

Report of the City Solicitor

Report to General Purposes Committee

Date: 30th August 2012

Subject: New Regulations regarding meetings of the executive and access to information

Are specific electoral Wards affected? If relevant, name(s) of Ward(s): n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: n/a Appendix number: n/a	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

Summary of main issues

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, to seek Members' views on proposed amendments to current practice, and to highlight any areas of risk to the authority.
2. The Regulations were made on 10th August 2012 and will come into force on Monday 10th September 2012. The new Regulations revoke the current Regulations which govern meetings of the executive and how executive decisions are recorded.

Recommendations

3. Members of the General Purposes Committee are asked to:
 - Note the implications of the new Regulations and officers' suggestions that clarification should be sought as to the scope and definition of 'executive decisions'.
 - Consider whether the Council should continue to produce some form of Forward Plan, and what period it should cover.
 - Recommend that full Council approve the proposed amendments to Article 12 in relation to the functions of the Head of Paid Service (Appendix 2), and the amended terms of reference for the Standards and Conduct Committee (Appendix 3).

- Note that the City Solicitor's intention, in consultation with Members, to amend the Constitution¹ to give effect to the new Regulations and the amendments to current practice.

1 Purpose of this report

- 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, to seek Members' views on proposed amendments to current practice, and to highlight any areas of risk to the authority.

2 Background information

- 2.1 The Regulations (attached as Appendix 1) were made on 10th August 2012 and will come into force on Monday 10th September 2012. The new Regulations revoke the current Regulations which govern meetings of the executive and how executive decisions are recorded.
- 2.2 The Government has chosen not to consult on the contents of these Regulations, but did conduct a short, focussed 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. Unfortunately 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.
- 2.3 The Government consider 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.

3 Main issues

Meetings of the Executive Board and other executive committees

- 3.1 The previous Regulations required that any meeting of the Executive where a key decision was to be made must be held in public. The new Regulations establish a presumption that all Executive Board meetings (and meetings of executive committees) will 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. However, as before, this does not mean that the

¹ The City Solicitor (as Monitoring Officer) has the authority to make any changes to any part of the Constitution which are required as a result of legislative change, or decisions of the Council or Executive, to enable her to maintain it up to date.

authority must permit photographs, video or audio recordings of the meeting, or an oral report of the proceedings as they take place.

- 3.2 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 Board 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 Leeds City Council as since the adoption of executive arrangements all decision making meetings of the Executive have been held in public as a matter of course.

Key decisions

- 3.3 The definition of a key decision provided in the Regulations remains the same. As Members will be aware the definition of a Key decision used in Leeds differs from the definition provided in the Regulations. The Regulations state that a decision is a Key decision if it is significant in terms of its effects on communities living or working in an area comprising two or more wards, whereas in Leeds a decision is treated as Key if it significantly affects one or more wards.
- 3.4 The Secretary of State issued guidance in October 2000 on the definition of a key decision through the 'New Council Constitutions: Guidance to Local Authorities in England' which stated that "nevertheless, local authorities should, unless it is impracticable to do so, specify that they will treat as if they were key any decisions which are likely to have a significant impact on communities in one or more ward". Therefore the definition used in Leeds is consistent with the guidance issued in October 2000.
- 3.5 It is considered that the definition of a key decision currently being used does not present a risk to the authority given that the result is that more decisions are treated as Key decisions and are therefore subject to greater transparency and public scrutiny.

Forward Plan

- 3.6 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 must be made available for inspection by the public at the offices of the relevant authority and on the website.
- 3.7 This deadline is significantly earlier than the 14 days which decision makers currently need to comply with, and therefore some key decisions which are due to be taken after 10th September will not have been publicised early enough. This will affect key decisions which are taken by officers on Monday 10th September until Thursday 13th September (inclusive). However, the new rules regarding notification will not prevent key decisions being made during this period, as key decisions can still be made under the provisions for general exception or special

urgency (detailed later in this report). Any key decisions which are due to be taken during the remainder of September will have been the subject of a notification 28 clear days earlier, as the Forward Plan for September was published on Thursday 16th August. The change will not affect any decisions due to be taken by the Executive Board as it is not scheduled to meet during this period.

- 3.8 In order to mitigate the risk for decisions which are due to be taken during the beginning of October, the Forward Plan for October – January will to be published on Friday 31st August rather than on 17th September. This will mean that details of decisions which are due to be taken on 1st October onwards will have been available for 28 clear days beforehand. The format of the Forward Plan will also be amended to include the additional details required under the new Regulations.
- 3.9 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. However as the issue remains a cross cutting Council priority it would be appropriate for any such notice to include this information.
- 3.10 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 Boards 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. This has the advantage of being similar to the current process for producing the Forward Plan, maintains and improves the current notification process linked to scrutiny, and does not require a new facility for such a list to be produced and managed through the Council's website.
- 3.11 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.
- 3.12 In relation to cases of special urgency, there is now a requirement that as soon as reasonable 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.
- 3.13 Although these are new requirements in the Regulations, the delegated decision form used by decision makers in Leeds already requires them to specify why the

decision has not been included in the Forward Plan when the general exception or special urgency provisions are being used.

