

<b>Committee:</b> Overview and Scrutiny	<b>Date:</b> 2 October 2012	<b>Classification:</b> Unrestricted	<b>Report No:</b>	<b>Agenda Item:</b>
<b>Report of:</b> Assistant Chief Executive (Legal Services)  <b>Originating officer(s)</b> Isabella Freeman, Assistant Chief Executive (Legal Services)		<b>Title:</b> Briefing note – Executive Arrangements  <b>Wards Affected:</b> All		

## 1. SUMMARY

- 1.1. On 10 August 2012 the Government unexpectedly published new Executive Decisions regulations. The regulations replace existing Access to Information and other Executive Decision making requirements. The regulations - *The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012* - came into force on 10 September 2012.
- 1.2. The regulations have caused considerable confusion nationally as to their intention and a number of bodies including the Association of Council Secretaries and Solicitors (ACSeS) and the Association of Democratic Services Officers (ADSO) are attempting to organise a discussion with CLG to express their concerns and to clarify a number of points.
- 1.3. However, the Council is required to operate to the new regulations and, making use of Counsel advice issued to ACSeS, this briefing note outlines the changes and what actions are being taken to comply. Should clarification be received from CLG then a further note will be circulated if required.
- 1.4. The following briefing note applies to **Executive** decisions only.

## 2. DECISIONS REQUIRED

Overview and Scrutiny Committee is recommended to:-

- 2.1. Consider and comment on the information set out in the report.

## 3. BACKGROUND

- 3.1. The main changes required in the regulations are as follows.

### 3.2. **Key Decisions**

3.3. The Council must provide at least 28 clear days' pre-notification before a Key Decision can be taken. The Council is free to decide the style of this notice. This removes the specific requirement for a Forward Plan however most Councils appear to be keeping a Forward Plan and we are doing the same so the deadline for publishing the plan will be 30 days prior to the cabinet meeting date. New deadline dates for items will be provided to teams. If a report is not on the list then it will only go to that month's cabinet if signed off by the Chair of OS as an urgent item.

3.4. Although when we refer to '5 clear days' this excludes weekends and bank holidays, Counsel's advice is that for longer periods such as 28 days it is reasonable to include weekends and holidays in the calculations.

### 3.5. **Exempt Reports/Private Meetings**

3.6. There is a new regulation requiring the Council to give 28 clear days' notice of its intention to go into private session [part2] to consider a report (or part of a report) and to allow the public to make representations against that happening.

3.7. Counsel's advice is as follows:

*'the notice that has to be provided 28 clear days before a meeting is held in private needs to be sufficiently specific and detailed so that representations can properly be made to the council as to why the meeting should be held in public. The notice should therefore identify the part(s) of the meeting that the council intends to hold in private, with reasons why;'*

3.8. If the Council cannot meet the 28 day notice deadline then the agreement of the Chair of Overview and Scrutiny is required before the meeting or particular item can take place in private session.

3.9. Further to the 28 day notice, a 5 clear day notice is then required reviewing the decision to hold a private session or item and confirming the intention to hold a private session of the meeting, listing any representations received and also the response to those representations.

### 3.10. **Recording of Officer Decisions**

3.11. The most difficult part of the new Regulations is a new requirement that requires the Council to publish decision making reports on executive decisions taken by officers.

3.12. What is the definition of an executive decision taken by officers? Counsel's advice is the following:

*'decisions made by individual officers that are closely connected to the discharge of executive functions need to be recorded; it is not permissible to record 'key decisions' only;*

*It seems to me that the definition of an 'executive decision' is broad, as it is not confined to decisions that 'discharge . . . a function' of an executive, but include decisions 'in connection with the discharge of a function*

*I consider that purely administrative decisions – such as purchasing stationery for use in connection with the discharge of an executive function – would not need to be recorded.*

*Nevertheless, other decisions which may be fairly routine, but are closely connected to the functions of the Executive will need to be recorded. I appreciate that this may be regarded by some as imposing a disproportionate burden on councils.*

*If so, then it is something that ACSeS may wish to take up with the Department with a view to amending the 2012 Regulations at the first available opportunity.'*

