

## **Council Report**

Council – 7 December 2016

### **Title**

Proposed Constitutional Amendments – Recording and Publication of Officer Decisions

### **Is this a Key Decision and has it been included on the Forward Plan?**

Not applicable

### **Strategic Director Approving Submission of the Report**

Judith Badger, Strategic Director Finance and Customer Services

### **Ward(s) Affected**

All

### **Executive Summary**

At its Annual Meeting Council agreed that a Constitution Working Group be established whose responsibilities were to include reviewing the Scheme of Delegation to Officers and the arrangements for recording Council decision making on line.

The Constitution Working Group has considered the arrangements for the recording and publication of decisions made by officers. This report sets out the recommendations of the Working Group and invites Council to make the necessary amendments to the Constitution to implement those recommendations.

### **Recommendations:**

1. That the Council approves the amendments to the Constitution in respect of the recording and publication of officer decisions as set out in Appendices 1 to 4 of this report.
2. That the proposed amendments to the Constitution take effect from 2 January 2017.

### **Background Papers**

- The Council's Constitution
- *“Open and accountable local government - A guide for the press and public on attending and reporting meetings of local government”*, Department for Communities and Local Government, 2014.

**Consideration by any other Council Committee, Scrutiny or Advisory Panel**

This report brings to Council the recommendations of the Constitution Working Group

**Council Approval Required**

Yes

**Exempt from the Press and Public**

No

## **Title**

### Proposed Constitutional Amendments – Recording and Publication of Officer Decisions

#### **1. Recommendations**

- 1.1 That the Council approves the amendments to the Constitution in respect of the recording and publication of officer decisions as set out in Appendices 1 to 4 of this report.
- 1.2 That the proposed amendments to the Constitution take effect from 2 January 2017.

#### **2. Background**

- 2.1 At its Annual Meeting Council agreed that a Constitution Working Group be established whose responsibilities were to include reviewing the arrangements for recording Council decision making on line. The Constitution Working Group has considered the arrangements for the recording and publication of decisions made by officers. This report sets out the recommendations of the Working Group and invites Council to make the necessary amendments to the Constitution to implement those recommendations.
- 2.2 The Council's Constitution requires amendment in order to bring it into compliance with the legal requirements for the recording and publication of officer decisions set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Openness of Local Government Bodies Regulations 2014.
- 2.3 Regulation 13(4) of the 2012 Regulations states:

*(4) As soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce a written statement which must include—*

  - (a) a record of the decision including the date it was made;*
  - (b) a record of the reasons for the decision;*
  - (c) details of any alternative options considered and rejected by the officer when making the decision;*
  - (d) a record of any conflict of interest declared by any executive member who is consulted by the officer which relates to the decision; and*
  - (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.*
- 2.4 Regulation 7 of the 2014 Regulations, which make similar provision for the recording of decisions delegated by Council to officers, states:

*(1) The decision-making officer must produce a written record of any decision which falls within paragraph (2).*

*(2) A decision falls within this paragraph if it 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) The written record must be produced as soon as reasonably practicable after the decision making officer has made the decision and must contain the following information—*

*(a) the date the decision was taken;*

*(b) a record of the decision taken along with reasons for the decision;*

*(c) details of alternative options, if any, considered and rejected; and*

*(d) where the decision falls under paragraph (2)(a), the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.*

*(4) The duty imposed by paragraph (1) is satisfied where, in respect of a decision, a written record containing the information referred to in subparagraphs (a) and (b) of paragraph (3) is already required to be produced in accordance with any other statutory requirement.*

2.5 Both the 2012 and the 2014 Regulations make detailed provision for how decisions made by officers are to be published and the proposed amendments to the Constitution set out at Appendices 1 to 4 incorporate those requirements.

2.6 In its guidance *Open and accountable local government - A guide for the press and public on attending and reporting meetings of local government* the Department for Communities and Local Government confirms that the requirements for the recording of officer decisions do not apply to administrative and operational decisions.

- 2.7 The work of the Constitution Working Group continues and includes a review of the operation of the Constitution as a whole. Further reports will be brought to Council as that work progresses.
- 2.8 The Commissioners will consider any amendments to the Constitution made by Council and will reflect upon how the approach taken to the recording and publication of officer decisions might apply to functions exercised by the Commissioners.

