



St Edmundsbury
BOROUGH COUNCIL

D213

Democratic Renewal Working Party 6 December 2012

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

1. Summary and reasons for recommendation

- 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, and to highlight the changes which will be required to some of the Council's executive (Cabinet) processes, and to the Constitution.
- 1.2 The Regulations came into force on 10 September 2012, and make changes to the governance of meetings of the Cabinet and its Joint Committees, and to how executive decisions are recorded.

2. Recommendation

- 2.1 That the Head of Legal and Democratic Services be given delegated authority to make any necessary changes to the Council's Constitution identified as a result of the coming into force of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

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3. Corporate priorities

- 3.1 The recommendations meet the following, as contained within the Corporate Plan:

Corporate priority: Working together for an efficient council.

4. Key issues

- 4.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 came into force on 10 September 2012, and make changes to the Regulations which govern meetings of the Executive (Cabinet) and how executive decisions are recorded.
- 4.2 Unfortunately the Government did not consult on the content of these Regulations before they were implemented, and local authorities were not informed of the Regulations until they were published. This has resulted in a situation where there is still confusion over one or two of the Regulations, and it is hoped that separate guidance will ultimately be provided to clarify these issues. The Association of Council Secretaries and Solicitors (ACSeS) and Centre for Public Scrutiny (CfPS), amongst others, have requested clarification.
- 4.3 This report takes each of the key elements of the Regulations in turn and advises Members of changes which need to be made to the executive decision making process as a result, and requests delegated authority to make the necessary changes to the Constitution.

5. Other options considered

- 5.1 As this is a statutory requirement, there is no alternative option but to implement the Regulations, although as will be seen from the report, officers are awaiting further guidance on some issues.

6. Outline of the main Regulations

6.1 Forward Plan and Notice of Key Decisions (Regulation 9)

- 6.1.1 There is no longer a requirement to publish a rolling Forward Plan at least 14 days before the start of each month setting out Key Decisions (KDs) for the next 4 months. This has been replaced by a requirement to publish 28 clear days' notice of any intended Key Decision.
- 6.1.2 Actions have been taken by officers to change the previous Forward Plan to a Decisions Plan, published 28 clear days before Cabinet or Joint Cabinet Committees which will take a KD. There are several other changes to the Decisions Plan. It still includes details of the KD, documents to be considered and procedures for requesting copies of those. Changes include that the "consultation" column may be removed; addition of "reason why part of this decision may be taken in private" column; details of how members of the public can receive copies of papers, make enquiries and make representations; and setting out the full membership of decision making bodies.

6.1.3 Various changes will be required to the Constitution, which will need to be identified via a full review of the Constitution. Additionally, report authors will need to advise Democratic Services of any forthcoming KDs at least 28 days in advance of the decision being taken (in reality this information will probably be required at least 40 days before the decision is taken, to allow time for the appropriate paperwork to be prepared and publicised, and officers have been briefed). Additionally, it will no longer be sufficient for “recommendations arising from Working Party” to be stated on the Decisions Plan, authors will have to advise what reports and KDs are being brought forward. Finally, any background documents referred to in a report must now be put on the website.

6.2 Private Meetings of Cabinet and Joint Cabinet Committees (Regulation 5)

6.2.1 There is a new requirement to give 28 clear days’ notice (on the Decisions Plan) that part of any Cabinet meeting or Joint Cabinet Committee meeting may be held in private, including the reasons for the meeting being held in private. This must be followed by a further notice giving at least 5 days’ notice (which can be covered on the agenda), along with details of any representations received that the meeting should be open and the authority’s response.

6.2.2 Further changes to the Decisions Plan and agendas have been made. Agendas will more clearly set out the reasons for part of the meeting being held in private, including details of any representations received and the authority’s response, or if none received, stating “none”.

6.2.3 Any necessary changes to the Constitution will also need to be investigated.

6.2.4 As with Key Decisions, report authors will need to advise Democratic Services at least 28 days in advance, and in reality at least 40 days’ in advance, of the intention to make any part of a report to Cabinet or a Joint Cabinet Committee exempt or confidential, and that the decision is likely to be taken in private, plus the reason therefor, to allow the preparation and publicising of the required paperwork, and again officers have been briefed on this requirement and will receive regular reminders.

6.3 Decisions Notice (Regulation 12)

6.3.1 There are two changes required to the Decisions Notice. The “other options considered” column now needs to include reasons for rejection of those other options. Additionally, any conflicts of interest by Cabinet Members or Joint Committee Members, and any dispensations granted by the Head of Paid Service, need to be included on the Notice.

