

1. Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Background

These Regulations were laid before Parliament on 15 August and came into effect on 10 September. This report is intended to set out where changes are required to the Council's procedures.

These Regulations revoke Regulations issued in 2000: in particular, the provisions relating to the Forward Plan of Key Decisions are removed but arrangements for what is in effect a revised Forward Plan are introduced. The other significant changes are the need to give notice of Cabinet meetings to be held in private and the introduction of arrangements for publishing executive decisions taken by officers.

Admission of public to meetings of local authority executives and their committees

Meetings of a decision-making body of a local authority executive and its committees must be open to the public, subject to the provisions for excluding the public during an item of business. The provisions for excluding the public and how this operates at meetings have not changed.

What is new and extends beyond the traditional members of the press, is the provision that while a meeting is open to the public any person attending the meeting to report the proceedings is, so far as is practicable, to be afforded reasonable facilities for taking their report, although, later on the Regulations state that nothing in the Regulations requires a decision-making body to permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings or the making of any oral report on any proceedings.

The Council's Constitution is silent on the subject of recording or filming of meetings by third parties and it might be appropriate to add to the Council's Standing Orders authority for the Chairman of the meeting to respond to any request.

Procedures prior to private meetings

These are new procedures. At least 28 clear days before a private meeting of the Cabinet notice of the intention to hold the meeting in private including a statement of the reasons must be available at the Council offices and published on the website. The 28 day notice of a decision to be taken at a cabinet meeting in private or to comprise of some confidential information will be given on the revised forward plan.

At least five clear days before a private meeting further notice of the intention to hold the meeting in private including a statement of the reasons, any representations received about why the meeting should be open to the public and the response to any such representations must be available and published on the website. The five-day notice will be covered by the wording on the Agenda.

There is provision for holding a meeting in private where it is impracticable to give 28 days' notice by obtaining the agreement of the relevant overview and scrutiny committee, following previous practice this would be the Chairman of the Executive Scrutiny Committee, or in his absence, the Chairman of the Council and giving notice of why the meeting cannot reasonably be deferred.

Procedures prior to public meetings and providing access to Agenda and reports

The procedures for giving notice of public meetings and making papers available to the public have not changed except that there is now specific reference to publishing the information on the website.

Key Decisions

The definition of a Key decision has not changed.

The previous Regulations contained provision for publishing the intention to take a decision. This is no longer required under the new Regulations.

Publicity in connection with key decisions

The old Forward Plan has in effect been replaced by a new form of forward plan: a Key decision cannot be taken until at least 28 clear days before the decision is made a document has been available at the Council offices and on the website stating that:

- a Key decision is to be made
- the matter in respect of which the decision is to be made
- the name and title of an individual decision maker or the name and list of members of the decision-making body
- the date or the period within which the decision is to be made
- a list of documents to be submitted to the decision maker for consideration
- the address from which the documents are available

- that other documents relevant to these matters may be submitted to the decision maker and the procedure for requesting details of those documents as they become available.

The requirement to update the forward plan on a given date each month has been removed. It will therefore be possible to update it on a rolling basis.

Similar arrangements to those previously in place exist for dealing with exceptions for taking urgent decisions that have not had the 28 days' notice involving the Chairman of the Executive Scrutiny Committee and the Chairman.

Although the minimum requirement is 28 days notice, to aid the planning of the Council's business, decisions and items for Cabinet Agenda should continue to be added well in advance and preferably at least up to four months ahead.

Recording of executive decisions made at meetings

These arrangements remain largely unchanged. A record of decisions taken at a meeting, should include a record of any conflict of interest in relation to the matter decided which is declared by any member of the decision making body and in respect of any declared conflict of interest, a note of any dispensation granted by the head of paid service. Previously, dispensation was given by the standards committee but under the Localism Act 2011 there is no longer a statutory requirement to have a standards committee.

