
6H OFFICER DECISION MAKING PROTOCOL

1.0 INTRODUCTION

This document sets out the legal framework for decision making and establishes a system to document decisions taken by Officers under delegated authority, to ensure a robust process of accountability, to promote transparency and to ensure legal compliance.

2.0 TYPES OF OFFICER DECISIONS

The significance, in terms of value or impact, of decisions taken under delegated authority will vary and Officers authorised to make delegated decisions will need to exercise judgment in determining whether decisions are significant enough to require placing in the Executive Work Programme (if they are Executive) and whether they are significant enough to require formal recording.

To assist in this process, decisions are defined as either Key, Major or Administrative.

A key Executive decision should be included in the Executive Work Programme, regardless of whom the decision maker may be. This must be published for 28 days prior to the decision being made.

Key and major decisions, regardless of whether they are Executive or not, must be properly recorded in accordance with this protocol. Where such decisions are Executive, it is a legal requirement to formally record them, and they may be challenged through the call in process. Where they are non-Executive, it remains necessary to formally record them as, although they cannot be called in, they could be challenged externally through an appeals process, the Courts and Tribunals or the Local Government and Social Care Ombudsman.

2.1 Key Decision

A key decision is defined in Part 3A of this Constitution.

A key decision is an Executive decision that is likely to:

- Result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function to which the decision relates; or
- Be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the authority.

The Council has decided that something is financial significant for these purposes if it is an Executive decision which requires a budget expenditure of £150,000 or more, or generates income or savings of £150,000 or more.

In considering whether a decision is likely to be 'significant', the decision maker should consider the strategic nature of the decision and whether the outcome will have an impact, for better or worse, on the amenity of a community or quality of service provided by the Council to a significant number of people living or working in the locality affected. The following should be considered:

- The effect on businesses and communities
- The expectation of the public and councillors as to whether the decision should be taken by the Executive
- The anticipated interest of the public and of councillors
- The effect on other council services and function

It is for the Chief Executive, having taken advice from the Monitoring Officer, to decide which decisions should be treated as Key Decisions.

2.2 Major Decisions

Major Decisions are all those that are not categorised as either Key Decisions or Administrative Decisions.

2.3 Administrative Decisions

Administrative decisions are decisions that are ancillary to the delivery of the function such as the:

- Ordering of stationery,
- Publication of statutory notices; or
- Deployment of staff.

As a guideline, administrative decision will often relate to expenditure, income or savings, of less than £10,000, but before determining the type of decision, it is also necessary to consider the impact, risk and consequences, as well as value.

3.0 AUTHORITY TO MAKE AN OFFICER DECISION

Before taking any decision, an Officer should ensure that they have appropriate delegated authority in writing, and reference should be made to the Scheme of Officer Delegations in Part 4 of the Constitution. Alternatively a specific delegation may have been made to an Officer via a specific resolution of the Executive, the Council or one of its Committees.

4.0 NOTICE OF THE MAKING OF AN OFFICER KEY DECISION

In accordance with the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012, all proposed key decisions need to be published on the Council's website, as part of the Executive Work Programme for at least 28 clear days prior to the date on which the decision is made. Officers proposing to make a key decision and needing to place an item on the Council's website should provide details to Democratic Services via email at democratic.services@westoxon.gov.uk at least 30 days prior to the date on which the decision is to be made.

There may be occasions where it has not been possible to give notice of a key decision. When this occurs the following process must be followed:

- At least 5 clear working days before the decision is to be made the Monitoring Officer must inform (by written notice) the Chair of the Finance and Management Overview and Scrutiny Committee, the Chair of the Economic and Social Overview and Scrutiny Committee and the Chair of the Climate and Environment Overview and Scrutiny Committee
- A copy of the notice must be placed on the website and made available for public inspection

- The Monitoring Officer will prepare and publish a notice on the website setting out the reasons why the item did not appear on the Executive Work Programme.

If it has not been possible to give 5 clear working days' notice of a key decision, the agreement of the Chair of the Finance and Management Overview and Scrutiny Committee that the making of the decision is urgent and cannot reasonably be deferred must be obtained in writing before the decision may be made. The decision notice, in such circumstances, must include their views, together with an explanation as to why the matter is urgent, why it cannot await the next edition of the Executive Work Programme and why it missed the last edition.

