

## BRECKLAND DISTRICT COUNCIL

**Report of:** Councillor Sarah Suggitt, Executive Member, Governance, and Maxine O'Mahony Executive Director Strategy and Governance/Monitoring Officer.

**To:** Council – 25 February 2021

**Author:** Jacqui Berridge – Lawyer  
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**Subject:** Constitution

**Purpose:** To consider variations to the Constitution relating to (a) Call-in for Non-Key Officer Decisions; and (b) the definition of "Key Decision"

### **Recommendations:**

a) **Call-in for Non-Key Officer Decisions** – that members decide whether they wish to exclude Call-in from Non-Key Decisions made by officers under delegated authority, and whether to amend the Constitution in accordance with Appendix A;

b) **Definition of Key Decision** - that the existing definition in the glossary to the Constitution be amended to read as follows:

*"Key Decision" means a decision which, in relation to an Executive Function, has a significant effect on communities in two or more wards of the Council and/or is likely to result in the Authority incurring expenditure, or making savings, in any single financial year above £250,000."*

c) That the Key Decision figure be re-assessed at the end of a 12 month period to enable members to consider whether the expenditure/savings figure is still appropriate.

### **1.0 BACKGROUND**

1.1 The Council's current Constitution was approved by full Council at its meeting on 21 January 2016. Under Article 14 of the Constitution (as amended) any proposed changes may be approved only by full Council unless the change is:

- a minor variation; or
- required to be made to remove any inconsistency or ambiguity; or
- required to be made so as to put into effect any decision of the Council or its committees or the Cabinet

1.2 In such circumstances the variation may be made by the Monitoring Officer and comes into force with immediate effect, but must (unless a minor typographical, referencing or numbering change) be referred to full Council as soon as is reasonably possible. Any change only continues to have effect if full Council agree. Minor typographical, referencing and numbering changes shall not require the approval of full Council.

1.3 All other variations must be submitted to full Council for approval.

- 1.4 This report seeks full Council decision on two non-minor variations.
- 1.5 References in this report to "the 2012 Regulations" mean the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 1.6 It is recommended that both issues are considered concurrently.

## 2.0 PROPOSED VARIATIONS BEING SUBMITTED TO COUNCIL FOR CONSIDERATION

### (a) Call-in for Non-Key Officer Decisions

- 2.1 The 2012 Regulations have been in force since 10 September 2012. Amongst other things, the Regulations require all executive decisions (meaning both Key and Non-Key Decisions) taken by officers under delegated powers to be published. Prior to these Regulations only officer decisions which were Key Decisions had, by law, to be published.
- 2.2 The Constitution currently requires all published executive officer decisions to be subject to call-in, but prior to 2016 the Constitution only required officer Key Decisions to be subject to call-in. By default, then, all officer executive decisions (other than very minor/administrative decisions which do not need to be published) are subject to call-in. This means that a very large number of officer decisions are now subject to call-in but this is by default rather than design.
- 2.3 Under section 9F of the Local Government Act 2000 the Council is required to ensure that its Overview and Scrutiny Commission has power to review or scrutinise executive decisions, including the power to review or scrutinise decisions made but not implemented (call-in), but it is for each Council to decide which decisions are subject to call-in. As the Constitution currently requires all published officer executive decisions to be subject to call-in this can significantly reduce the speed of decision-making, and potentially divert attention away from those officer decisions that are likely to be of the greatest interest to the Overview and Scrutiny Commission.
- 2.4 It is suggested that, where an officer is authorised to make an executive decision under delegated powers, members may consider that such a decision should not be subject to call-in unless the decision is a Key Decision, and potential amendments are shown in Appendix A to this report. The definition of Key Decision is dealt with later in this report.
- 2.5 If approved, Non-Key Decisions will still continue to be published in accordance with the law, in order to ensure openness and transparency, and to enable members and the public to scrutinise decisions taken. The Overview and Scrutiny Commission will also continue to have the ability to scrutinise such decisions after implementation, and may wish to consider these decisions at scheduled meetings in order to hold decision-makers to account.

### Previous Consideration

- 2.6 This report has previously been considered by:
- the Governance and Audit Committee on 8 October 2020
  - the Overview and Scrutiny Commission on 22 October 2020
  - full Council on 10 December 2020
  - the Governance and Audit Committee (with members of the Overview and Scrutiny Commission in attendance) on 11 February 2021.
- 2.7 The Governance and Audit Committee at its meeting on 8 October supported the proposal. The Overview and Scrutiny Commission, however, felt that call-in should remain for both

Key and Non-Key officer decisions. Full Council referred the matter back to the Governance and Audit Committee for further consideration. The Governance and Audit Commission on 11 February 2021 then again supported the proposal.

