



**Report of City Solicitor**

**Report to Corporate Governance and Audit Committee**

**Date: 23<sup>rd</sup> November 2018**

**Subject: Procedure for Short Notice Publication of Officer Key Decision Reports**

Are specific electoral wards affected? If yes, name(s) of ward(s):	<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: Appendix number:	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

**Summary of main issues**

1. The Scrutiny Board (Children and Families) have requested that Corporate Governance and Audit Committee review the Council's processes and procedures for officers taking key executive decisions at short notice.
2. This report sets out recommendations in relation to the procedure that officers must follow when taking a Key Decision.

**Recommendations**

Corporate Governance and Audit Committee are requested to;

1. Consider the proposals set out and the comments made in response to them by the Chair of the Children and Families Scrutiny Board and;
2. Ask General Purposes Committee to consider any recommendations from this committee to amend the Constitution.

## **1. Purpose of this report**

- 1.1 At its meeting of 26<sup>th</sup> September the Scrutiny Board (Children and Families) considered the use of the Special Urgency provision (provided for in the Constitution) when taking a decision to extend a Framework Agreement.
- 1.2 It was noted that there is a gap in the Council's constitutional arrangements for officers taking key executive decisions where it is necessary to give short notice of the report on which the relevant decision will be based.
- 1.3 This report considers the identified gap in the Council's Constitutional arrangements and sets out for Member's consideration a method to regularise the process for the late publication of reports supporting an officer decision.

## **2. Background information**

### The Decision Making Process for Key Decisions

- 2.1 Regulations require that certain prior publicity be given for Key Decisions. In addition the Leeds City Council Constitution includes an additional step in that report a must be published for a period of five days prior to the decision being taken. These publicity requirements are summarised in the table at Appendix 1, whilst legislative details are set out at paragraph 4.5 below.

### Responsibility for Taking Key Decisions

- 2.2 The Officer Delegation Scheme (Executive Functions) set out in the constitution provides that officers are authorised to discharge all functions within their remit "save where the Leader or relevant portfolio holder has directed or the Director considers that the matter should be referred to Executive Board for consideration."

### Review of Decision Making Framework

- 2.3 At its meeting of 26<sup>th</sup> September the Scrutiny Board (Children and Families) considered the use of the Special Urgency provision in the circumstances set out above. The Board noted that there is no specific provision in the Constitution to provide for late notice reports and requested that:

"a review be undertaken of the Executive and Decision Making Procedure Rules to ensure that any future circumstances where a decision is required can be done so through a tailored and regularised process."

## **3. Main issues**

### Review of Decision Making Framework

- 3.1 Through the constitutional arrangements in place at Leeds City Council (which are summarised at Appendix 1) the authority complies fully with all statutory provisions.
- 3.2 Members will note that, in addition to compliance with statutory requirements, the Council has adopted, as part of its Constitution, an additional requirement that reports to be considered by a decision taker be placed in the public domain 5 clear working days ahead of that decision being taken.

- 3.3 It was this aspect of the Council's decision making arrangements which gave rise to the discussion at the Scrutiny Board (Children and Families). The decision taker, having complied with the statutory duties, was not in a position to comply with the additional Constitutional requirement to publish the report five clear days in advance of the decision needing to be taken.
- 3.4 Should Executive Board or a Committee be presented with similar circumstances statutory provisions exist for either a meeting to be called at short notice, or if an agenda has already been published, a late item to be admitted to the Agenda by the Chair of the meeting.
- 3.5 No such arrangements exist for Officer Decisions. In the circumstances of considered by the Children and Families Scrutiny Board Officers could have satisfied the statutory provisions by simply publishing the report – however this would have been at odds with the local constitutional requirement to publish a report five days prior.
- 3.6 In light of the request from the Scrutiny Board to review the Constitution, and having reviewed the circumstances the Head of Governance and Scrutiny Support recommends the following proposed additions to the Executive and Decision Making Procedure Rules which would enable appropriate political and governance oversight should a similar situation arise in relation to an officer decision in the future:-
- Where a decision maker has ensured the appropriate 28 day notification of a decision, but is not in a position to publish a report 5 clear days in advance of the decision needing to be taken, then that decision may only proceed with the agreement of the relevant Executive Member that the decision is urgent and cannot reasonably be delayed until the full five days' notice have been given. Responsibility for the substantive decision will remain with the decision making officer unless, in accordance with the officer delegation scheme the Executive Member requests or the relevant Director decides that the matter should be referred to Executive Board.
  - If the relevant Executive Member is not available the decision maker may ask the Leader to provide this agreement and if the Leader is also unavailable may seek the agreement of the Deputy Leader;
  - That the circumstances as to why it has not been possible to comply with the requirement for 5 days' notice be set out in the decision report;
  - That the relevant Scrutiny Chair be advised of the circumstances;
- 3.7 In addition to these measures it is also suggested that Corporate Governance and Audit Committee monitor the instances of these provisions being used by way of the annual assurance report to the committee on decision making.
- 3.8 The Committee is invited to comment as to whether the proposals set out in paragraphs 3.7 and 3.8 will sufficiently address the gap identified in the Constitution.