### **3. Key Issues**

- 3.1 The Council is required to comply with the 2012 and 2014 Regulations as to the recording and publication of officer decisions and by making the recommended amendments to the Council's Constitution it will incorporate the rules required in order to achieve compliance.
- 3.2 There is an element of choice in the implementation of the 2012 Regulations in that the guidance from the Department for Communities and Local Government referred to above includes in its list of executive decisions made by officers which should be recorded the following:

*Decisions about awarding contracts above specified individual or total values;*

The Constitution Working Group considered the appropriate value and recommends to Council that the value be set at £250,000 and that is the value set out in Appendix 1 as part of the proposed amendments to the Executive Procedure Rules. The Constitution Working Group took the view that a threshold of £250,000 would result in significant officer decisions in relation to the award of contracts being recorded and published.

- 3.3 Similarly is an element of choice in the implementation of the 2014 Regulations in that the guidance from the Department for Communities and Local Government referred to above includes in its examples of Council decisions made by officers which should be recorded the following:

*Decisions about awarding contracts above specified individual or total values (the values will vary according to the relevant council or local government body)*

The Constitution Working Group considered the appropriate value and recommends to Council that the value be set at £250,000, on the same basis as set out in paragraph 3.2 above and that is the value set out in Appendix 2 as part of the proposed amendments to the Access to Information Rules.

### **4. Options considered and recommended proposal**

- 4.1 The Council must comply with the requirements as to the recording and publication of decisions made by officers set out in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and the Openness of Local Government Bodies Regulations 2014. The proposed amendments to the Constitution set out in Appendices 1 to 4 will bring the Constitution into accord with these legal requirements.

4.2 As above at paragraphs 3.2 and 3.3 the Constitution Working Group has recommended that the financial threshold for recording and publishing officer decisions in relation to the award of contracts should be £250,000.

## **5. Consultation**

5.1 No consultation has taken place due to the proposed amendments being required to bring the Constitution into accord with the requirements of the 2012 and 2014 Regulations.

## **6. Timetable and Accountability for Implementing this Decision**

6.1 Any amendments to the Constitution are recommended take effect from 2 January 2017 in order to allow time for the Monitoring Officer to provide appropriate briefings to officers on the recording and publication of officer decisions before any new arrangements come into force.

6.2 The Chief Executive, Strategic Directors, Assistant Chief Executive and Director of Public Health will be responsible for implementing the proposed arrangements for recording and publishing officer decisions.

## **7. Financial and Procurement Implications**

7.1 None arising directly from this report

## **8. Legal Implications**

8.1 The legislative requirements are set out at in the body of this report.

## **9. Human Resources Implications**

9.1 There are no human resources implications.

## **10. Implications for Children and Young People**

10.1 As set out at paragraph 2.8 above the Commissioners will consider any amendments to the Constitution made by Council and will reflect upon how the approach taken to the recording and publication of officer decisions might apply to functions exercised by the Commissioners. This will apply to officer decision making in relation to the functions exercised by the Commissioners in relation to children's safeguarding and all other children's social care services.

## **11 Equalities and Human Rights Implications**

11.1 None directly from this report

## **12. Implications for Partners and Other Directorates**

12.1 None.

### **13. Risks and Mitigation**

13.1 Without the proposed amendments to the Constitution the Council's officer decision making procedures will not comply with the 2012 and 2014 Regulations.

### **14. Accountable Officer(s)**

Assistant Director (Legal Services)

### **15. Appendices**

Appendix 1	Proposed amendments to the Executive Procedure Rules
Appendix 2	Proposed amendments to the Access to Information Rules
Appendix 3	Proposed amendments to Standing Orders
Appendix 4	Proposed amendments to the Scheme of Delegation for Members and Officers

## APPENDIX 1

### Proposed Amendments to Rule 6 of the Executive Procedure Rules

To add the words:

*(5) As soon as reasonably practicable following the making of an executive decision by an officer, the officer must produce a written statement in respect of that decision.*