### **Conclusions**

- 2.8 Until the introduction of the 2012 regulations it was not necessary to publish Non-Key Decisions made by officers and therefore call-in was not relevant. After the 2012 regulations came into effect, and until the new Constitution was adopted in 2016, officer Non-Key Decisions were not subject to call-in.
- 2.9 There is a balance to be struck between efficient decision making and the important role of scrutiny. Officer Non-Key Decisions are currently subject to call-in by default rather than by design and applying call-in has slowed down the decision making process.
- 2.10 Bearing these issues in mind members are invited to consider whether call-in should be removed from officer Non-Key Decisions.

### **(b) Definition of Key Decision**

- 2.11 The Constitution currently contains the following definition of Key Decision:

*"a decision which, in relation to an Executive Function, has a significant effect on communities in two or more wards of the Council and/or is likely to result in the Authority incurring expenditure, generating income or making savings in any single financial year above the capital expenditure threshold or the revenue expenditure threshold currently laid down by the Council".*

- 2.12 The capital and revenue threshold currently agreed by the Council is 25% of the relevant budget, however this is causing practical problems because it is necessary for many potential decisions to be referred to the Finance Team for assessment and the 25% of relevant budget is not defined (ie 25% of total Council budget, the service budget, gross or net budget, etc)
- 2.13 It is felt that the Key Decision threshold should be readily understood by officers, members and members of the public, and should specifically be detailed in the Constitution to avoid confusion. With this in mind a review of the Key Decision definition has been undertaken.

### **What is the relevance of a Key Decision**

- 2.14 The relevance of a Key Decision is that:

- when the Leader, Cabinet, any Committee of the Cabinet, any portfolio holder or any officer with delegated authority from any of these wishes to make a Key Decision, the 2012 Regulations (which replaced similar regulations issued in 2000) and the Constitution (Access to Information Procedure Rules) require the following:
  - the proposal to make the Key Decision must be advertised on the Key Decision Plan which is a public document available on the Council's website
  - 28 days must elapse from the date that the Key Decision Plan is published before the decision can be made
  - during that 28 day period members, and members of the public, may submit comments on the issues that are included on the Key Decision Plan
  - if the decision is urgent such that the 28 day requirement cannot be met then a reduced 5 day period is permitted provided notice is issued to the Chairman of the Overview and Scrutiny Commission

- If the decision is so urgent that the 5 day requirement cannot be met then the decision can be taken immediately, with the approval of the Chairman of the Overview and Scrutiny Commission.
- where a decision is made without following the above procedures the Overview and Scrutiny Commission may review the decision and, if they conclude that it was a Key Decision, the Commission may require a report to full Council setting out the reasons for dealing with the matter as a Non-Key Decision
- if the first part of this report is approved, only officer decisions which are Key Decisions will be subject to call-in.

### Review of Definition

2.15 Regulation 8 of the 2012 Regulations defines a Key Decision as:

*"an executive decision, which is likely (a) to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority's budget for the service or function to which the decision relates; or (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority".*

2.16 Whilst Government guidance was available in 2002 to assist local authorities to determine what is "significant" this was much criticised for being too prescriptive, and local authorities are now left to determine this issue.

2.17 The following table compares how "Key Decision" is defined in Breckland and neighbouring authorities in relation to the expenditure/income threshold:

Authority	Is "generating income" included	Threshold
Breckland	yes	25% of relevant budget
South Norfolk	yes	Gross full year effect of <b>£100,000</b> or 10% of the Council portfolio's net budget, whichever is the greater which has not been included in the relevant theme budget
Broadland	no	Any proposal with a cost in excess of 1% of the council's net revenue budget
North Norfolk	no	Expenditure or savings of <b>£100,000</b> or more except where such expenditure or saving is specifically identified in the Council's Budget
Norwich City	no	Any sum exceeding whichever is greater of the thresholds established by the European Public Contracts Directive 2004/18/EC for Local Government in respect of contracts for supplies or services).  (Replaced by 2014/24/EU. Figures were as follows for 2020: <ul style="list-style-type: none"> <li>• Supply services and design contract <b>£189,330</b></li> <li>• Works Contracts: <b>£4,733,252</b></li> <li>• Social and other specific services: <b>£663,540</b>)</li> </ul>

Kings Lynn and West Norfolk	no	£500,000 or more
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NOTE: One of the above authorities defines a Key Decision as expenditure that is not included in the relevant theme budget. However, for BDC, where the Cabinet makes a decision that proposes the spending of money that is not included in the budget then the Cabinet may in accordance with Financial Procedure Rules vire up to £68,000 from one approved account to another. That virement is considered to be an executive decision. Where a larger sum needs to be vired, Cabinet must seek Council approval for the additional spend and that decision is not, by definition, an executive decision and therefore cannot be a Key Decision. It is not therefore considered appropriate for BDC to define a Key Decision as any expenditure not included in the relevant budget.

