

EAST HERTS COUNCIL

COUNCIL – 26 SEPTEMBER 2012

REPORT BY THE LEADER OF THE COUNCIL

IMPLICATIONS OF THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) (ENGLAND) REGULATIONS 2012

WARD(S) AFFECTED: ALL

Purpose/Summary of Report

The purpose of this report is to outline the new provisions introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and to seek Members' views on proposed amendments to current practice and the constitution.

RECOMMENDATIONS FOR COUNCIL That:

(A)	Council notes the implications of the new Regulations; and
(B)	the proposed amendments to current practice be approved and the monitoring officer be authorised to make appropriate changes to the constitution.

1.0 Background

1.1 The Regulations were made on 10 August 2012 and came into force on 10 September 2012. The new Regulations revoke the current Regulations which govern meetings of the Executive and how Executive decisions are recorded.

2.0 Report

2.1 **Meetings of the Executive**

2.2 The previous Regulations required 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 (and meetings of Executive committees) will be held in public, unless certain circumstances apply. 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.

2.3 It is still up to the Executive to decide which of its meetings, and which of the meetings of any committee of the Executive, are to be open to the public and which of those meetings are to be held in private. 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 East Herts Council as since the adoption of executive arrangements, the approach has been for decision making meetings of the Executive to be held in public.

2.4 **Key decisions**

2.5 The definition of a key decision provided in the regulations remains the same. The regulations state that a decision is a key decision if it is significant in terms of its effects on communities living or working in an area comprising two or more wards.

2.6 **Forward Plan**

2.7 The Council 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 document has been published at least 28 clear days beforehand. This document must be made available for inspection by the public at the Council's offices and on the website.

2.8 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 would be consulted on the decision have been removed.

- 2.9 It is recommended that the Council publishes pending key decisions on a monthly basis, a month in advance. The new regulations also provide an opportunity for the plan to be updated in real time.
- 2.10 This has the advantage of being similar to the current process for producing the Forward Plan and does not require a new facility for such a list to be produced and managed through the Council's website.
- 2.11 Where it is not possible for an officer to comply with the notification requirements it is still possible to rely on the provisions of 'general exception' or 'special urgency'. The rules regarding general exception are broadly the same, although the regulations now state that as soon as reasonably practicable the proper officer must make available at the Council offices a notice setting out the reasons why compliance with the 28 days notification period is impracticable and that notice must be published on the Council's website.
- 2.12 In relation to cases of special urgency, there is now a requirement that as soon as reasonable practicable after the decision maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred, the decision maker (rather than the proper officer) 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.
- 2.13 **Procedures prior to Executive meetings where the public may be excluded**
- 2.14 New provisions now apply prior to any meeting of the Executive (and its Committees) 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 Executive to go in to private session to discuss the exempt appendix.
- 2.15 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 Executive to these.

2.16 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.

2.17 **Cases of special urgency**

2.18 These provisions remain the same 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.

2.19 **Inspection of background papers**

2.20 There is now a requirement for the list of background papers in Executive 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. In future a web link will need to be provided to these documents in Executive reports and where this is not possible an electronic copy of the document provided to Democratic Services for publication on the Council's website.

2.21 **Additional rights of access to documents for Members**

2.22 The regulations strengthen the rights of 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 Portfolio Holders 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 an Executive meeting where there is a closed session or for Executive decisions taken by a Portfolio Holder 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 at East Herts Council as the usual practice is for key decisions to only be taken by the Executive and for full copies of all Executive agendas and records of decisions to be provided.

2.23 **Additional rights of access to documents for Members of Overview and Scrutiny Committees**

2.24 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 an Executive decision or a decision taken by a Portfolio Holder or officer under Executive arrangements.

2.25 If the Executive 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.

2.26 **Amendments to the Constitution**

2.27 The new regulations require changes in process and procedure as well as requiring changes to the constitution. The proposed changes are set out in **Essential Reference Paper 'B'**.

3.0 Implications/Consultations

3.1 Information on any corporate issues and consultation associated with this report can be found within **Essential Reference Paper 'A'**.

Background Papers

Localism Act 2011

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ESSENTIAL REFERENCE PAPER 'A'

IMPLICATIONS/CONSULTATIONS

Contribution to the Council's Corporate Priorities/ Objectives <i>(delete as appropriate):</i>	People This priority focuses on enhancing the quality of life, health and wellbeing of individuals, families and communities, particularly those who are vulnerable.
Consultation:	There has not been any consultation.
Legal:	Legal implications are in the report.
Financial:	No direct financial implications identified.
Human Resource:	None
Risk Management:	The Council needs to comply with the regulations to ensure that decisions are correctly made and recorded.