

OVERVIEW AND SCRUTINY BOARD

28th AUGUST 2007

EXECUTIVE DECISIONS

PURPOSE OF THE REPORT

1. To provide Members with a briefing paper explaining the procedures adopted in relation to decisions made by the Executive.

LEGISLATION BACKGROUND

2. Prior to the implementation of the Local Government Act 2000, local authorities operated what was known as a Committee system. Under the Committee system the full Council meeting had supreme power but as the volume of decision making increased it became impractical for all decisions to be made by the Council. The legislation permitted Councils to establish Committees and also to allow those Committees to exercise delegated powers on behalf of the Council. The practice then followed that those Committees established Sub-Committees, some of which had delegated powers. A Sub-Committee would deal with a matter and the minutes of the Sub-Committee would be submitted to the main Committee either for information if the Sub-Committee had delegated powers or for approval if it did not. The minutes of the main Committee were then submitted to the full Council. If neither the Sub-Committee nor the main Committee had delegated powers, the whole process of decision making was a lengthy process. Prior to the 2000 Act Middlesbrough Council had approximately 10 Committees and 90 Sub-Committees.
3. The whole decision making process changed drastically following the passing of the Local Government Act 2000. The Act basically imposed a requirement on local authorities to scrap the Committee system. In its place the Act introduced what is known as the Executive form of local government. All but the smallest of authorities (authorities with a population of less than 85,000 in June 1999) had to draw up proposals for the implementation of Executive

arrangements. The Act describes “Executive arrangements” as meaning those arrangements for the creation and operation of an Executive of the authority under which certain functions of the authority are the responsibility of the Executive.

4. The Act further provided for three forms of Executive arrangements. The first form, comprising of an elected Mayor and two or more Councillors appointed by the Mayor, is known as a Mayor and Cabinet Executive. The second form, comprising a Councillor, elected by the Council as Leader, and two or more Councillors, appointed either by the Leader or the Council, is known as a Leader and Cabinet Executive. The third form, comprising an Elected Mayor and an Officer, appointed by the Council, is known as a Mayor and Council Manager Executive. In respect of the first two forms, the number of Executive Members cannot exceed ten. In Middlesbrough, following a referendum, the Council adopted the Mayor and Cabinet form of Executive.
5. The 2000 Act made further provision that, subject to any other enactment, any function of the local authority, other than that specified in the Act, shall be the responsibility of the Executive. This was a major change in the way local authorities operated.
6. In the past, the full Council had the power, with one or two exceptions, to decide, which Committee, if any, dealt with a particular function. What the 2000 Act did, was to change that, and all power rested with the Executive unless there was a provision in the 2000 Act, another Act, or in regulations which stated that a particular matter could not be the responsibility of the Executive. There are a wide range of functions that cannot be exercised by the Executive and they include: planning, licensing, elections, members allowances etc.

EXECUTIVE

7. The 2000 Act also deals with the exercise of power by the Mayor. Whilst the Act requires there to be a Cabinet of at least the Mayor and one other Councillor, the Act does not prevent the Mayor from personally discharging the functions of the Executive. What the Act does do, is to allow the Mayor to discharge any of the functions by the Executive, another member of the Executive, a Committee of the Executive, or an officer of the authority.
8. It is clearly impractical for the Mayor to exercise all functions, and, therefore, every year the Mayor determines what functions will be exercised by individual Members etc. The delegations are identified in a formal scheme of delegation, a copy of which is appended to this report.

EXECUTIVE DECISION MAKING PROCESS

9. The Executive decision making process does differ depending upon whether the decision is classed as a key decision. A key decision is an Executive decision, which is likely to result in the authority incurring expenditure or

making a saving in excess of £75,000 or if the decision has a significant effect on communities living or working in two or more wards.

10. The regulations and the guidance issued by the Government envisage decisions will be made by individual Executive Members. Furthermore the rules also provide for such decisions to be made by the individual in private. The general law relating to meetings is that there is only a meeting if it involves more than one person, i.e. you cannot have a meeting of one person. Notwithstanding that, it was decided that if an individual Executive Member makes a delegated decision then a formal meeting (albeit a meeting of one person) will be arranged and generally that meeting will be open to the public.
11. Regulations require the Executive to set out its programme of work in the coming four months, in what is known as the "Forward Plan". The forward plan is updated on a monthly basis and deals with proposed key decisions. The plan gives a short description of the matters under consideration, who is responsible for making the decision, what relevant and background papers are available, and the consultation process.
12. The Access to Information Regulations provide that where the Mayor believes that a decision is likely to be made collectively at a meeting, which will be a key decision that meeting must be held in public, subject to the normal rules regarding exempt and confidential reports. The Secretary of State, does specifically recognise that there will be occasions when the Executive will need to meet in private to have collective discussions, when considering numerous options etc. However, such meetings cannot be held in private if a key decision is to be made. The rules relate to collective decisions and, therefore, do not apply to an individual member decision.
13. In respect of individual member decisions, the rules provide that if the member receives an officer report in respect of a key decisions, the Member may not make a decision until that report has been available for public inspection for at least five clear days.
14. The current procedure dealing with reports that will result in an Executive decision includes provision for the report to be considered at the Council's Corporate Management Team (CMT). At that stage, the report is accompanied by a short report giving details of the consultation carried out and the procedure to be followed regarding the decision making process. Reports are drafted on the assumption that the decision will be made by the appropriate body/member in accordance with the Executive Scheme of Delegation.
15. Once a report has been considered by C.M.T., it will be placed on the agenda for the next Executive meeting or contact will be made with the Individual Executive Member to agree a suitable date and time.

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