

25 September 2014

Recording specific decisions delegated to officers

Report by the Chief Officer

Contact: Geoff Howsego geoff.howsego@hantsfire.gov.uk

1 Summary

- 1.1 The new Openness of Local Government Bodies Regulations 2014 (the Regulations) which came into force on 6th August 2014, requires specific decisions that are delegated to Officers to be formally recorded when they are taken and then published. This report describes which delegated decisions need to be recorded and published. The arrangements to deliver this requirement that have been established by Officers are contained in the policy attached at Appendix A .
- 1.2 This policy applies to all decisions taken by Officers of Hampshire Fire and Rescue Service (HFRS) whilst acting:
 - a) Under a specific express authorisation (e.g. a decision delegated to the Chief Officer from an Hampshire Fire and Rescue Authority (HFRA) meeting); or
 - b) Under a general authorisation (e.g. the scheme of delegation) but only in relation to three specific categories of decision taken.

2 Recommendation

That the Standards and Governance Committee endorse the arrangements put in place by HFRS to meet the requirements under the Regulations relating to decisions that are delegated to Officers to be formally recorded when they are taken and then published.

3 Introduction and background

- 3.1 Appendix A provides the Policy that has been adopted by HFRS to meet the new legal requirements contained within the Regulations. The policy provides the full background and identifies the decisions which need to be recorded and the recording and publishing arrangements.
- 3.2 In order to help Officers easily identify which decisions are captured by the Regulations a flowchart has been created. This is attached at Appendix B.
- 3.3 Some decisions will be confidential or exempt from publication and this is specified

within the Policy at Appendix A.

- 3.4 In some cases, decisions caught by the legal requirements are already formally recorded (e.g. granting property licences). It may be possible to continue with these recording requirements (perhaps, slightly adapted) rather than making wholesale change, provided they meet the legislative requirements. HFRS are reviewing these procedures to ensure that they are compliant with the Regulations.

4 Specific delegated decisions

- 4.1 'Specific delegated decisions' are decisions which are delegated to an officer by a decision of the HFRA or one of its committees. When the officer takes the decision it needs to be recorded and promptly published.
- 4.2 Any decision by the HFRA or one of its committees to delegate authority to make a decision on its behalf will need to be recorded and documented at the time it is agreed. This record will then be used to periodically check if the officer has taken the decision and that it has been properly recorded and published.

5 Delegated decisions taken under general powers

- 5.1 The Authority has three documents which delegate decisions as follows:
- a. Scheme of delegation
 - b. Financial regulations
 - c. Contract Standing Orders
- 5.2 Not all decisions taken under these documents need to be recorded. Operational and routine administration decisions are not included.
- 5.3 There are three specific categories of decisions which need to be recorded:
- a. Grant a permission or licence;
 - b. Affect the rights of an individual (i.e. to change an individual's legal rights); or
 - c. To award a contract or incur expenditure which, in either case materially affects the Authority's financial position.
- 5.4 Appendix A gives examples of these categories, including feedback from some other FRSS.
- 5.5 Within the policy, the £100,000 de minimus limit for the third category has been proposed by the HFRA Chief Finance Officer (CFO) and will be subject to review. The amount aligns with other thresholds within the delegated authority documents, e.g. in the financial regulations.

6 Supporting our corporate aims and objectives

- 6.1 The HFRA has sought to be open and transparent in its approach, including its decision making. Officers have a key role to play in supporting this and recently

released regulations provide direction on the point of publishing key relevant decisions. This approach will strengthen the audit trail of decision making and hence the governance arrangements.

- 6.2 Conversely, HFRA has been seeking to minimise bureaucratic processes. This legislation, which is probably more targeted to local authorities rather than FRSSs, will involve more administration. This later part is minimised by the approach adopted.

7 Risk analysis

- 7.1 There is a risk that relevant decisions that have been taken are not properly recorded or published. Proven failure to comply with the regulations could result in criminal sanctions being applied. The policy seeks to minimise these risks and if properly adopted will do so.

8 People Impact Assessment

- 8.1 The proposals in this report are considered compatible with the provisions of the equality and human rights legislation.

9 Resource implications

- 9.1 There will be resource implications in completing decision records and publishing them. This will be met from existing resources.

10 Consultation

- 10.1 The policy has been drafted with the support of the HFRA legal advisers and the financial threshold has been proposed by the CFO. The Policy was agreed by the HFRS Service Management Team.

11 Background papers

- 12.1 The following documents disclose the facts or matters on which this report, or an important part of it, is based and has been relied upon to a material extent in the preparation of the report:

The Openness of Local Government Bodies Regulations 2014 (“Regulations”) (6 August 2014.)

