

Committee: Council

Date: 19 November 2014

Wards: All

Subject: Recording of non-key delegated executive decisions

Lead officer: Paul Evans, Assistant Director Corporate Governance

Lead member: Councillor Mark Allison, Deputy Leader and Cabinet Member for Finance

Contact officer: Chris Pedlow, Senior Democracy Services Officer

Recommendations:

- A. To agree the constitutional changes in the relation to the publication of non-key officer decisions as set out in the report and that officer decisions be made subject to 'call-in' (See Appendix A), with a review after six months
- B. To agree a minor constitutional change regarding filming of council meetings in order to comply with recent legislation (see Appendix B).

Reason for Urgency: The Chair has approved the submission of this report as a matter of urgency as a timely decision is required to ensure that the Council is complying with recent legislation changes.

1 PURPOSE OF REPORT

- 1.1. The purpose of this report is to advise Council of new requirements under the Openness of Local Government Bodies Regulations 2014 and to agree a proposed approach for recording and publishing non-key delegated executive decisions to comply with the statutory requirement for local authorities to do so.
- 1.2. The report also seeks agreement of the Council to make a minor constitutional change to comply with recent legislation on filming of any Council meetings.
- 1.3. This report has been considered by the Standards Committee and General Purposes Committee at their meetings held on and 23 October 2014 and 6 November 2014 respectively. The committees recommend the proposals set out in this report and recommend that the constitution be amended to make non-key officer decisions subject to 'call-in'.

2 EXECUTIVE SUMMARY

- 2.1. **Introduction**
- 2.2. The Council is reminded of the current definitions and arrangements for dealing with key and non-key decisions:
- 2.3. Key decisions

- 2.4. The Local Government Act 2000 required councils to publish all key decisions. The definition of a key decision is made locally and set out in the council's constitution. In Merton this is:
- Key decision type a (Cabinet or Chief Officer) - incurring expenditure or making savings which are significant having regard to the budget for the service or function to which the decision relates
 - Key decision type b (Cabinet or Chief Officer) - significant in terms of its effects on communities and groups of service users living or working in an area comprising one or more wards or electoral divisions in Merton Council
 - Key decision type c (Cabinet or Chief Officer) - amending the agreed budget and policy framework
 - Key decision type d (Cabinet or Chief Officer) - expenditure of £500,000 or more
- 2.5. The forward plan includes all Cabinet, Cabinet Member delegated decisions and Council decisions, whether key or non-key, as well as chief officer key decisions. Notice of all key decisions are circulated to Members in an email
- 2.6. All key decisions are subject to call-in unless they are exempted from it.
- 2.7. Non-key decisions
- 2.8. Non-key decisions are all other executive decisions made by members and officers. At present there is no comprehensive system to publish or to determine which non-key decision should be published.
- 2.9. New regulations, described below, require the council to record and publish non key delegated executive decisions. This report sets out proposals for complying with these regulations by defining those non-key delegated executive decisions and setting out arrangements for recording and publishing those decisions.

3 DETAILS

3.1. Definition of a Non-Key Delegated Executive Decision

3.2. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 required local authorities to record any executive decisions by an individual, including non-key decisions.

3.3. This requirement has recently been amended and clarified within the Openness of Local Government Bodies Regulations 2014, which came into force on 6 August 2014. The 2014 Regulations require the decision making officer to produce a written record of any decision that:

“would otherwise 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 it 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, the effect of the decision is to:*

- i. grant a permission or licence;*
- 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"*

3.4. It is proposed that criteria that will be used in determining which officer decisions are defined as non-key delegated executive decisions are:

1. a financial test aligned with the financial delegation levels in the Scheme of Management :
 - Key decision = £500,000 and above
 - Non key delegated executive decision = between £250,000-£499,999 (aligns with Contract sign off levels)
 - Administrative decision = less than £250,000.
2. a non-administrative decision that concerns a permission, licence or individual rights that, in the opinion of the Monitoring Officer, is required to be published further to the regulations.

3.5. The proposed consequent changes to the constitution are set out in Appendix A.

3.6. **Publication of non-key delegated executive decisions**

3.7. The 2014 Regulations require the decision to be published so that a written record of the decision is made available to members of the public. The record must be retained for six years from the date that the decision was made.

