

CABINET MEETING – 10 OCTOBER 2012

EXECUTIVE SUMMARY SHEET – PART I

Title of Report:

Executive Arrangements - Meetings and Access to Information

Author(s):

The Chief Executive and Executive Director of Commercial and Corporate Services

Purpose of Report:

To inform Cabinet of revised requirements for the notification and recording of executive decisions and propose consequential revisions to arrangements to support executive decision-making

Description of Decision:

That Cabinet

- (i) notes the report and the provisions of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ("the Regulations") and
- (ii) delegates to the Head of Law and Governance, in consultation with the Leader, the consideration of representations received in response to notices issued under regulation 5 of the Regulations in respect of private meetings and the determination of the response to such representations on behalf of the decision making body

Is the decision consistent with the Budget/Policy Framework? Yes

If not, Council approval is required to change the Budget/Policy Framework

Suggested reason(s) for Decision:

To ensure executive decisions are taken in accordance with the revised requirements introduced by the Regulations

Alternative options to be considered and recommended to be rejected:

There are no alternative options as it is a statutory requirement to comply with the Regulations

Impacts analysed;

Equality Privacy Sustainability Crime and Disorder

Is this a “Key Decision” as defined in the Constitution? No	Scrutiny Committee
Is it included in the 28 day Notice of Decisions? No	

EXECUTIVE ARRANGEMENTS - MEETINGS AND ACCESS TO INFORMATION

**JOINT REPORT OF THE CHIEF EXECUTIVE AND EXECUTIVE DIRECTOR OF
COMMERCIAL AND CORPORATE SERVICES**

1. Purpose of the Report

To inform Cabinet of revised requirements for the notification and recording of executive Decisions and propose consequential revisions to arrangements to support executive decision-making.

2. Description of Decision (Recommendations)

That Cabinet

(i) notes the report and the provisions of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ("the Regulations") and

(ii) delegates to the Head of Law and Governance, in consultation with the Leader, the consideration of representations received in response to notices issued under regulation 5 of the Regulations in respect of private meetings and the determination of the response to such representations on behalf of the decision making body.

3. Introduction/Background

3.1 The Regulations restate a number of the provisions that applied under the previous legislation regarding meetings and access to information, but also introduce new requirements regarding publication of notices of key decisions to be taken, notice of private meetings, and publication of executive decisions taken by individual decision-makers. They apply to the executive and its committees and subcommittees, joint committees where all the members are members of a local authority executive, sub committees of such joint committees and area committees of local authority executives, as well as individual decision makers who take executive decisions.

3.2 The Regulations were laid before Parliament on 15th August and took effect on 10th September, with no advance warning given of the proposals.

The Association of Council Secretaries and Solicitors (ACSeS) has taken advice from Clive Sheldon QC on some aspects of the Regulations which are open to interpretation and could give rise to practical difficulties, and it may be that further advice is required as the practical application of the Regulations is worked through.

3.3 In the light of the regulations, it will be necessary to amend the Access to Information Rules set out in the constitution together with the various references to the Forward Plan, in order to reflect the new requirements and terminology and a further report will be presented to Cabinet in due course in this regard.

3.4 The principal new requirements are set out below.

4. Meeting in private

4.1 The Access to Information requirements remain in place and the public can be excluded from a meeting of a decision-making body only in the following circumstances;

- where confidential information is likely to be disclosed. (The definition of 'confidential information' remains unchanged, and relates only to information provided to the local authority by a Government department on terms which forbid the disclosure of the information to the public or information the disclosure of which is prohibited by or under any enactment or a court order), or
- a resolution has been passed to exclude the public because exempt information is likely to be disclosed. (These are the "Part II" items on Cabinet etc agendas, and the definition of 'exempt information' remains unchanged) or
- a lawful power is used to exclude members of the public in order to maintain orderly conduct or prevent misbehaviour.

4.2 However, there are new requirements for notice to be given regarding meetings proposed to be held in private, and the following notice requirements now apply;

- The decision-making body must give at least 28 clear days' notice of such a meeting stating the reasons for the meeting to be held in private. Communities and Local Government (CLG) has confirmed that this is intended to mean 28 calendar days i.e. including weekends and bank holidays. During the notice period, representations may be made as to why the meeting should be held in public.
- At least five clear days before the private meeting, the decision-making body must make another notice available at the local authority's offices and publish it on the local authority's website if the local authority has one. This must include the reasons for the meeting to be held in private (assuming that remains the decision making body's view), details of any representations received about why the meeting should be held in public, and the response of the decision-making body to the representations.

It is suggested that it will be appropriate to delegate responsibility for determining the response of a decision-making body to representations received, as otherwise additional Cabinet meetings would need to be arranged to undertake this function. It is recommended that this be delegated to the Head of Law and Governance as Monitoring Officer (as she is the "proper officer" for the purposes of the Access to Information Rules), in consultation with the Leader.