Note: The list excludes: (1) published works; and (2) documents that disclose exempt or confidential information defined in the Act.

**Hampshire Fire and Rescue Authority:-
DRAFT Policy for Recording Decisions Delegated to an Officer of the Authority**

1. Introduction

- 1.1 The Openness of Local Government Bodies Regulations 2014 (“Regulations”) came into force on 6 August 2014. The Regulations require the recording of certain decisions which would otherwise have been taken by the Hampshire Fire and Rescue Authority (“the Authority”), or any of its committees or sub-committees, but the decision has been delegated to an officer of the Authority, either whilst acting under a specific express authorisation or whilst acting under a general authorisation to take the decision.
- 1.2 This policy for recording decisions has been created to meet the requirements of the Regulations for the recording of certain decisions taken by officers acting under powers delegated to them.

2. Policy

- 2.1 This policy aims to ensure that any decision that has been taken by an officer of the Authority either whilst acting under a specific express authorisation or whilst acting under a general authorisation and which falls under the three specific categories referred to below is recorded and made available for inspection by the public.

3. Scope

- 3.1 This policy applies to all decisions taken by officers of the Authority whilst acting:
- a. Under a specific express authorisation (e.g. a decision delegated to the Chief Officer from an HFRA meeting); or
 - b. Under a general authorisation (e.g. the scheme of delegation) but only in relation to three specific categories of decision taken.
- 3.2 In relation to para 3.1 b. above, the three specific categories that cover decisions requiring publication are where the effect of the decision is to:
- a. Grant a permission or licence;
 - b. Affect the rights of an individual (i.e. to change an individual’s legal rights); or
 - c. To award a contract or incur expenditure which, in either case materially affects the Authority’s financial position.
- 3.3 Administrative and operational decisions taken by officers of the Authority on how they go about their day to day work will not need to be recorded.
- 3.4 Examples of decisions that should be recorded for the three specific categories could include the following:

- a. *'Grant a permission or licence'*. This category would cover land transactions (e.g. agreements sharing fire stations with the ambulance service). There is already a formal recording system under the scheme of delegation for this type of decision.
- b. *'Affect the rights of an individual - (i.e. to change an individual's legal rights)*. This category would cover:
 - Alteration Notices
 - Prohibition Notices
 - Entry to premises where notice is given or the officer applies for a warrant

It is not likely to relate to employees.

- c. *'Award a contract or incur expenditure which, in either case materially affects the HFRA's financial position'*. In this category, the total value of the contract or the total value of the expenditure to be incurred would need to be over £100,000 before the Treasurer would consider this to have a material affect on the HFRA's finances.

This category would require contracts and spending decisions exceeding £100,000 or above to be recorded. It is almost certain that any contract would have needed to have been previously considered by the HFRA or one of its committees (e.g. as part of the annual budget or capital programme consideration). Other decisions might be caught, e.g. the payment of pay awards (which would be part of the agreed budget), and setting up provisions in the accounts (such as equal pay claims although these may have been reported to the HFRA for decision).

4. Decisions Procedure

- 4.1 The Director of Professional Services (DPS) will have overall responsibility for the operation of this policy and the recording of decisions delegated to officers of the Authority. He/she will seek the advice of other Authority officers (e.g. clerk or treasurer) as appropriate.

Note: There will be other decisions taken under delegated powers which may be recorded, and which may use the same documentation but which are not covered by this policy.

- 4.2 Some of the decisions required to be recorded and published are already documented but in a different format (e.g. decisions to grant estate licences under the Scheme of Delegation or deciding prohibition notices). The DPS may consider that this recording process is adequate or can be easily adapted to meet the changed legal requirements and allow the existing system to continue with periodic checks to confirm that the recording continues to be compliant.
- 4.3 It will assist the recording of decisions taken under specific delegation from the HFRA or one of its committees, if the committee administrator identifies the decision to delegate a decision. A record will be made and passed to DPS to maintain an updated list of these decisions until such time as the decision is taken and published.

