

4.10 Recording of Officer Decision Procedure Rules

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1. Introduction

- 1.1 Section 101 of the Local Government Act 1972 and section 9E of the Local Government Act 2000 set out the framework of delegation. They provide that a Council and a Mayor and Cabinet Executive can arrange for the discharge of functions through a Committee, Sub-Committee or officer of the authority, or any other local Authorities. Committees can delegate to Sub-Committees or to officers, and Sub-Committees can delegate to officers, unless expressly prohibited.

1.2 Pursuant to both the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089) ('the 2012 Regulations') and the Openness of Local Government Bodies Regulations 2014 (SI 2014/2095) ('the 2014 Regulations'), the Council has a statutory responsibility to produce a written record of:

- (a) executive decisions (key or otherwise) made by individual officers or members which must be recorded in a written statement (courtesy of the 2012 Regulations); and
- (b) non-executive decisions which would have been taken by the relevant local government body, or a Committee, Sub-Committee of that body or a Joint Committee in which that body participates, but have been delegated to an officer of that body either under a specific express authorisation; or under a general authorisation to officers to take such decisions and, the effect of the decision is to either grant a permission or licence; or affect the rights of an individual; or award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position (courtesy of the 2014 Regulations).

1.3 This is part of the Government's Transparency Agenda with the aim of placing more power into citizens' hands to increase democratic accountability and make it easier for local people to contribute to the local decision making process and help shape public services. This also forms part of the Council's specific focus on transparency.

1.4 This document forms part of the legal framework to decision making and establishes a system to document decisions taken under delegated authority. It must be read in conjunction with the

2. Types of Decisions

2.1 Officers acting in accordance with delegated authority take one of two types of decisions: executive or non-executive.

3. Executive Decisions

3.1 An "executive decision" means 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 and all decisions of the authority are executive unless they are specified as not. These non-executive functions are set out in Parts 3.1 and 3.2 of the Council's Constitution.

3.2 Executive decisions are then split into two (2) categories: key decisions or non-key decisions. Key decisions are defined in Part 2, Article 13.03(b) of the

Constitution. Pursuant to the 2012 Regulations, key decisions require to be published at least twenty-eight (28) days before the decision is made. This applies even if the key decision is to be taken by an officer. The Key Decision Notice shall contain in relation to each matter included such of the following particulars as are available when the notice is prepared or which the person preparing it may reasonably be expected to obtain:

- (a) that a key decision is to be made on behalf of the relevant local authority;
- (b) the matter in respect of which the decision is to be made;
- (c) where the decision maker is an individual, her/his name and title, if any; and, where the decision maker is a decision making body, its name and a list of its members;
- (d) the date on which or the period within which the decision is to be made;
- (e) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the decision is to be made;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
- (g) that other documents relevant to those matters may be submitted to the decision maker; and
- (h) the procedure for requesting details of those documents (if any) as they become available.

3.3 For more information about Key Decision Notices please refer to Rules 14 to 19 of the Access to Information Procedure Rules, Part 4.2 of the Council's Constitution.

4. Non-executive Decisions

4.1 Non-executive functions are those set out in Part 3.1 of the Constitution and any decision taken in respect of these functions is a non-executive decision. These functions include:

- (a) Functions relating to Town and Country Planning;
- (b) Licensing and Registration Functions;
- (c) Functions relating to health and safety at work;
- (d) Functions relating to elections;
- (e) Functions relating to smoke-free premises;
- (f) Miscellaneous functions (as set out in Part 3.1.1 of the Constitution); and

- (g) The 'Local Choice' functions set out in Parts 3.1.2 and 3.1.3 of the Constitution (e.g. Street Trading Functions).

5. Delegations

- 5.1 Officers are delegated to take both executive (including key) and non-executive decisions. The delegations are either directly from the Mayor, a Committee or within the Scheme of Delegations contained in the Constitution.
- 5.2 The significance of decisions taken under delegated powers will vary, and officers authorised to make delegated decisions will need to exercise judgement in determining whether decisions are significant enough to require placing in the Forward Plan if they are key executive decisions; in addition to whether the decision requires to be formally recorded.
- 5.3 Officers also need to be aware of whether the decision that is being taken relates to an executive or non-executive function.

