

Procedures for recording decisions taken by officers

Background

1. Regulations in 2012 introduced a requirement for officers taking an executive decision to publish a written statement about the decision as soon as practically possible after the decision is taken. Further Regulations in 2014 extended this requirement to include non-executive decisions taken by officers.
2. Whilst the 2012 regulations simply identify the need to record executive decisions taken by officers, the 2014 regulations make reference ~~extend this~~ to decisions that would otherwise have been taken by the Council or a committee / sub-committee if not otherwise delegated to officers. This therefore includes delegated decisions on non-executive functions.
3. The 2014 regulations also state that the requirement to record applies to decisions made:
 - (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.
4. A specific express authorisation is an issue where full Council, Cabinet, a Cabinet Spokesperson or Regulatory Board has authorised an officer to take action on a specific matter.
5. A general authorisation is an issue where the authority derives from a function listed in the Schemes of officer delegations and otherwise meets the requirements of 3(b) above. The Council has determined that the amount of a contract or expenditure that materially affects the Council's financial position is £250,000.
6. In the case of officer executive decisions, the record must include:
 - (a) the decision taken, including the date it was made;
 - (b) the reasons for the decision;
 - (c) details of any alternative options considered and rejected by the officer when making the decision;
 - (d) any conflict of interest declared by any executive member 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.
7. In the case of other officer decisions covered by the 2014 regulations, the record must include:

- (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 3(a) above, the names of any Member who has declared a conflict of interest in relation to the decision

8. The regulations also require that the statement and any supporting documents be available for inspection by the public and on the Council's website.

Guidance on decisions to be recorded

9. The regulations require the recording of all executive officer decisions and those non-executive decisions that fall under the requirements set out at paragraph 3 above. These will either be as stated in the officer delegations (see links below) or as a result of a specific express authorisation given by Council or a Regulatory Board.
10. This will inevitably give rise to concerns about the officer decisions that should be recorded under the Regulations. The intention of the Regulations is to give the public access to information about local authority decisions. However, it can be assumed that Parliament would expect this to be interpreted in a common sense way, and not result in a bureaucratic burden that would have no public benefit nor meet any reasonable public interest. The intention, therefore, is to give access to information on those decisions that they would reasonably expect to be publicly available and which are appropriate for public access
11. On this basis, any decision that is merely administrative in nature, with only a remote connection with an executive function, or otherwise minor and routine need not be reported. Although the decision might involve large amount of expenditure, the nature of the decision might still mean it is minor (for example, paying a gas bill), so doesn't need to be recorded separately.
12. Equally, where the decision affects one individual rather than the general public and / or contains confidential or exempt information, this need not be published. However, the service concern will need to maintain records on the decision made and the background to it.
13. It should be borne in mind that an apparently minor decision might be taken against a wider context that makes it more sensitive than would otherwise be the case. A key consideration is whether an individual or group might seek to challenge the decision in the light of this. This will always be a matter for judgement and the officer should take this into account in deciding how to record and report the decision and if a Member decision-making route should be followed.
14. A general principle of delegated officer decision making is that particularly sensitive issues might be "referred up" for approval by the relevant Cabinet Spokesperson or Cabinet. As a result of the Regulations, officers should consider if a decision is sufficiently important and/or sensitive so that a reasonable member of the public would reasonably expect it to be "referred up". If so, the officer

responsible should arrange for this to be done. The decision would then be recorded as part of the normal Member decision-making process.

Procedure for recording decisions

15. The officer named in the Officer Delegations as responsible for specific decisions should use the form ('the decision notice') attached at Appendix 1 to record the decision taken. This provides space to give basic information about the subject and date of the decision taken and the authority / delegated power under which the decision is taken. The decision notice should be signed by the officer(s) taking the decision, and, if required, by any Cabinet Spokesperson who should be consulted.
16. If services already use a pro forma to record decisions taken by officers, this can continue to be used, provided it complies with the recording requirements set out in this procedure. If services use a system to record and publish decisions taken (e.g. Planning Explorer, YorTender), there is no requirement to produce a separate record provided that the record meets the requirements set out at paragraph 6 or 7, as appropriate.
17. The decision notice should be accompanied by documentation that provides information on the reasons for any decision and any options considered where this is too detailed or complex to be set out on the decision notice itself. Provided it gives the necessary information, this documentation need not be in the same format as a report for Cabinet or Spokesperson delegated decision.
18. Officers should take care not to include in the supporting documentation any confidential or exempt information that might prejudice the public interest if published. Where information of this type has been referred to in the course of making the decision, this should be stated as one of the background papers. A reference should be made to it containing confidential information or exempt information under the Local Government Act 1972, Part 1, Schedule 12A
19. Where an executive decision is being taken, any conflict of interest declared by an Executive Member on that matter should be recorded, together with any dispensation granted. Where a non-executive decision is being taken under a specific express authorisation, the record should include any conflict of interest declared by a Member on that matter.
20. Once the notice of decision and any supporting documentation has been fully completed, the officer making the decision should make arrangements for it to be scanned as one document and e-mailed to the Council Governance Unit at governance@barnsley.gov.uk for publication in the website. The original documentation should be kept on file by the decision making officer according to their normal procedures.

Appendices

Appendix 1 Pro forma notice of decision

Appendix 2 Categories of exempt information as described in the Local Government Act, Part 1, Schedule 12A

Links to Regulations:

Executive Decisions: [Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#)

Non-Executive Decisions: [Openness of Local Government Bodies Regulations 2014](#)

Details of the schemes of officer delegations are available in [the Council's Constitution](#).

