

Body: CABINET

Date: 6 February 2013

Subject: Executive regulations – Delegation arrangements

Report of: Head of Corporate Development

Ward(s): All

Purpose: New statutory regulations impose additional administrative duties on the Council's executive arm. In order that these can be undertaken in a timely and efficient manner it is desirable that delegation arrangements and proper officer appointments are put in place.

Is this a key decision? No

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Recommendations: (1) Agree the delegations and proper officer appointments as set out in section 5 of this report, including:

- Issue of all notices required in respect of private business, key decisions, time and place of meetings and urgency (paragraph 5.2).
- Duties in respect of the exclusion of part or all of a report from the public part of a meeting, key decisions and written statements of decisions (paragraph 5.3).
- Grant of dispensations in relation to conflicts of interest (paragraph 5.4).

(2) Agree that the Council's Monitoring Officer make all necessary amendments to the Council's Constitution in so far as is necessary to ensure wording is consistent with the requirements of the regulations.

(3) Authorise the Head of Corporate Development to approve any necessary changes to public notice and provision of information procedures under these regulations (such as that indicated in paragraph 3.3 of this report regarding key decisions) that might be required as a consequence of the Council implementing a "back-office" IT system for member and meeting related activities.

(4) Recommend full Council to approve the foregoing recommendations in so far as they relate to amendments to the Council's Constitution.

1.0 Introduction

- 1.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 were laid before Parliament on 15 August last year and implemented on 10 September 2013. The regulations replaced 3 previous sets of regulations and apply to the conduct of executive business by the Cabinet, committee or sub-committee of the Cabinet or individual on behalf of the Cabinet.
- 1.2 The regulations apply to districts, counties and unitaries in England, operating executive arrangements under Part 1A of the Local Government Act 2000. The regulations make provision for public access to meetings and to information relating to decisions of executives/cabinets and their committees. They provide for access to information relating to decisions made by joint committees of local authorities, where these are solely comprised of executive members and are discharging executive functions. The regulations make provision for public access to documents where executive decisions are made by individual members or officers. The general principle of the regulations is for the public to have access to meetings and documents where a local authority executive, committee or individual is taking an executive decision.
- 1.3 Unusually, the regulations were subject to no meaningful consultation by the government, and therefore the opportunity of local government practitioners suggesting improved wording, correcting drafting errors and providing clarity as to how the regulations are supposed to operate was lost. Strong representations were made by bodies representing council lawyers and others following publication of the regulations concerning various anomalies, however the government has ruled out any amendment for the present.
- 1.4 This report deals with certain of the new requirements introduced by the regulations and recommends matters which should be subject to delegation arrangements.

2.0 Procedure prior to private meetings

- 2.1 In the past when the Cabinet sought to conduct business with press and public excluded they could do so providing they gave 5 clear days notice (or less if the matter was urgent) and were able to justify exclusion on grounds specified in local government legislation. These are detailed in the Council's Access to Information Procedure Rules at <http://www.eastbourne.gov.uk/council/constitution/?p=2>
- 2.2 The new regulations impose an additional requirement that at least 28 clear days notice must now be given and an opportunity given to anyone

to challenge the intention to deal with a particular matter in private. Any representations must be considered by the decision-making body. A further notice must be issued 5 clear days before the meeting confirming the intention to conduct business in private and giving a response to any representations which may have been received.

- 2.3 If compliance with the 28 day requirement cannot be achieved and the need for the meeting is urgent and cannot be reasonably be deferred, the chairman of a council's overview and scrutiny committee can be asked to give consent to the matter being dealt with. If unavailable, the council's chairman/mayor can be asked to act. If agreed, public notice must then be given.
- 2.4 Legal opinion recently given by a barrister to the Association of Council Secretaries and Solicitors advises that 28 clear days notice period includes weekends and bank/public holidays. The 5 clear days notice period however is generally understood to apply to working days only. "Clear days" exclude both the day the notice is given and the day of the meeting.