- 4.4 The officer making the decision will complete a short form (Appendix C) detailing the following:
- a. The decision taken;
 - b. The date the decision was taken;
 - c. The reasons for the decision;
 - d. Any alternative options considered and rejected; and
 - e. Any other relevant background documents.
 - f. Declared conflicts of interest from Members.
- 4.5 The form requires the inclusion of all relevant background documents. It is envisaged that there will normally be associated documents that support the decision making process. Where that is not the case, the officer making the decision will ensure that there is suitable written material to support the decision made. A template is provided at Appendix D to support this and can be used where appropriate.
- 4.6 The Decision Record will be forwarded to DPS as soon as possible by the officer making the decision. The DPS will then arrange for the decision to be made public. This decision will be cross referenced to the record of delegation detailed in section 4.3.
- 4.7 Where a decision is taken under a specific express authorisation, the names of any member of the Authority who has declared a conflict of interest must also be recorded in the Decision Record.
- 4.8 The Authority must retain the written record of the Decision Record and make it available for public inspection for six years beginning from the date the decision is made, together with a copy of any background papers for four years. These may be kept in electronic format.
- 4.9 The Authority must on request and on receipt of payment of postage, copying or other necessary charge for transmission, as determined reasonable by the Authority, provide to the person who has made the request and paid the appropriate charges, a copy of the written record and a copy of any background papers, relating to decisions taken by an officer whilst acting under specific or general delegated powers.

5. Publication Status

- 5.1 In accordance with principles of openness and transparency, Decision Records and any supporting materials will normally be published in full on the Authority's website, except where, and to the extent that, they contain information which is regarded as confidential or exempt from publication. Published decisions will include the details contained in Appendix C
- 5.2 Information is *confidential* where it has been received from a Government Department or other source upon terms (however expressed) which forbid the disclosure of it to the public, or where its disclosure to the public is prohibited by or under any enactment or by the order of a court.
- 5.3 Information is *exempt from publication* where it falls within one or more of the following categories and, in all the circumstances of the case, the public

interest in maintaining the exemption outweighs the public interest in disclosing the information:

- a. Information relating to any individual.
- b. Information which is likely to reveal the identity of an individual.
- c. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- d. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the body or a Minister of the Crown and employees of, or office holders under, the authority.
- e. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- f. Information which reveals that the authority proposes:
 - i. To give under any enactment a notice under or by virtue of which requirements are imposed on a person, or
 - ii. To make an order or direction under any enactment.
- g. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

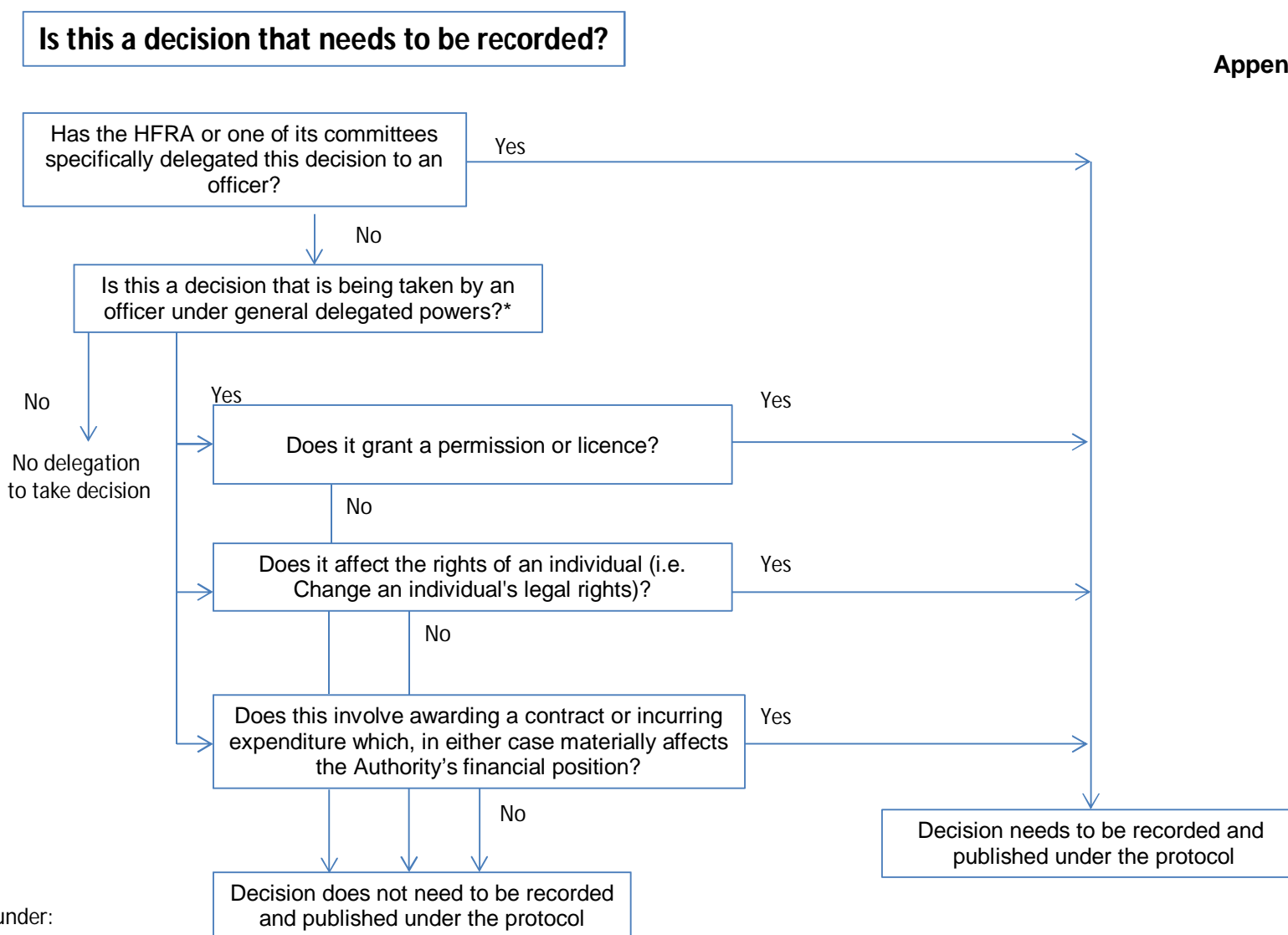
5.4.1 Where the whole of a Decision Record is not for publication, the appropriate protective marking classification shall be stated in the header, and the reasons given in the appropriate paragraph of the Report. Where part of a Decision Record is not for publication, the confidential or exempt information should be included in a confidential appendix, along with the appropriate protective marking and reasons. The remainder of the Decision Record should be published in the normal way.

