

ARTICLE 14 - DECISION-MAKING

Introduction

1. 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 **or in relation to the responsibilities of Committees, subcommittees and panels of the Council, within the Articles of the Constitution.**

Section 13 of the Local Government Act 2000 provides that all functions of the Council shall be functions of the Executive (Cabinet) except in so far as they are reserved to the Council by regulations made under the Act (or by subsequent or other legislation) or are otherwise delegated as shown in Part 3 of this Constitution in accordance with the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

2. Principles of Decision-Making

All decisions of the Council (whether they are the responsibility of the Cabinet or not) will be made in accordance with the following principles:

- (a) proportionality (i.e. the action must be proportionate to the desired outcome);
- (b) due consultation and the taking of professional advice from officers;
- (c) that relevant human and equality rights have been considered, given due regard and respected in the formulation of options and in the making of any relevant decision;
- (d) there is a presumption in favour of openness; and
- (e) there is a clarity of aims and desired outcomes.

In addition the decision-maker(s) will be required to demonstrate:

- (f) that all relevant matters were fully taken into account in reaching decisions and are for example consistent with the agreed policy framework of the Council;
- (g) that all relevant requirements of the Council's rules and Financial Regulations were complied with;
- (h) that the member(s) concerned considered whether he or she had any **pecuniary or non-pecuniary** interest in the particular item and if necessary made a declaration of interest **and acted on any conflict of interest;**
- (i) that the Scheme of Delegation had been complied with;
- (j) that the decision was properly recorded and published within the appropriate timescale, together with declarations of interest and background papers; and

- (k) **that the decision itself was made in accordance with the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000.**

3. Forward Plan

In accordance with the 2000 Act, the Council will prepare a Forward Plan, which will list all Key Decisions which the Cabinet anticipate that they will take during the next 4 months, **those which they propose to take in private session**, together with any particularly significant Key Decisions which they anticipate that they will take within the next 4 to 12 months. The Council may also include in the Forward Plan reference to significant decisions which are to be taken by the Council or any of its Committees or Sub Committees. This Plan will be updated on a monthly rolling programme to **coincide with the requirements of the Local Authorities (Executive Arrangements) (Meetings And Access To Information) (England) Regulations 2012**

4. Types of Decision

Decisions reserved to the Council

(a) Decisions reserved to the full Council relating to the functions listed in Article 4.01 will be made by the full Council and not delegated.

(b) Decisions on supplementary expenditure will be made by Council on the recommendation of the Cabinet.

Key Decisions

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 define a key decision as:

— “An Executive decision which is likely:

— (i) — to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or

— (ii) — to be significant in terms of its effect on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.”

— **(c) Key Decisions - Definition of "Significance" – Redraft required**

— The Epping Forest District Council has agreed, the following definition of significance as any decision which would, if implemented, fall within any of the following descriptions:

— (i) — a significant decision under (b)(i) above shall be defined as follows:

— 1. — any decision within budget and policy which involves expenditure or savings of £250,000 or over;

— 2. — any decision not within budget and policy which involves expenditure or savings of £100,000 or over in the current Council year;

- ~~3. a decision which raises new issues of policy;~~
- ~~4. a decision which increases financial commitments (i.e. revenue and/or capital) in future years over and above existing budgetary approval;~~
- ~~(ii) a significant decision under (b)(ii) above shall be defined as follows:~~
- ~~1. any decision which comprises and includes the publication of draft or final schemes which may require either directly or in relation to objections to the approval of a Government Minister.~~
- ~~2. any decision which involves the passage of local legislation;~~
- ~~3. any decision which affects two or more wards and is one which would have a discernible effect on the quantity or quality of services provided to people living or working in that area;~~
- ~~(iii) any definition of a key decision shall exclude borrowing or lending decisions by the Head of Finance under delegated authority;~~

(i) A “Key Decision” means an executive decision which:

(a) involves expenditure or savings of £250,000 or above which are currently within budget and/or policy;

(b) involves expenditure or savings of £100,000 or above which are NOT currently within budget and/or policy;

(c) has a significant impact on the local community or is one which would have a discernible effect on the quantity or quality of services provided to people living or working in two or more wards.

