

BRECKLAND COUNCIL

Report of The Assistant Director - Democratic Services

To: Council: 25 October 2012

(Author: Vicky Thomson, Assistant Director - Democratic Services)

Subject: The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Purpose: To outline the new provisions introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Recommendation(s):

It is recommended that Members note the implications of the new Regulations.

1. INTRODUCTION

- 1.1 The purpose of this report is to outline the new provisions introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 1.2 The Regulations were made on 10 August 2012 and came into force on Monday 10 September 2012. The new Regulations revoke the previous Regulations which governed meetings of the executive and how executive decisions are recorded.
- 1.3 The Government has chosen not to consult on the contents of these Regulations, but did conduct a short, focused informal sounding exercise with partners, including the Local Government Association (LGA), Society of Local Authority Chief Executives, Association of Council Secretaries and Solicitors, Centre for Public Scrutiny, Local Government Regulation, and the Chartered Institute of Public Finance and Accountancy. Local authorities were not informed of the Regulations until they were published, and in their response the LGA stated that no amendments to existing Regulations were necessary. The Government did not share that view.
- 1.4 The Government considers that the Regulations are necessary in order to clarify and extend the circumstances in which local authority executive decisions are to be open to the public by requiring maximum transparency rather than allowing it. The Government does not plan to issue any separate guidance on these Regulations, as they are considered to be self explanatory, nor does the Government intend to monitor local authority compliance with the new Regulations.

2. ISSUES

Meetings of the Executive (Cabinet) and other executive committees

- 2.1 The previous Regulations required that any meeting of the Executive where a key decision was to be made must be held in public, unless certain

circumstances apply. Whilst the meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

- 2.2 It is still up to a local authority executive to decide which of its meetings, and which of the meetings of any committee of the executive, are to be open to the public and which of those meetings are to be held in private. The Regulations prescribe the procedures which must be followed before the Executive (Cabinet) or one of its committees holds a meeting in private, including allowing the public to make representations about why the meeting should be open to the public. This is unlikely to be an issue for this Council as since the adoption of executive arrangements all decision making meetings of the Executive (Cabinet) have been held in public as a matter of course.

Key decisions

- 2.3 The definition of a key decision provided in the Regulations remains the same. The definition of a Key decision for Breckland Council is:
- A decision to approve or recommend to Council any matter relating to a Policy or Strategic plan
 - A decision made in connection with the setting of Council Tax
 - A decision involving significant expenditure or savings exceeding 25% of the budget sum approved for a particular service or function; and
 - A decision which significantly affects the community on more than one ward or electoral division.

Forward Plan

- 2.4 The Council is no longer required to produce and publish a Forward Plan detailing the key decisions to be taken during a four month period. Instead the new Regulations state that where a decision maker intends to make a Key decision, that decision must not be made until a document has been published at least 28 clear days beforehand. This document, now to be known as the 'Key Decision Planner' must be made available for inspection by the public at the offices of the relevant authority and on the website.
- 2.5 The next Key Decision Planner will have been available for 28 clear days beforehand. The format of the Key Decision Planner will also be amended to include the additional details required under the new Regulations.
- 2.6 The notice of a key decision must contain additional information relating to the documents submitted to the decision maker for consideration, where the public can access the documents, and the procedure for requesting any other documents to be considered as they become available. The requirements to detail information about the consultation process that will be used and to identify the groups that would be consulted on the decision have been removed.
- 2.7 It is recommended that the Council continues to publish pending key decisions on a monthly basis, a month in advance, with the period covered being four months. This enables Scrutiny to have a reasonable period of notice of forthcoming executive decisions that might be suitable for pre

decision scrutiny. The new Regulations also provide an opportunity for the plan to be updated in real time.

- 2.8 Where it is not possible for an officer to comply with the notification requirements it is still possible to rely on the provisions of 'general exception' or 'special urgency'. The rules regarding general exception are broadly the same, although the Regulations now state that as soon as reasonably practicable the proper officer must make available at the offices of the local authority a notice setting out the reasons why compliance with the 28 days notification period is impracticable and that notice must be published on the Council's website.
- 2.9 In relation to cases of special urgency, there is now a requirement that as soon as reasonably practicable after the decision maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred, the decision maker (rather than the proper officer) must make available at the offices of the Council a notice setting out the reasons that the decision is urgent and cannot reasonably be deferred, and that notice must be published on the Council's website.
- 2.10 Although these are new requirements in the Regulations, the delegated decision form used by decision makers in this council already requires them to specify why the decision has not been included in the Key Decision Planner when the general exception or special urgency provisions are being used.
- 2.11 Alongside these changes, the requirement to have the report and other documents relating to an officer delegated decision available for inspection five days before the decision is taken has been removed.