6. Decision Making - The Process

- 6.1 Before taking any decision, the authorised officer must take into account the principles of decision making set out in the Constitution and ensure that they have the necessary authority to take the decision.
- 6.2 Additionally, before taking any decision, an officer must satisfy him/herself of the following matters, where relevant:
 - (a) The facts upon which the decision must be based.
 - (b) Any legislative requirements, including the need to secure Best Value.
 - (c) The strategies and policies of the Council including any plans, objectives relating to their service or the Council.
 - (d) Any relevant national or regional guidance.
 - (e) The available options.
 - (f) The financial, staffing and legal implications, following consultations with the Corporate Director, Place; Corporate Director, Governance; Divisional Director, HR and Workforce Development; or other service as appropriate.
 - (g) The views/advice of any appropriate statutory officer.
 - (h) Any consultations undertaken, the views of any consultees, and any other representations received.

- (i) Any implications for any other areas of the Council's activities including the views of any Corporate Director or Divisional Director whose services may be affected.
- (j) The need to inform the Mayor or appropriate Members (e.g. the Chair of a particular Committee).

6.3 Where the decision to be taken is a Key Decision then, as stated in Rule 3.2 above, before the decision can be taken a notice must be published at least 28 days before the decision is made. The Council has a system to publish notices of forthcoming decisions and which is known as the Forthcoming Decisions Plan (or 'Forward Plan'). A Forward Plan is published at least twenty-eight (28) days before each Cabinet meeting setting out information on all the Key Decisions that are expected to be taken at that meeting, along with other Cabinet and Commissioner decisions where known.

6.4 Therefore, officers proposing to make a Key Decision and needing to place an item on the Council's Forward Plan should complete the Forward Plan template and supply this to the Democratic Services Officer. This is available on the Council's intranet site. **Key decisions must be published on the Forward Plan at least twenty-eight (28) clear days before the proposed decision date.**

6.5 If it is impracticable to include the matter in the Forward Plan, then the officer must comply with the legal requirements relating to exceptional and urgent executive decisions. These are set out in Rules 18 (Urgency - General Exception) and Rule 19 (Urgency - Special Urgency) of the Access to Information Procedure Rules, Part 4.2 of the Council's Constitution.

6.6 The Urgency - General Exception is that if matter has not been published at least twenty-eight (28) days in advance then, subject to Urgency - Special Urgency, the decision may still be taken if

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until public notice of at least twenty-eight (28) days has been given;
- (b) the Corporate Director, Law, Probity and Governance has informed the Chair of the Overview and Scrutiny Committee, or if there is no such person, each member of the Overview and Scrutiny Committee by notice in writing of the matter about which the decision is to be made;
- (c) the Corporate Director, Law, Probity and Governance has made copies of that notice available to the public at the offices of the local authority for inspection; and
- (d) at least five (5) clear days have elapsed following the day on which the Corporate Director, Law, Probity and Governance complied with 6.6(b) and 6.6(c).

- 6.7 If an officer is unable to give five (5) clear days notice of a key decision that was not in the Forward Plan, s/he can only take the decision if the chair of the Overview and Scrutiny Committee agrees that the decision is urgent and cannot reasonably be deferred. This is Urgency - Special Urgency.
- 6.8 A report has to be submitted to Full Council on executive decisions taken under the Urgency - Special Urgency Rule.

7. Decision Making - Accountability

- 7.1 Decisions are open to challenge and review in a number of ways and it is therefore important that the Council is able to demonstrate that such decisions have been properly taken and in a manner that avoids challenge. In that regard, it is important to bear in mind that frequently decisions are overturned not because they were 'wrong' but because the challenge has successfully shown that the decision was reached following a flawed process.
- 7.2 Challenges to decisions usually arise where-
- (a) there is a failure by the decision maker to take into account relevant considerations, either as required by law or such as would be taken into account by any reasonable person taking into account irrelevant considerations acting so unreasonably such that no reasonable body of persons could have so acted;
 - (b) there is a failure by the decision maker to direct himself/ herself properly in law;
 - (c) there is a failure to take into account relevant considerations, either as required by law or such as would be taken into account by any reasonable person taking into account irrelevant considerations acting so unreasonably such that no reasonable body of persons could have so acted;
 - (d) the decision maker exercises a power for a purpose for which it was not delegated;
 - (e) the decision maker acts in bad faith or with an improper motive;
 - (f) there is a fettering or failing to exercise a discretion;
 - (g) there has been an improper delegation;
 - (h) there is a failure to consult or to consult properly, either as a matter of statute or legitimate expectation; or
 - (i) the decision maker fails to act fairly or observe procedural requirements.