(d) raises new issues of policy;

(e) increases financial commitments (i.e. revenue and/or capital) in future years over and above existing budgetary approval;

(f) comprises and includes the publication of draft or final schemes which may require, either directly or in relation to objections to, the approval of a Government Minister.

(g) involves the passage of local legislation;

(iii) any definition of a key decision shall exclude borrowing or lending decisions by the Director of Resources under delegated authority;

DO WE NEED TO EXCLUDE ESTATES MATTERS?

(d) Key Decisions - Further Requirements - Responsibility for making a Key Decisions

The following additional requirements in relation to key decisions have been applied by the Council:

(i) 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; **Article 7 (The Executive) and Article XX (Access to information)**

(ii) key decisions may not be made by Heads of Service **Officers unless specifically delegated**;

(iii) key decisions under (b)(i) above shall be made by the Cabinet if they involve amounts of £1m or more;

(v) key decisions under (b)(i) involving amounts of between £250,000 and up to £1m may be made by the appropriate Portfolio Holder; and

(iii) Key decisions involving expenditure within the budget and policy framework up to £1,000,000 may be taken by a Portfolio Holder;

(iv) Key decisions involving expenditure within the budget and policy framework of £1,000,000 or greater will be taken by the Cabinet.

Non-key decisions

Other non key decisions shall be taken by the relevant committee, subcommittee or panel or an officer in accordance with the responsibilities for functions and articles in this constitution. Non key decisions made by the Cabinet or Portfolio Holders shall also be included in the Forward Plan wherever possible.

14.05 Decision-Making by the Full Council

Subject to Article 13.09, the Council meeting will follow the Council Procedure Rules set out in Part 4 of this Constitution.

14.06 Decision-Making by the Executive

Subject to Article 13.09, the Executive will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

14.07 Decision-Making by Overview and Scrutiny

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

14.08 Decision-Making by Other Committees, Sub-Committees, Panels and Boards

Subject to article 13.09, other Council committees and sub-committees will follow those parts of the Council Procedure Rules set out in Part 4 of this Constitution as apply to them.

5. Decision making by Portfolio Holders

Individual portfolio holders may take decisions on:

(i) key decisions within the category in 4(d)(ii) above, or/and

(ii) other decisions not being the responsibility of a relevant committee, subcommittee or panel or an officer to determine; or/and

(iii) decisions which are not reserved to the Cabinet; or/and

(iv) decisions which are not contrary to the budget and policy framework and therefore a matter for the full Council to determine.

Portfolio Holders may only make decisions on matters affecting their own wards if recommended by ~~Head of Service~~ or as one of a range of options recommended by a ~~Head of Service~~ **Director within a Portfolio Holders Decision report.**

Where an interest has been declared by the Portfolio Holder that prevents that individual from taking a decision, that decision may be taken by another member of the cabinet (on advice) or be referred to the cabinet for decision.

6. Decision making by the Cabinet

The Executive (Cabinet) will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution and the local choice functions set out in Part 3 of this constitution. The operation of the Executive is set out in Article 7.

7. Decision making by Officers

Officers may take decisions on those matters set out within the schedules of Council and Executive delegation in Part 3 of this Constitution and those of general management set out within Article XX (officers) and those required by other statutory provisions.

8. Other Decisions

The Council has appointed a number of committees, subcommittees and panels to carry out certain prescribed functions that cannot be undertaken by the Cabinet. Their responsibilities are set out in the Articles of this constitution.

9. Changes to the responsibility for decision making

The Council, Leader or Cabinet may, from time to time, vary the responsibilities for decision making in accordance with their statutory powers.

10. 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. For the purposes of this, the licensing and enforcement functions of any body shall be subject to this Article. Likewise the provisions of Article 6 of the European Convention relating to natural justice and a fair trial will be applied to the proceedings of the Standards Committee of the Authority.