



Date: **20 May 2024**
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CONSTITUTIONAL REVIEW COMMITTEE

28 MAY 2024

A meeting of the Constitutional Review Committee will be held at **7.00 pm on Tuesday, 28 May 2024** in the Council Chamber, Cecil Street, Margate, Kent.

Membership:

Independent Members: Peter Tucker (Chair);

Councillors: Austin, Britcher, Everitt, W Scobie, Scott, Crittenden, D Green, Pugh, Worrow, Currie, Edwards, Fellows and Garner

A G E N D A

Item
No

Subject

4. **SPECIAL URGENCY PROVISIONS** (Pages 3 - 8)
5. **RECORDING OF EXECUTIVE AND NON-EXECUTIVE DECISIONS** (Pages 9 - 16)

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SPECIAL URGENCY IN DECISION MAKING

Constitutional Review Committee	28 May 2024
Report Author	Ingrid Brown, Head of Legal and Democracy and Monitoring Officer
Cabinet Portfolio Holder	Councillor Rob Yates
Classification:	Unrestricted
Key Decision	No
Ward:	No direct impact on wards

Purpose of the Report

This report proposes an amendment to the Council's Constitution in respect of the provisions for decision making where special urgency is required.

Recommendation(s):

It is recommended that Council approve the following amendments to the Constitution:

1. Under Part 3, Delegation Scheme, Part A, Section D amend 2.2 so that it reads as follows:

With the exception of key decisions that are covered by the special urgency provisions set out under Part 3, B, 2 and in Part 4, all key decisions must be agreed by the Cabinet.

2. Under Part 3, Delegations Scheme, Section E, Part B, insert a part 2 to read as follows:

Delegation to the Chief Executive:

- i, to undertake all action related to the role of the Head of Paid Service
- ii, To exercise any power whether specified in this Scheme or otherwise delegated to any other officer with the exception of the Monitoring Officer and unless expressly prohibited by law.
- iii, In a situation they consider to be an emergency, to undertake all action they consider necessary, including:

- (a) Incurring expenditure from working balances and/or reserves,
- (b) to determine whether to take, defend and/or settle any legal proceedings
- (c) to make a final determination whether to acquire land and/or dispose of a building and/or land,

subject to consultation with the Section 151 Officer to the extent that they consider it appropriate and feasible and to notifying any emergency action as soon as

reasonable to the Leader. For the purposes of exercising this power, all restrictions in the Financial Regulations including the contract procedure Rules are deemed waived and any decision may be made regardless of whether it is a Key Decision. In the event of an urgent key decision the procedure rules in Part 4 of this constitution must be followed.

3. Amend paragraph (q) of section 15 (Call-in) of the overview and scrutiny procedure rules in Part 4 of the Constitution to read as follows:

The Chair of the Council must agree both that the decision proposed is reasonable in all of the circumstances and to it being treated as a matter of urgency. In the absence of the Chair, the Vice-Chair's consent shall be required. In the absence of both, the consent of the Chair of the Overview and Scrutiny shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

1. Summary of Reasons

- 1.1 Within the Council's constitution there are procedural provisions for the making of urgent key decisions. However, the scheme of delegation in Part 3 of the constitution currently only provides for cabinet to make key decisions. Urgent key decisions should only be made in the most exceptional of circumstances and where the case for urgency is clear. In such circumstances however it is important that the provisions of the constitution allow for urgent decision making and accordingly these amendments are proposed.
- 1.2 The proposal to amend the procedure rules as indicated at three above is because currently the rules provide that in the absence of the Chair or Vice Chair, the Head of Paid Service who is currently the Chief Executive, should consent that the matter is urgent. Now that it is proposed that the Chief Executive take any urgent decision, they cannot also provide the necessary consent in relation to urgency.

2. Background

- 2.1 This is set out in the summary of reasons above. The Constitution currently only allows for key decision to be made by cabinet. There is a procedure for urgent key decisions to be made by the delegation to the chief executive needs to be agreed.

3. Relevant Issues

- 3.1 As above, the decision being sought seeks to amend the Council's constitution so that there is proper provision for urgent key decisions to be made by the Chief Executive.

4. Alternative Options

- 4.1 The decision may be approved in its current form or an alternative suggested. One alternative would be the Leader to take all Urgent Key decisions. Whilst there are merits to this there are also some disadvantages in that the Leader is not so close to operational decision making as the Chief Executive and it is likely to be more practical

for the Chief Executive to make these decisions, where possible in consultation with the Leader. It would also be possible to include the requirement in the recommendation for formal consultation with the Leader. This is not recommended for practical reasons. Whilst such consultation is desirable there may be occasions when it will not be possible and it is important that urgent decisions can be taken promptly and that there are few formal and procedural barriers to this. The procedure rules require in any event that the Chair of the Council must agree that the decision is an urgent one.

- 4.3 The preferred option is to amend as per the recommendations in this report. The preferred option will ensure not only consistency but will include the greatest level of transparency in respect of decisions that are non-key and are also sensitive in nature or might otherwise have been decided by cabinet.

