

From: **Gary Cooke, Cabinet Member for Corporate and Democratic Services**

Geoff Wild, Director of Governance and Law

To: **Policy and Resources Cabinet Committee**

Decision No: **For Decision**

Subject: Proposed changes to officer delegations, the impact on executive decisions and where and how Key Decisions happen now

Classification: **Unrestricted**

Summary: This report sets out the current situation regarding the taking of Executive decisions, details proposed changes to the Executive Scheme of Delegation to Officers and describes the potential consequences on Executive decision taking should those changes be implemented.

Recommendation(s):

The Cabinet Committee is asked to consider and comment on the proposed changes to the Executive Scheme of Delegation to Officers

1. Introduction

1.1 The Council operates a Cabinet system and the functions of the Executive are those prescribed by the Local Government Act 2000 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) regulations 2012. The Executive undertakes all of the functions of the Council not specifically reserved to the Council or delegated by the council to a committee or an officer.

1.2 All Executive powers are vested in the Leader who may arrange for any executive functions to be exercised by a selection of individuals or bodies identified in the relevant legislation. At Kent County Council functions are exercised by:

- (a) the Cabinet collectively
- (b) an individual Cabinet Member
- (c) an officer

1.3 A briefing has been requested to confirm for members of the Committee the current legislative and constitutional requirements for taking Key Decisions and officer delegations and any changes recommended to the system after its first 18 months of implementation.

2. Executive Decisions

- 2.1 Some of the Executive decisions that elected Members take will also be 'Key' decisions. Key Decisions are defined in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. In accordance with the statutory definition and Government guidance, Key Decisions are executive decisions that are likely to:
- (a) result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000); or
 - (b) be significant in terms of its effects on a significant proportion of the community living or working within one or more electoral divisions.
- 2.2 The definition, above, is currently under consideration as part of a review of Appendix 4 Part 6 of the Constitution.
- 2.3 Key Decisions can only be taken by the Leader, Cabinet or an individual Cabinet Member.
- 2.4 The process for taking a Key Decision is as follows:
- (a) The proposed decision must be advertised on the Forthcoming Executive Decision (FED) list published fortnightly by Democratic Services
 - (b) The proposed decision should be considered by the relevant Cabinet Committee and any recommendations of the committee considered by the Cabinet Member
 - (c) The decision is taken. Either
 - a. A Record of Decision sheet is produced containing certain information prescribed by law and signed by the Cabinet Member and published on line
 - or
 - b. Cabinet meets to consider the item and agrees the proposed decision. The minutes which are the record of decision are published on line
 - (d) A five clear working day call-in period is observed where the decision may be called-in for further consideration by the Scrutiny Committee
- 2.5 There are various procedures for expediency or urgency that may be followed where some or all of the process above cannot be adhered to. A decision flow chart has been produced for the aid of Members and officers, and is attached as **Appendix 1** to this report.

2.6 The process for taking a Cabinet Member decision that is not a Key Decision is identical. However, expediency and urgency procedures do not need to be utilised where the process cannot be completed in full.

3. Executive Scheme of Delegation to Officers

3.1 The Executive Scheme of Delegation to Officers as contained at Appendix 2 Part 4 of the Constitution was introduced by Cabinet on 16 April 2012. It was intended to create a framework for effective and efficient delivery of decisions and conducting of day to day business that was Member-led but implemented by officers, free from unnecessary bureaucratic burden.

3.2 This Scheme allows Officers to take:

- (a) Decisions that do not qualify as 'Key' under the legal definitions described above and which are not considered to be significant enough to be determined at Member level, such as day-to day running of the council, where the financial implications for the council are under £1,000,000 (officers should ensure that they act within the financial limits agreed by Council and included at Appendix 5 of the Constitution); and
- (b) Actions to implement specific decisions already taken at Member level.

In addition, responsibilities and delegated authorities to specific officers are set out in Appendix 5 of the Constitution, including the Property Management Protocol which sets out delegated authorities specific to the Director of Property.

3.3 It is a requirement of the Scheme that at all times when taking actions under the authority of the Scheme officers must keep the relevant Cabinet Member informed, who in turn can at anytime remove the delegation and require that the decision be taken by the elected Member route described in 2, above.

3.4 A particular concern identified prior to the introduction of the Scheme had been the onerous requirement on officers to take decisions through the formal Cabinet Member decision pathway, where the political will had previously explicitly been identified. An example of this might be a secondary decision to sign a contract for delivery of works to refurbish a building where the refurbishment had previously been agreed at Cabinet or Cabinet Member level.

3.4 In order to address this concern the scheme includes a paragraph which reads:

“This scheme assumes that once a Member-level decision has been taken, whether as part of the approved revenue or capital budget, in a Directorate or Divisional Business Plan, or otherwise, the implementation of that decision will normally be delegated to officers, so that multiple Member decisions are not required in respect of the same matter”.

- 3.5 The use of this paragraph to draw authority from original Cabinet Member and Cabinet decisions that relate to specific projects or policies is becoming well embedded and is beginning to achieve the results that were anticipated by freeing up officers to implement decisions without recourse to further formal authorities.
- 3.6 Some use has also been made of Divisional Business Plans approved by Cabinet in order to derive authority for action by officers but this has proved less successful and is now thought to be unnecessary in light of the Scheme's introduction.
- 3.7 Divisional Business Plans are the plans for the coming year for a particular division, their production is an almost continuous cycle and they are extremely resource intensive in terms of officer time. The plans are very large documents and in order that they are useful as a business tool they are required to be strategic in nature, focused and contain measurable outcomes.
- 3.8 In terms of governance this makes the documents less useful and the authorities derived from them less sound. In order to allow officers to undertake actions to achieve a particular political end, it must be evident in some detail what the desired outcome is to be.
- 3.9 It is therefore proposed that the reference to business plans, or any replacement, as a source of delegated authority to officers be removed from the scheme.
- 3.10 In addition it will reduce the administrative burden on officers and allow them to focus solely on producing plans that meet the business and operational needs of the Council.

4. Impact of proposed changes

- 4.1 It is intended that this change will:
- (a) Reduce the reputational, financial and legal risks for the Council, by ensuring that actions are not taken by officers under the false presumption that authority exists via a business plan entry.
 - (b) Reduce the need for urgent decisions. Currently, when at the end of the process - contract signature, for example – it is observed that sufficient authority is not in place, an urgent decision must be taken.
 - (c) Reduce the administrative burden on officers allowing them to concentrate on delivery of services and implementation of Executive policy.
 - (d) Ensure that the Kent County Council continues to be a Member-led authority

5. Financial Implications

- 5.1 There are no financial implications of the proposed changes.

6. Bold Steps for Kent and Policy Framework

6.1 The proposed changes will continue to 'put the citizen in control' by facilitating democratic engagement and further ensuring openness and transparency.

7. Recommendation(s)

The Policy and Resources Cabinet Committee is asked to consider and endorse, or make recommendations on the proposed changes to the Executive Scheme of Delegation to Officers.

7. Background Documents

7.1 None

8. Contact details

Report Author

- Louise Whitaker
Democratic Services manager (Executive)
- 01622 694433
- Louise.whitaker@kent.gov.uk

Relevant Director:

- Geoff Wild
Director of Governance and Law
- Geoff.wild@kent.gov.uk