- 7.3 Officers are accountable to the Council for any decision they make, and with the exception of decisions relating to non-executive functions, officers may be required to report to, and to answer questions from the Overview and Scrutiny Committee or a Scrutiny Panel in respect of any decision. The Overview and Scrutiny Committee may also call in Key Decisions before they are implemented and may recommend a course of action requiring the matter to be reconsidered by the officer.
- 7.4 Where a decision can be called in, it cannot be implemented until either the call-in period has expired or the Overview and Scrutiny Committee has made a decision regarding the call-in. The call-in procedure is set out in the Overview and Scrutiny Procedure Rules, Part 4.4 of the Council's Constitution.

8. Decision Making – Recording Executive Decisions

- 8.1 Executive decisions made by officers must be recorded in a written statement. This written record together with any other background documents must also be made available for inspection as soon as practicable and published on the Council's website. This applies whether or not the decision is a key decision. That being said, numerous executive decisions are taken by officers on a daily basis and a large number of these are administrative. A line therefore needs to be drawn as to what type of executive decision should be recorded as clearly it would be an administrative nightmare for all officer executive decisions to be recorded. To assist, the Department of Communities and Local Government ('DCLG') has published guidance and which provides that it is not intended that administrative and operational decisions are to be recorded.
- 8.2 Based on this Guidance and for the purposes of these Rules only, executive decisions will be defined as Key, Important or Administrative. All decisions other than Administrative are to be formally recorded and published. However, administrative decisions although not required to be formally recorded and published, should still have a written note of the decision made so as to provide an audit trail in respect of decision making.
- 8.3 A Key Decision is as defined in Article 13.
- 8.4 "Important" decisions are:
- (a) Any decision taken and which would be contrary to the Budget and Policy Framework;
 - (b) Decisions taken that are likely to conflict with or result in a change or departure from any decision or policy agreed by the Executive;
 - (c) Decisions taken that are contrary to legal advice;

- (d) Decisions taken that may incur significant social, economic or environmental risk (and this would include decisions that have significant impact on communities in a single ward);
- (e) Decisions taken which have an impact both within and outside of the Borough;
- (f) Decisions taken and which are likely to result in substantial public interest;
- (g) Decisions specifically delegated to an officer at an Executive meeting;
- (h) Decisions that would result in the setting up of a company or entering into a partnership arrangement with any other body;
- (i) Major individual service reorganisation decisions likely to involve 20 or more redundancies;
- (j) Decisions to waive the procurement rules in respect of contracts over the value of £250,000; and
- (k) Urgent decisions on matters that are otherwise reserved to the Executive.

8.5 The procedure for an officer taking a key decision is set out in Rule 23 of the Access to Information Procedure Rules and is set out in full below.

23.1 *Where executive decision making is delegated to an officer, that officer may only take a key decision on the basis of a written report setting out key legal, financial, service and corporate implications.*

23.2 *Subject to Rules 18 and 19, where an individual officer receives a report which s/he intends to take into account in making a key decision s/he shall not make that decision until notice of the decision has been available for public inspection for twenty-eight (28) days.*

23.3 *The individual officer making the decision must ensure that the Corporate Director, Law, Probity and Governance (or an officer nominated by her/him) receives a copy of the report and makes it available in accordance with paragraph 23.4.*

23.4 *The Corporate Director, Law, Probity and Governance will publish the report to the Overview and Scrutiny Committee, the Chief Executive, Chief Finance Officer and Monitoring Officer. The report will be made publicly available as soon as reasonably practicable.*

23.5 *As soon as is reasonably practicable after an officer has made a key decision or a non-key decision delegated to the officer by a specific decision of the Executive s/he shall produce a written statement including:*

- (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 at the time by the officer when making the decision;*
- (d) a record of any conflict of interest declared by any Executive Member who was 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.*

23.6 All executive decisions taken by officers in accordance with Rule 23.5 must be published and will be subject to call in as set out in part 4.5 of this Constitution. Other non-key decisions taken by officers are not subject to call in.

23.7 Nothing in these rules relating to the taking of decision by individual officers shall require them to disclose confidential or exempt information or the advice of a political adviser or assistant.