Recording of executive decisions made by individuals

As far as decisions taken by Cabinet Members are concerned these arrangements have not significantly changed. Again there is reference to a note of dispensation granted by the head of paid service in relation to a conflict of interest.

What is new is that the recording of executive decisions by individuals extends to officers. The new Regulations require that as soon as reasonably practicable after an officer has made an executive decision the officer must produce a written statement which must include:

- a record of the decision including the date it was made
- a record of the reasons for the decision
- details of any alternative options considered and rejected by the officer when making the decision
- a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision and in respect of any declared conflict of interest a note of dispensation granted by the head of paid service.

An Executive Decision is defined in the Regulations as "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."

At the moment The Council has no process for publishing officer decisions. It cannot be the Government's intention that all officer decisions taken in connection with the discharge of an executive function should be published and the matter is being followed up at National level. The Monitoring Officer is preparing appropriate advice as to how to deal with the publishing of decisions by officers.

Inspection of documents following executive decisions

This is basically the same but now makes specific reference to the website.

Inspection of background papers

Where a report is made available for inspection by members of the public a list of the background papers must be included in the report and one copy of each of the documents must be available for inspection at the Council's offices and on the website.

The definition of "background papers" in relation to a report or part of a report, means those documents other than published works, that –

- (a) relate to the subject matter of the report or, as the case may be, the part of the report; and
- (b) in the opinion of the proper officer –
 - (i) disclose any facts or matters on which the report or an important part of the report is based; and
 - (ii) were relied on to a material extent in preparing the report.

This is basically the same but now makes specific reference to publishing the documents on the website.

Additional rights of access to documents for members of overview and scrutiny committees

These requirements are the same as in the previous Regulations.

Additional rights of access to documents for members of overview and scrutiny committees

These requirements are basically the same but a deadline is now put on when the documents have to be provided by and where the executive determines that a member of an overview and scrutiny committee is not entitled to a copy of a document it must now provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

The Council's Constitution

The Constitution will be reviewed and updated to bring it in line with the provisions of the new Regulations: minor changes are required to the Protocol on Member / Officer Relations; most of the change is required to the Cabinet and Access to Information Procedure Rules.

Recommended:

That an addition is made to Council Standing Orders to formalise the arrangement whereby the Chairman responds to any request for the recording or filming of meetings by third parties and this also be added to Standing Order 16.20 (Standing Orders to apply to committees).

2. Membership of the Essex Pension Fund Board (Paragraph 8.1.7 of the Constitution)

The Essex Pension Fund Board was established in 2008 to exercise on behalf of the Council the powers and duties of the Council in relation to its functions as Administering Authority for the Essex Pension Fund. Its current membership, as set out in paragraph 8.1.7 of the Council's Constitution, includes provision for a representative of the Essex Police Authority.

On 27 September 2012, the Board considered a report which advised that, as a result of the Police Reform and Social Responsibility Act 2011, the Essex Police Authority will be abolished in November 2012 and replaced by an elected Police and Crime Commissioner. At that time, the existing civilian employees of the Essex Police Authority will transfer to the employment of the Police and Crime Commissioner. Their entitlement to membership of the Essex Pension Fund will remain.

In order to ensure the continuing representation of these employees on the Essex Pension Fund Board, the Board agreed to recommend to the Council that its membership be amended by the deletion of the representative of the Essex Police Authority, to be replaced by a representative of the Essex Police and Crime Commissioner.

Recommended:

That the membership of the Essex Pension Fund Board as set out in paragraph 8.1.7 of the Council's Constitution be amended to read as follows:

"14 members consisting of six Members of the Council (in the ratio of five Conservative and one Liberal Democrat), two members representing District and Borough Councils in Essex, one member representing Southend-on-Sea Borough Council, one member representing Thurrock Council, **one member representing Essex Police and Crime Commissioner**, one member representing Essex Fire Authority, one member representing Scheme Members nominated by UNISON and one member representing Smaller Employing Bodies nominated by the Employer Forum."