3.8. It is proposed that the decision will be published on the council's website and that it should include the same information that is required for a key decision:

- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.

3.9. Confidentiality is not a reason for non-publication. The officer will still need to publish information to the effect that a decision has been taken but the confidential details will not be made public.

3.10. The consequent changes to the constitution are set out in Appendix A.

3.11. **Call-in and non-key decisions**

3.12. It should be noted that, under the current system, no officer non-key decisions are subject to call-in.

- 3.13. Currently only those non-key decisions taken by Cabinet Members are subject to call-in, namely the street management decisions taken by the Cabinet Member for Environmental Sustainability and Regeneration.
- 3.14. Standards Committee and General Purposes Committee have discussed this and proposed that Cabinet Member non-key decisions would continue to be subject to call-in. In addition they have recommended that officer non-key delegated executive decision (where expenditure of between £250,000-£499,999 incurs) should now also be subject to call-in. The reason for this change is to allow great openness and transparency.
- 3.15. **Implications of Officer Non-key executive decision being subject to Call-in**
- 3.16. Council is advised that there is likely to be some impact on service delivery and additional costs should the introduction of officer non-key decisions be subject to call-in.
- 3.17. **Impact on services** - Currently once a non-key decision is taken by an officer it can be implemented immediately. If these types of decisions become subject to call-in it would delay the implementations for one week to two weeks. If the decision is called-in, that time period would increase by at least a further 10 days, depending on the availability of a date for the call-in meeting.
- 3.18. **Number of decisions affected** -. Under the financial scheme of delegation, these decisions would be predominately taken at Director level e.g. awarding contracts and agreeing authorisations of invoices. Based on the current procurement plan for the next year there will be 10-12 decisions taken at this level and over the next 4 to 5 years there is likely to be at least 50. There will also be other decisions that would be captured under this criteria.
- 3.19. **Additional costs** – Additional costs would be incurred in time spent on this by Directors, senior managers and democratic services staff, as well as increased printing costs. These officers may have to de-prioritise other work whilst responding to a call-in request
- 3.20. In supporting the resolution, General Purposes Committee acknowledged that there could be some impact and thus requested that they receive a further report to review the process at its meeting of 12 March 2015.
- 3.21. **Filming of council meetings**
- 3.22. The 2014 Regulations allow members of the public to film or otherwise record council meetings.
- 3.23. Previously this was only allowed at the discretion of the Chair. A minor change is therefore required to the constitution to remove that discretion.
- 3.24. The proposed constitutional change is set out in Appendix B.

4 ALTERNATIVE OPTIONS

- 4.1. The Council is legally required to record non-key delegated executive decisions and publicise them on line. The definition is set out in the 2014 Regulations, as in paragraph 8.2 below.
- 4.2. The Council is not required to make non-key delegated executive officer decisions subject to call-in.

5 CONSULTATION UNDERTAKEN OR PROPOSED

- 5.1. Initial proposals were discussed with the council's management team and with the Deputy Leader.
- 5.2. The proposals had been considered by Standards Committee and General Purposes Committee on 23 October 2014 and 6 November 2014.
- 5.3. It also proposed that departmental management teams will be briefed on the changes.

6 TIMETABLE

- 6.1. Following ratification, the aim is to roll out and work under the new process as soon as practically possible. The timetable will allow guidance to be prepared and staff training to be carried out.

7 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS

- 7.1. It is expected that the costs of publishing non-key delegated executive decisions would be made within existing resources, with some consequent delay to other work.
- 7.2. The additional cost of opening non-key officer decisions up to call-in is difficult to quantify. There will be additional costs for printing the decision sheets and associated reports (estimated at £200 a year) which will need to be met within current resources. However there will also be a need for additional officer time in producing the call-in packs which will need to be met from within existing resources, with other work not completed or delayed. Also, where decisions are called-in further costs will be incurred, including officer time, including senior officers, and further paperwork.
- 7.3. It must be recognised that the new procedure could also have a significant opportunity cost by delaying decision making and hence the implementation of projects

8 LEGAL AND STATUTORY IMPLICATIONS

- 8.1. The Council has a statutory duty to comply with legislation and not doing so may result in the validity of decisions being subject to legal challenge.
- 8.2. The 2014 Regulations require the decision making officer to produce a written record of any decision that:

“would otherwise 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 it 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, the effect of the decision is to:*
 - I. *grant a permission or licence;*
 - 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"*

8.3. The 2014 Regulations also require that, as soon as practicably possible after the record is made, to make it available for inspection by members of the public on the website and at council offices for a period of six years from the date of the decision. Any background papers must be retained and made available for inspection for a period of four years from the date of the decision. These requirements do not apply to confidential or exempt information.

