

Statutory Provisions

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012/2089 make provision in respect of executive decision making. In particular

- Regulations 9-11 set out requirements in relation to publicity in connection with key decisions
- Regulation 13(4) sets out requirements for recording executive decisions taken by officers. The regulation requires that a written statement is prepared as soon as practicable after a decision is taken setting out
 - (a) a record of the decision including the date it was made;
 - (b) a record of the reasons for the decision;
 - (c) details of any alternative options considered and rejected by the officer when making the decision;
 - (d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and
 - (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

The Openness of Local Government Bodies Regulations 2014/2095 make provision for the recording of decisions taken by officers under council delegations. In particular:

- Regulation 7(3) requires that a written record be produced as soon as practicable detailing
 - (a) the date the decision was taken;
 - (b) a record of the decision taken along with reasons for the decision;
 - (c) details of alternative options, if any, considered and rejected; and
 - (d) where the decision falls under paragraph (2)(a), the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.

Constitutional Provisions

Article 13 of the Constitution sets out the definition for each decision category. In brief these are:-

- Key Decisions (subject to specified exemptions)
 - a. Decisions valued in excess of £500K
 - b. Decisions with a significant impact on communities living and working in an area the size of one ward or more.
- Significant Operational Decisions
 - a. Decisions which would have been administrative but are not within budget or policy framework;
 - b. Decisions which would have been key but for an exemption set out in the definition;
 - c. Decisions valued in excess of £100K
 - d. Decisions which require a published record for reasons of transparency and accountability
- Administrative decisions

The Executive and Decision Making Procedure Rules set out the procedure to follow to ensure that executive decisions are taken in accordance with statutory requirements in relation to publicity and recording of decisions. In particular:

- Rules 2.4 – 2.6 require that key decisions are published to the List of Forthcoming key Decisions not less than 28 clear calendar days before a decision is taken unless:-
 - It is impracticable to do so by virtue of the date by which the decision must be taken in which case the General Exception permits the decision to be taken on advising the relevant scrutiny chair and giving five clear working days' notice of the decision; or
 - If the date by which the decision must be taken is such that the General Exception cannot be used, Special Urgency permits the decision to be taken with the approval of the relevant scrutiny chair that the matter is urgent and cannot reasonably be deferred.
- Rule 4.3 requires the recording of key and significant operational decisions taken by officers.

The Access to Information Procedure Rules set out the procedures to follow to ensure that council decisions are taken in accordance with statutory requirements. Rule 6.2 makes provision for the publication of council decisions taken by officers.

Both the Executive and Decision Making Procedure Rules and the Access to information Procedure Rules require officers who take decisions to prepare and publish a written record, together with a report in relation to a decision taken by an officer. The intention in this is to ensure that together the two documents (record and report) include the prescribed information. Both rules require the record to include:

- record of the decision including the date it was made,
- a statement of the reasons for it,
- details of any alternative options considered and rejected by the officer at the time of making the decision, and
- a record of any interest declared by any Executive Member consulted by the officer who made the decision together with a note of any dispensation granted in respect of that interest.

In addition Executive and Decision Making Procedure Rule 3.1 sets out the local (non-statutory) requirement that reports relating to key delegated decisions to be taken by Directors are published not less than five working days in advance of a decision being taken.