

MUNICIPAL YEAR 2013/2014 REPORT NO. 106

MEETING TITLE AND DATE:

Council – 9 October 2013

REPORT OF:

Director of Finance
Resources & Customer
Services

Contact: John Austin (020 8379 4094)

E mail: John.Austin@enfield.gov.uk

Agenda – Part: 1

Item: 8

Subject: Constitution Changes: Executive Meeting Regulations & Local Authorities (Functions & Responsibilities) Order 2000

Cabinet & Other Members consulted: n/a

1. EXECUTIVE SUMMARY

- 1.1 This report is seeking approval to a number of changes to the Constitution resulting from the making of new Regulations relating to:
- (a) Executive meetings; publication of documents and access to them by the public, councillors and scrutiny members; and
 - (b) the recording and filming of Council, Cabinet, Scrutiny, Forum and other Committee meetings;
- 1.2 Approval is also being sought to a change in the way decisions regarding the establishing of companies are agreed, with this matter being removed as one reserved for Council and included within the Terms of Reference for Cabinet.

2. RECOMMENDATIONS

Council is asked to approve:

- 2.1 The amended Access to Information Rules (Chapter 4.6 in the Constitution) attached as Appendix 1 and Citizens Rights section (Chapter 2.3 in the Constitution) attached as Appendix 2, as detailed in section 3.1 of the report.
- 2.2 The adoption of the policy relating to the filming of any Council, Cabinet, Scrutiny, Area Forum or other Committee meetings as detailed in section 3.2.4 of the report.
- 2.3 The amendment to the decision making process in relation to the establishment of any companies or trusts in view of recent legal advice received relating to the terms of the Local Authorities (Functions & Responsibilities) Order 2000, as detailed in section 3.3 of the report.

3. BACKGROUND

3.1 Access to Information & Executive Meeting Regulations

3.1.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 have introduced a number of changes designed to make Executive decisions as open and transparent as possible. These Regulations came into force in September 2012.

3.1.2 The changes introduced have required a number of amendments to be made to the Council's decision making procedures which have been outlined below.

Effects of Regulations

3.1.3 Whilst the Regulations reproduced many of the existing elements of the decision making regime they did also contain a number of new features designed to make Executive decisions as open and transparent as possible. The main features were as follows:

- Extending public access to meetings and documents where the Executive or an individual Executive member makes a decision. The presumption that Executive meetings must be held in public (except where confidential or exempt information is being considered) has been strengthened.
- No part of a Cabinet or Cabinet Sub Committee meeting can now be held in private unless 28 days public notice has been given. The 28 days notice will allow members of the public to have an opportunity to object to the holding of a private meeting and the Council will have to publish any representations received and its reply to them. These new requirements have been set out in section 4 of the amended Access To Information Procedure Rules attached as Appendix 1 and in section 3.1 (b) (iv) of the updated Chapter 2.3 on Citizens Rights attached as Appendix 2.
- There is no longer a requirement to publish a Forward Plan. This is replaced by a Key Decision list, with the Council required to give 28 clear calendar days notice before the relevant "key decision" is taken. The same procedures apply as before to urgent key decisions, where timescales do not allow such notice to be given. The new requirements in relation to the notice before taking key decisions have been set out in section 13 of the amended Procedure Rules attached as Appendix 1.
- The recording of decisions and the reasons for them, together with details of alternative options considered is extended from Cabinet and Individual Cabinet Member decisions to Executive

decisions also taken by officers. In Enfield the definition of an Executive officer decision has been taken to mean any Operational key decision taken under the Council's scheme of delegation or those matters specifically delegated to officers by either Cabinet or individual Cabinet Members. Details of these decisions will be included on the Publication of Decision List. The new requirements in relation to the recording of decisions taken by individual Cabinet members and Executive Officer decisions have been set out in sections 18 – 20 of the amended Procedure Rules attached as Appendix 1.

- Previously unpublished background papers used to prepare a Cabinet, Portfolio or Operational key decision report or upon which an important part of the report is based must now be made available for public inspection alongside the actual report. This requirement is set out in section 8 of the amended Procedure Rules attached as Appendix 1.
- Scrutiny members also now have additional rights regarding access to documents relating to decisions which Cabinet, Cabinet Members and Officers have taken (as Executive decisions). These are detailed in section 21 of the amended Procedure Rules attached as Appendix 1. The change introduces (subject to certain exemptions) a 10 clear working day deadline for the provision of documents requested from the Executive by scrutiny.

3.1.4 The Regulations apply only to Executive functions and references to reports and documentation specifically exclude draft versions. Existing provisions in respect of non-Executive functions and decisions made by non-Executive bodies such as Scrutiny, Planning & Licensing are unaffected.