8.6 If the executive decision is a non- key decision then the decision maker needs to consider whether it is an “Important” or an “Administrative” decision using the criteria as outlined in Rule 8.4 of these Rules.

8.7 If it is an “Important” decision then it has to be recorded and published just like a key decision.

8.8 All executive decisions taken by officers and which are required to be published will be published through the modern.gov portal on the LBTH intranet. This link is:

<https://edemoc2ksrv.towerhamlets.gov.uk/mgWorkToDo.aspx?DR=08%2f03%2f2016%20-%2015%2f03%2f2016&SC=U00001675&OP=2>

8.9 On making an executive decision that requires to be recorded, the officer must provide the Directorate lead within his/her Directorate a completed Record of Decision Form – Executive Decision (see Appendix A) within two (2) clear working days of the date of taking the decision. A copy of the completed record should also be provided to the officer’s Service Head.

8.10 It is essential that the contents of the Record of Decision Form – Executive Decision are clear in conveying the decision taken. The reasons for the

decision must be set out. It will not be sufficient to say that the recommendations in a report were agreed especially as it is an accepted 'best practice' principle of good administration that reasons for decisions have to be given. Any report to the officer exercising the delegation must be attached and details of any background documents must be included. The form and accompanying report must set out:

- (a) a record of the decision (including the date it was made);
- (b) the reasons for the decision;
- (c) details of any alternative options considered and rejected;
- (d) a record of any conflict of interest declared by any Executive Member consulted; and
- (e) in relation to any such declaration, a note of any dispensation granted by the Chief Executive.

8.11 The Record of Decision Form – Executive Decision includes a section for the recording of interests by officers. It is important that where officers involved in making decisions have a registerable interest this is declared on the form to preserve the integrity of the process.

8.12 The Directorate lead will be responsible for maintaining a record of all decisions referred, including any report upon which each decision was made and any background documents. Further s/he will ensure that this decision is recorded by the Council and that the record of the decision is available for public inspection, excluding any exempt or confidential information, during all normal office hours and that the public has the right to copy or to be provided with a copy of any part of that record upon payment of a reasonable copying and administrative charge. The Directorate lead will also publish the decision on the Council's website via the modern.gov portal and will follow the "submit officer decision" link and complete as required.

8.13 If the Directorate lead has any concerns regarding the submitted Record of Decision Form – Executive Decision then they must raise this with officer submitting the form and ensure that all concerns are addressed before publishing the decision.

8.14 If a decision is challenged it is vital to be able to demonstrate that the proper processes were complied with. To be able to do this it is essential that adequate records are kept so they can be referred to and produced if necessary. These records should include written notes of all relevant meetings and discussions and copies of all papers considered in making a decision. It is best practice to keep a clear note of all considerations taken into account with reasons why they were considered relevant and why matters not considered were thought not to be relevant.

- 8.15 With regard to publication, nothing in these Rules relating to the taking of an executive decision by individual officers shall require them to disclose confidential or exempt information or the advice of a political adviser or assistant. In there is such information then the published decision must contain particulars of the matter but is not to contain any confidential or exempt information or particulars of the advice of a political adviser or assistant. Please see Rule 10 of these Rules for more details.**

9. Decision Making – Recording Non-Executive Decisions

- 9.1 Regulation 7 of the 2014 Regulations extends the requirement for officers to also make a written record of non-executive decisions which would have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but has been delegated to an officer of that body either-

- (a) under a specific express authorisation; or
- (b) under a general authorisation to officers to take such decisions and,
 - (i) the effect of the decision is to either grant a permission or licence; or
 - (ii) affect the rights of an individual; or
 - (iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.

- 9.2 Regulation 7(3) of the 2014 Regulations also requires that the written record be produced as soon as reasonable practicable and contain the following information:

- (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 at the time by the officer when making the decision; and
- (d) where the decision falls under a specific express authorisation, the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.

- 9.3 This written record together with any other background documents must also be made available for inspection as soon as practicable and published on the Council's website.