- 3.13. This is clearly going to be difficult for all officers who make decisions. Any decision whether it be for a contract within officers delegations, or ordering goods and services, all the delegations within the constitution already which have been delegation to chief officers and delegated down through deputies etc need to be recorded in the Register both in the department and on a form to be sent to Matthew Manion at Democratic Services and will be published.
- 3.14. We will give more guidance as we get it but this applies for decisions from the 10<sup>th</sup> September.
- 3.15. **Member and public access to documents**
- 3.16. The new regulations outline the rights that Members have in being able to receive documents in addition to the rights of the public (particularly in the case of the Overview and Scrutiny Committee Members). In reviewing the regulations officers have not detected many major changes to the current regulations. Officers must note that members only have access to information in their committees and all requests for information outside of that fall within the Access to information rules set out in the member officer protocol in part 5 of the constitution.
- 3.17. A general change in access to documents is that any background documents related to a report must be published on the Council's website rather than just be available for inspection.
- 3.18. **Other Changes**

3.19. The regulations require a number of other changes, a summary of which are presented here:

- Bloggers and other ‘online news gatherers’ must be given the same access at Executive decision making meetings as the traditional press.
- Councils are also encouraged, but not forced, to allow the webcasting/audio recording of meetings so we don’t have to change our current position on this.
- If there is a ‘conflict of interest’ as defined by common law for the decision maker (e.g. a Cabinet Member or officer) or consultation with such person by other decision makers in cabinet then the Head of the Paid Service is able to grant such dispensations as may be required if appropriate and these will have to be registered.
- Additional details are required to be published in the Decision notice including reasons for the decision and alternatives considered.

### 3.20. **Similar/unchanged regulations**

3.21. The following are unchanged or appear similar to previous regulations including:

- The ability of the Council to charge for paper copies of documents.
- That Overview and Scrutiny Committee can require a report to be written explaining why a particular decision was not treated as a key decision. This means the committee not an individual member of the OS committee.
- The Executive must write at least one report a year to Council providing details of each occasion where special urgency procedures were followed we currently do this quarterly.

### 3.22. **Urgency Provisions for Key Decisions**

3.23. The regulations provide for similar urgency provisions; general urgency (if 5 clear days publication can be met) and special urgency (if 5 clear days publication cannot be met). In both circumstances the signed authority of the Chair of OS is required. However, as Counsel points out, the regulations are clear that these should only be used where it is *impracticable* to offer sufficient notice.

3.24. It should be an extremely rare situation for it to be impracticable to offer sufficient notice before a decision is taken and implemented.

## 4. **COMMENTS OF THE CHIEF FINANCIAL OFFICER**

4.4 This report describes published new Executive Decisions regulations that replace existing Access to Information and other Executive Decision making requirements. There are no specific financial implications arising from the recommendations in this report. However, if there are any additional costs, officers will be obliged to

seek the appropriate financial approval before further financial commitments are made.

**5. CONCURRENT REPORT OF THE ASSISTANT CHIEF EXECUTIVE (LEGAL)**

5.1. This report originates in Legal Services and any necessary legal comments are set out in the body of the report.

**6. ONE TOWER HAMLETS CONSIDERATIONS**

6.1. Any equalities impacts arising from the regulatory changes will need to be assessed in due course.

**7. SUSTAINABLE ACTION FOR A GREENER ENVIRONMENT**

7.1. The new regulations do not impact on sustainable action for a greener environment.

**8. RISK MANAGEMENT IMPLICATIONS**

8.1. The difficulties arising from implementing the new regulations are referred to in the body of the report.

**9. EFFICIENCY STATEMENT**

9.1. Steps are being taken to facilitate the implementation of the regulations, although aspects of them place a clear administrative burden on local authorities

**10. APPENDICES**

None

---

**Local Government Act, 1972 Section 100D (As amended)  
List of "Background Papers" used in the preparation of this report**

Brief description of "back ground papers"	Name and telephone number of holder and address where open to inspection.
---	---

None	N/A
------	-----