3.1.5 The new requirements summarised above have required changes to terminology and procedures throughout the Constitution. In addition the opportunity has been taken to improve the layout and to apply plain English principles (where possible). The changes apply to:

- (a) Part 4: Access to Information Rules Chapter 4.6 - which have required extensive amendment to incorporate the changes summarised above. The proposed new Access to Information Rules are attached for consideration as Appendix 1 to this report.
- (b) Part 2: Chapter 2.3 (Citizens and the Council) to incorporate the increased rights of notice and the making of representations in relation to Executive decisions to be made in private. The proposed change has been incorporated into the amended version of this Chapter attached as Appendix 2 to the report (section 3.1 (b)(iv)).

- 3.1.6 The changes introduced as a result of the Executive Meeting Regulations have also been summarised in a plain English guide for local people produced by the Department for Communities & Local Government (DCLG) “Your Council’s Cabinet – going to its meetings, seeing how it works.” A copy of the guide has previously been circulated to all members, but further copies are available from the Governance Team, if required (020 8379 4041). A copy of the guide has also been placed (for reference purposes) in the Members Lounge and both Group offices.
- 3.1.7 The Members & Democratic Services Group (3 September 13) considered the proposed changes outlined above and agreed to recommend them on to Council for formal approval and adoption within the Constitution.

3.2 Policy on filming at meetings of the Council

- 3.2.1 The Local Authorities (Executive Arrangements) (Meetings & Access to Information) (England) Regulations 2012 also require the provision of reasonable facilities for any member of the public to report on meetings. Further guidance from the DCLG has indicated that this should include the filming of councillors and officers at public meetings.
- 3.2.2 The Council’s Constitution does not currently include any policy in relation to the filming of Council meetings. Council is therefore being asked to consider the adoption of a policy, designed to satisfy the requirements within the Executive Meeting Regulations.
- 3.2.3 Regulation 4 (6) (Part 2) within the Local Authorities (Executive Arrangements) (Meetings & Access to Information) (England) Regulations 2012 includes the provision that “while 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.” Supplemental guidance issued by the DCLG (June 2013) “Your council’s cabinet – going to its meetings, seeing how it works: A guide for local people” specifically addresses the issue of filming at Council meetings. The guidance says:

“Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.

The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees

should be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

The Council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting.”

3.2.3 At the moment the Council deals with requests to film at meetings on an individual case by case basis taking into account the merits of each request. This has mainly involved the filming of meetings for internal relay to overflow facilities arranged to accommodate large public attendance e.g. Planning Committee & full Council. In addition the Council was also involved in a time limited pilot involving the webcasting of Planning and Scrutiny meetings, which was not progressed at the time, given the limited use of the facility and ongoing costs involved. Given the new Regulations and recently issued guidance it is recommended that the Council adopt a more formal policy in relation to how any requests to film Council meetings are dealt with.

3.2.4 A draft policy was presented to the Members & Democratic Services Group (3 September 2013) for consideration, based on research undertaken around how other local authorities deal with the issue. As a result of comments made at that meeting the following has been recommended to Council as the policy for adoption within Enfield:

- (a) The filming and recording of the public sessions of any Council, Cabinet, Committee, Panel or Area Forum meetings through any audio, visual or written methods will be allowed, providing this does not disturb the conduct of the meeting.
- (b) The Chair of the relevant meeting will have the power to withdraw this permission should it prove necessary due to the nature of the meeting or if the conduct of the meeting is disturbed, for example through flash photography, intrusive camera or lighting equipment or the behaviour of the person filming the meeting
- (c) Anyone wishing to record or film at a meeting must contact the relevant meeting administrator normally no less than 3 working days before the meeting in question so that the Chair, other councillors and any members of the public present can be informed and the necessary arrangements made.

- (d) All those visually recording a meeting must remain in designated areas within the meeting room and are requested to only focus on recording councillors, officers and the public directly involved in the conduct of the meeting. Should any member of the public participating in the meeting object to being filmed then the chair will make arrangements for that individual to be excluded from the recording.
- (e) Covert recording/filming at meetings will not be permitted and the person filming will be asked to provide an assurance that (a) recordings will include sound and vision; (b) the original version will be available to the Council on request and (c) that recordings will not be edited in a misleading way.
- (f) If a meeting passes a motion to exclude the press and public then all rights to record the part of the meeting to which the exemption applies will be removed.

3.2.5 The Policy, whilst complying with the Executive Meeting Regulations and taking account of the recent guidance issued by the DCLG, will allow the filming of council meetings but only provided it is done in a way that is not likely to be disruptive or distracting to the good order and conduct of the meeting. Advance notice will also need to be provided so attendees can be informed at the start of the meeting that it is being filmed.

3.2.6 Subject to the approval of Council, the policy will be incorporated as an additional section within Chapter 4.3 (Cabinet Rules of Procedure) and Chapter 4.5 (operating rules for Committees) under Part 4 of the Constitution and will apply to all public meetings of Council, Cabinet, Scrutiny, Area Forums and other Committees/Panels.

