

**NORTH LINCOLNSHIRE COUNCIL**

**CABINET**

**EXECUTIVE DECISION MAKING - NEW REGULATIONS**

**1. OBJECT AND KEY POINTS IN THIS REPORT**

- 1.1 This report outlines the new provisions introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

**2. BACKGROUND INFORMATION**

- 2.1 The Regulations came into force on Monday 10 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 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. The government does not plan to issue any separate guidance on these regulations which they consider to be self explanatory nor does it intend to monitor local authority compliance with the new regulations.

**Meetings of the Executive (Cabinet)**

- 2.3 The previous regulations require 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 meetings will be held in public, unless certain circumstances apply. In addition, 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 authority must permit photographs, video or audio recordings of the meeting, or an oral report of the proceedings as they take place.
- 2.4 Local authority executives can still decide which of its meetings, and which of the meetings of any committee of executive, are to be open to the public and which of these meetings are to be held in private. However, where any key decisions are to be taken by the executive or

its committees they must meet in public and the access to information arrangements will apply. The regulations prescribe the procedures which must be followed before the executive 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 North Lincolnshire 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**

2.5 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 North Lincolnshire is that which was originally issued by the Secretary of State in guidance in October 2000 through the "New Council Constitutions: Guidance to Local Authorities in England". The definitions are -

- A decision which is likely to result in a significant expenditure or saving
- A decision that affects people living or working in an area covering two or more wards

The definition used in North Lincolnshire is therefore consistent with the guidance issued in 2000.

## **Forward Plan**

2.6 The Leader 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 notice has been published at least 28 clear days beforehand. This notice must be made available for inspection by the public at the offices of the council and on the council's website.

2.7 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 will be consulted on the decision have been removed. However, as consultation is a council priority it would probably be appropriate for any such notice to continue to include this information.

2.8 Where it is not possible for the notification requirements to be complied with, it is still possible to rely on the provisions currently contained in the council's constitution in relation to "general exception" or "special urgency". The rules regarding general exception are broadly the same, requiring at the very least the agreement of the Chairman of the

relevant Scrutiny Panel although the regulations also now state that as soon as reasonably practicable the proper officer must make available at the offices of the council a notice setting out the reasons why compliance with a 28 days notification period is impracticable and that notice must also be published on the council's website.

- 2.9 In relation to cases of special urgency, there is now a requirement that as soon as reasonably practicable after the decision maker has obtained agreement that the making of the decision is urgent and cannot therefore reasonably be deferred, the decision maker must make available at the offices of the council a notice setting out the reasons why the decision is urgent and cannot reasonably be deferred and that notice must be published on the council's website.

### **Recording of Executive Decisions**

- 2.10 There is an obligation for any executive decision made by decision making bodies at meetings to be recorded in a written statement which includes details of -

- The decision and the date it was made.
- The reasons for the decision.
- Details of any alternative options considered and rejected.
- A record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision.
- In respect of any declared conflict of interest a note of dispensation granted by the relevant local authority's head of paid service.

These statements and the reports considered must be made available for inspection at the council's offices and published on the council's website.

- 2.11 There is also an obligation for the recording of executive decisions made by individual members or officers. As soon as reasonably practicable after an individual member or officer has made an executive decision, that member or officer must produce or instruct the proper officer to produce a written statement. That statement must include details of -

- The decision and the date it was made.
- The reasons for the decision.
- Details of any alternative options considered and rejected.

- A record of any conflict of interest declared by any executive member who is consulted by the member which relates to the decision.
- In respect of any declared conflict of interest a note of dispensation granted by the relevant local authority's head of paid service.

Again, copies of such written statements and the reports considered must be made available for inspection at the council's offices and be published on the council's website.

- 2.12 Under the previous regulations officers were only required to produce a written statement where the executive decision taken by them was a 'key' decision. The new regulations seemingly expand the requirements to cover all executive decisions taken by officers. Potentially this may mean that even the most routine decisions will now need to be the subject of these requirements. It is understood that the Association of County Secretaries and Solicitors, Association of Democratic Services Officers and fellow authorities are seeking clarification from DCLG on the exact scope of these new requirements, as detailed in paragraph 2.20.