6.3.2 The Regulations give power to grant dispensations not to a Committee of the Council or the Monitoring Officer, but to the Head of Paid Service. The regulations do not restrict the delegation of this power, and therefore this could be delegated to the Monitoring Officer. In either case, changes to the Scheme of Delegations under the Constitution will be required.

6.4 Agendas (Regulation 5)

- 6.4.1 To comply with the requirement for at least 5 days' notice setting out the reasons for a Cabinet or Cabinet Joint Committee meeting to be held in private, and details of any representations received that the meeting should be open, and the authority's response to that, it would be simplest to add this to the agenda.
- 6.4.2 The agenda will also make it clearer as to which paragraph under Schedule 12A to the Local Government Act 1972 is being referred to, and the whole paragraph will therefore be quoted. Any representations received and the authority's response can also be added at that part of the agenda.

6.5 Urgent decisions – not able to give 28 days' notice (Regulation 10)

- 6.5.1 Similar to the current general urgency provision, where it is impracticable to give the full 28 days' notice of a KD, we must give at least 5 days' clear notice to the Chairman of the Overview and Scrutiny Committee in writing, or if unable to act, each Member of the Overview and Scrutiny Committee. Notice must be given (at the Council's offices and on its website) of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days' notice.

6.6 Urgent decisions – not able to give 5 days' notice (Regulation 11)

- 6.6.1 Similar to the current special urgency provision, where a KD is so urgent that 5 clear days' notice cannot be given, it can be taken if the Chairman of the Overview and Scrutiny Committee agrees that the decision cannot be deferred (or where this office is vacant or the Chairman is unable to act, the Mayor, or in his absence, the Deputy Mayor). This applies to all KDs by Cabinet or Joint Cabinet Committees, or by officers under delegated authority.
- 6.6.2 These changes to general and special urgency may require minor changes to the Constitution.

6.7 Urgent private decisions – not able to give 28 or 5 days' notice (Regulation 5)

- 6.7.1 The Cabinet or a Joint Cabinet Committee can decide a confidential matter with shorter than 28 or the further 5 days' notice, provided the consent of the Chairman of the Overview and Scrutiny has been obtained (or if unable to act, the Mayor or Deputy Mayor). This only applies to meetings. Notice must then be given, at the Council's offices and on its website, setting out the reasons why a meeting is urgent and cannot reasonably be deferred.
- 6.7.2 This provision will need to be added to the Constitution.

6.8 Recording executive decisions made by individuals (Regulation 13)

- 6.8.1 This element of the Regulations is the one which is causing the most controversy amongst authorities. The regulations require officers to prepare a written statement of every decision taken which is closely connected to the discharge of executive functions – not just KDs - including date of decision, reasons for decision, details of alternative options considered and rejected,

record of conflict of interest by any Portfolio Holders consulted, and notes of any dispensations granted by Head of Paid Service.

- 6.8.2 The way the Regulations are written, this should include fairly minor routine decisions such as the granting of licences to assign and sub-let leases, approving rent reviews, the determination of homelessness applications, issuing nuisance notices and granting rate relief etc, as well as major decisions such as letting contracts following tender process.
- 6.8.3 Hundreds of such decisions are taken by officers every day, and whilst Counsel (appointed by the ACSeS) has advised that purely administrative decisions such as stationery orders connected with the discharge of an executive function would not need to be recorded, other fairly routine decisions such as those set out in Paragraph 6.8.1 above would need to be recorded. This would be a disproportionate burden on councils, and ACSeS as well as other organisations and authorities have asked the Department for Communities and Local Government (DCLG) to amend the Regulations.
- 6.8.4 ACSeS has just provided some guidance with regard to the recording of officer executive decisions, and this guidance will be used to create a template for officers to use to ensure they record decisions taken. However, the guidance does not go into great detail on the level of decisions which need to be recorded, so officers will have to take a common sense view in order to comply with the Regulations whilst at the same time not creating an unwieldy bureaucracy of recording every decision taken by an officer. It is hoped that clearer guidance from DCLG will be forthcoming.

6.9 Additional rights of access to documents for Members (Regulation 16)

- 6.9.1 Similar to existing requirements, Members will be able to inspect any document in the possession or under the control of the Cabinet or a Joint Committee of Cabinet which contains material relating to any business to be transacted at a public meeting, at least 5 clear days before the meeting. Regarding business transacted in private meetings, or by individual Member or officer, right of access applies when the meeting concludes or when the decision has been made, and in any case within 24 hours of the conclusion of the meeting or the decision being made. This does not apply to exempt papers. However, there is a new right to inspect information under:
- (a) paragraph 3 of Schedule 12A to the LGA 1972 (information relating to the financial or business affairs of any particular person (including the authority) except information relating to terms proposed or to be proposed in negotiations for a contract); and
 - (b) paragraph 6 of Schedule 12A to the LGA 1972 (info which reveals that the authority proposes (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment).
- 6.9.2 Although these rights are similar to those existing, they will require wording changes to the Constitution. However, in reality, the Council has always provided any confidential papers to Members on request.