3.3 Local Authorities (Functions & Responsibilities) Order 2000: Establishment of Companies

3.3.1 Recent external legal advice has confirmed that the current requirement we have listed under the functions of Council (Chapter 2.3 – para 4.3 (20) of the Constitution) for Council to “establish any companies or trusts or acquire share capital in companies other than on behalf of the Pension Fund Investment Panel” should be treated as an Executive rather than Council function, under the terms of the Local Authorities (Functions & Responsibilities) Order 2000. This would mean the power resting with Cabinet rather than full Council.

3.3.2 The Local Government Act 2000 provided for three categories of council decision. Most decisions are with the Executive; exercised by the Leader and Cabinet, and often delegated to officers. There are some decisions which are specifically reserved to Council e.g. setting the Council tax and Council also has responsibility for the sort of regulatory decisions dealing for example with licensing and development control- usually delegated by Council to Committees; and there is also a relatively small category of "Local Choice" decisions; these are the only ones where the Council has discretion over whether a decision is one for the Executive or the Council. The fall-back position is always that unless a matter is specifically reserved to the Council, it is a matter for Executive decision.

3.3.3 In order to reflect the advice received, it is recommended that section (20) be removed from Chapter 2.3 (para 4.3) as a matter reserved to Council and added to the remit for Cabinet. The Members & Democratic Services Group have been consulted on this recommended change via email.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 The recommended changes to the Constitution reflect the requirements within the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 that came into force in September 2012, as well as external legal advice.

4.2 The policy relating to filming at meetings has been designed to comply with the Executive Meeting Regulations and Guidance issued by the DCLG. The policy requires that advance notice is provided and also allows the chair to withdraw the right to film, if necessary, in order to prevent disruption or maintain order at a meeting.

4.3 The changes being sought in relation to decisions regarding the establishment of companies have been recommended following recent external legal advice regarding application of the Local Authorities (Functions & Responsibilities) Order 2000.

5. REASONS FOR RECOMMENDATIONS

5.1 To ensure the Council's Constitution and decision making procedures formally reflect the changes already introduced in order to comply with the requirements in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

5.2 The changes in procedure have sought to:

- reflect good practice and the previous experience in operating relevant practices and procedures; and

- ensure the Council has an established policy in respect of filming at council meetings;
- reflect the provisions within the Local Authorities (Functions & Responsibilities) Order 2000.

6. COMMENTS OF THE DIRECTOR OF FINANCE, RESOURCES AND CUSTOMER SERVICES AND OTHER DEPARTMENTS

6.1 Financial Implications

None – the changes required to the Constitution will be met from within existing resources.

6.2 Legal Implications

The recommendations within the report have been designed to reflect, within the Council's Constitution, the requirements within the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and also external legal advice relating to application of the Local Authorities (Functions & Responsibilities) Order 2000.

7. KEY RISKS

- 7.1 The changes to the Council's decision making procedures introduced under Executive meeting Regulations have already been implemented, with staff being provided with ongoing advice & guidance on the new arrangements. Not complying with these Regulations could open the decision making process up to potential challenge. The changes introduced and reflected within the amended Access to Information rules have been designed to ensure this risk is minimised.
- 7.2 Without an agreed policy on filming at its meetings, the Council will need to continue dealing with requests to film or record meetings on an individual basis. Increase use of social media and mobile technology has also made it easier for individuals to undertake this activity. The adoption of a formal policy will ensure a clear and consistent approach in the way the Council handles these request as well as complying with the recently issued guidance by DCLG, following introduction of the Executive Meeting Regulations in 2012.
- 7.3 The changes recommended to the way in decisions are taken within the Constitution relating to the establishment of companies has been designed to reflect external legal advice. This will ensure that the Council continues to act within the requirements of the Local Authorities (Functions & Responsibilities) Order 2000.

8. IMPACT ON COUNCIL PRIORITIES

8.1 Fairness for All & Strong Communities

The Executive Meeting Regulations have been designed to increase transparency and openness in relation to the Council's Executive arrangements and have strengthened the rights of councillors (as local representatives) with regard to access to information. Adopting a policy which allows filming at Council meetings will also enhance this process

9. EQUALITIES IMPACT IMPLICATIONS

It has not been necessary to carry out an Equalities Impact Assessment in relation to this proposal.

10. PERFORMANCE MANAGEMENT IMPLICATIONS

The changes introduced to the Council's governance and decision making procedures as a result of the Executive Meeting Regulations have been designed to assist the Council in managing its business in as efficient and effective a way as possible.

11. PUBLIC HEALTH IMPLICATIONS

There are no specific public health implications arising from the proposals within this report.

Background Papers

None