

## **Briefing Note for Scrutiny Board (Sustainable Economy and Culture)**

### **Categorisation of Executive Decisions**

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, came into force in September 2012, and provide for local authorities to define a 'Key Decision' in accordance with the significance of the impact of that decision on their budgets and on the communities living or working in the area. The Regulations require that in doing so the local authority should have regard to guidance issued by the Secretary of State in this regard.

In chapter 7 of the Guidance on New Council Constitutions issued in October 2000, and since updated, the Secretary of State provides

- 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. ...
- 7.20 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. For example, a council should regard as key a decision to close a school or carry out roadworks (such as introducing or altering traffic calming measures) in a neighbourhood, notwithstanding the thresholds of financial significance and that there may be an impact in only one ward. Where a decision is only likely to have a significant impact on a very small number of people in one ward or electoral division the decision maker should ensure that those people are nevertheless informed of the forthcoming decision in sufficient time for them to exercise their rights to see the relevant papers and make an input into the decision making process.
- 7.21 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. ...

The definition established by Leeds City Council is set out in Article 13.6 of the Council's Constitution and provides:-

**Key Decision:-** a decision relating to an executive function which is likely

- a. to result in the authority incurring expenditure or making savings (including the receipt or loss of income) over £250,000 pa<sup>1</sup>; or  
to have a significant effect on communities living or working in an area (including one ward), and
- b. which is not a decision which is a direct consequence of implementing a previous Key Decision<sup>2</sup>, or in relation to which a further report will be submitted for approval of the proposal before the Council is committed to proceed<sup>3</sup>; or

which is not the result of varying a previous Key decision in line with recommendations made by a Scrutiny Board following a Call In of that decision.

Key decisions are subject to a number of requirements to enable transparent and accountable Executive decision making. The Regulations require that intention to take a Key Decision is published 28 clear calendar days before that decision is taken: in Leeds this is achieved by inclusion in the List of Forthcoming Key Decisions which is published on the Council's internet site. In addition to this the Executive and Decision Making Procedure Rules require that 5 clear working days prior to an officer taking a Key Decision, that officer should give notice of the report on which that decision will be based: this is achieved by publishing the report and the delegated decision notice on the Council's internet site. When the Key decision is taken, the decision is recorded: as it is already included in the Council's internet site this recording of the decision requires only that the status of the decision is amended to show that it has now been taken. Finally Key Decisions, unless exempted for reasons of urgency, are open to Call In: in Leeds Call In closes at 5 p.m. on the fifth working day after the decision is recorded as taken.

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<sup>1</sup> Except where this expenditure, saving or income will result from:-

- a) a Treasury Management decision in relation to the making, payment or borrowing of a loan; or
- b) a decision to purchase energy under the terms of an energy supply contract which has been awarded following the appropriate procurement process; or
- c) a decision to approve a care plan which the Council has a duty or power to provide as defined by s46 of National Health Service and Community Care Act 1990 and s2 of the Chronically Sick and Disabled Persons Act 1970. Ss17 and 20 Children Act 1989
- d) the settlement of proceedings to which Leeds City Council is a party.

<sup>2</sup> Where a scheme or proposal changes following the original decision to the extent that the additional spend or save, or the additional impact of the decision, reaches the threshold for a Key decision it shall be treated as a new Key decision.

<sup>3</sup> Under the capital programme, a decision to **authorise expenditure** over £250,000 will be a **key** decision, but a decision to **inject a scheme** into the capital programme, or to **award a contract** over the value of £250,000 will not.

In accordance with the Regulations all other decisions would be categorised as Administrative, and are not subject to any formal requirements in relation to notice, recording or scrutiny. However, in Leeds, a third category of Executive Decision has been developed to provide an enhanced level of transparency in relation to matters which do not fulfil the definition of a Key Decision but are none the less considered significant, and which require recording and publication. These decisions are defined as Significant Operational Decisions:-

**Significant Operational Decisions:-** those decisions which are not Key decisions and which;

- a. Do not fall within the definition of Administrative decisions; or
- b. Would have been a Key decision but for footnote 1 to Article 13.6.1a or Article 13.6.1b above; or
- c. Result in the authority incurring expenditure or making savings (including the receipt or loss of income) over £100,000 each year; or
- d. Are, in the opinion of the Director, Chief Officer or Head of Service, of such significance that a published record of the decision would ensure transparency and accountability in relation to decision making within the authority.

Significant Operation Decisions are subject only to the requirement that they should be recorded. In Leeds this is achieved by publishing the Delegated Decision Notice and accompanying report (together with any relevant appendices or background documents) on the Council's internet site. Significant Operational Decisions taken by officers are not open to call in, and can therefore be implemented as soon as they are taken, whether or not they have yet been published.