

Key Decisions and when they arise

Supplementary guidance document

1. Definition of Key Decision

The Statutory Definition of Key Decision is as set out in Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 made pursuant to the Local Government Act 2000, which as follows:

“A “key decision” means 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.

In determining the meaning of “significant” for the purposes of paragraph (1) the local authority must have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the 2000 Act (guidance).

Whilst there is currently no guidance under S9Q in this regard, guidance issued under S38 of the 2000 Act makes clear that the local authority should agree as a full council limits above which items are significant and publish these limits, which Croydon has done via its Constitution. A local authority is able to set different thresholds for different services or functions, bearing in mind the overall budget for those services and functions and the likely impact on communities of each service or function.

The Council is able to review and amend these limits if considered appropriate and following consideration by full Council.

The Definition of Key Decision in the Council’s Constitution (Part 2 Article 13) is as follows:

“A Key Decision is an executive decision which is likely to:

- (i) result in the Council incurring expenditure, or making savings, of (a) more than £500,000 or (b) between £100,000 and £500,000 AND is more than 25% of the Council’s budget for the service or function to which the decision relates; or
- (ii) significant in terms of its effects on communities living or working in an area comprising two or more Wards in the Borough.

2. Steps to deciding when a Decision is Key

The basis upon which a decision will be regarded as key will involve assessing the following three matters: (a) Is the decision executive or non-executive; (b) what is the saving or expenditure level which will result from the proposed decision and (c) is the decision likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Borough.

These are discussed below:

a. Is the decision executive or non-executive:

Before a decision can be regarded as a key decision, it must be determined that it is a decision for the executive to make rather than a non-executive decision making body (such for example as Licensing, Planning, General Purposes and Audit Committee or Health and Wellbeing Board) or the Full Council.

Non-executive decisions are not, by law, regarded as key decisions.

Whether or not a matter may be considered by the Executive or is reserved for a non-executive body or Council is set out either in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 as amended from time to time, the Council's Constitution or in the specific statute which provides the Council with the authority to act in relation to that area/function. So in each case the starting point is to confirm the statutory provisions which would permit the authority to undertake the function or make the decision in question.

Only if the matter is an executive function do the provisions pertaining to key decisions come into contention and it becomes necessary to consider items b. and c. below. If the matter is for decision as a non-executive matter, then the key decision provisions are not, by operation of law, engaged.

For example the approval of certain policies which are reserved to full council are not as a matter of law a 'key decision'. This includes adopting the Policy and Budget framework which is defined in the Appendix to article 4.02 in the Constitution as follows:

- 1 Equality Strategy;
- 2 Health and Well Being Strategy;
- 3 Community Safety Strategy;
- 4 Children and Young Persons Plan;
- 5 Initial Local Implementation (Transport) Plan;
- 6 Annual Council Budget
- 7 Licensing Statement;
- 8 Gambling Strategy;
- 9 The Admission arrangements for Community schools;
- 10 The plans and strategies for planning, development and conservation in the Borough comprising the Croydon Plan and other approved and adopted development plan documents and supplementary planning documents which make up the Local Development Framework for Croydon;
- 11 Plans, Policies and Strategies which together make up the Housing Strategy;
- 12 Youth Justice Plan.
- 13 The Making or revising of a Council Tax Reduction Scheme
- 14 Exercise of the power to determine further discounts for certain dwellings and set higher amount of council tax in respect of long term empty dwellings under sections 11A and 11B of the LGFA 1992, as amended

b. What is the saving or expenditure level which will result from the proposed decision:

This requires consideration of two separate elements of the “financial” test.

Element one: Is the decision one which could result in the Council incurring expenditure, or the making of savings of more than £500,000.

If the answer to this is yes, then the decision is regarded as Key.

For example: Executive decisions which involve:

- Disposal of any council property with a value of more than £500,000
- Contracts which over their lifetime are anticipated to have a value of more than £500,000 or provide a saving of more than £500,000
- Any extension/modification to a contract which will mean that the expenditure on a contract (either in total over its lifetime or as a result of this extension/modification) will have a value of more than £500,000 or provide a saving of more than £500,000
- Taking by the council of any interest in land for a consideration of more than £500,000
- The granting of any interest in land for a consideration of more than £500,000
- Applications for funding from any external body which if successful would require match funding of more than £500,000, or require revenue commitment of more than £500,000.

Some examples of historic executive decisions under this category (when the threshold was more than £1m) include:

Microsoft Enterprise Software Agreement – this decision was taken by the Cabinet Member for Finance & Resources in June 2019 and was a Key Decision as it involved expenditure of over £1,000,000.

Delivering the Growth Zone – this decision was taken by Cabinet in October 2018, and was a key decision as it involved expenditure of over £1,000,000 and impacted two or more wards.

Element two: Is the decision one which could result in expenditure or savings of between £100,000 and £500,000 AND is it in excess of 25% of the Budget for the service or function to which the decision relates

This second part of the test is best illustrated with an example: if the budget for delivering a service or function were £400,000 and this executive decision was looking to commit £125,000 of that, this sum would be significant bearing in mind the budget for that service or function therefore rendering the decision a key decision.