- 3.14 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. However, Members views are sought on whether the 5 clear working day publication for officer key decisions should be maintained.

Recording of executive decisions

- 3.15 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.

- 3.16 The previous Regulations only required Key decisions to be recorded in this way. However, in Leeds, three other categories of executive decision were developed. These were Major, Significant Operational and Administrative. All decisions except Administrative decisions were required to be formally recorded by officers (including the information listed above), and more recently these decisions have all be published on the Council's website alongside the report and other documents considered by the decision maker.

- 3.17 In May 2012 the Council decided to delete the category of Major decisions, although the definition of a Key decision was also widened to include decisions which significantly affect communities living or working in one or more wards, rather than two or more wards. This allows more decisions to be treated as Key decisions and therefore increases transparency and the opportunity for Member and public involvement in these decisions.

- 3.18 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 which relates to the decision, a note of any dispensation granted.

- 3.19 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 seems 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.
- 3.20 Given the efforts already undertaken by Leeds City Council to be transparent, it is recommended that clarification be sought from the Department for Communities and Local Government as to the intended focus of this new Regulation, and whether Leeds' existing practice of publishing significant operational as well as key decisions satisfies the Regulations.

Background papers

- 3.21 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. The Council's report writing guidance will be reviewed prior to 10th September to ensure that all report authors are aware that background documents will need to be submitted to Governance Services alongside their reports.

Dispensations

- 3.22 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. In the Localism Act 2011 this power is granted to the local authority and it does not specify that this function should be carried out by the Head of Paid Service. Full Council has already chosen to delegate this role to the Standards and Conduct Committee, with written applications for dispensations being received by the Monitoring Officer.
- 3.23 The Chief Executive has suggested that Article 12 of the Constitution is amended to transfer the function of granting dispensations to the Head of Paid Service, but only following consultation with the Chair of the Standards and Conduct Committee. This function will also need to be removed from the Standards and Conduct Committee terms of reference. The proposed amended documents are attached as Appendices 2 and 3.

Members' rights of access to information

- 3.24 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.

- 3.25 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

- 3.26 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. It is suggested that this report might naturally fit within the annual decision monitoring report considered by the Corporate Governance and Audit Committee.

Inspection of documents by members of the public

- 3.27 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.

4 Corporate Considerations

4.1 Consultation and Engagement

- 4.1.2 According to the explanatory memorandum to the Regulations, the Government has chosen not to consult on the contents of these Regulations, but did conduct a short, focussed informal sounding exercise with partners, including the Local Government Association, 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.

- 4.1.3 The Government has not carried out an impact assessment and does not plan to produce guidance on the Regulations.

4.2 Equality and Diversity / Cohesion and Integration

4.2.1 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.

4.3 Council policies and City Priorities

4.3.1 These new Regulations will require amendments to the Council's Constitution and decision making procedures, particularly the Executive and Decision Making Procedure Rules and the Access to Information Procedure Rules.

4.3.2 The Council Business Plan will also be amended to clarify that key decisions are now subject to a longer notification period.

4.4 Resources and value for money

4.4.1 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 until clarification is received from DCLG regarding whether administrative decisions made by officers need to be formally recorded from 10th September onwards.

4.5 Legal Implications, Access to Information and Call In

4.5.1 These Regulations come into force on 10th 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.

4.6 Risk Management

4.6.1 There are risks associated with the new Regulations, in particular that key decisions taken from Monday 10th September must have been the subject of a notification for 28 clear days beforehand. The steps proposed to mitigate these risks are detailed in the main issues section of this report.

5 Conclusions

5.1 The Government has issued new Regulations dealing with public access to meetings of the executive and how executive decisions are to be recorded. This

report highlights the implications of the new Regulations for Leeds City Council, and any areas of risk to the Council arising from the changes.

- 5.2 The most significant changes include that decision makers will need to publish a notice of a key decision 28 clear days in advance of the decision and there is no longer a requirement to publish a forward plan. The Regulations also suggest that the Head of Paid Service should be responsible for granting dispensations to Members of the executive.

6 Recommendations

6.1 Members of the General Purposes Committee are asked to:

- Note the implications of the new Regulations and officers' suggestions that clarification should be sought as to the scope and definition of 'executive decisions'.
- Consider whether the Council should continue to produce some form of Forward Plan, and what period it should cover.
- Recommend that full Council approve the proposed amendments to Article 12 in relation to the functions of the Head of Paid Service (Appendix 2), and the amended terms of reference for the Standards and Conduct Committee (Appendix 3).
- Note that the City Solicitor's intention, in consultation with Members, to amend the Constitution² to give effect to the new Regulations and the amendments to current practice.

7 Background documents³

7.1 None

² The City Solicitor (as Monitoring Officer) has the authority to make any changes to any part of the Constitution which are required as a result of legislative change, or decisions of the Council or Executive, to enable her to maintain it up to date.

³ The background documents listed in this section are available for inspection on request for a period of four years following the date of the relevant meeting. Accordingly this list does not include documents containing exempt or confidential information, or any published works. Requests to inspect any background documents should be submitted to the report author.