### Considerations

2.18 The following issues are put forward for members' consideration:

- most of the neighbouring authorities do not include reference to "generating income" within their definition of Key Decision, and such reference is not included in the 2012 Regulations. This requirement can delay the receipt of grant payments and it is suggested that this reference be excluded.
- there is no reference in the statutory definition to any timeframe over which the Key Decision value is calculated. The Council's Constitution refers to the threshold in relation to each financial year and it is considered that this is appropriate and should remain.
- it is considered that the larger items of expenditure are more likely to be of concern to members of the public
- greater bureaucracy inevitably slows down decision-making
- there is a wide variation in what neighbouring authorities consider to be significant in terms of expenditure and income
- it is considered appropriate to adopt a threshold somewhere between the highest and lowest amounts detailed in the above table, with a view to testing this arrangement over the next 12 months
- it is suggested that a figure of £250,000 would be appropriate, with this figure relating to both revenue and capital expenditure

2.19 If the above issues are accepted it is proposed that the definition of Key Decision in the Constitution be amended to read as follows:

*"a decision which, in relation to an Executive Function, has a significant effect on communities in two or more wards of the Council and/or is likely to result in the Authority incurring expenditure, **generating income** or making savings in any single financial year above **£250,000 the capital expenditure threshold or the revenue expenditure threshold currently laid down by the Council**".*

2.20 If approved, it is further suggested that the Key Decision figure be re-assessed at the end of a 12 month period to enable members to consider whether the figure is still appropriate.

### Previous Consideration

2.21 This matter was considered by the Governance and Audit Committee at its meeting on 11 February 2021. Members of the Overview and Scrutiny Commission were in attendance. The proposal was supported.

### 3.0 **OPTIONS**

3.1 Members have the option to approve or not approve the variations, or to require alternative variations.

### 4.0 **REASONS FOR RECOMMENDATION(S)**

4.1 Prior to the 2012 Regulations it was not necessary for officer non-Key Decisions to be published. Prior to the adoption of the amended Constitution in 2016 officer non-Key Decisions were not subject to call-in. The current requirement for officer non-Key Decisions to be subject to call-in were included in the Constitution by accident rather than design, and it is recommended that call-in revert to the pre 2016 status.

4.2 The current definition of "Key Decision" is not sufficiently precise to give clarity to members, officers and members of the public.

### 5.0 **EXPECTED BENEFITS**

5.1 To reduce bureaucracy and the administrative burden; and ensure clarity of function.

### 6.0 **IMPLICATIONS**

In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Other. Where the report author considers that there may be implications under one or more of these headings, these are identified below.

#### 6.1 **Constitution & Legal**

6.1.1 Approval of amendments to the Constitution is a function of the full Council. Any legal implications are set out in the relevant paragraphs. Amending the Constitution is a function reserved to full Council.

### 7.0 **WARDS/COMMUNITIES AFFECTED**

7.1 None

### 8.0 **ACRONYMS**

8.1 None, but reference to "**the 2012 Regulations**" mean the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

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Background papers:- The Council's Constitution which is available on the Council's website.

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#### **Lead Contact Officer**

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**Key Decision:** No

**Exempt Decision:** No

**This report refers to a Mandatory Service**

Appendix A Proposed amendments if deletion of call-in to non-key officer decisions is approved

**Appendix A** – Proposed amendments if deletion of call-in to non-key officer decisions is approved

Part 3 - Section D – Delegation to Committees - Section D1 – General provisions relating to Executive Powers

Paragraph 7 be amended to read as follows:

“7. All Executive Decisions, (other than **(a)** urgent decisions (as described in the Access to Information Procedure Rules) **and (b) Non-Key Decisions made by officers**), are subject to the Call-In procedure set out later in Part 3.”

Function of Overview and Scrutiny Commission – paragraph 20 describing the Call-in Procedure for Executive Decisions be amended as follows:

“No Executive action shall be taken to implement a decision by the Leader, a Cabinet Member or by the Cabinet, a Sub-Committee of the Cabinet or ~~an~~ **a Key Decision by an officer** for a period of five clear Working Days from the date of publication of the decision to members, and if any reference is made within this time under the following paragraph, Executive action shall be further delayed pending consideration by the Overview and Scrutiny Commission. However, Executive action can proceed at once if the action is urgent and the procedures set out in the Access to Information Procedure Rules are followed.”

Section F1 – Officer Delegations

Paragraph 11.0 be amended to read as follows:

11.0 Where a decision to be made by any Officer under delegated authority meets the definition of an Executive Decision ~~including a Key Decision~~, that Officer shall be obliged to ***publish the decision. Where that Executive Decision is also a Key Decision that Officer shall be obliged to*** comply with all relevant rules in this Constitution relating to Key Decisions (with particular regard to publishing Key Decisions in advance, publishing decision notices and complying with Call-In).