*(6) A statement prepared under subparagraph (5) will record –*

- *the decision;*
- *the reasons for the decision;*
- *details of any alternative options considered and rejected by the officer when he or she made the decision;*
- *any personal interest declared by any Cabinet Member who was consulted by the officer in relation to the decision; and*
- *in respect of any declared conflict of interest, a note of dispensation granted by the Council's Head of Paid Service.*

•  
*(7) For the purposes of sub-paragraphs (5) and (6) above an executive decision includes decisions made under specific delegation from a meeting of a decision-making body but does not include decisions which are administrative or operational in nature or decisions about the awarding of contracts which are of a value less than £250,000.*

*(8) After a meeting of a decision-making body at which an executive decision has been made, or after an individual executive member or officer has made an executive decision the proper officer must ensure that a copy of;*

- *any records prepared in accordance with the requirements of this Rule; and*
- *any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with the requirements of this Rule or, where only part of the report is relevant to such a decision, that part,*

*must be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of Council and on the Council's website.*

*(9) This Rule does not require the disclosure of exempt or confidential information.*



## APPENDIX 2

### Proposed Amendments to the Access to Information Rules

#### Proposed wording

##### To add the words:

### **PART IIIA**

#### **RECORDING OF DECISIONS MADE BY OFFICERS**

*11A Where an officer makes a decision which is not an executive decision, including under specific delegation from a meeting of a decision-making body, the effect of which is*

- *to grant a permission or licence,*
- *to affect the rights of an individual; or*
- *to award a contract or incur expenditure which, in either case, materially affects the Council's financial position,*

*the decision-making officer must produce a written record of the decision as soon as reasonably practicable after the decision has been made which must contain the following information—*

- *the date the decision was taken;*
- *a record of the decision taken along with reasons for the decision;*
- *details of alternative options, if any, considered and rejected; and*
- *where the decision was made under specific delegation from a decision-making body, the names of any member of the relevant body who has declared a conflict of interest in relation to the decision.*

*The Council has determined that where the effect of an officer decision is to award a contract or incur expenditure, the value of the contract or expenditure above which it is to be considered as materially affecting the Council's position is to be £250,000.*

*11B The duty imposed by Rule 11A above is satisfied where, in respect of a decision, a written record, containing the date the decision was taken and the reasons for the decision, is already required to be produced in accordance with statute, and the duty does not require administrative and operational decisions to be recorded.*

*11C All written records produced in accordance with Rule 11A above, together with any background papers, must as soon as reasonably practicable after the record is made, be made available for inspection by members of the public—*

- *at all reasonable hours, at the offices of the Council; and*
- *on the Council's website,*

*11D All written records produced in accordance with Rule 11A above must be retained and made available for inspection by the public for a period of six years beginning with the date on which the decision, to which the record relates, was made.*

*11E Any background papers must be retained and made available for inspection by the public for a period of four years beginning with the date on which the decision, to which the background papers relate, was made.*

*11F Nothing in Rules 11A to 11E requires the disclosure of exempt or confidential information*

## APPENDIX 3

### Proposed Amendments to Standing Order 34 (Delegation Arrangements – Strategic Directors and Directors of Services)

To add the words:

#### **Recording and Publication of Officer Decisions**

*34.6 Where an officer makes an executive decision to which Rule 6 of the Executive Procedure Rules applies, including any decision made in accordance with specific delegation from a meeting of a decision-making body, that decision must be recorded and published in accordance with sub-paragraphs 6(5) to 6(9) of those Rules.*

*34.7 Where an officer makes a decision which is not an executive decision, including any decision made in accordance with specific delegation from a meeting of a decision-making body, the effect of which is*

*34.7.1 to grant a permission or licence,*

*34.7.2 to affect the rights of an individual; or*

*34.7.3 to award a contract or incur expenditure which, in either case, materially affects the Council's financial position,*

*that decision must be recorded and published in accordance with Part IIIA of the Access to Information Rules*

## **APPENDIX 4**

### **Proposed Amendments to the Scheme of Delegation for Members and Officers**

#### **Delegations to Officers – General Principles**

##### **To add the words:**

- 4 *Decisions made by officers under delegated powers are to be recorded and published in accordance with Rule 6 of the Executive Procedure Rules or in accordance with Part IIIA of the Access to Information Rules as appropriate.*