## **4. Corporate considerations**

### **4.1 Consultation and engagement**

- 4.1.1 The Executive Member, Chief Executive, and City Solicitor have been consulted and are content with the proposals set out in this report.

- 4.1.2 The Chair of the Children and Families Scrutiny Board has been consulted on the proposals and comments that in addition to the proposals set out, further safeguards be considered by way of any use of the provisions proposed being reported back to the next meeting of the Executive Board.
- 4.1.3 In addition the Chair of the Children and Families Scrutiny Board supports the recommendation that this Committee monitor the instances of these provisions being used and requests that the Annual Decision Making report include an analysis of reasons for each decision made without the 5 day notice required by the constitution.

## **4.2 Equality and diversity / cohesion and integration**

- 4.2.1 There are no implications for this report.

## **4.3 Council policies and best council plan**

- 4.3.1 The considerations set out in this report seek to ensure that the Council is fulfilling its value of being open, honest and trusted.

## **4.4 Resources and value for money**

- 4.4.1 There are no implications for this report.

## **4.5 Legal implications, access to information, and call-in**

- 4.5.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require local authorities to specify a threshold above which a decision will be considered a Key decision. No amendments are proposed in this report relating to the Council's arrangements which comply with this requirement.

### List of Forthcoming Key Decisions

- 4.5.2 Regulation 9 of the 2012 Regulations requires that at least 28 clear calendar days in advance of a key decision being taken, notice must be given of the intention to take the decision; who will take the decision; the date or period in which the decision will be taken; and the documents on which the decision will be based. No amendments are proposed in this report to the Council's arrangements which comply with these arrangements.
- 4.5.3 The Regulations permit key decisions to be taken with less notice under a provision titled 'the General Exception' where the 28 day period is impracticable. To do so the relevant Scrutiny Chair must be notified, and five days' notice given of the intention to use the provision.
- 4.5.4 In cases where the decision is so urgent that it cannot be delayed the Regulations provide for 'Special Urgency'. Such decisions require the approval of the relevant Scrutiny Chair that the making of the decision is urgent and cannot reasonably be deferred. The responsibility for taking the substantive decision remains with the decision maker.

### Publication of Report

- 4.5.5 Under previous regulations (2000/3272) which were revoked by the 2012 Regulations there was an additional requirement that where an officer received a report which they intended to take into consideration in making a key decision, that report would be published for a period of three days prior to the decision being taken. Case law subsequently extended this period to five working days.
- 4.5.6 The 2012 Regulations repealed and did not replace this provision. However, in the interests of openness and transparency the requirement remains as part of the local framework for the governance of executive decision making.
- 4.5.7 This local requirement is met by the publication of a delegated decision notice together with the supporting report. These documents are published five clear working days in advance of the decision being taken; they are available to the public on the Council's web-site and the link to each decision is emailed to all Members of Council and to any member of the public who has set up a relevant subscription.
- 4.5.8 This report proposes an amendment to these local arrangements to establish a new provision within the Constitution for shortening this five day notification period (other than the Special Urgency procedure which enables short notice decision making where it is not possible to include an item on the List of Forthcoming Key Decisions).