8.4. It is an offence for an officer to intentionally obstruct or refuse to provide written records or background papers.

9 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS

8.1 The Council has a statutory duty to comply with legislation around openness and transparency that meets the values and needs of all its residents. Not doing so could leave the council open to legal challenge.

10 CRIME AND DISORDER IMPLICATIONS

10.1. N/a

11 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS

11.1. N/a

12 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT

12.1 Appendix A – proposed constitutional changes in relation to non-key delegated executive decisions

12.2 Appendix B – proposed constitutional changes in relation to filming of council meetings

13 BACKGROUND PAPERS

- Council's current Constitution
- The Local Authorities (Executive Arrangement) (Meetings and access to Information) (England) Regulations 2012
- Openness of Local Government Bodies Regulations 2014

APPENDIX A – Proposed constitutional changes in relation to non key delegated executive decisions

Part 2 – Article 13 – decision making

Insert new sub-paragraph 13.3 (c) as follows:

(c) Non Key Delegated Executive Decisions

(i) Definition. A non-key delegated executive decision is an executive decision that:

- Incurs expenditure of between £250,000-£499,999
- or
- Is a significant one-off decision that would be a variation from council policy in respect of:
 - the granting of a permission or licence; or
 - ii) affecting the rights of an individual

(ii) Procedure. A decision maker may only make a non-key delegated executive decision in accordance with the requirements of the Access to Information Procedure rules set out in Part 4B of this Constitution.

(d) Administrative Decisions (Non-key)

(ii) Definition. A non-key administrative decision is an executive decision that:

- Incurs expenditure of less than £250,000
- has not been defined as a non-key delegated executive decision

Part 4B – access to information procedure rules

Insert new paragraph 20 after existing paragraph 19.3 as follows:

20 RECORDING AND PUBLISHING OF NON-KEY DELEGATED EXECUTIVE DECISION

- 20.1 The council is required to record and publish all Non-Key Delegated Executive Decision (defined in Part2, Article 13, paragraph 13 of this constitution).
- 20.2 As soon as reasonably practicable after the non key delegated executive decision has been taken by an officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, that states:
- reasons for the decision;
 - any other options considered and why those options were rejected;
 - details of any conflict of interest declared by any executive member consulted in relation to the decision; and

- a note of dispensation granted in respect of any declared conflict of interest.
 - the date by which a request to call-in the decision must be received.
- 20.3 Any background papers must be retained and made available for inspection for a period of four years from the date of the decision. These requirements do not apply to confidential or exempt information.
- 20.4 Confidentiality is not a reason for non-publication. The officer will still need to publish the information to the effect that a decision has been taken but the confidential details will not be made public.
- 20.5 Non-key delegated executive officer decisions relating to (expenditure of between £250,000-£499,999) are be subject to call-in and will therefore not be implemented until the call-in period has expired.
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Part 4E – OVERVIEW AND SCRUTINY PROCEDURES RULE

16 Call-in

- (d) **Publication of Decision.** When a decision is made by the Cabinet, a Cabinet Committee or an individual Cabinet member, or a key decision or a non-key decision as defined in Article (c) (i) is made by an Officer with delegated authority from the Cabinet or under joint arrangements, the decision will be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 days of being made. All Members will be able to access copies of the records of all such decisions within the same timescale.

That notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the following Monday at noon, unless a proper and timely call in request has been made in accordance with Rule17.

APPENDIX B – Proposed constitutional changes in relation filming council meetings

Part 4A

The deletion of paragraph 5.3 (d), the powers of the Chair include:

to authorise by prior agreement the electronic recording, photographing or filming of the proceedings by a member of the public, the media or by the council

Note – paragraph 5.3 c remains –

To order the removal of a member of the public who is disruptive or the clearing of public areas in the event of a general disturbance. Readmission shall be at the discretion of the Chair

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