3.0 Key decisions and the forward plan

- 3.1 The regulations now require that before any key decision can be taken, at least 28 clear days notice must be given. A key decision is one for which there is significant expenditure/savings and is significant in terms of its effects on communities living or working in two or more of the Council's wards. The Council's constitution includes a detailed statement as to the matters which are considered to be key decisions. See article 13 in Part 2 (Articles)
<http://www.eastbourne.gov.uk/council/constitution/>
- 3.2 Previously the executive was required to publish a monthly plan at least 14 days before the first working day of the month and list all items expected to come forward for decision in the 4 month period ahead.
- 3.3 No change in the current practice of publishing a monthly plan is planned in the immediate future. It is, however, anticipated that a new "back-office" system for meetings, member support and civic activities will be procured in the course of 2013 and implementation of this is likely to require changes in the way prior notice is made of key decisions as this particular activity is likely to be included as part of the standard system package.

4.0 Recording executive decisions

- 4.1 The regulations impose a new requirement in respect of executive decisions (both key and non-key decisions) taken by individuals under delegation arrangements. As soon as reasonably practicable after such a decision has been taken, the decision taker must produce a written statement giving a record of the decision and other specified information. In the past this requirement only applied to decisions taken at a meeting

or a key decision taken by an individual. The impact of this change is that a number of decisions taken by officers under their delegated powers will now need to be made the subject of a formal public record open to inspection and available on the Council's website. (Such information could previously have been requested under Freedom of Information rules.)

- 4.2 Development of a co-ordinated approach by which such decisions can be recorded and published in a systematic and consistent fashion across the Council is in hand and its implementation will be monitored by the corporate management team.

5.0 Delegations and proper officer appointments

- 5.1 Generally, there is an expectation that council officers are empowered to issue the various notices that are required in support of the Cabinet's meeting arrangements, however, in view of the wording in sections of the regulations (in that the power is said to be exercised by the "decision making body" or "decision maker") and to remove doubt it is recommended that the Chief Executive is formally granted delegated authority to give the various notices required under the regulations and also to consider and respond to any representations received as to the conduct of business in private.
- 5.2 The delegations are in respect of the following:
- Notice under regulation 5(2) (the 28 day notice for private business).
 - Notice under regulation 5(4) (the further 5 day notice for private business).
 - Statement under regulation 5(5) (c) (response to representation).
 - Application to chair of Scrutiny under regulation 5(6).
 - Notice under regulation 5(7) (agreement of Scrutiny chair).
 - Notice under regulation 6 (giving notice of time and place of meetings).
 - Authority to obtain agreement of chair of Scrutiny under regulation 11(1) to key decision being made in cases of special urgency and issue of subsequent notices under regulation 11(2).
- 5.3 Elsewhere in the regulations, the term "proper officer" is used in relation to other administrative arrangements. This term is taken from the Local Government Act 1972. The Council's scheme of delegations to officers provides that where a proper officer is not appointed, the Chief Executive (or his Deputy) is authorised to act. In the case of the various references to proper officers in these regulations (see below), it is proposed that the Chief Executive is confirmed as the proper officer, but with one exception. The exception relates to the first listed item where it is suggested that the Lawyer to the Council (LC) is the proper officer. The reason for this is that the LC is currently the proper officer for the exclusion of documents in relation to non-executive matters submitted to full Council and committees of the Council. The following is a list of proper officer

functions in the regulations:

- Power under regulation 7(2) to exclude part or all of a report from the public part of the meeting. Proposed that the Lawyer to the Council is the proper officer (deputy to be Head of Corporate Development).
- Duty to inform chair of Scrutiny under regulation 10(1) that a key decision is to be made where compliance with the publicity requirements of regulation 9 is impracticable, together with related duties to publish notices of such notification. Proper officer to be Chief Executive.
- Duty under regulation 12 to produce written statement of every executive decision made. Proper officer to be Chief Executive.
- Power under regulation 16(7) to withhold from inspection by a member of the authority a document that discloses advice provided by a political adviser or assistant. Proper officer to be Chief Executive.