9.4 Non-executive functions are those set out in Part 3.1 of the Constitution and any decision taken in respect of these functions is a non-executive decision. These functions include:

- (a) Functions relating to Town and Country Planning;
- (b) Licensing and Registration Functions;
- (c) Functions relating to health and safety at work;
- (d) Functions relating to elections;
- (e) Functions relating to smoke-free premises;
- (f) Miscellaneous functions (set out in Part 3.1 of the Constitution);
and
- (g) The 'Local Choice' functions set out in Parts 3.1.2 and 3.1.3 of the Constitution (e.g. Street Trading Functions).

9.5 Decisions under an express authorisation are straightforward and would be where a Committee has delegated a specific non-executive decision to an officer or there is a specific delegation to an officer in the Constitution. All non-executive decisions of this nature must be recorded.

9.6 Decisions under a general authorisation to officers to take such decisions would be those as set out in the Scheme of Management and specifically, Part B – Directorate Delegations. These are set out at Part 8.2 of this Constitution and apply to the particular functions undertaken by each Directorate. The delegations extend to the holders of the specified posts which have been determined by the Director having regard to the requirements of the particular functions and the way in which the service is delivered.

9.7 Under a general authorisation, to require recording the decision must also be to either grant a permission or licence; affect the rights of an individual; or award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.

9.8 Decisions under a general authorisation to officers to take such decisions would be those as set out in the Scheme of Management and specifically, Part B – Directorate Delegations. These are set out at Part 8.2 of this Constitution and apply to the particular functions undertaken by each Directorate. The delegations extend to the holders of the specified posts which have been determined by the Director having regard to the requirements of the particular functions and the way in which the service is delivered.

9.9 The DCLG Guidance has set out examples of decisions that should be recorded, namely-

- Decisions about awarding contracts above specified individual or total values (the values will vary according to the relevant council or local government body);
- A decision to carry out major road works;
- Determination of licencing applications, building control decisions and notices; and
- Decisions to give listed building consents.

9.10 Taking this into account, and looking at each category in turn then where the effect of the decision is to grant a licence or permission, this would include:

- (a) determination of a licence application;
- (b) the granting of a planning permission and any other permissions; and
- (c) giving listed building consent.

9.11 As to a decision that affect the rights of an individual, this would include:

- (a) a decision to review a licence;
- (b) a decision to refuse to grant a licence or permission; and
- (c) a decision to serve a notice.

9.12 As to decisions in respect of the award of a contract and incurring expenditure then having regard to Section D of the Financial Procedure Rules and which relates to Financial Management, decisions that should be recorded are:

- (a) Decisions which would lead to a shortfall in the services budget;
- (b) Decisions in relation to an overspend;
- (c) Decisions the result of which would lead to a budget variance that would require to be reported to the Corporate Director of Resources.
- (d) The exercise of discretion by Corporate Directors in respect of incurring expenditure in respect of non-executive functions; and
- (e) Any decision in respect of a level 3 category contract where a PIF (Procurement Instruction Form) is to be completed but Member approval is not required.

9.13 All non-executive decisions taken by officers and which are required to be published will be published through the modern.gov portal on the LBTH intranet. This link is:

- 9.14 On making a non-executive decision that requires to be recorded, the officer must provide the Directorate lead within his/her Directorate a completed Record of Decision Form – Non-Executive Decision (see Appendix B) within 2 clear working days of the date of taking the decision. A copy of the completed record should also be provided to the officer's Service Head.
- 9.15 It is essential that the contents of the Record of Decision Form – Non-Executive Decision are clear in conveying the decision taken. The reasons for the decision must be set out. It will not be sufficient to say that the recommendations in a report were agreed especially as it is an accepted 'best practice' principle of good administration that reasons for decisions have to be given. Any report to the officer exercising the delegation must be attached and details of any background documents must be included. The form and accompanying report must set 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 at the time by the officer when making the decision; and
 - (d) where the decision falls under a specific express authorisation, the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.
- 9.16 The Record of Decision Form – Non-Executive Decision includes a section for the recording of interests by officers. It is important that where officers involved in making decisions have a registerable interest this is declared on the form to preserve the integrity of the process.
- 9.17 The Directorate lead will be responsible for maintaining a record of all decisions referred, including any report upon which each decision was made and any background documents. Further s/he will ensure that this decision is recorded by the Council and that the record of the decision is available for public inspection, excluding any exempt or confidential information, during all normal office hours and that the public has the right to copy or to be provided with a copy of any part of that record upon payment of a reasonable copying and administrative charge. The Directorate lead will also publish the decision on the Council's website via the modern.gov portal and will follow the "submit officer decision" link and complete as required.
- 9.18 If the Directorate lead has any concerns regarding the submitted Record of Decision Form – Non-Executive Decision then they must raise this with officer

submitting the form and ensure that all concerns are addressed before publishing the decision.

