

CABINET

4 SEPTEMBER 2012

EXECUTIVE DECISION MAKING – NEW LEGISLATIVE REQUIREMENTS

Portfolio Holder: Councillor Rodney Chambers, Leader
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Summary

This report advises the Cabinet of the content of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which were laid before Parliament on 15 August and come into effect on 10 September 2012. These regulations clarify and extend the circumstances in which local authority executive decisions are to be open to the public. The Cabinet is asked to agree new working arrangements with immediate effect and to recommend the Council to agree the required changes to Medway's Constitution at its meeting on 18 October 2012.

1. Budget and Policy Framework

1.1 The Council's Constitution sets out the how the Council operates, how decisions are made and the procedures to ensure these are efficient, transparent and accountable to local people. The Monitoring Officer has delegated authority to make minor changes to the Constitution, including those changes to executive decision making agreed by the Leader, with a copy of such changes being supplied all Group Leaders and Whips within 14 days. Any other changes can only be approved by the Council.

2. Background

2.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 revoke and replace regulations made in 2000. In summary the new regulations establish the presumption that meetings of a local authority executive (either a Mayor and Cabinet executive or Leader and Cabinet executive), its Committees and Sub-committees must be held in public. The Regulations prescribe the circumstances in which such meetings may be held in private. They also set out circumstances in which written records relating to executive decisions are to be made and when those records are to be open to the public.

- 2.2 Before making the regulations the Government took soundings from the Local Government Association (LGA), Society of Local Authority Chief Executives, Association of Council Secretaries and Solicitors, Centre for Public Scrutiny and CIPFA. The LGA opposed the regulations and said they are unnecessary on the basis that local authorities are committed to transparency and accountability and that the current rules and regulations already allow for maximum transparency. However the Government has proceeded to introduce the new regulations because it believes the current regulations only allow, rather than require, maximum transparency and this has resulted in practice in more meetings being held in private than could be properly justified on the basis of well founded reasons.
- 2.3 The timescale for implementation of the provisions in the new regulations is extremely tight. The regulations were laid before Parliament on 15 August and are effective from 10 September 2012. They require some changes to procedures for managing the business of the Cabinet. In addition some sections of the Constitution will need to be amended and submitted for approval to the Council at its next meeting on 18 October. It should be noted that whilst the Constitution will have to reflect the new legal provisions, established working arrangements in Medway are already in line with best practice in transparent and open executive decision – making. Current practice in Medway exceeds minimum requirements set out in the relevant regulations. For example, the Council's Constitution says key decisions should only be taken by the Leader/Cabinet, normal practice is for non-key decisions to be taken by the Leader/Cabinet to be also listed in the Forward Plan and the Cabinet endeavours to minimise the extent to which the press and public are excluded from meetings.

3. Options

- 3.1 The Council will be required to align provisions in Medway's Constitution relating to executive decision-making and access to information with the new 2012 regulations. There is an option to then set up working arrangements which only meet the minimum requirements. However this report assumes the Cabinet will wish to continue with established working arrangements (insofar as this is possible under the new regulations) as these demonstrate a high level of transparency and accountability and have served the Council well since a Leader/Cabinet executive was introduced in Medway in October 2001.

4. Changes required to executive decision-making and access to information arrangements

- 4.1 This section of the report sets out the principal changes required to bring Medway's working arrangements for executive decision-making and access to information into line with the provisions in the new regulations. Work is underway to produce a schedule of the full set of changes required to the Constitution for submission to Full Council and this will follow in Appendices A and B on a supplementary agenda.
- 4.2 **Publicity in connection with key decisions:** Currently the Leader is required to publish a Forward Plan of key decisions to be taken by the Leader/Cabinet covering a four - month period which has to be published on a monthly basis, ten working days before the start of the period covered. This requirement is repealed with effect from 10 September.

Instead, effective from 10 September 2012, a document must be published 28 clear days before the Leader/Cabinet makes a key decision setting out the key decision to be made and a range of other information similar in content to the current Forward Plan. In effect this means that the legal obligation to list forthcoming key decisions only applies to the next Cabinet meeting rather than the next three to four meetings. If compliance with the 28 - day notice period is not possible there is a continuing requirement to notify the relevant Overview and Scrutiny Committee Chairman and wait five clear days before the decision is taken (unless the special urgency provisions are followed).

There is then a new requirement to publish a notice explaining why compliance with the usual 28 - day notice requirement has not been possible.

- 4.3 In making these changes it is proposed to take the opportunity of aligning the definition of a key decision in Medway's Constitution with the definition in the 2012 regulations as set out in Appendix A.

It is also suggested that the Forward Plan should continue to include a list of all reports expected for forthcoming Cabinet meetings rather than be restricted to the reports for the meeting 28 days ahead and that the Plan should now be updated more frequently than once a month. This will enhance transparency and enable Overview and Scrutiny Committees to continue to identify items for pre-decision scrutiny. Any reduction in the level of pre-decision scrutiny could give rise to an increase in call-ins.

- 4.4 **Procedures prior to Cabinet meetings where the public may be excluded:** New provisions now apply ahead of any meeting of the Leader/Cabinet (and Committees and Sub Committees of the Cabinet) where the public are to be excluded due to disclosure of confidential or exempt information. 28 days before the meeting notice of the intention to hold the meeting in private must be published giving reasons. Even if there is ultimately no private session of the meeting, it will be necessary to publish the notice where there are exempt parts of a report, as it might be necessary for the Cabinet to go in to private session to discuss the exempt Appendix. Further notice of the intention to hold the meeting in private must then be published 5 clear days before the meeting, setting out any representations received about why the meeting should be open to the public and the response of the Leader/Cabinet to these. It is proposed to ask the Leader to delegate authority to the Monitoring Officer to determine, in consultation with the Leader, a response to any representations received about why a Cabinet meeting should be open to the public following publication of a notice of intention to meet in private

Where it is not possible to meet the timescales for publication of these new notices the meeting may only proceed and the decision be taken if the relevant Overview and Scrutiny Chairman has agreed that the meeting is urgent and cannot reasonably be deferred. A notice to this effect must then be published.

