

PLYMOUTH CITY COUNCIL

Subject: Key Decision Definition – Amendment to Constitution
Committee: Audit and Governance Committee
Date: 30 July 2018
Cabinet Member: Cllr Peter Smith, Deputy Leader
CMT Member: Giles Perritt, Assistant Chief Executive
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Ref:
Key Decision: No
Part: I

Purpose of the report:

The purpose of this report is to propose changes to the definition of a key decision. Approval will provide additional responsibility and accountability to individual cabinet members for decisions in their portfolio area, improve the efficiency of the decision making process, and maintain open and transparent decision making which remains subject to scrutiny and call in.

The report also outlines the role and process of the Forward Plan and the Call-in process for executive decisions.

Corporate Plan:

The Executive Decision making process is a central element of the Democratic process of the Council which supports the Democratic values of the Corporate Plan.

Implications for Medium Term Financial Plan and Resource Implications: Including finance, human, IT and land:

As this is a change to internal business process there are no anticipated financial implications.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety and Risk Management:

None

Equality and Diversity:

Has an Equality Impact Assessment been undertaken? No

Recommendations and Reasons for recommended action:

Agree to -

1. recommend to Council that the new definition of a Key Decision as outlined at appendix one is adopted;

Reason: Approval will provide additional responsibility and accountability to individual cabinet members for decisions in their portfolio area, improving the efficiency of the decision making process.

2. note the Forward Plan and Call-in processes;

Reason: Established Forward Plan and Call-in processes are consistent with the Law and processes conducted by other local authorities.

3. subject to (1) above, delegate to the Monitoring Officer any required consequential amendments to the constitution for Council approval in September.

Reason: To ensure consistency across the constitution.

Alternative options considered and rejected:

Not accepting the change would not lead to efficiencies in the decision making process.

Published work / information:

None

Background papers:

Title	Part I	Part II	Exemption Paragraph Number							
			1	2	3	4	5	6	7	

Sign off:

Fin	akhI	Leg	It/30	Mon	It/30	HR		Assets		IT		Strat	
	8.19.		878/	Off	878/							Proc	
	49		1807		1807								
Originating SMT Member – Giles Perritt													
Has the Cabinet Member(s) agreed the content of the report? Yes													

1.0 Key Decision Definition and Thresholds

- 1.1 Key decisions are significant decisions to be made either by the Cabinet, or by Cabinet members or officers when acting under delegated authority from the Cabinet.
- 1.2 In order to assist potential decision-makers within a local authority to reach consistent and objective judgements and to ensure the public are clear about what is regarded as significant locally, the local authority should agree and publish limits above which items are deemed significant.
- 1.3 The last review of the key decision threshold was in 2014 when the threshold for savings treated as key decisions was raised. Since that time costs have increased, there has been sustained growth in construction price and consumer prices indices and the national living wage has driven the cost of service delivery. In addition to rising costs, Cabinet members and officers continue to look for significant savings that are required across the organisation in order to deal with decreasing central government funding.
- 1.4 As a result of these changes an increasing number of decisions are likely to become high value and to enable continuing efficiency whilst maintaining transparency and accountability in the decision making process, consideration should be given to the raising of Key Decision financial thresholds.
- 1.5 The proposed key decision definition and threshold outlined at appendix I will allow Cabinet members to make decisions quickly, responding to needs in their communities and portfolio areas and clarify for officers decision which should be treated as significant and published as a Key Decision.
- 1.6 All decisions made by Councillors would still be subject of scrutiny and call-in when necessary as will Officer Key Decisions.

2.0 Forward Plan

- 2.1 Regulations made under the Local Government Act 2000 and Localism Act 2011 obliges local authorities to publish advance notice of “key decisions” they are planning to take. At least 28 days’ notice needs to be given of intention to make a key decision and the regulations specify the content of the notice.
- 2.2 The process behind the Forward Plan was delegated in 2012 to the monitoring officer. Following discussion with Cabinet Members in portfolio holder briefings, council officers provide notices of decisions for the forward plan to the Democratic Support Team who publishes the plan online.
- 2.3 The Forward Plan is updated monthly and is a rolling three month list of decisions. Many of the decisions on the forward plan are enabling decisions for ongoing programmes of work.
- 2.4 When including a key decision on the forward plan is impracticable, the decision may only be taken when the chair of the relevant overview and scrutiny committee has been informed. This is by notice in writing at least five clear days in advance of the decision being taken. The notice must also be published on the Councils website. When made the decision would still be subject to the call in period.

