

CHESHIRE EAST COUNCIL

Constitution Committee

Date of Meeting: 20th September 2012
Report of: Borough Solicitor
Subject/Title: Key Decisions – Definition and Thresholds

1.0 Report Summary

- 1.1 This report sets out the Council's current definition of a key decision and compares the definition adopted by a number of comparator authorities. It is recommended that Council should be requested to adopt a new definition as set out at in Section 11.6 having regard to the definition used in the comparator authorities.

2.0 Recommendation

- 2.1 That the Committee

(1) consider the Key Decision definitions adopted by the identified comparator authorities; and

(2) recommend the definition set out in paragraph 11.6 to Council for approval.

3.0 Reasons for Recommendations

- 3.1 The Council's current definition of a key decision is based on the statutory definition and as a result does not set out any financial limits to be used as a guideline figure to assess what is a key decision in budgetary terms. A number of Councils have adopted appropriate limits or thresholds and members have requested that comparator information is made available to enable the Council's current definition to be reviewed.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 All

6.0 Policy Implications

- 6.1 Key decisions are significant decisions made by the Cabinet and as such will affect the vast majority of the Councils major policies. In particular the

Guidance issued under the Local Government Act 2000 in relation to the making of key decisions indicates that decisions made by the Cabinet in the course of the development of proposals to full Council to amend the Policy Framework will fall within the definition of a key decision.

7.0 Financial Implications

- 7.1 There are no direct financial implications associated with the proposed decisions.
- 7.2 The proposed revised definition for a Key Decision is in line with the current Financial Procedure Rules and therefore there are no revisions proposed for any other associated areas of the Constitution.

8.0 Legal Implications

- 8.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 come into force on the 10 September 2012 and replace earlier regulations made under the Local Government Act 2000 for those authorities operating executive arrangements. However the definition of a key decision is largely unchanged from that set out in earlier regulations.

9.0 Risk Management

- 9.1 The Council needs to be clear that all decisions which do fall within the definition of a “ Key Decision “ are properly identified and appear on the Councils Forward Plan otherwise there is the risk of challenge that the decision is ultra vires on the basis that the requisite procedures have not been followed.

10.0 Background and Options

- 10.1 The Constitution states that certain types of decisions made by the Cabinet, individual Cabinet Members, Committees, Sub-Committees of the Cabinet are “Key Decisions”. Except in cases of urgency, these types of decision receive advance publicity in the Forward Plan so that members of the public and Councillors are able to consider the implications of the decision. They may also seek to influence the decision by making contact with the decision-maker. Key Decisions appear on the Council’s Forward Plan, which can be viewed on the Council’s website, or in hard copy form at the Council’s offices.
- 10.2 The Constitution provides that the Forward Plan will contain matters which the Leader has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a Committee of the Cabinet, Officers, Area Committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The Forward Plan must be published at least 14 days before the start of the period covered and made available to the relevant Overview and Scrutiny Committees. It will describe the following

particulars in so far as the information is available or might reasonably be obtained

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;
- (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

10.3 The Constitution also sets out the procedure to be followed where decisions are urgent or it is impracticable for the item to be included in the Forward Plan.

11.0 Key Decisions

11.1 Cheshire East uses the original statutory definition of a Key Decision as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000. An extract from the constitution is set out below

“an executive decision which, is likely –

- (a) to result 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; 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 local authority.”*

11.2 As part of the overall arrangements for the modernisation of Local Government and the introduction of executive arrangements the then Government issued “Local Government Act 2000: Guidance to Local Authorities” setting out detailed advice and examples on how the new decision making structures would be expected to operate. Chapter 7 dealt with “Accountable decision making”. The intention was to make decision making more efficient, transparent and accountable so that the public knew who was

responsible for making decisions, when they would make them, how they could have input and access to information about decisions and could influence the decision making process and that significant decisions should not be a surprise to those they affect.

- 11.3 The definition of a key decision is two fold. The first limb relates to monetary considerations and covers those executive decisions where either expenditure or savings are significant having regard to either the service or the function to which the decision relates. The guidance states that whilst it is for the potential decision maker to decide in any one case whether a decision made is likely to involve significant expenditure, for the purposes of consistency and to ensure the public are clear about what is regarded a significant locally, the authority itself ought to agree as a full Council limits above which items are significant. It would be open to the Council to set different thresholds for different services or functions given the overall budget for the services or function and likely impact upon the local community. The guidance stresses that there ought to be consistency between neighbouring Councils of comparable size.
- 11.4 The second limb of the definition of a key decision relates to its impact and effect upon local communities. Although the statutory definition requires the impact to be on two or more wards the guidance recognises that in some instances there will be very significant impact on one ward (e.g. closure of a school or carrying traffic calming works) and such a decision ought to be treated as if it were a key decision. The strategic nature of the decision being taken is a relevant consideration as well as its negative or positive impact upon the community or of the service provided to a significant number of people living or working in the locality.
- 11.5 The Councils current definition of a key decision does not specify any thresholds in the first limb of the definition. The Guidance indicates that the Council ought to look at specifying limits, both in the interests of consistency and so that the public are clear about which decisions are considered significant in financial terms. Information has been obtained on the definition of a “key decision” adopted by Cheshire East Council’s 15 near statistical neighbours as approved by the Audit Commission namely:
- Bath and North East Somerset
 - Bedford
 - Central Bedfordshire
 - Cheshire West and Chester
 - East Riding of Yorkshire
 - Herefordshire
 - North Somerset
 - Shropshire
 - Solihull
 - South Gloucestershire
 - Stockport
 - Trafford
 - Warrington
 - Wiltshire

- York

The definitions are set out at Appendix A

11.6 Based on a consideration of the various definitions it is recommended that the following Key Decision definition is recommended for approval by full Council:

an executive decision which is likely –

- (a) to result 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; or*
- (b) to be significant in terms of its effects on communities living or working in an area comprising one or more wards or electoral divisions in the area of the local authority.*

For the purpose of the above, savings or expenditure are “significant” if they are equal to or greater than [£].

The background papers relating to this report can be inspected by contacting the report writer:

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