Consideration is being given to publishing these new notices as part of the revised Forward Plan and as part of the relevant Cabinet agenda (where a response to representations relating to an intention to meet in private is required).

- 4.5 **Cases of special urgency:** These provisions remain the same as set out Rule 16 of the Council's Access to Information Rules except in future a notice must be published by the decision-maker where special urgency procedures have been invoked setting out the reasons for urgency and why the meeting could not be reasonably deferred. The regulations provide choice for the Council in terms of the timescales within which the Leader must report any executive decisions taken under the urgency provisions to Full Council as long as this is done at least once a year. It is proposed to preserve the requirement in Medway's Constitution for this to be done quarterly (or annually if there have been none).
- 4.6 **Inspection of background papers:** There is now a requirement for the list of background papers in Cabinet reports and at least one copy of each document listed to be available for public inspection at the Council's Offices and on the Council's website. This represents a departure from current working arrangements. Currently report authors are expected to retain paper copies of background documents listed in reports for public inspection for a period of at least four years beginning on the date of the related decision. In future a web link will need to be provided to these documents in Cabinet reports and where this is not possible an electronic copy of the document provided to Democratic Services for publication on the Council's website via modern.gov.
- 4.7 **Additional rights of access to documents for Members of local authorities:** The regulations strengthen the rights of local authority Members to access to information relating to business to be discussed at a public meeting of the executive, or business transacted at a private meeting, or decisions made by individual Cabinet Members and officers under executive arrangements. Members must be able to inspect any report or background paper to be discussed at least five clear days before a public meeting is held or from the time the meeting is convened if this is less than 5 clear days ahead (previously there was no 5 day rule). In the case of a Cabinet meeting where there is a closed session or for executive decisions taken by an individual Cabinet Member or officer, reports and background papers must be available for inspection by any Member of the Council, on request within 24 hours. These changes are somewhat academic in Medway as usual practice is for key decisions to only be taken by the Leader/Cabinet and for full copies of all Cabinet agendas and records of decisions to be provided to all Members of the Council.
- 4.8 **Additional rights of access to documents for Members of Overview and Scrutiny Committees:** The rights of Members of Overview and Scrutiny Committees have been strengthened by the regulations which now stipulate a 10 day deadline for responding to any request for a report or background paper that contains material relating to a Cabinet decision or a decision taken by a Cabinet Member or officer under executive arrangements.

If the Cabinet denies a request for information under this regulation there is a new requirement for the reason for the refusal has to be reported to the relevant Overview and Scrutiny Committee.

- 4.9 **Reporting of Cabinet proceedings:** The new regulations require reasonable facilities for taking reports to be made available at public Cabinet meetings to any person attending the meeting for the purpose of reporting the proceedings. Under a heading "New legal rights for citizen reporters", a DCLG

press release issued on 23 August 2012 says that this provision will now oblige local authorities “to provide reasonable facilities for Members of the public to report the proceedings as well as accredited newspapers and this will make it easier for new “social media” reporting of Cabinet meetings thereby opening proceedings up to internet bloggers, tweeting and hyperlocal news forums”.

5. Risk management

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

Risk	Description	Action to avoid or mitigate risk
Implementation of regulations	The Council fails to implement the provisions in the 2012 regulations on executive decision-making by 10 September	Report to Cabinet on 4 September setting out new requirements to apply with immediate effect so as to cover the Cabinet meeting on 2 October. Changes to Constitution to be agreed at Council at its next meeting on 18 October
Publication of background documents	Officers could be deemed to commit an offence by intentionally failing to meet the new obligation to provide web links or electronic versions of background papers listed in Cabinet reports	Democratic Services to advise each Director and Directorate management team of the new requirements and incorporate advice into the report writing guidance on the intranet

6. Consultation

6.1 It has not been possible to consult the Business Support Overview and Scrutiny Committee on the approach set out in this report due to the statutory timescales involved. However all Members of the Council will be able to consider and discuss the matter at the Council meeting on 18 October 2012.

7. Financial and legal implications

7.1 This report arises from the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. The legal implications are set out in full in the body of the report.

7.2 It is expected that the changes required to the arrangements for executive decision making can be accommodated within existing budget and staffing levels.

8. Recommendations

- 8.1 To agree the changes required to the Constitution as set out in Appendix A for referral to Council for approval on 18 October.
- 8.2 To agree that the working arrangements for executive decision-making and access to information as set out in the revisions to the Constitution together with the proposed approach described in paragraphs 4.1 to 4.7 of this report should take effect immediately to ensure compliance with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 from 10 September 2012.
- 8.3 To note that the Leader will be asked to delegate authority to the Monitoring Officer to determine, in consultation with the Leader, a response to any representations received about why a Cabinet meeting should be open to the public following publication of a notice of intention to meet in private.

9. Suggested reasons for decision(s)

- 9.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 require a number of changes to arrangements for executive decision- making and access to information to be in place by 10 September 2012.

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Background papers

Medway Council's Constitution:
<http://www.medway.gov.uk/councilanddemocracy/council/constitution.aspx>