9.19 If a decision is challenged it is vital to be able to demonstrate that the proper processes were complied with. To be able to do this it is essential that adequate records are kept so they can be referred to and produced if necessary. These records should include written notes of all relevant meetings and discussions and copies of all papers considered in making a decision. It is best practice to keep a clear note of all considerations taken into account with reasons why they were considered relevant and why matters not considered were thought not to be relevant.

9.20 With regard to publication, nothing in these Rules relating to the taking of a non-executive decision by individual officers shall require them to disclose confidential or exempt information. In there is such information then the published decision must contain particulars of the matter but is not to contain any confidential or exempt information. Please see Rule 10 of these Rules for more details.

10. Decision Making - Exempt and Confidential Information

10.1 In respect of the recording of executive decisions, the 2012 Regulations provide that nothing in those Regulations is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

10.2 Further, in respect of Executive Decisions, the Council is not required to disclose to the public or make available for public inspection any document or part of a document relating to the decision if, in the opinion of the monitoring officer, that document or part of that document contains or may contain:

- (a) confidential information;
- (b) exempt information; or
- (c) the advice of a political adviser or an assistant.

10.3 "Confidential Information" is information provided to the local authority by a government department on terms (however expressed) which forbid the disclosure of the information to the public; or information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court, and in either case, a reference to the obligation of confidence is to be construed accordingly.

10.4 "Exempt Information" is has the meaning given by section 100I of the 1972 Act (exempt information and power to vary Schedule 12A, namely-

- (a) Information relating to any individual.
- (b) Information which is likely to reveal the identity of an individual.
- (c) Information relating to the financial or business affairs of any particular person (including the authority handling the information) [**Information is not exempt under this category if it is required to be registered under the Companies Act 1985, the Friendly Societies Act 1974 and 1992, the Industrial and Provident Societies Acts 1965 to 1978, the Building Societies Act 1986 or the Charities Act 1993.**].
- (d) Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- (e) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (f) Information which reveals that the authority proposes:-
 - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (ii) to make an order or direction under any enactment.
- (g) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

10.5 Information falling within any of the categories (a) to (g) of Rule 11.5 above are not exempt by virtue of Rule 11.2 if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

10.6 As to non-executive decisions, the 2014 Regulations also provide that nothing in those Regulations is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

10.7 The 2014 Regulations also provide that the Council is not required to disclose to the public or make available for public inspection any document or part of a document relating to the decision if, in the opinion of the monitoring officer, that document or part of that document contains or may contain:

- (a) confidential information; or
- (b) exempt information.

10.8 The 2014 Regulations do not provide an exemption for the advice of a political adviser or an assistant.

10.9 Otherwise, confidential information and exempt information have the same meanings in Rules 10.3 and 10.4 above.

11. Decision Making - Referrals

- 11.1 Whilst officers are encouraged to take responsibility for decisions, an officer may decide that a particular issue is such that it should be referred to the body from which authority was delegated. In any event, such a referral must take place where the proposed decision relating to Executive function is in conflict with the Council's Budget and Policy Framework.
- 11.2 The Executive may also direct an officer's delegated authority should not be exercised and that the matter should be referred to the Executive.
- 11.3 In relation to the exercise of non-Executive functions, the officer may decide to refer a particular issue to the Committee or sub-committee from whom it was delegated, or if none, arrange for an appropriate recommendation to be made to Full Council.
- 11.4 In considering not to exercise a delegation, The criteria that officers may have to consider when determining whether to exercise a function could include-
- (a) Whether the decision may incur a significant social, economic or environmental risk.
 - (b) The likely extent of the impact of the decision both within and outside of the borough.
 - (c) Whether the decision is likely to be a matter of political controversy.
 - (d) The extent to which the decision is likely to result in substantial public interest.

12. Retention of Documents

- 12.1 Both the 2012 Regulations and the 2014 Regulations provide that any written record of an executive decision or any report required to be available for inspection by members of the public, must be retained by the Council and made available for inspection by the public for a period of at least six (6) years beginning on the date on which the decision, to which the report or record relates, was made.
- 12.2 In respect of background papers however, both sets of Regulations only require retention for four (4) years.