### Call In

- 4.5.9 Section 9F of the Local Government Act 2000 requires that the executive arrangements of a local authority must include provision for the appointment of one more overview and scrutiny committees, to have functions which must include power to review or scrutinise decisions made but not yet implemented and to recommend that the decision is reconsidered.
- 4.5.10 This power is known as 'Call In' and the provisions for call in in Leeds are set out at Rule 5 of the Executive and Decision Making Procedure Rules. Rule 5.1.3 provides that the decision maker may exempt the decision from call in "if the decision taker considers that the decision is urgent (i.e. that any delay would seriously prejudice the Council's or the public's interest.)"

## **4.6 Risk management**

- 4.6.1 There are no implications for this report.

## **5. Conclusions**

- 5.1 The existing processes for executive decision making comply with statutory requirements, and provide for a number of local procedures. However there is a gap in relation to decisions to be taken where, although included in the List of Forthcoming Key Decisions, the relevant report has not been published sufficiently far in advance of the decision.
- 5.2 Additional amendments to the decision making framework would stipulate Executive Member (or in their absence the Deputy Leader or Leader) approval must be sought prior to such decisions being taken under delegated powers, whilst also enabling appropriate non- Executive oversight by Scrutiny Boards and the Corporate Governance and Audit Committee.

## **6. Recommendations**

- 6.1 Corporate Governance and Audit Committee are requested to;
  - 6.1.1 Consider the proposals set out and the comments made in response to them by the Chair of the Children and Families Scrutiny Board and;
  - 6.1.2 Ask General Purposes Committee to consider any recommendations from this committee to amend the Constitution.

## **7. Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.

Appendix 1

Summary of Key Decision Notification Steps

Step	Committee Decisions	Officer Decisions
<p>28 Clear Calendar Days' notice of intention to take decision</p> <p>(Statutory requirement)</p>	<p>All Key decisions added to List of Forthcoming Key Decisions at least 28 days before Executive Board meeting.</p> <ul style="list-style-type: none"> <li>• If 28 days not practicable, then decision taken under General Exception with five working days' notice and Scrutiny Chair advised.</li> <li>• If urgent, then taken under Special Urgency with approval of relevant Scrutiny Chair.</li> </ul>	<p>All Key decisions added to List of Forthcoming Key Decisions at least 28 days before decision taken.</p> <ul style="list-style-type: none"> <li>• If 28 days not practicable, then decision taken under General Exception with five working days' notice and Scrutiny Chair advised.</li> <li>• If urgent, then taken under Special Urgency with approval of relevant Scrutiny Chair.</li> </ul>
<p>5 clear working days' notice of report upon which decision will be based</p> <p>(Statutory requirement for committee meetings, local requirement for officer decisions)</p>	<p>Meeting agenda published five clear working days before meeting.</p> <ul style="list-style-type: none"> <li>• Meetings convened at less than five days' notice published when convened</li> <li>• Items added after agenda published are published as soon as added to agenda.</li> </ul> <p>(Late agendas and reports published only with agreement of Chair)</p>	<p>Report and delegated decision notice published (and link circulated) five clear working days before key decision taken.</p> <ul style="list-style-type: none"> <li>• <i>NO CURRENT PROVISION FOR LATE PUBLICATION OF REPORT</i></li> </ul>
<p>Recording of Decision</p> <p>(Statutory requirement)</p>	<p>Minutes Published (Local target)</p> <ul style="list-style-type: none"> <li>• 10 days from date of meeting,</li> <li>• 2 days from date of Executive Board meeting.</li> </ul>	<p>Status of published report and delegated decision notification amended to show decision has been taken.</p>
<p>Decision open to Call In</p> <p>(Local arrangements)</p>	<p>All Executive Board decisions open to call in unless Executive Board exempts on the grounds of urgency.</p>	<p>All Key decisions open to call in unless decision maker exempts on the grounds of urgency.</p>