5. Consultation

- 5.1 There is no formal legal duty to consult in relation to this decision. There has however been discussion and informal consultation with Democratic Services.

6. Corporate Implications

6.1 Finance and Resources

- 6.1.1 There are no financial or resource implications arising from this decision.

6.2 Legal and Constitutional

The Local Government Act 2000 makes provision for the discharge of functions by local authorities with executive arrangement.

The Constitutional procedures around call-in and urgency are set out in part 4 of the constitution. The amendments proposed in this decision report are consistent with the procedures set out in part 4 of the Constitution.

6.3 Council Policies and Priorities

- 6.3.1 The decision sought in this report accords with the Council's priority to work efficiently.

6.4 Risk

- 6.4.1 In the event that the Council fails to record executive non- key decisions, it will not be compliant with regulations and there is a risk that it will be found failing in this regard.

6.5 Climate Change and Biodiversity

This decision will not have any impact on climate change or biodiversity, either positively or negatively.

7. Equality, Equity and Diversity Implications

- 7.1 An equalities screening tool has been completed. There are no particular equalities implications arising from the decision sought in this report.

8. Crime and Disorder Implications and Community impact

- 8.1 There are no crime and disorder implications arising from this report and the decision, if approved, will not have a significant impact on the community.

Subject History

This matter will first be considered by the Constitutional Review Committee and will then go on to be considered by Full Council.

Appendices

There are no appendices

Background Papers

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Report Sign Off:

Legal Ingrid Brown-Head of Legal and Democracy and Monitoring Officer

Finance Chris Blundell (Director of Corporate Services - Section 151)

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RECORDING OF EXECUTIVE AND NON-EXECUTIVE DECISIONS

Constitutional Review Committee	28 May 2024
Report Author	Ingrid Brown, Head of Legal and Democracy and Monitoring Officer
Cabinet Portfolio Holder	Councillor Rob Yates
Classification:	Unrestricted
Key Decision	No
Ward:	No direct impact on wards

Purpose of the Report

This report proposes amendment to the Council's Constitution in respect of the publication of executive and non-executive decisions.

Recommendation(s):

It is recommended that Council approve the following amendments to the Constitution:

1. Under Part 2, Article 13- Decision Making and Types of Decision (13.03):

Replace the existing paragraph (a) with the following:

(a) Decisions of the Council are either executive or non-executive. Executive decisions relate to all of the council's functions that are not Full Council (or Non-Executive) functions. They include those Local Choice functions identified in Part 3 of the Constitution as the responsibility of the Executive. Executive decisions are taken by the Leader, Cabinet, Cabinet committees, Cabinet Members or officers under delegated authority in accordance with, and in order to implement, the Budget and Policy Framework.

The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and subsequent regulations give effect to section 13 of the Local Government Act 2000 by specifying which functions are not to be the responsibility of the Executive; which may (but need not) be the responsibility of the Executive (the "Local Choice functions"); and which are to some extent the responsibility of the Executive. All other functions not so specified are the responsibility of the Executive.

Non-Executive functions are powers and duties that under statute are not the responsibility of the Executive Leader, Cabinet or Cabinet members. The power to exercise Non-Executive functions is either reserved to Full Council or delegated by Full Council to committees or officers. Decisions that are reserved to Full Council and may not be delegated are set out in Article 4.02.

2. Insert a paragraph (d) after paragraph (c) referred to above to read as follows:

Executive decisions that are not key decisions:

- (d) Non-key executive decisions are decisions that are more than merely administrative. They are major operational decisions and are important enough to be open to public scrutiny. These include the following:
 - i. all officer decisions which will result in the Council incurring expenditure, including the loss of income, of between £140 000 and £250 000, with the exception of operational expenditure identified within the agreed Service Plan and Service Budget;
 - ii. a decision which has been specifically delegated to Officers – for example to conclude an agreement or contract within the outline terms agreed by the Cabinet; and/or
 - iii. a decision which is controversial and/or politically sensitive in nature or is, in the opinion of the Director, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the Council
3. Insert the following paragraph (e)
 - (e) All executive non-key decisions as described above, must also be made in accordance with the requirements of the executive decision Procedure Rules set out in Part 4 of this Constitution at paragraphs 21.0- 22.2.

1. Summary of Reasons

- 1.1 The publication of executive decisions is governed by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the regulations). These provide for the publication of a decision record in respect of all executive decisions, both key and non- key decisions. The Council's Constitution currently provides for the publication of a decision record in relation to executive key decisions. The Constitution defines what is meant by an executive key decision however there is no definition of an executive non-key decision. This has the potential to lead to inconsistency in the application of the requirement to publish a decision record. The amendments proposed in this report will provide for greater consistency in the application of the regulations and greater transparency in relation to this type of decision. It also ensures adherence to the regulations referred to.

2. Background

- 2.1 This is set out in the summary of reasons above. The Constitution does not currently provide for the recording of non-key executive decisions.

3. Relevant Issues

- 3.1 As above, the decision being sought seeks to clarify the council's constitution in relation to the recording of non-key executive decisions. This will ensure compliance

with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the regulations).

