (unless the number of those affected is very small or it is impractical to treat this as a Key decision)***

and having regard to

- ***the strategic nature of the decision***
- ***whether the outcome will have an impact, for a better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality affected.***

Any substantive decision made by the Cabinet to bring forward proposals to Council to amend the Policy Framework (not being subject to call-in) .

Any substantive decision made by the Cabinet to amend the Policy Framework where Council has granted the Cabinet power to do so (being subject to call-in)

- N.B. 1. The reference to “substantive decision” indicates that matters should not keep appearing in the Forward Plan just because they compromise a series of decisions***
- 2. The majority of key decisions are predictable and should therefore appear early in the Forward Plan covering a four month period.***
- 3. The decision maker in each case should consider, with the relevant officers whether a decision is a Key decision and seek guidance from the Monitoring Officer.***

17. If approved, this definition will appear in the Glossary of Terms found at Part 8 of the Constitution and any consequential amendments in other parts of the Constitution could be made by the Monitoring Officer.

Community Impact

18. The significance of community impact in deciding whether a decision is a Key Decision would be clarified by the proposed change and assist in the objective of encouraging wider participation in public life. This includes the Council's duties towards groups sharing a protected characteristic under the Equalities Act.

Financial Implications

19. There is no cost in implementing the proposed change.

Legal Implications

20. These proposals comply with statutory guidance issued by the former DETR and regulation 13 of the Local Authorities (Executive Arrangements) (Access to information) (England) Regulations 2000

Risk Management

21. If the definition of a key decision is not appropriately drawn then key decisions may be omitted from the Forward Plan and proper scrutiny and consultation may not be undertaken. This could result in reputational damage poor governance and in some cases judicial challenge. These proposals aim to avoid these adverse outcomes.

Consultees

22. This is not in itself a key decision and Council is being invited to put in place measures which will facilitate wide involvement by public and stakeholders.

Appendices

23. Appendix 1 - Part 8 Glossary of Terms Used in the Constitution

Background Papers

24. None identified.