3. Police and Crime Panel

In May, Council approved the establishment of the Essex Police and Crime Panel and its terms of reference. It also agreed to appoint Councillor John Jowers as its representative on the Panel. Councillor Jowers has since been elected Chairman of the Panel.

The Police Reform and Social Responsibility Act 2011 requires local authorities in each Police Force area in England (excluding London) to establish a Police and Crime Panel (PCP). These panels will fulfil the role of scrutinising the Police and Crime Commissioner, who in turn is responsible for holding the Chief Constable to account. Panels will be expected to support and challenge the Commissioner in the exercise of his / her functions, acting as a critical friend. The Police and Crime Commissioner takes on many of the functions previously performed by the Police Authority, which will disband upon election of the Commissioner. A Police and Crime Panel in a multi-authority police area is a joint committee of the relevant local authorities and all those authorities have given approval to its establishment and appointed representatives to it. The Home Secretary has approved the Panel's proposal for a co-opted member and arrangements are under way to recruit two independent members.

In line with Home Office guidance, and as agreed by all Essex local authorities, the County Council will act as host of the Panel. This means Essex County Council will be responsible for arranging meetings and providing support, development and training to panel members. In May the details of the "Panel Arrangements" required to be produced in accordance with the Act had not been finalised and these are now attached as the annex to this report for approval by Council.

The Act also requires that the Panel must make rules of procedure for the Panel and this has been done.

Recommended:

That the Panel Arrangements for the Essex Police and Crime Panel as set out in the Annex to this report be approved.

4. Report of the Development and Regulation Committee

Since the last report to Full Council on 8 May, three meetings of the Development and Regulation Committee have taken place; on 22 June, 27 July and 24 August 2012.

Three planning applications have been considered by the Committee. All were resolved to be approved, subject to planning conditions. Two Village Green applications were considered; one was approved and one rejected.

Members also received updates on planning enforcement issues and appeals statistics.

5. Dates of Future Meetings

The Council is asked to approve the dates of its meetings for the Municipal Year 2013/14.

Recommended:

That meetings of the Council be held on Tuesdays at 10am on 9 July, 15 October and 10 December 2013 and 4 February (Budget) and 13 May 2014 (Annual).

6. Appointment of Senior Officer

Derek Ingle has been appointed to the role of Assistant Director for Financial Management.

ESSEX POLICE AND CRIME PANEL

PANEL ARRANGEMENTS

1. Operating Arrangements

- 1.1 In line with Home Office guidance, Essex County Council shall act as the lead authority in establishing the Police and Crime Panel and provide the necessary officer support.
- 1.2 The lead authority will provide such administrative and other support as will be necessary to enable the Panel to undertake its functions. Home Office funding is expected for at least the first year. Thereafter, if no funds are provided by the Home Office, or if those funds are insufficient to cover the costs of running the Panel, the Lead Authority will defray and recover from the other members the costs of administrative support. The budget for the Panel will be agreed annually and the Panel will operate within the allocated budget.
- 1.3 In the event of the Panel being wound up, the Lead Authority will defray and recover from the other member authorities any associated costs exceeding the funding provided by the Home Office.
- 1.4 Any dedicated staff employed to support the Panel will be employed by the Lead Authority, and their terms and conditions will be that of the Lead Authority.
- 1.5 The Panel shall comprise a minimum of 15 councillors (one from each of the twelve Essex districts, one from the County Council and one from each of the two Unitaries) and two independent members.
- 1.6 Additional members may be co-opted onto the Panel, as long as the two independent members are also included, the size of the Panel does not exceed 20 and the Secretary of State approves the membership arrangements.

2. Membership

- 2.1 Any Councillor on the 15 appointing Councils is eligible for membership of the Panel.
- 2.2 All members of the Panel may vote in proceedings of the Panel.
- 2.3 The appointment of elected members to the Panel shall be made by each of the appointing councils in accordance with their own procedures provided that the balanced appointment objective is met. The balanced appointment objective requires that the local authority members of the Panel should:
 - (a) represent all parts of the police force area;
 - (b) represent the political make-up of the councils taken together; and
 - (c) have the skills, knowledge and experience necessary to enable the Panel to discharge its functions effectively.