- 2.5 Where a decision is deemed urgent a notice must be published on the website providing the reason for the urgent decision, the decision must receive agreement by the relevant chair of scrutiny. An urgent decision may be implemented immediately and there is no right for call-in by councillors.
- 2.6 The process for the Forward Plan and its publication adheres to the regulations as set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the method of publication is broadly similar to those authorities administering the Moden.Gov committee software.

3.0 Call-in Process

- 3.1 Call-in provides a mechanism for councillors to intervene when they feel that a decision being made by the executive needs to be revisited (or possibly changed). It provides a key check and balance in the leader/cabinet system of governance. It should, however, be regarded as a measure that is only needed in exceptional circumstances, rather than day-to-day.
- 3.2 The law relating to call-in in England can be found in the Local Government Act 2000. The Act establishes that scrutiny has a power to review or scrutinise decisions made but not implemented by the executive, which includes a power to recommend that the decision be reconsidered by the person who made it. The power in the Act also includes the power for an overview and scrutiny committee to refer the issue to Full Council for them to consider it substantively.
- 3.3 Plymouth City Council has an existing call in procedure, which is in line with neighbouring local authority's and Government guidance, and is published in the constitution. A copy of the process is provided at appendix two.

Proposed Key Decision Definition and Threshold

Key decisions must be taken by Cabinet, unless the Leader chooses to take the decision.

A key decision is an executive decision likely to result 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 to which the decision relates. In determining the meaning of "significant" regard must be had to any guidance issued by the secretary of state from time to time in accordance with section 9q of the Local Government Act 2000.

A decision will be a "key decision" if it is an executive decision -

- **AND** is likely to result in the local authority incurring expenditure which is, or the making of savings which are, significant:
 - in the case of capital projects¹ and contract awards, when the decision involves a new commitment to spend and/or save in excess of £3million in total; **or**
 - in the case of revenue projects when the decision involves entering into new commitments and/or making new savings in excess of £1million.
- **OR** is significant in terms of its effect on communities living or working in an area comprising two or more wards in the area of the local authority. ("Significant Impact" in this respect is determined by the Monitoring Officer)

Other decisions which must be published

- Executive Decisions by Cabinet Members – all executive decisions between the Chief Officer limit of £200k and £1million (revenue) or £3million (capital/contracts) (subject to call in)
- Decisions delegated by Cabinet to Cabinet Members (subject to call in)
- Decisions delegated by Cabinet and Cabinet Members to Officers (subject to call in)
- Emergency Decisions

Effect on communities

- A decision may affect a great number of people, or a number of wards, but not significantly and these decisions shall not normally be regarded as key;
- Where a decision is only likely to have a significant impact on a very small number of people in one ward it will not normally be key. But the people affected should be 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;
- Consideration should be given to the level of public interest in the decision. The higher the level of interest the more appropriate it is that the decision should be considered to be key.

¹ **Nb** An allocation in the Capital Programme is not a commitment to spend as allocations are subject to change. Decisions for the commitment of spend which follow capital allocations are subject to the executive decision making process and may be considered Key Decisions. The approval process for Capital Projects is set out in Part H of the constitution.

CALL-IN PROCEDURE RULES

1. What decisions can be called-in?

1.1 Call-in is a process where an Overview and Scrutiny Committee can recommend that an executive decision which has not yet been carried out, is reconsidered by the decision maker

1.2 The following executive decisions can be called-in:

- decisions of the Leader;
- Cabinet decisions;
- Cabinet member decisions;
- executive decisions under joint arrangements
- Officer key decisions

2. Publishing decisions that can be called-in

On the Monday (normally) after a decision that could be called-in is taken, Democratic Support will email information about the decision to all Councillors.

The information will be marked with the date it was published, will say what the decision was and how it can be called-in.

