P. PROTOCOL ON THE RECORDING OF DECISIONS MADE BY OFFICERS

Introduction

1. The Council is required by law to record certain decisions made by officers. This protocol sets out which decisions should be recorded and requirements regarding publication. A suggested template for the recording of decisions is at Appendix 1. Directorates may already have, or wish to develop, their own forms based on this protocol. Legal Services can advise on the recording of decisions and/or what sort of decisions should be recorded.

Decisions which must be recorded

Decisions made under a specific express delegation

2. These decisions are ones where a particular decision has been delegated to an officer by Council, a committee, sub-committee or Cabinet. Recording of these decisions is provided for in the Openness of Local Government Bodies Regulations 2014

Decisions made under a general authorisation

3. These are decisions made under the scheme of delegations in the ~~c~~Constitution or in departmental schemes of delegations. The legislation requires that permissions or licences and decisions that affect the rights of individuals should be recorded. Examples of permissions or licences that should be recorded are set out at a – d below. Directorates may be aware of other permissions or licences that should be recorded. Legal Services takes the view that the category of decisions which 'affect the rights of individuals' covers only a narrow set of decisions as set out at e – g below:

a. Highways:
    i. Permits to undertake works on the highway
    ii. Temporary Traffic Orders
    iii. Permission for temporary suspension of Controlled Parking Spaces
    iv. Street works licences

b. Consents issued under the Land Drainage Byelaws
c. Building Regulations approvals
d. Licences granted in relation to:
    i. Alcohol and entertainment
    ii. Gambling
    iii. Houses in Multiple Occupation
    iv. Special Treatment Licensing
    v. Skip, Scaffolding and Cranes

e. Deprivation of liberty under Schedule A1 of the Mental Capacity Act 2005
f. 'Best interests' decisions made under section 4 of the Mental Capacity Act 2005 which significantly affect the welfare of the individual about whom the decision is made for example:
    i. Where they live;
    ii. The type of care provided; and
    iii. Who they do or do not have contact with.
g. Decisions made under the Mental Health Act 1983 in relation to detention in hospital for assessment and/or treatment, guardianship and community

treatment orders.

How to record decisions

4. The Regulations require that the decision-making officer must produce a written record of the decision as soon as reasonably practicable after making the decision and should 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. A record of any conflict of interest as follows:

        i. In the case of an executive decision, any declaration of a conflict of interest on the part of a member who was consulted by the officer making the decision. Any dispensation granted should also be recorded; or
        ii. In the case of a non-executive decision made under a specific express authorisation, any declaration of a conflict of interest on the part of a member who has declared a conflict of interest in relation to the decision.

5. A template is attached at Appendix 1. However, if a format is already in place then it can be adapted, if necessary, to comply with the requirements set out in paragraph 4 above. Each directorate should use their own system of reference numbering.

Record-keeping

6. Each record must be kept for six years. Any background papers must be kept for four years. These are statutory requirements.

7. Background papers are documents which:

    a. relate to the subject matter of the decision, or part of the decision;
    b. disclose relevant facts or matters on which the decision or an important part of the decision is based; and
    c. Were relied on to a material extent in making the decision.

8. The record of the decision and the background papers are open to public inspection and must be published on the Council's website except where any of the following are involved:

    a. Confidential information (provided by a government department on terms which forbid the disclosure of the information to the public or where disclosure is prohibited by an enactment or court order);
    b. Exempt information (as defined under Schedule 12A of the Local Government Act 1972); and/or
    c. In the case of executive decisions, the advice of a political assistant or ~~adviser~~ a Council officer.