

## CONSTITUTION PRACTICE NOTE

### KEY DECISIONS

#### 1. Why this Practice Note has been produced

1.1 There are processes and procedures that we must follow when making certain decisions. Failure to follow these means the decision can be challenged and lead to delays in putting them into practice.

1.2 This Practice Note explains:

- what a key decision is
- sets out the legal requirements for making and publishing them; and
- explains what you need to do

1.3 The main legal requirements can be found in the following documents-

- Article 14 of the Council's Constitution; and
- The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ("the 2012 Regulations").

1.4 There is a flowchart of the process at Appendix B that takes you through all the steps required.

1.5 You should contact the Democratic Services Team if you have any questions or are unsure what to do.

#### 2. What is a Key Decision?

2.1 Article 14 of the Constitution describes what a Key Decision is.

2.2 In summary this definition and procedure only applies where the decision is taken by-

- the Leader of the Council,
- the Cabinet or
- delegated by Cabinet to-
  - a committee of the Cabinet,
  - a Cabinet Member or
  - an officer

2.3 In addition it is only a Key Decision where-

- the Council will incur expenditure or make savings (including generating income):
  - the value of which is at least £200,000 or
  - would result in an increase or decrease of a least 20% in the relevant expenditure or income budget for a particular service

**OR**

- there is a significant effect on two or more wards in the City of Chelmsford in terms of the services provided or impact on the quality of life in the area.

### 3. The Requirements to Publish a Notice

3.1 The 2012 Regulations changed the way in which a Local Authority can make Key Decisions and sets out a legal process to ensure that the Council is accountable and transparent to the public, which requires us to publish a notice as to what we intend to make a decision on and when.

3.2 For all notice periods-

- a clear day starts the day after the decision is published and
- the period ends the day before the decision will be taken.

#### The Normal Procedure

3.3 Where at all possible we should publish a notice that we intend to take a Key Decision at least **28 clear days** in advance of the decision being taken. The 28 day period includes weekends and bank holidays and but does not include the day the notice is given or the day the decision is taken (the meeting).

3.4 It is possible to give shorter notice of the intention to make the decision in cases of urgency, but-

- we need to have good reasons that we can explain
- this creates more work and
- is not as transparent for the public.

3.5 The notice is placed on the Council's website and must include any decisions to be made by the members or officers referred to in Paragraph 2.2 above.

3.6 You should therefore inform Democratic Services as soon as you know that a decision will be required, so that we can add it to the notice. It doesn't matter if you subsequently have to delay the decision as the notice will still be effective.

#### Exceptions Procedures

3.7 There will of course be times when, because of urgency, we cannot give 28 days' notice. In those cases there are two possible Procedures, namely the General Exception and the Urgency Exception.

3.8 It is less likely that this procedure will be required when a decision is to be taken by an officer as it is easier to move the date an officer will do so than to change the date of the Cabinet, meetings of which are fixed well in advance. However, there may still be times when an officer decision will be urgent and in these circumstances the following rules must be applied

#### The General Exception

3.9 This can only be used-

- Where there are **more than 5 clear days but less than 28 clear days** before the decision is to be made.
- Where it is impractical to publish notice with 28 clear days' notice and you need to explain why the decision cannot wait.
- Where the Chair and Vice-Chair of the Overview and Scrutiny Committee have been **informed** in writing, or if they are unavailable, each member of that Committee, before the decision can be taken.

3.10 The notice will be published by Democratic Services and you will be told the earliest date the decision can be taken. This will be the appropriate procedure where a decision cannot wait for the full 28 days' notice, for example-

- There are not 28 clear days before the next Cabinet meeting and the decision cannot wait for the Cabinet meeting after that; and
- There are reasons why we need members or officers to make that decision within the next 28 days, examples of which are set out in Appendix A.

### The Urgency Exception

3.11 This can only be used -

- Where there are **less than 5 clear days** before the decision is to be made
- if there are exceptional circumstances, in which case you need to explain why the decision cannot wait.
- Where the following have **agreed** that the decision cannot reasonably be deferred
  - the Chair of the Overview and Scrutiny Committee; or
  - if the Chair is unavailable, the Mayor
- Once the required notice of the decision being taken has been published by Democratic Services.