Officer Decision Record Template

Record of Decision of the *(Insert Officer name)* taken in consultation with the *(Insert Portfolio) Cabinet Spokesperson or (Insert name of other officer)*
[delete as appropriate]

Where the delegation is subject to consultation with a Cabinet Spokesperson or other officer, the position of the Spokesperson or officer should be inserted above and they should be asked to sign below. Where no consultation is required, delete these references.

Subject

*Give a brief description of the subject and the decision to be taken. Include a statement of reasons for the decision taken and any options for action considered and rejected. Information on those consulted on the proposed action / decision should be included, together with any conflicts of interest for Cabinet Spokespersons. Where this is too detailed or complex to include here, this information **must** be included in appendices.*

Authority

Insert reference to relevant section of the Scheme of Delegation or Council / Cabinet / Regulatory Board Minute Number, where appropriate, to show where the delegated powers on this matter was authorised.

Decision Taken

Set out the decisions (to be) taken

Date of Decision

Insert the date of the decision

Elected Member Conflicts of Interest

Record any conflicts of interest, and dispensations granted

Signature

(Insert Officer name)

(Insert more Officer names as required)

Signature
Cabinet Spokesperson
(if required)

Scan / email the completed form and appendices to the Council Governance Unit and keep the original on the project file

Restrictions on the Publication of Reports Considered by Meetings within the Council

The Cabinet and other Council meetings are generally required to consider all reports in public. However, the facility exists to consider a report in private if it contains certain categories of information. The relevant legal provision is Schedule 12A to the Local Government Act 1972, as amended by regulations issued in 2006.

This note gives practical guidance on how exemptions from publication can be “claimed” and what qualifications to this apply. However, on a general note, any information which gives rise to an exemption must be specific, not theoretical, and must be relevant to the decision being sought from Members. The whole intention of the Freedom of Information Act is to ensure the availability of information, including reports, to the public and the starting point, therefore, is that all reports will be made available for publication.

Report authors are encouraged to contact the Cabinet Support Unit for assistance and advice in applying these provisions.

Exempt Information under the Terms of the Local Government Act 1972, Schedule 12A (as amended)

Council meetings may consider reports following the exclusion of the public and press from the meeting if it contains some types of information, other than personal information, as described above. These categories of so-called exempt information are set out in Schedule 12A to the Local Government Act 1972, which has been amended to be consistent with the Freedom of Information Act.

The Categories of Exempt Information are given below and report authors need to consider these when seeking an exemption from publication, having regard to the qualifications that apply to each of the exemptions.

A particular issue that report authors need to bear in mind is the application of the public interest test included in the Freedom of Information Act. This means that a report cannot be exempt from publication unless, in all circumstances of the case, the public interest in maintaining confidentiality outweighs the public interest in disclosing the information. Even so, the exemption from publication may be time limited: For example it may not be in the public interest to publish the budget allocation for a particular contract, as this might affect the tender bids received; however, once the contract has been let there is no reason for this report to continue to be withheld from publication. Therefore, where there is a valid public interest justification for withholding the publication but this is time limited, report authors should include this information in the report.

To identify that a report contains exempt information, report authors should arrange for the inclusion of a “box” in the top left hand corner of the first page of the report, as follows:

**NOT FOR PUBLICATION UNTIL
[INSERT DATE]***

**Exempt Information
Local Government Act 1972
Schedule 12A Part 1 Paragraph
(insert number)**

* The date of release will not be appropriate in all cases but report authors are encouraged to consider whether or not this would serve the public interest. It might be that information can be released immediately after the meeting at which the report was considered.

The categories of exempt information are as follows:-

**Paragraph Number/
Information Type**

Qualification

Paragraph 1

Information relating to any individual.

Information falling within this Paragraph is subject to the public interest test referred to above. Exemption from publication will also generally be time limited, requiring report authors to consider the date on which the public interest will no longer be served by withholding publication.

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992

Paragraph 2

Information which is likely to reveal the identity of an individual.

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992

Paragraph 3

Information relating to the financial or business affairs of any particular person (including the Local Authority holding the information).

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Financial or business affairs includes contemplated, as well as past or current activities.

Paragraph 3 (cont/d...)

Qualification:

Information falling within this Paragraph is not exempt information by virtue of that Paragraph if it is required to be registered under:

- a. The Companies Act 1985
- b. The Friendly Societies Act 1974
- c. The Friendly Societies Act 1992
- d. The Industrial & Provident Societies Acts 1965 to 1978
- e. The Building Societies Act 1986 or
- f. The Charities Act 1993

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992

Paragraph 4

Information relating to any consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matter arising between the Authority or a Minister of the Crown and employees of, or office holders under, the Authority.

Information falling within this Paragraph is subject to the time-limited public interest test referred to above. Note that it is therefore likely that, once the consultations or negotiations are concluded, the information is no longer exempt from publication.

In this context, "Labour relations matters" means (a) any of the matters specified in Paragraphs (a) to (g) of Section 218(l) of the Trade Union and Labour Relations (Consolidation) Act 1992 (ie matters which may be the matter of a trade dispute within the meaning of that Act) or (b) any dispute about a matter falling within Paragraph (a) above.

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992

Paragraph 5

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992

Paragraph 6

Information which, if disclosed to the public, would reveal that the authority proposes:

(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or

(b) to make an order or direction under any enactment

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992

Paragraph 7

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Information in this Paragraph is not exempt if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992