In addition the decision-making body should still consider the question of whether the matter should be considered in private at the time it is considering a resolution to exclude the press and public.

4.3 When it is not practicable for the decision-making body to comply with these requirements because of the urgency of the decision to be taken, a meeting may be held in private if this has been agreed by the Chair of the Scrutiny Committee (or, if the chair is unable to act, the Mayor). A notice must then be published, explaining why the meeting is urgent and cannot reasonably be deferred.

5 Key decisions

- 5.1 The requirement to publish a Forward Plan of key decisions to be taken for the next four month period is replaced with a 28 days' notice requirement. A decision-maker who intends to make a key decision is required to publish a notice explaining that a key decision is to be made. The information contained is similar but not identical to the previous requirements. The notice must state:
- the matter in respect of which the decision is to be made;
 - where the decision-maker is an individual, their name and title and
 - where the decision-maker is a body, its name and members;
 - the date on or period within which the decision will be made;
 - a list of the documents submitted to the decision maker for consideration in relation to the matter to be considered before the decision is made;
 - the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, those documents are available;
 - confirmation that other documents may be submitted to the decision-maker, and
 - the procedure for requesting details of such documents as they become available.

The Regulations do not require authorities to disclose to the public or make available for public inspection any document or part of a document that contains confidential or exempt information or the advice of a political adviser or assistant.

A notice compliant with the new requirements was issued on 11 September to support proposed key decisions of which officers were aware at that time.

- 5.2 A similar provision to the previous "Rule 15" notice procedure for decisions not included in the forward plan is included in Regulation 10. If it is not practicable to comply with the 28 day notice requirement before a key decision is made because of the urgency of the decision to be taken, it may be made after 5 days' written notice has been given to the Chair of the Scrutiny Committee (or if there is no such person, each member of the Scrutiny Committee), and the notice has been made available to the public for inspection.

A new requirement is that, as soon as reasonably practicable after complying with those requirements, the proper officer must publish a notice explaining why compliance with the publication requirements before making a key decision is impracticable.

Clearly it is important that executive decision-making is planned well in advance to ensure that whenever possible, 28 days' notice can be given.

- 5.3 Where giving the 5 days' notice is not practicable, there is a provision similar to the previous "Rule 16" procedure for a key decision to be made if the Chair of the Scrutiny Committee or, if the chair is unable to act, the Mayor, agrees that the making of the decision is urgent and cannot reasonably be deferred. As soon as reasonably practicable after obtaining such agreement, the decision-maker must publish a notice setting out the reasons for urgency.

6 Background papers

- 6.1 In relation to reports for meetings, there is a new requirement for background papers to be made available for inspection on the Council's website, as well as an ongoing requirement to make a copy available for inspection at the Council's offices. In future, when submitting Cabinet reports, officers must also supply to Governance Services copies of the background papers specified in the report or an appropriate link, to be uploaded to the website.

7 Publication of Notices

- 7.1 All notices are now required to be published on the Council's website, in addition to being made available for inspection.

8 Facilities for reporting meetings

- 8.1 If a meeting is open to the public, the regulations require that any person attending the meeting for the purpose of reporting proceedings should be afforded reasonable facilities for taking their report. While press reports indicate this is intended to encompass real-time reporting by use of social media, this is not specifically stated in the regulations.
- 8.2 There is, though, a clear indication that the Government does not expect local authorities to prevent or restrict the use of social media by those who want to report their public meetings. CLG indicated in its press notice about the regulations that it expects this to make it easier for new social media reporting of council executive meetings thereby opening proceedings up to internet bloggers, tweeting and hyperlocal news forums. Eric Pickles, the Communities and Local Government Secretary, has commented to the effect that every kind of modern journalist can go through the doors of town hall transparency, be it from the daily reporter, the hyper-local news website or the armchair activist and concerned citizen blogger.

9 Reporting urgent decisions

- 9.1 There remains a requirement for the Leader to report to Council with details of each executive decision taken since the submission of the last report where the making of the decision was agreed as urgent. The Leader's report must set out the decisions made and a summary of the matters in respect of which each decision was made. Reports must be made at the intervals required by the Council, at a minimum annually. It is proposed that the current practice of reporting on a quarterly basis continues.

10 Recording executive decisions

- 10.1 There is an ongoing requirement for executive decisions made at a meeting of a decision-making body to be recorded in a written statement. Previously all executive decisions made by an individual member, but only key decisions made by officers were required to be recorded and available for inspection. The publication requirements now extend to all executive decisions taken by an officer.