RECORD OF DECISION FORM – EXECUTIVE DECISION

Regulation 13 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Name, job title, Directorate and Service of Decision Maker:	
Subject matter:	
Wards affected:	
Delegated Power Being Exercised:	
Name of the Executive Member consulted (if applicable):	
Any conflict of interest that has been declared by the Executive Member:	
In relation to any such declaration, is there a note of any dispensation granted by the Chief Executive:	
Does the decision maker have a registerable interest:	
Date Decision Taken:	
Decision Taken (specify precise details):	
Reasons for the Decision (specify all reasons for taking the decisions including reference to Council policy, where necessary):	

List and attach the documents, reports etc. considered as part of making the decision:	
Details of any alternative options considered and rejected at the time by the officer when making the decision:	
Consultations (where appropriate):	
Any Legal, Financial, or Equality Implications considered:	
List of background papers:	
If not the Decision Maker, the name and contact details of the officer to contact for background papers:	
Signature and Date:	

RECORD OF DECISION FORM – NON-EXECUTIVE DECISION

Regulation 7 of The Openness of Local Government Bodies Regulations 2014

Name, job title, Directorate and Service of Decision Maker:	
Subject matter:	
Wards affected:	
Delegated Power Being Exercised:	
Is the decision arising from a specific express authorisation:	
If yes, state the names of any member who has declared a conflict of interest in relation to the decision:	
Does the decision maker have a registerable interest:	
Date Decision Taken:	
Subject of Decision:	
Decision Taken (specify precise details):	
Reasons for the Decision (specify all reasons for taking the decisions including reference to Council policy, where necessary):	

List and attach the documents, reports etc. considered as part of making the decision:	
Details of any alternative options considered and rejected at the time by the officer when making the decision:	
Consultations (where appropriate):	
Any Legal, Financial, or Equality Implications considered:	
List of background papers:	
If not the Decision Maker, the name and contact details of the officer to contact for background papers:	
Decision:	
Signature and Date:	

BULLET POINT GUIDE TO RECORDING OF OFFICER DECISIONS

- Is the decision Executive or Non-executive?
- If Executive, is it a Key decision?
- If a Key Decision, then decision must be recorded and complete **“RECORD OF DECISION FORM – EXECUTIVE DECISION”** and then submit to Directorate lead.
- If Executive non-Key decision, then is it an important decision or an administrative one?
- If important (see Rule 8.4 of **“Recording of Officer Decision Procedure Rules”** for criteria for deciding whether decision is important), then decision must be recorded and complete **“RECORD OF DECISION FORM – EXECUTIVE DECISION”** and then submit to Directorate lead.
- If administrative, then decision does not need to be formally recorded but a written note of the decision should be made by the officer to provide an audit trail in respect of decision making.
- If decision is non-Executive (see Rule 9.4 of **“Recording of Officer Decision Procedure Rules”** for examples of non-Executive decisions), then it must be recorded if it is has either-
 - been delegated under a specific express authorisation; or
 - been delegated under a general authorisation to officers to take such decisions and the effect of the decision is to-
 - (i) grant a permission or licence; or
 - (ii) affect the rights of an individual; or
 - (iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.
- Examples of decisions in (i), (ii) and (iii) above are-
 - determination of a licence application;

- the granting of a planning permission and any other permissions;
 - giving listed building consent;
 - a decision to review a licence;
 - a decision to refuse to grant a licence or permission;
 - a decision to serve a notice;
 - a decision which would lead to a shortfall in the services budget;
 - a decision in relation to an overspend;
 - a decision the result of which would lead to a budget variance that would require to be reported to the Corporate Director of Resources.
 - the exercise of discretion by Corporate Directors in respect of incurring expenditure in respect of non-executive functions; and
 - any decision in respect of a level 3 category contract where a PIF (Procurement Instruction Form) is to be completed but Member approval is not required.
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- If the non-Executive decision must be recorded then complete “**RECORD OF DECISION FORM – NON-EXECUTIVE DECISION**” and then submit to Directorate lead.
 - Do consider whether any information is confidential or exempt (see Rule 10 of “**Recording of Officer Decision Procedure Rules**” for definitions of exempt and confidential) and, if so, advise Directorate lead accordingly.