6.10 Additional rights of access to documents for Overview and Scrutiny Members (Regulation 17)

6.10.1 Upon request from a Member of an Overview and Scrutiny Committee, Cabinet and Joint Cabinet Committees must make available any material relating to (i) any business that has been transacted by them or (ii) any decisions made by an individual Member of Cabinet/Joint Committee; or (iii) any decisions made by an officer of the authority in accordance with executive arrangements, no later than 10 clear days after the request is made.

6.10.2 Exempt information is only to be provided if it relates to an action or decision being scrutinised, or a review in the work programme. If Cabinet determines material will not be provided, it must set out its reasons in writing.

6.10.3 Again, this does not really affect St Edmundsbury as we already make the papers for all Cabinet and Joint Committee meetings available to all Members, regardless of whether the report is public or private, however, this Regulation may require changes to the wording of the Constitution.

6.11 People attending meetings for reporting (Regulations 4 and 20)

6.11.1 Whilst a meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings must be afforded reasonable facilities for taking their report. This is wider than previous legislation, which was limited to representatives of newspapers. A DCLG press release accompanying the Regulations referred to facilitating social media reporting, which implied permitting use of electronic communications media. However, this was in contradiction to the Regulations, and nothing in the Regulations requires the authority to allow photography, recording or broadcasting, or live commentary.

6.11.2 Currently the St Edmundsbury Constitution states that if anyone wishes to film or record a meeting, they need the Chairman's permission, who must advise the Head of Legal and Democratic Services 5 days before the meeting.

6.11.3 Should the DCLG make amendments to the Regulations as a result of the confusion caused by its press statement, we may need to amend the Constitution, however, as the Regulations currently stand, this is not necessary.

6.12 Cabinet reports to Council on urgent decisions (Regulation 19)

6.12.1 There is a change to the requirement for the Leader to submit reports to Council containing details of each urgent Cabinet decision. Prior to the Regulations the requirement was for a report on urgent decisions to be made quarterly. The new Regulations change this to "at least one report per year". However, it is felt that it would be wise to continue with quarterly reports, to ensure that no decisions are missed, and to provide Members with this information on a regular basis.

7. Community impact

7.1 **Crime and disorder impact** *(including Section 17 of the Crime and Disorder Act 1998)*

7.1.1 Not applicable.

7.2 **Diversity and equality impact** *(including the findings of the Equality Impact Assessment)*

7.2.1 The Regulations seek to make decision making more open and accessible.

7.3 **Sustainability impact** *(including completing a Sustainability Impact Assessment)*

7.3.1 Not applicable.

7.4 **Other impact** *(any other impacts affecting this report)*

7.4.1 Not applicable.

8. **Consultation** *(what consultation has been undertaken, and what were the outcomes?)*

8.1 As stated above, no consultation was undertaken by the Government before implementing the Regulations, and that has led to requests from various organisations and authorities for further guidance on the Regulations.

9. **Financial and resource implications** *(including asset management implications)*

9.1 The majority of the changes required under the Regulations can be implemented using existing resources.

9.2 However, should it become the case that all decisions made by officers "in accordance with executive arrangements" must be recorded, in the manner set out in Section 6.8 above, this will have significant resource implications in terms of officer time involved in recording decisions and in 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 until clarification is received from DCLG regarding the level of decisions made by officers in accordance with executive arrangements which need to be formally recorded.

10. **Risk/opportunity assessment** *(potential hazards or opportunities affecting corporate, service or project objectives)*

Risk area	Inherent level of risk (before controls)	Controls	Residual risk (after controls)
Not implementing the Regulations could lead to the Council making decisions which could be challenged.	Low	The Regulations will be implemented immediately.	Low
Should it transpire that Regulation 13 is required to be implemented as set out in Section 6.8 above, this will have significant resource implications for the Council which could slow down decision making.	Medium	Officers will be provided with a template for recording executive decisions and some guidance on the level of decisions to be recorded. In the meantime, along with many other authorities, the Council will wait for guidance to be issued by the DCLG, plus any amendments to the Regulations. This does, however, lead to a further risk of challenge of decisions made from not	Low

		having been recorded in the manner prescribed under the Regulations. However, as Key Decisions taken by officers are already recorded, this would only apply to non-key decisions.	
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11. Legal and policy implications

11.1 The report deals with the implementation of new Regulations concerning executive decision making.

12. Ward(s) affected

12.1 All

13. Background papers

13.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

14. Documents attached

14.1 None

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