4. Alternative Options

- 4.1 The decision could be made to adopt an alternative definition of executive non-key decision. This could be simply to set a financial value and to leave out ii and iii in the recommendations above, that is to say, leave out a decisions which has been specifically delegated to officers and a decision which is controversial or politically sensitive.
- 4.2 The decision could be made to set an alternative financial value to the definition of executive non-key decision.
- 4.3 The preferred option is to amend as per the recommendations in this report. The preferred option will ensure not only consistency but will include the greatest level of transparency in respect of decisions that are non-key and are also sensitive in nature or might otherwise have been decided by cabinet.

5. Consultation

- 5.1 There is no formal legal duty to consult in relation to this decision. There has however been discussion and informal consultation with Democratic Services.

6. Corporate Implications

6.1 Finance and Resources

- 6.1.1 There are no financial implications arising from the decision sought in this report.

6.2 Legal and Constitutional

In accordance with the provisions of part 3 of the Council's constitution, amendments to the Council's constitution must be decided by Council, after first having been considered by the Constitutional Review Working Party.

The legal implications are set out in the body of this report. The relevant regulations are the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. These provide for the publication of a decision record in respect of both executive key and non- key decisions. Regulation 12 provides for the recording of executive decisions made at meetings and regulation 13 provides for the recording of executive decisions made by individuals. In relation to each of the aforementioned the regulations provide a written record must be produced as soon as reasonably practicable a written statement must be produced which must include—

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;

(c) details of any alternative options considered and rejected by the officer when making the decision;

(d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and

(e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

The proposals in this report will ensure the Council's compliance with the regulations referred to above.

6.3 Council Policies and Priorities

6.3.1 The decision sought in this report accords with the Council's priority to work efficiently.

6.4 Risk

6.4.1 In the event that the Council fails to record executive non- key decisions, it will not be compliant with regulations and there is a risk that it will be found failing in this regard.

6.5 Climate Change and Biodiversity

This decision will not have any impact on climate change or biodiversity, either positively or negatively.

7. Equality, Equity and Diversity Implications

7.1 An equalities screening tool has been completed. There are no particular equalities implications arising from the decision sought in this report.

8. Crime and Disorder Implications and Community impact

8.1 There are no crime and disorder implications arising from this report and the decision, if approved, will not have a significant impact on the community.

Subject History

This matter will first be considered by the Constitutional Review Committee. The matter will then be considered by Full Council.

Appendices

Appended to this report and labelled Annex 1 is the current version of Article 13 of the Council's constitution for comparison

Background Papers

Agenda Item 5

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Article 13 – Decision Making

13.01 Responsibility for decision making

The Council will issue and keep up to date a record of what part of the Council or individual has responsibility for particular types of decisions or decisions relating to particular areas or functions. This record is set out in Part 3 of this Constitution.

13.02 Principles of decision making

All decisions of the Council will be made in accordance with the following principles:

- (a) the presumption in favour of openness and transparency;
- (b) the need for due consultation;
- (c) the need to take account of relevant professional advice from appropriate staff;
- (d) the need for clarity of aims and desired outcomes;
- (e) the need to identify the range of options considered;
- (f) the need to give reasons and explanation for a decision;
- (g) the need to ensure that all necessary requirements of legality and confidence are observed.

13.03 Types of decision

- (a) Decisions reserved to Full Council. Decisions relating to the functions listed in Article 4.02 will be made by the full Council and not delegated.
- (b) Key decisions.

A “key decision” which must be included in the Forward Plan, is an executive Decision:

1. Which is likely to involve the incurring of expenditure, or the making of one-off savings, by the Council, which are anticipated to be £250,000 or more*. The exceptions to this rule being:
 - a) Where approval has previously been received to incur that expenditure by the Cabinet.**
 - b) For the acquisition, enhancement or disposal of land or property with a value of £1m, a new key decision would be needed even if previous generic permission has been received via another key decision.

2. Which is likely to have an annual expenditure of less than £250,000, but has a total contract value over the lifetime of the contract of over £750,000.

or

3. Where the effect would be on communities living or working in the district, in an area comprising two or more wards. However, decisions that impact on communities living or working in one ward will be treated as “key” if the impact is likely to be very significant. *With regard to property leases the £250k value is defined as the letting or taking of a lease with a cumulative rental value in excess of £250k over the first 5 years of the lease

**Having the budget approved by Council does not mean that an individual has permission to proceed with their project.

- (c) A decision taker may only make a key decision in accordance with the requirements of the Executive Procedure Rules set out in Part 4 of this Constitution.

13.04 Decision making by the full Council

Subject to Article 13.08, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.05 Decision making by the Cabinet

Subject to Article 13.08, the Cabinet will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.06 Decision making by overview and scrutiny committees

Overview and scrutiny committees will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

13.07 Decision making by other committees and sub-committees established by the Council

Subject to Article 13.08, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

13.08 Decision making by Council bodies acting as tribunals

The Council, a councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.