In all cases where the Chief Executive is designated proper officer, the Deputy Chief Executive shall be designated as deputy.

- 5.4 Regulations 12 and 13, which deal with records of executive decisions, both refer to the need to record any notes of dispensation given to councillors by the "Head of Paid Service" in connection with any conflict of interest declared by the councillors in prescribed circumstances. This conflicts with our current arrangements for the Monitoring Officer (or in certain circumstances the Standards Panel) to grant dispensations in relation to participation at non-executive meetings. To ensure consistency it is therefore recommended that the delegation is exercised by the Monitoring Officer rather than the Head of Paid Service (i.e. the Chief Executive).

6.0 Provision of information, inspection of documents and facilities at meetings

- 6.1 The regulations reproduce existing rights of the press, public and members to attend meetings and have access to minutes, reports and background papers. One area where there is a minor change is in relation to the facilities to be afforded people attending the meeting to take a record of proceedings. The following provision now applies to meetings of the executive:

While the meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, be afforded reasonable facilities for taking their report. Regulation 4(6).

Regulation 21(3) further allows members of the public to reproduce or provide commentary in relation to any documents made available under the regulations and to do so in any publically available medium.

- 6.2 It should be noted that the wording in the Local Government Act 1972 still

applies to non-executive meetings of the Council, as follows:

While the meeting is open to the public, duly accredited representatives of newspapers attending the meeting for the purpose of reporting the proceedings for those newspapers shall, so far as practicable, be afforded reasonable facilities for taking their report and, unless the meeting is held in premises not belonging to the council or not on the telephone, for telephoning the report at their own expense.

Section 100A(6)(c) LGA 1972

- 6.3 Nothing in the regulations requires an executive decision making body to permit the taking of any photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place. This wording matches that in the Local Government Act 1972 that applies to non-executive meetings.
- 6.4 In addition there is some strengthening of the rights of Scrutiny members to access documents. Where they are entitled to see a copy of a document they must now be given it as soon as reasonably practicable and no later than 10 clear days after making the request. No time limit was specified in the past (regulation 17(3)).

7.0 Amendment to Constitution

- 7.1 Members are asked to note that changes will be made in various sections of the Council's Constitution to reflect the changes introduced by the regulations. Although the Council's Monitoring Officer has delegated authority to make certain changes where these are required as a result of legislation or decisions of the Cabinet or Council (article 15.03) it is considered that the changes proposed in this report go beyond the scope of that delegation and therefore full Council approval will be required.
- 7.2 In addition to the scheme of delegation to officers and proper officer list, other sections of the Constitution that will require amendment include the Cabinet Procedure Rules and the Access to Information Procedure Rules.

8.0 Consultation

- 8.1 The Chairman and Deputy Chairman of the Council's Scrutiny Committee has been briefed on the regulations.
- 8.2 As this report deals with matters relating to the conduct of the executive's business this report has not been submitted to the Audit and Governance Committee.

9.0 Implications

- 9.1 **Corporate plan.** Ensuring that the Council's constitutional and procedural arrangements are in line with legislative requirements will contribute to the Council's corporate aims of improved services, efficiency

and access.

- 9.2 **Risk management/probity.** Establishing delegation arrangements, proper officer appointments and ensuring the Constitution reflects legislative requirements will ensure the Council meets its legal obligations and provide clear information to the public, stakeholders and councillors in relation to executive decision making.
- 9.3 **Equality considerations.** None.
- 9.4 **Financial and legal.** None, other than as noted in paragraph 9.2 above.
- 9.5 **Other** (e.g. impact on environment, partner organisations, local employment). None.

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Background Papers:

The following background papers are available for inspection from the report author whose contact details are set out at the front of this report.

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