5.0 OFFICER REPORT

A key officer decision should only be taken after consideration of an internal report, which should at the very least include:

- The Wards affected by the proposed decision;
- The name and title of the Officer writing the report;
- The title of the report;
- The designation as a key decision;
- Whether the report contains exempt or confidential information;
- Details of any consultation taken and representations received;
- The Officer's recommendations and reasons;
- Any alternative options considered;
- Any professional advice from legal or finance officers.

There is no requirement for any such Officer report to be published, although it is good practice to retain a copy of it for a complete audit trail of the decision making process.

6.0 PRINCIPLES OF OFFICER DECISION MAKING

The authorised Officer must take into account the principles of decision making as set out in Part 2H of the Constitution (Article 8 – Decision Making), which are equally applicable to Officers and Members. They must take into account all relevant considerations and no irrelevant considerations and they must have due regard to professional advice.

7.0 CONSULTATION

Sometimes delegated authority to an Officer is given with the restriction that the authority may only be exercised in consultation with a specified Member or Members. In such cases, consultation is mandatory to comply with the terms of the delegation. However, consultation may also be appropriate in other circumstances, and an Officer making a decision should always consider any consultation that may be beneficial and inform their decision. The decision maker has a duty to ensure that effective consultation takes place.

Sufficient timescales should be provided to Members for consultation, and where appropriate sufficient time should be available to allow Members to consult with their constituents. Consultation should be carried out in writing, unless there is an urgency about the decision that makes such written consultation impractical, in which case the Officer shall confirm, in writing, to the Member their understanding of the Member's response to the consultation.

Regardless of any consultation, the Officer remains the decision maker and may not have their discretion fettered. If, after consultation, they consider they cannot make the decision in accordance with their professional opinion, they should not exercise their delegation.

8.0 REASONS

It is a statutory requirement arising from the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012, that reasons are given in respect of all Executive decisions.

It is good practice to record reasons in any Officer decision and it supports the principles of good administration, as well as ensuring that controversial decisions are rooted in relevant considerations and with proper regard to legal powers.

9.0 RECORDING AND PUBLISHING AN OFFICER DECISION

Any Key or Major decision made by an Officer must be recorded, regardless of whether they are Executive or not. The decision should be recorded on an Officer Decision Notice, available on the intranet or from Democratic Services.

The Officer must provide a copy of the Officer report, together with the Officer Decision Notice to Democratic Services via email at democratic.services@westoxon.gov.uk as soon as practicable after making the decision.

Democratic Services will maintain a record of all Officer Decision Notices, including any reports upon which the decision was made. Subject to any exempt or confidential information, democratic services will publish Officer Decision Notices relating to key and major decisions on the Council's website.

The Officer Decision Notice must be clear and convey the decision taken. It shall, as a minimum, set out the following:

- A record of the decision
- The date the decision was made
- The reasons for the decision
- Details of any alternative options considered and rejected with reasons for rejection
- A record of any conflict of interest and any relevant dispensation granted.

10.0 CALL IN

Key decisions made by Officers are subject to call in by the Overview & Scrutiny Committees and cannot be implemented until either the call in period has expired or the relevant Overview & Scrutiny Committee has made a decision regarding the call in, or call in has been waived by the relevant Chair of the Scrutiny Committee.

The call in procedure is set out at Part 5C of the Constitution in the Overview and Scrutiny Procedure Rules.

It should be noted that the call in period commences at the time of publication of the Officer Decision Notice, rather than at the time the decision was made.

11.0 SUB DELEGATION

Officers authorised to make decisions, whether by way of an Executive, Council or Committee resolution, or via the Scheme of Officer Delegations, are able to sub delegate that authority.

Any sub delegation made must be to an Officer with suitable experience and seniority. The original delegate remains responsible and accountable for the decision to sub delegate and for the exercise of the authority by a sub delegate.

Delegations to Officers are designed to enable Officers to take responsibility for decision where appropriate. However, there may be circumstances where the Officer considers that a particular decision should be referred to the body from whom the authority was delegated. Furthermore, the body making the delegation may, in particular circumstances, consider that the delegate should not exercise their authority, and require the decision to be made by the delegating body.