

ARTICLE 12 - DECISION-MAKING

Text shown in red is an amendment made by the Joint Constitution Working Group at its meeting on 4 March 2015

12.1 Responsibility for Decision-Making

12.1.1 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 and decisions relating to particular areas of functions. This record is set out in Part 3 of this Constitution.

12.2 The Principles of Decision-Making

12.2.1 All decisions of the Council will be made in accordance with the following principles:-

- (a) the decision must be reasonable within the common meaning of the word, i.e. it must be a rational decision based on sound judgement;
- (b) the decision must also be reasonable within the legal meaning of "reasonableness" i.e. all relevant considerations must be fully taken into account in reaching the decision and all irrelevant ones disregarded;
- (c) in the case of 'quasi-judicial' decisions (e.g. a decision as to whether or not to grant a licence) a fair hearing conducted in accordance with the rules of natural justice should be afforded to the person who is the subject of the decision;
- (d) the decision must be proportionate (i.e. the action should be proportionate to the desired outcome);
- (e) decisions should be taken on the basis of due consultation and professional advice from officers;
- (f) human rights must be respected and consideration must be given as to whether the decision will give rise to any implications under the Human Rights Act 1998 and the European Convention on Human Rights;
- (g) decisions must be taken in compliance with Council's schemes of delegation, financial rules and instructions relating to contracts;
- (h) when making decisions a presumption in favour of openness must be applied and a clarity of aims and desired outcomes must be displayed;
- (i) careful consideration should always be given as to whether there is an interest that should be declared; and
- (j) in the case of executive decisions taken by the Cabinet, or an individual Member of the Cabinet, or an Officer (where the decision is closely connected with the Cabinet), a proper record of the

decision must be made together with a record of the reasons for the decision, details of any alternative options considered and rejected and any conflicts of interest.

12.3 Types of Decision

12.3.1 **Decisions reserved to Council** - Decisions relating to the functions listed in Article 4.2 will be made by the whole Council and not delegated.

12.3.2 Key Decisions (see footnotes)

- (a) A "key decision" means an executive decision which, pending any further guidance from the Secretary of State, is likely to:-
- (i) be significant in terms of its effects on communities living or working in an area ~~comprising two or more Wards~~ in the Borough/District¹; or
 - (ii) result in any new expenditure, income or savings of more than £50,000 in relation to the Council's revenue budget or capital programme²; or
 - ~~(iii) require the acquisition or disposal of any land or interest in land in excess of a value of £300,000³; or~~

¹ This is from the SEBC constitution, and was in the initial national guidance. It is used almost universally by local authorities as it focuses on the impact of a decision on residents.

² £50,000 is the existing SEBC limit (FHDC chose £25,000 as their initial limit, as SEBC did when adopting the cabinet model in 2002). Looking at some neighbouring councils using a cabinet model, the following defined limits apply:

- South Norfolk - gross full year effect of £100,000 or 10% of the Council portfolio's net budget;
- Ipswich - revenue savings of £50,000; new revenue spending of £100,000; or capital spending of £250,000;
- Waveney - £100,000;
- Suffolk Coastal - £50,000;
- South Cambs - "significant" ; not defined as a sum;
- Breckland - "significant"; not defined as a sum.

Not included in the new proposed definition of a key decision are any provisions relating to changes to the staff establishment. While mentioned in the FHDC constitution at present, this has never been included in the SEBC version; other delegations to cabinet and the officers already cover this matter fully so it is not needed e.g. the financial thresholds for a key decision and the Council's adopted staff policies. Cabinet cannot act outside of these other provisions.

³ Could be deleted if desired. This is taken straight from the FHDC constitution, and is not in the SEBC model. In practice, major asset decisions are likely to be included in asset management plan reports, or to be the subject of reports to Cabinet under the other key decision definitions.

- (iv) comprise or include the making, approval or publication of a draft or final scheme which may require, either directly or in the event of objections, the approval of a Minister of the Crown.⁴

~~(b) Wherever practicable, a decision which has a significant impact on people living or working in a single Ward will be treated as a key decision.~~

(c) 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.

12.4 Urgent key decisions

12.4.1 Provisions for taking key decisions in cases of urgency where they have not been included in the decisions plan are set out in the Access to Information Procedure Rules in Part 4 of this constitution.

12.4 Decision-Making by the Full Council

12.4.1 Subject to Article 12.8, the Council meeting will follow the Council procedure rules set out in Part 4 of this Constitution when considering any matter.

12.5 Decision-Making by the Cabinet

12.5.1 Subject to Article 12.8, the Cabinet will follow the Executive Procedure Rules set out in Part 4 of this Constitution when considering any matter.

12.6 Decision-Making by the Overview and Scrutiny Committee and Performance and Audit Scrutiny Committee

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

2.7 Decision-Making by Other Committees and Sub-Committees Established by the Council

⁴ The FHDC constitution also includes two other definitions:

- (i) "decisions which raise new issues of policy". This is not included since Article 6 only empowers the Cabinet to operate within the adopted policy framework, and also indicates that Cabinet's role is to formulate policy for council adoption. So this is implicit. Also, significant matters of new policy would also be captured by (a) (i) and (ii);
- (ii) "decisions contrary to a policy, plan or strategy approved by the Council or a Committee of the Council". This is also not included in the draft above for the reason previously explained. It would be ultra-vires under Article 6 for Cabinet to make such decisions – so suggesting it could appear contradictory.

12.7.1 Subject to Article 12.8, 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.

12.8 Decision-Making by Council Bodies Acting as Tribunals

12.8.1 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 of Human Rights.

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