### **Background Papers**

- 2.13 The previous regulations provided for the authors of reports to set out in that report a list of documents called background papers relating to the subject matter of the report. These background papers had to be made available for public inspection for up to four years after the date of a meeting. The new regulations provide for reports to continue to contain a list of background papers but also provides for a copy of each of the documents in that list to 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 in relation to council decisions. Work is currently ongoing in relation to possible changes to the current report format to take account of the need to make reference to and have available Integrated Impact Assessments. The opportunity will therefore be taken to ensure that the new regulations and the possible changes to the report format are aligned.

### **Dispensations**

- 2.14 There are various references in the new regulations to the Head of Paid Service being responsible for the granting of dispensations to members who have declared a conflict of interest in decisions taken. Strictly this is a different provision to the dispensation provisions the Council has recently adopted concerning 'Disclosable Pecuniary Interests' under the Localism Act 2011, which, depending on the ground relied upon, have been delegated to the Standards Committee and the Monitoring Officer. However it is likely that similar considerations will apply and to assist consistency of approach it is

proposed that the Head of Paid Service exercise this power in consultation with the Chairman of the Standards Committee and Monitoring Officer

### **Members' rights of access to information**

- 2.15 Members' rights of access to information are broadly unchanged and are well covered in the council's constitution. However, the new regulations have introduced timescales within which members must be provided with the information requested. Any document which is required to be available for inspection by any member of the council must be made available for inspection within 24 hours of the conclusion of a private meeting or the decision being made.
- 2.16 As before members of the 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 that committee with a written statement setting out its reasons for that decision.

### **Reports from the Leader**

- 2.17 The new regulations require the Leader of the Council to submit a report to the council containing details of each executive decision taken where the decision was agreed as urgent. Individual councils are free to determine the frequency of such reports providing at least one report is submitted annually. This report might fit with the Annual Governance Statement which is considered annually by the Audit Committee.

### **Inspection of Documents by Members of the Public**

- 2.18 The access to information 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 documents supplied to that person or made available for public inspection.

### **General**

- 2.19 As mentioned previously, the new regulations came into effect on 10 September 2012. The regulations do not contain any transitional provisions and therefore local authorities can only issue the required 28 days clear notice in respect of key decisions after 10 September. The

effect of this is that any key decision proposed to be made between 10 September and 19 October 2012 cannot be taken unless the general exception or special urgency procedures apply. There is one key decision listed on the agenda for this cabinet meeting. This is item 5.

It is proposed therefore that the general exception provisions are invoked to enable a decision to be made on this item and that the chairman of the appropriate scrutiny panel be informed accordingly.

- 2.20 A number of professional organisations including the Association of Council Secretaries and Solicitors have requested an urgent meeting with the Department for Communities and Local Government to seek some clarity about the Regulations.

### **3. OPTIONS FOR CONSIDERATION**

- 3.1 The new regulations must be implemented with immediate effect and therefore there are no options associated with the report. However, members may wish to consider whether to continue to use a document similar to the forward plan as described in paragraph 2.9 above or to deal with each key decision and the notice required on an individual basis.

### **4. RESOURCE IMPLICATIONS (FINANCIAL, STAFFING, PROPERTY, IT)**

- 4.1 There are no financial, property or IT implications associated with this report. However, in relation to staffing the impact of the new regulations when fully implemented will be monitored.

### **5. OTHER IMPLICATIONS (STATUTORY, ENVIRONMENTAL, DIVERSITY, SECTION 17 - CRIME AND DISORDER, RISK AND OTHER)**

- 5.1 The implementation of the regulations is a statutory requirement.

### **6. OUTCOMES OF CONSULTATION**

- 6.1 No consultation is required as the new regulations are statutory.

### **7. RECOMMENDATIONS**

- 7.1 That the implications of the new regulations be noted and implemented with immediate effect, subject to any clarification issued by the DCLG.
- 7.2 That officers continue to consider the regulations and submit a report to council in November to include proposed changes to the council's constitution to take account of the changes brought about by the regulations.
- 7.3 That the council publish notice of key decisions on an individual basis.

- 7.4 Agree that cabinet agenda item number 5 be progressed for decision by the use of the general exception provisions contained within the new regulations and the council's constitution.

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**Background Papers used in the preparation of this report -**

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