3.12 This will be the appropriate procedure where there is a clear need to take a decision within a very short period of time, for example-

- there is a health and safety issue that must be addressed or
- an opportunity will be lost, which would represent a significant detriment to the Council or to the services it provides.

## **4. Providing Reasons under the General or Urgency Exception Procedures**

4.1 Democratic Services cannot prepare the required notice, under either procedure, until you have provided details of the decision required and reasons as to why the normal procedure, with 28 clear days' notice, cannot be used. You should prepare a report for the decision maker whether that is to be members or an officer.

- In the case of a Cabinet decision the usual form of report will be required, even if it is to be dealt with as an urgent report.
- It is strongly recommended that you use a similar format for an officer decision as it prompts you to include information as to all the legal requirements.

4.2 Some of the more usual reasons for not giving the full 28 days' notice are set out in Appendix A. If you are unsure of the reasons it is likely that short notice is inappropriate and you should discuss this with Democratic Services before sending the papers. Otherwise there may be further delays to clarify them.

4.3 You should also be aware that the reasons you provide will be included in the Notice of the intention to take the decision (the Regulation 10(1) Notice), which is available for public inspection on the Council's website and at Civic Centre.

## **5. Consequences of a breach of these Regulations**

5.1 It is an offence to obstruct the publication or copy of a document that should have been published or available for inspection. It is also an offence to obstruct the inspection of a document that should have been open to the public. Both offences carry a penalty of a fine not exceeding Level 1 of the Standard Scale, currently £200.

5.2 The decision may be 'called-in' by the Overview and Scrutiny Committee and an Officer may be required to give evidence at this Committee on the decision. Therefore it is imperative where the decision is urgent that the agreement of the Monitoring Officer is obtained as to the reasons for the urgency as set out in Rule 7 of the Executive Rules in Part 4.4 of the Constitution.

An urgent decision will normally also need to be exempted from the call-in arrangements, whereby it could be requested that the Overview and Scrutiny Committee consider the decision before it is implemented.

If an exemption is needed, Rule 4.4.7.6 of the Executive Rules in Part 4.4 of the Constitution requires that the agreement of the Monitoring Officer is obtained before the decision is taken by the Executive. This will also apply to urgent decisions to be taken by officers. It should be noted that the Overview and Scrutiny Committee could still review the decision after it has been taken.

## Appendix A - What would qualify as reasons for the General and Urgency Exceptions?

- **Commercially sensitive reasons:**
  - Favourable Market values at that time.
  - Third Parties competing.
  - Seller requires a quick completion of a property transaction, which the Council is keen to secure or the purchaser of a Council property does so and an opportunity would be lost.
  - An unplanned but urgent event requires the completion of a contract.
  
- **Legal reasons:**
  - Statutory deadlines with the consequence that the decision cannot be deferred to 28 clear days' notice.
  - The delay may prejudice the Council's legal position.
  - The delay would cause adverse legal conditions / consequences for the Council, such as a possible breach of health and safety requirements.
  - The approval of a budget is required before the urgent action can be progressed
  - There is no appropriate authority for officers to take the decision and therefore member's approval is required urgently.
  - New information has come to light on a previously agreed issue and a further key decision is necessary
  - A statutory consultation period or other requirement means the decision cannot be delayed
  
- **Detriment or hardship to a party other than the Council**

## Appendix B – Which Procedures should you use?

### Is the decision a Key Decision?

A key decision is an executive decision (i.e. one taken by the Leader, the Cabinet or delegated by it to a committee of the Cabinet, a Cabinet Member or an officer) which:

- **Will result in** the Council incurring expenditure or making savings (including generating income) which represents the lower of **£200,000 or 20%** or more of the relevant expenditure or income budget for a particular service; **OR**
- **Will have a significant effect** on two or more wards in the City of Chelmsford in terms of the services or quality of life in the area.