Recording of executive decisions

- 2.12 Under the previous Regulations, as soon as reasonably practicable after an officer had made a decision which was a **key decision**, the officer would produce a written statement which had to include:
- A record of the decision;
 - A record of the reasons for the decision;
 - Details of any alternative options considered and rejected by the officer at the time when he made the decision;
 - A record of any conflict of interest declared, in relation to the decision, by any executive member who was consulted, and a record of any dispensation granted.
- 2.13 The previous Regulations only required Key decisions to be recorded in this way.
- 2.14 However the new Regulations state that as soon as reasonably practicable after an officer has made a decision which is an **executive decision**, the officer must produce a written statement which must include –
- A record of the decision including the date it was made;
 - A record of the reasons for the decision;
 - Details of any alternative options considered and rejected by the officer when making the decision;
 - A record of any conflict of interest declared by an executive member who is consulted by the officer that relates to the decision, a note of any dispensation granted.

- 2.15 Furthermore, the new Regulations defines the term 'executive decision' as a decision made or to be made, by a decision maker, in connection with the discharge of a function which is the responsibility of the executive of a local authority. This could be considered to have significantly widened the scope of decisions which must be formally recorded to include Administrative decisions made by officers, not just Key and Significant Operational decisions. It is however suggested that a pragmatic approach is taken to the interpretation of this and that only those decisions that are closely connected to the discharge of executive functions need to be recorded.

Background papers

- 2.16 Where a report considered at a public meeting or by an officer contains a list of background papers, a copy of each of the documents in that list must now be published on the Council's website, unless it contains exempt or confidential information. The effect of this change is that background documents must be published in relation to executive decisions, but not council decisions.

Dispensations

- 2.17 At various points in the new Regulations there are references made to the Head of Paid Service granting dispensations to Members who have a declared conflict of interest. Although in the Localism Act 2011 the power to grant dispensations relating to the Code of Conduct and Disclosable Pecuniary Interests is granted to the local authority, it does not specify that this function should be carried out by the Head of Paid Service. Full Council has chosen to delegate the role of granting dispensations under the Code of Conduct to the Audit Committee and the Monitoring Officer, however for the purposes of these new Regulations, the reference to 'conflict of interest' in regulation 13 (2) is not confined to 'pecuniary interests' but means an actual conflict as at common law. Authority now therefore sits with the Head of Paid Service in this instance only as detailed in the regulations.

Members' rights of access to information

- 2.18 Members' rights of access are broadly unchanged, although the new Regulations have introduced timescales within which Members must be provided with the requested information. Any document which is required to be available for inspection by any member of the relevant local authority must be made available for inspection within 24 hours of the conclusion of a private meeting or the decision being made.
- 2.19 As before members of overview and scrutiny committees have additional rights to access documents relating to decisions that committee is scrutinising, and in certain circumstances the committee can access exempt or confidential information. The executive must provide the requested document as soon as reasonably practicable and in any case no later than 10 clear days after the executive receives the request. Furthermore, where the executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document for reasons set out in the regulations, it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

Reports from the Leader

- 2.20 Under the previous regulations the Leader was required to submit a quarterly report to the authority containing details of each executive decision taken where the decision was agreed as urgent. The new Regulations remove the requirement for the Leader to make such reports quarterly, but now state that the authority can determine when the reports should be received but the Leader must submit at least one report annually.

Inspection of documents by members of the public

- 2.21 The rules regarding the inspection and retention of documents are broadly the same. However, the new Regulations clarify that wherever a document is to be open to public inspection it should be published on the Council's website. Furthermore, subject to copyright rules, any member of the public may, in any publicly available medium, reproduce, or provide commentary in relation to, any document supplied to that person or made available for public inspection.

3. IMPLICATIONS

Risk - There are no risks identified as a result of this report.

Financial - There are resource implications in terms of officer time involved in recording administrative decisions made by officers and ensuring that records of all executive decisions made by officers are available for inspection by Members within 24 hours of a decision being made. It is not possible to fully analyse the implications of these changes on staffing.

Legal - These Regulations come into force on 10 September 2012 and will revoke the following current Regulations:

- The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000;
- The Local Authorities (Executive Arrangements) (Access to Information) (England) Amendment Regulations 2002; and
- The Local Authorities (Executive Arrangements) (Access to Information) (Amendment) (England) Regulations 2006

Equality and Diversity - The Regulations do not explicitly require information in relation to equality and diversity to be included in the notification of a key decision. However the report writing guidance still requires decision makers to include such information in their reports to decision makers.

4. Wards/Communities Affected

- 4.1 All wards are affected by the content of this report.

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