- 10.2 There is clearly a need for greater clarity on the question of the level of decision to be recorded, and it is understood that ACSeS are writing to CLG to make representations regarding the disproportionate burden that could be placed on authorities in recording all such decisions, unless the Regulations are clarified and amended. However unless or until the Regulations are changed, there is a need to adopt a workable approach to comply with the requirement.
- 10.3 Eric Pickles has said that every decision a council takes has a major impact on the lives of local people, so it is crucial that whenever it takes a significant decision about local budgets that affect local communities, whether it is in a full council meeting or in an unheard of sub-committee, it has got to be taken in the full glare of all the press and any of the public.
- 10.4 From this, arguably it appears that the intention is that only those decisions that are significant for local communities should be recorded and published. However, the Regulations do not use this terminology. It is proposed that purely administrative decisions, i.e. decisions that are only tenuously connected with the discharge of executive functions – such as purchasing stationery for use in connection with executive functions – will not be recorded, but that executive delegated decisions of a similar level to those that officers have been in the practice of recording and including in the Members' Digest are recorded in an appropriate format which complies with the Regulations. The Head of Law and Governance will revisit the guidance on decisions and delegated decision form in order to ensure compliance with the Regulations and circulate this to officers.
- 10.5 As soon as reasonably practicable after an individual member has made an executive decision, that member must produce or instruct the proper officer to produce a written statement. As soon as reasonably practicable after an officer has made an executive decision, that officer must produce a written statement.

These statements must include details of:

- the decision
 - the date it was made
 - the reasons for the decision
 - any alternative options considered and rejected
 - any conflict of interest declared by any executive member and
 - any dispensations granted by the Head of Paid Service in respect of any declared conflict of interest
- 10.6 These statements and the reports considered (subject to the provisions regarding confidential or exempt information) must be made available for inspection at the local authority's offices and published on the local authority's website if it has one. They must also be supplied to a newspaper following a request on payment of postage, copying or other necessary charges.

11 Dispensations

- 11.1 With regard to the reference in paragraph 10.5 to the granting of dispensations by the Head of Paid Service, it is understood that this is not intended to be the same as a dispensation granted by the Standards Committee or monitoring officer under the new standards regime relating to disclosable pecuniary interests. The reference to “conflict of interest” in the Regulations is understood to be dealing with the ability of executive members to be consulted in relation to a decision with respect to which they have a “conflict of interest” as understood at common law. Where this is the case, a record of this needs to be made and dispensation to be consulted can be granted by the Head of Paid Service.

12 Members’ rights of access to documents

There are slight changes to Members’ rights of access, and the provisions are now as follows;

- 12.1 Members are entitled, as previously, to inspect documents which relate to business to be transacted at a public meeting. These must be made available at least five clear days before the meeting, unless the meeting is convened at shorter notice. If the executive possess a document containing material relating to business transacted at a private meeting, or a decision made by an individual member or an officer, it must be available for inspection by any member of the authority when the meeting concludes or, where the decision is made by an individual member or officer, immediately after the decision has been made. The document must be available for inspection by members of the authority, in any event, within 24 hours of the meeting or decision.
- 12.2 These provisions do not require a document to be made available for inspection if it discloses exempt information, with two exceptions. Exempt information which must be provided is;
- information about financial or business affairs (except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract), and
 - information about the Council’s intention to make a statutory notice, order or direction.
- 12.3 Members of overview and scrutiny committees are entitled to a copy of any document which is in the possession of or under the control of their local authority’s executive and which contains material relating to business transacted at a meeting of a decision-making body of the local authority, or executive decisions made by individual members or officers.
- If a member of an overview and scrutiny committee requests such a document, the executive must provide it no later than 10 clear days after the executive receives the request, or provide a written statement explaining why the member is not entitled to receive it.

- 12.4 Members of overview and scrutiny committees are not entitled to documents or parts of documents containing confidential or exempt information unless this is relevant to an action or decision that the relevant member is reviewing or scrutinising or to a review contained in any work programme of the member's overview and scrutiny committee or a sub-committee of it. If an executive decision-maker decides not to release a document or part of a document to a member of an overview and scrutiny committee as requested, it must provide the overview and scrutiny committee with a written statement which explains the reasons.

13. Reasons for the Decision

To ensure executive decisions are taken in accordance with the revised requirements introduced by the Regulations

14. Alternative Options

There are no alternative options as it is a statutory requirement to comply with the Regulations

15. Impact Analysis

- 15.1 Equalities – The proposed arrangements will make details of decisions to be taken and records of those decisions accessible to the public in hard copy and on the internet. The Council has long-standing arrangements that enable documents to be provided in alternative formats.
- 15.2 Privacy Impact Assessment (PIA) –Privacy considerations are built into the Access to Information regime which means that decisions about individuals and their circumstances may be heard in private. The Council's arrangements will ensure that privacy issues are taken into account when considering representations received about whether a meeting should be held in public.
- 15.3 Sustainability and Community Cohesion – no specific new impacts are identified, the Council's decision making processes will continue to have regard to the need to promote sustainability and community cohesion.

16. Background Papers

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 -
<http://www.legislation.gov.uk/ukxi/2012/2089/contents/made>