- 2.4 The councils shall each appoint an elected Member to be a Member of the Panel. Additional nominations will be invited to positions for co-opted members in line with the composition agreed by the Panel to reflect better the Political balance across the Police Force area and subject to approval by the Secretary of State.
- 2.5 Named substitutes may also be appointed by the 15 appointing Councils and notified to the Secretary to the Panel.
- 2.6 In the event that a council does not appoint a Member in accordance with these requirements, the Secretary of State must appoint a member to the Panel from the defaulting council in accordance with the provisions in the Act.

3. Casual Vacancies

- 3.1 A vacancy on the Panel arises when a member resigns from the Panel.
- 3.2 Each council will fill vacancies for elected members in accordance with the arrangements in their Constitution. Vacancies for independent members will be filled in accordance with the selection process outlined in section 4 below.

4. Independent Members

- 4.1 The Police and Crime Panel shall co-opt two independent members onto the panel for a term of four years, starting in 2012.
- 4.2 The selection process for co-opting independent members should include a reasonable period of advertising for the positions. A closing date for the receipt of applications should be given of at least two weeks from the date the advert is first placed.
- 4.3 Information packs should be prepared and sent to those requesting application forms.
- 4.4 The applications will be considered against an agreed eligibility criteria and then an Appointments Sub-Committee will be established to consider applications and interview candidates.
- 4.5 Following the interviews, the Appointments Sub-Committee will make recommendations to the Panel about membership.
- 4.6 The Panel may decide to change either Independent Member at any point and on doing so shall give notice to the Secretary to the Panel.
- 4.7 Where the appointed Independent Member is an expert, the nominating body may change its nominee at any point and on doing so shall give notice to the Secretary to the Panel.

5. Term of Office

- 5.1 A council may decide in accordance with its procedures to remove their appointed member from the Panel at any point and on doing so shall give notice in writing to the Secretary to the Panel.

- 5.2 An appointed member may resign from the Panel by giving notice in writing to the Secretary to the Panel and to their council.
- 5.3 In the event that any appointed member resigns from the Panel, or is removed by a council, the council shall immediately take steps to nominate and appoint an alternative member. Each Council should give notice in writing to the Secretary to the Panel that their member has been changed.
- 5.4 Members appointed to the Panel may be re-appointed for a further term provided that the balanced appointment objective is met by their reappointment. The term of office shall be for one year, with each council selecting its representative at its annual general meeting each year. There is no maximum number of terms that a member may serve.
- 5.5 The term of office of a member co-opted to the Panel to reflect better the Political balance across the Police Force area shall be for one year. The member may be co-opted for a further term provided that the balanced appointment objective is still met by their co-option.

6. Allowances

- 6.1 Each council has the discretion to pay allowances to its representatives on the Panel. Any allowances payable to elected Members shall be determined and borne by the appointing councils.
- 6.2 The Lead Authority, on behalf of the Panel, may pay an allowance to the Independent Members and co-optees if this is agreed as part of the annual budget approved by the Panel.
- 6.3 The independent and co-opted members may claim allowances from the lead authority in accordance with the provisions contained within the lead authority's Members Allowances Scheme relating to "Co-opted Members of Committees Allowances" current at the time the duty was undertaken to which the claim relates.

7. Promotion of the Panel

- 7.1 The Panel shall be promoted and supported by the Lead Authority through:
- (a) the issuing of regular press releases in consultation with the Chairman about the Panel and its work;
 - (b) the inclusion of dedicated web pages on the work of the Panel, with the publication of Agendas and minutes. All reports and recommendations made, with responses from the Police and Crime Commissioner will be published.

8. Validity of proceedings

- 8.1 The validity of the proceedings of the Panel is not affected by a vacancy in the membership or a defect in the appointment of a member.