The information will say that the decision will come into force if it is not called in by 4.30pm on the fifth working day after the publication date.

3. Who can call in decisions and when do they have to be called in by?

Any three Councillors can call in a decision by 4.30pm on the fifth working day after the decision was published.

Co-opted and independent members cannot call-in decisions.

4. How are decisions called in?

Decisions are called-in by sending a call in form to the Monitoring Officer or emailing it to democratic.support@plymouth.gov.uk

Reasons for the call-in must be given. If an executive decision is being called-in because it is believed to be outside the policy framework and budget, the call-in must say so.

There are four other reasons to call-in a decision:

- the process was deficient in some way (e.g. the decision maker did not consult people who should have been consulted)
- the decision maker did not consider alternative courses of action
- the decision taker did not take into account relevant factors
- the decision was wrong in law or fact. The caller in must state why it was wrong in law or fact

When a decision is called in, the Monitoring Officer will tell the relevant officer, the chair of the body which took the decision and the Cabinet member.

5. Where are decisions called-in to?

The relevant Overview and Scrutiny Committee will consider decisions which are called-in.

6. What happens when a decision is called-in?

The relevant Overview and Scrutiny Committee can decide to:

- confirm that the decision should be implemented, the decision can then be acted on immediately; or
- recommend that the decision maker should reconsider the decision in light of the comments expressed by the Committee; or
- refer the decision to Council to consider the call in; or
- send comments to Council on any decision that recommends changing the policy framework and budget.

7. Sending the decision back with its comments to the decision maker

The decision maker will reconsider the decision, taking the Committee's views into account. The decision maker may then:

- (a) implement the decision (which cannot be called-in again); or
- (b) not implement the decision; or
- (c) alter the decision (which can be called-in).

The decision maker will report the outcome of the above to the next relevant Overview and Scrutiny Committee meeting.

8. Referring the decision to Council to consider the call-in

The decision will be considered at the next ordinary Council meeting or, if two Cabinet members require action earlier, at an extraordinary Council meeting. Council can decide to:

- support the decision, which can then be acted on immediately; or
- send the decision back with its comments to the decision maker who will then take a final decision (see below).

If the decision is sent back to the decision maker they will reconsider the decision and the procedure outlined in 7 (a) to (c) above will be followed, taking the Council's views into account.

9. Exceptions to the call-in procedure

Call-in will not apply to the following decisions:

- non-executive decisions;
- executive decisions made by appeals panels;
- decisions already called-in once (a decision modified becomes a new decision and may be subject to call-in);

- non-key decisions made by officers with delegated authority;
- urgent decisions.

10 Decisions believed to be outside the budget or policy framework

- (a) The Monitoring Officer or Responsible Finance Officer will say whether the decision is outside the policy framework and budget.
- (b) If the decision is not outside the policy framework and budget, the relevant Overview and Scrutiny Committee can decide to:
 - support the decision, which can then be acted on immediately, or
 - send the decision back with its comments to the Cabinet or Cabinet member, who will then take a final decision.
- (c) If the decision is outside the policy framework and budget, it will go as a recommendation to the next ordinary meeting of Council, along with any comments from the relevant Overview and Scrutiny Committee (if two Cabinet members want earlier action, an extraordinary meeting of the Council can be held, see Council Procedure Rule 6 One of the church representatives will be nominated by the Diocesan Board of Education for the Church of England diocese and the other will be nominated by the Bishop of the Roman Catholic diocese within the area.).
- (d) Council is able to:
 - ask the Cabinet to reconsider, or
 - change the policy framework and budget so that the decision is within it – the decision can then be acted on immediately.

11. Urgent decisions outside the budget and policy framework

A decision cannot be called-in if the Chair of the relevant Overview and Scrutiny Committee agrees that:

- the decision is reasonable and
- the delay would not be in the interests of the Council or the public.

If the Chair of the relevant Overview and Scrutiny Committee is not available, the Lord Mayor (or in his or her absence the Deputy Lord Mayor) must agree that the decision is urgent and reasonable.

Urgent decisions must be identified on the published information.

Urgent decisions must be reported to the next ordinary full Council meeting with the reason why they were urgent.