

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

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