6. Review

6.1 This policy and procedure will be reviewed at regular intervals by the DPS and amended if there are significant changes in either the Authority's or national policies. All aspects will be reviewed in the light of changes or amendments to legislation/regulation or policy.

7. Criminal Sanctions

7.1 It is a criminal offence for a person to intentionally obstruct, or refuse to make available for inspection by members of the public, documents relating to the decisions referred within this policy.



* Delegation under:
 Financial Regulations
 Scheme of Delegation
 Contract standing orders

**DECISION RECORD - FOR PUBLICATION UNDER THE OPENNESS OF LOCAL
GOVERNMENT BODIES REGULATIONS 2014**

The decision taken (S4.4):

The date the decision was taken (S4.4):

The reasons for the decision (S4.4):

Any alternative options considered and rejected (S4.4):

Any other background documents (S4.5):

Declared Member interests (S4.4/4.7):

Reasons if exempt from publication (in full or part) (S5):
(Protective marking classification to be stated in the header.)

Refer to the Hampshire Fire and Rescue Authority: Policy for Recording Decisions Delegated to an Officer of the Authority. Sections of the policy relevant to each of the requirements above are noted by Section (S) number

Supporting material for decisions taken by Officers under the Openness of Local Government Bodies Regulations 2014

Report Title

Report by

Contact : *[insert name, contact, telephone number and email address of person to whom any queries or comments should be sent]*

1 Summary

[Insert brief statement summarising what the matter is about and why a decision is being sought]

2 Decision

[Insert the decision - will be the same as the decision record]

3 Introduction and background

[This section provides the background to the issue, any key points e.g. legislation, previous reports, etc]

4 Options Appraisal

[Outline the options that have been considered, their respective strengths and weaknesses, and the reasons for the preferred option being proposed]

5 Financial and Resourcing Implications:

[Explain any financial cost that will arise as a result of the proposed decision, and how this will be met. Explain whether the decision can be implemented within existing staffing resources and, if not, the additional resources required and how these will be funded. Distinguish between one-off (capital) expenditure to be incurred in one year only and recurring (revenue) expenditure to be incurred in current and subsequent years]

6 Legal Implications:

[Set out any legal issues arising and summary of any advice provided by the Authority's legal advisers]

7 Risks and Mitigation:

[Explain any risks associated with the decision, and how the Decision will mitigate the risk/s in question.]

8 Equalities:

[Explain any particular impact the decision is likely to have on people with protected characteristics under the Equality Act 2010]

9. Publication status:

[Explain whether the report is suitable to be published in whole or in part. If is 'not for publication', state the grounds for this, by reference to section 5 of the Policy for Recording Decisions Delegated to an Officer of the Authority]

10. Persons consulted

[Identify if consultation has occurred and with whom]

11. Conflicts of Member Interests:

[to be completed where a decision is taken under a specific express authorisation – section 4.4 and 4.7 of the Policy refer]]

Annexes: *[Further documents appended where relevant to give further background or detail]*

Background Papers: *[List any documents which have been relied upon to any significant extent in the preparation of the report and which, while not appended to the report, may be made available on request, subject to not disclosing any information which is confidential or exempt from publication]*