If so, the decision will be a key decision.

What constitutes a service or function will be considered on its merits. It must, however, be capable of identification as a discrete activity and in many instances will

reflect the Council's statutory duties e.g. collecting used plastic is not a service in its own right but recycling probably is, even though it forms part of the wider waste collection function.

Even if the decision is not one which falls within the financial parameters of the key decision test it could still be key if it falls within the final element of the test in c. below.

c. Is the decision likely to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the Borough.

In making that assessment the lead officer is looking at the potential impacts and whether this will affect two or more wards in the borough. If the decision will impact on/effect two or more wards, the question will then arise as to whether this impact/effect is significant – whether on those living or working in those areas.

It is obviously a judgement call as to what may be significant, but the assessment is not only looking at what might be a detrimental impact but also whether it could have a positive impact – either could be significant in this context – and render the decision a key decision as a result.

The decision must impact on those living or working in two or more wards of the borough – significant impacts on just a single ward would not fall within the statutory definition. However, it should be noted that a decision regarding e.g. the physical location of a new development within one ward will not preclude the decision from being a key one under this limb of the definition where it impacts not just those living or working in the ward within which the development is located but also adjoining ward(s). It is not about geographical place but the effect on communities which must be assessed.

Some considerations which may be relevant in deciding the significance of an executive decision under this criteria could include:

- the extent of the impact (i.e. how many people and wards will be affected)
- the likely views of those affected (i.e. is the decision likely to result in substantial public interest/opposition/support – regard should be had to any consultation undertaken to assist in this regard and matters which require public consultation whether by statute or otherwise are more likely to be regarded as significant)
- whether the decision is likely to be a matter of political sensitivity
- where the decision may incur a significant social, economic or environmental risk
- where the decision may have a significant impact on those with protected characteristics (age, disability, gender reassignment, race, religion or belief, sex, sexual orientation, marriage and civil partnership and pregnancy and maternity)

Some examples of executive decisions which have recently been considered to be key decisions under this criteria include:

- Post-16 Travel Assistance policy changes this decision was taken by Cabinet in March 2019 and was a Key Decision as it had a significant impact on residents within two or more wards.
- Adoption of School Streets this decision was taken by the Cabinet Member for Environment, Transport & Regeneration (Job Share) in August 2019 and was a Key Decision as it would have significant impact on residents within two or more wards.
- Parking Policy 2019-22 this decision was taken by the Executive Director Place in July 2019 and was a key decision as it would have a significant impact on residents in two or more wards.
- Culture Policy
- Air Quality Action Plan

3. Will certain decisions always be regarded as key?

In short, no. In order to be a key decision, the decisions must be executive decisions which fall within the statutory definition as set out in Regulation 8 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 so each decision must be assessed on its individual merits to ascertain whether or not it is key in the circumstances.

For this purpose, the Council has set the financial thresholds for the first “financial” element of the key decision test at £500,000 as detailed above and where this threshold is not met, the second element of the financial test and the significant impact test need to then be considered by decision makers.

4. What does it mean if the decision is a Key Decision?

- a. Decision may not be taken unless the provisions of inter alia paragraphs 29-32 of the Access to Information Procedure Rules in Part 4B of the Constitution have been complied with.
- b. The decision may only be implemented after 13.00 hours on the 6th working day following the day on which the decision was taken unless it was referred (under the call in procedure) to the Scrutiny and Overview Committee during that period.
- c. If the decision is called in, its implementation is suspended pending consideration by the Overview and Scrutiny Committee who may in turn refer the matter back to Cabinet for reconsideration. If the Scrutiny and Overview Committee decides that no further action is necessary then the decision may be implemented.
- d. If the Scrutiny and Overview Committee consider that the decision is taken outside the Budget and Policy framework, the Committee may refer the matter directly to Council for decision.
- e. More detail is set out in Part 4E as to the process around call-in and the functions of Scrutiny and Overview Committee

5. What must I do if the decision is a Key Decision?

- a. Check whether or not the decision has been publicised via Democratic Services 28 days before the proposed decision date. Please complete the

table below with details of the decision to be listed on the 28 day notice and send to democratic.services@croydon.gov.uk

Report Title	
Lead Member	
Lead Officer	
Decision Makers	
Open/exempt/part exempt	
Reason a Key Decision	

- b. If not, the decision may not be taken until these provisions have been complied with unless the requirements around Exception or Special Urgency apply and have been complied with.
- c. Read Part 4B of the Constitution which applies to among other matters: access to reports prior to meetings/decisions, the taking of the decision, the records which must be kept (including in relation to background papers) and the manner of publication of the intention to take the decision as well as the subsequent publication of the decision.
- d. Ensure the Key Decision reference number is included in the relevant section of the report. The reference number is provided by Democratic Services when the decision is added to the 28 day notice.
- e. Have regard particularly to paragraphs 29 – 32 in Part 4B in relation to Key Decision rules
- f. Seek advice from Democratic Services (democratic.services@croydon.gov.uk) or the Director of Law and Governance if unsure.

The flowchart below illustrates the key decision process in simplified terms:

