

<b>Key Decision Required:</b>	<b>NO</b>	<b>In the Forward Plan:</b>	<b>NO</b>
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**CABINET**

**7 NOVEMBER 2012**

**REPORT OF THE PORTFOLIO HOLDER FOR CUSTOMER AND CENTRAL SERVICES**

**A.3 THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) (ENGLAND) REGULATIONS 2012**

(Report prepared by Colin Sweeney)

**PART 1 – KEY INFORMATION**

**PURPOSE OF THE REPORT**

This report informs the Cabinet of the statutory changes imposed upon local authorities operating executive arrangements, as defined by the Local Government Act 2000 and:

1. Seeks to agree proposed practical implementation stages as set out in the report;
2. Seeks to authorise the Monitoring Officer to be the proper officer to determine the Council's response to the recommendations arising from the publication of 28 day notices in respect of executive decisions which are to be taken in private;
3. Informs Cabinet of proposed changes to the Constitution and seeks authority to consult the Corporate Management Committee on the proposed changes.

**EXECUTIVE SUMMARY**

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, as set out in Statutory Instrument 2012 No.2089 came into force on 10 September 2012. These Regulations revoked and replaced the Local Authorities (Access to Information) (England) Regulations 2000.

The Regulations govern public access to meetings, and information relating to executive decisions only – that is, decisions made by the whole Cabinet, individual Portfolio Holders, any Cabinet Sub-Committees, joint committees and sub-committees of executive members with responsibility to discharge executive functions, and executive decisions taken by officers.

As with the previous Regulations, draft reports are specifically exempt from these provisions.

The changes refer, specifically, to:

- (a) Part 'B' – Private and Confidential meetings (or part thereof) and the requirement to

give 28 days' notice of intent, such notice to invite public representations as to why the matter or meeting is to be held in private. This notice to be followed by a second notice five days prior to the decision being taken and detailing the reasons behind why the matter or meeting is being held in private, should any public representations be received.

- (b) The process before taking a key decision and there no longer being a requirement to publish a forward plan in the current prescribed format.
- (c) Minor changes to the "general exception" and "special urgency" rules.
- (d) A requirement to record executive decisions taken by officers.
- (e) Changes allowing Councils to charge "a reasonable fee" for access to background papers to be inspected at the Council's offices (although at this stage, no charge is proposed).
- (f) Additional rights of members of overview and scrutiny committees, namely the making available by Cabinet of any material relating to business relating to past decisions, or the making available of exempt information where it relates to an action or decision that the member is scrutinising. There is a requirement upon Cabinet, whereupon it determines that material will not be provided, to set out, in writing, its reasons for that decision.

#### **RECOMMENDATION(S)**

It is recommended that Cabinet:

1. Notes the Regulations and agrees the proposed practical implementation stages set out in the report;
2. Authorises the Monitoring Officer to be the proper officer to determine the Council's response to recommendations arising from the publication of 28 day notices in respect of executive decisions which are to be taken in private; and
3. Requests the Corporate Management Committee to consider the proposed changes to the Constitution and reports back its comments in due course.

## **PART 2 – IMPLICATIONS OF THE DECISION**

#### **FINANCE, OTHER RESOURCES AND RISK**

##### Finance and other Resources

There are no significant financial implications arising from this report. Consequential, small costs may be required in terms of production of additional notices etc.

##### Risks

There are no apparent risks arising from this report.

## LEGAL

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, issued by the Department for Communities and Local Government, are statutory and revoke, and replace, the Local Authorities (Access to Information) (England) Regulations 2000.

## OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

**Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.**

### Area or Wards Affected

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 apply to how the Cabinet conducts its business and, as such, do not have a particular impact on specific wards.

### Consultation and Public Engagement

The Regulations are designed to strengthen the rights of members of the public as well as introduce greater transparency and openness into meetings of the Cabinet, its Committees and Sub-Committees.

## PART 3 – SUPPORTING INFORMATION

### BACKGROUND

#### The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

The Local Government Act 2000 came into force, in stages, between the summer of 2000 and April 2001.

The Act gave local authorities the power to promote the economic, social or environmental well-being of their area and the duty to review and make new executive arrangements, separating executive and scrutiny functions.

As executive arrangements have developed over this time, the Government has imposed changes upon such local authorities in terms of how these arrangements should be carried out and administered.

Statutory Instrument 2012 No.2089, issued by the Department for Communities and Local Government, revokes and replaces the Local Authorities (Access to Information) (England) Regulations 2000.

The Regulations apply to all Councils which operate executive arrangements and are designed to introduce greater transparency and openness into meetings of the Cabinet, its Committees and Sub-Committees.

Given that these Regulations were put upon local authorities with very little notice, the Association of Council Secretaries and Solicitors (ACSeS) sought Counsel's opinion on the Regulations and the approach set out in the report reflects the advice given.

Particular changes introduced by these Regulations include creating a presumption that all meetings of the formal Cabinet are open, except in narrowly-defined circumstances.

The Regulations are also designed to strengthen the rights of members of the public, as well as traditional newspapers, to report on proceedings, and provide more rights to individual Councillors and Members of the Overview and Scrutiny Committees. Further, as a consequence of the enhanced transparency around meetings, the Regulations remove the requirement to have a forward plan or identifying planned decisions four months in advance.

### The Changes

From 10 September 2012, local authorities must comply with new requirements regarding local authority executive decision-making. Those councils which operate executive arrangements will need to be aware of these to ensure that their authority observes the new requirements.

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089) replace the 2000 Executive Access to Information Regulations and contain a number of quite significant changes. The new regulations **only apply to executive decisions** and not to decisions taken by Council, a Committee or an officer on behalf of Council where slightly different processes will continue to apply.

The most significant changes relate to Key Decisions and holding meetings, or a part of them, in private session.

Appendix 1 to this report sets out the proposed changes which are necessary to the Council's Access to Information Rules to make them comply with the new Regulations.

### Key Decisions

Previously, there was a requirement to publish a rolling forward plan at least 14 days before the start of each month, that set out details of all the key decisions which the Council anticipated making within the next four months. This has now been replaced by a requirement to publish 28 clear days' notice of any intended key decision. The notice must be available not just for inspection but also published on the Council's website.

As a result, now, the Council cannot take a key decision unless it has given the required 28 days' notice, unless an urgent decision is required. There are two different ways in which this can be done:

- the Council can take an urgent key decision without giving 28 days' notice where it is impracticable to give the full notice, provided that the Council gives at least five days' clear notice to all members of the relevant Overview and Scrutiny Committee of the authority (the "general exception" rule); or
- where a key decision is so urgent there is not even time to give five clear days' notice, the Council can take the decision if the Chairman of the relevant Overview

and Scrutiny Committee has agreed that the key decision is urgent and cannot reasonably be deferred (the “special urgency” rule). This notice requirement applies whether the key decision is to be taken by the Cabinet at a meeting, by the Executive Leader, another Cabinet Member or by an officer without a meeting taking place.

The Department for Communities and Local Government (DCLG) has stated that “clear days” means calendar days, so the 28 days will include weekends and public holidays but exclude the date of the notice and the date of the meeting, i.e. for a meeting held on a Tuesday, the notice would need to be issued on the Monday four weeks beforehand.

### Meetings in Private

An entirely new requirement has been introduced for the Council to publish 28 clear days’ notice of the intention to hold a private meeting (or part of a meeting) of Cabinet. This 28 day notice must then be reinforced by a five-day notice which sets out the reasons for the meeting to be held in private, details of any propositions or representations received as to why the meeting should be open, and the Council’s response (so it will be necessary to authorise the proper officer to determine the Council’s response to such recommendations).

Once again, the regulations provide for an urgency procedure, under which the Council can decide the matter with shorter than 28 or five days’ notice, provided that it has first obtained the consent of the Chairman of the relevant Overview and Scrutiny Committee that the date by which the meeting must be held makes the notice impracticable and the meeting cannot reasonably be deferred. The requirement only applies to “meetings” rather than decisions by individual members or officers.

Reports for private meetings should continue to be marked as exempt in the usual manner. Records of decisions taken at private meetings are to continue to be maintained under the existing provisions contained under Section 22 of the 2000 Act (the “Decisions List”).

### Recording of Officer Executive Decisions

The new regulations now **require** an officer to prepare a written statement of every executive decision which he or she takes, which must include a note of any executive member whom he or she has consulted in taking that decision. The record is published on the Council’s website and must be retained for public inspection.

Following the publication of the Regulations, concerns were raised, nationally, as to their proper interpretation. Accordingly, ACSeS sought Counsel’s Opinion on the Regulations, including the recording of executive decisions made by officers.

Counsel’s Opinion states that

*“An ‘executive decision’ is defined as a ‘decision made or to be made by a decision-maker in connection with the discharge of a function which is the responsibility of the executive of a local authority.”*

Clearly, the Council needs a working definition of which decisions should be recorded to

ensure that the more significant decisions made are recorded without excessive bureaucracy of recording the minutiae of daily operational decisions. In order to achieve this, it is proposed that the following officer decisions are recorded:

- Any decision taken by an officer where consultation is undertaken with a Cabinet Member, and
- Any decision taken by an officer which is closely connected to the discharge of executive functions in accordance with Delegated Powers.

It is proposed that where the Cabinet or Council has made a decision to set a budget for a specific purpose, then decisions by officers to implement the Cabinet or Council decision by spending the budget for its intended purpose, should not be recorded unless, in accordance with the above, further consultation is held with a Cabinet Member as to the specific expenditure to be incurred.

### Conflict of Interest

There is a change relating to all executive decision-making where there is a potential conflict of interest on the part of the decision-maker. For all decisions made by Cabinet meetings, Executive Leader or Cabinet Member, and officers who consult any Executive Member, the new regulations provide that the record of the decision **must** disclose any “conflict of interest” declared by any Executive Member and a “note of any dispensation granted by the relevant authority’s Head of Paid Service”. The regulations do not define “conflict of interest” – while this would appear to include a disclosable pecuniary interest under the provisions of the Localism Act 2011, it could also include any other circumstance which might amount to common law bias or apparent bias on the part of the member.

### Additional Rights of Members of Overview and Scrutiny Committees

Finally, upon request from a member of an overview and scrutiny committee, the Executive must make available any material relating to business relating to past decisions. This must be provided as soon as reasonably practicable and no later than 10 clear days after the request is made.

Exempt information does not need to be provided unless it relates to an action or decision that the member is scrutinising, or to any review in a relevant overview and scrutiny committee’s work programme. Overview and scrutiny members are not entitled to any exempt material which contains advice provided by a political adviser or assistant.

If the Executive determines that material will not be provided, it must set out in writing its reasons for that decision.

### Transitional Arrangements

There are no transitional arrangements within the Regulations. For the purposes of the meeting of the Cabinet to be held on 3 October 2012, the provisions contained within the Forward Plan satisfy the new notice requirements proposed within the Regulations.

### Practical Implementation

It is proposed that the Forward Plan is retained and adapted so that it covers a period of two months in advance, rather than four months and that its content is adapted to meet:

- the new general requirements
- the specific requirement to give 28 days' notice of proposed key decisions
- the specific requirement to give 28 days' notice of proposed decisions to be taken in private.

It is proposed that the Forward Plan will continue to be approved by the Leader prior to issue.

It is proposed that the agenda for Cabinet meetings will be adapted to incorporate sufficient information to meet the requirements of the five-day notice of any proposed decisions to be taken in private.

### **BACKGROUND PAPERS FOR THE DECISION**

Counsel's Opinion (interpretation) in relation to the Regulations, obtained by the Association of Council Secretaries and Solicitors (ACSeS)

### **APPENDICES**

A.3 Appendix 1: Proposed Changes and Implications arising from the Regulations.

## A.3 – Appendix 1

### AMENDMENTS FLOWING FROM REVIEW OF CONSTITUTION PART 5 (CREAM) – RULES OF PROCEDURE (ACCESS TO INFORMATION PROCEDURE RULES) (CABINET)

No.	Constitution Ref.	Existing Wording	Proposed New Wording	Reason for Change
1	Rule 8.2 (Public Inspection of Background Papers)	The Council will make available for public inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.	<p><i>Retain wording under “existing wording” which applies to Cabinet and Committees etc and add the following two new paragraphs specifically in relation to meetings of the Cabinet:</i></p> <p><i>8.2.1 Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection at the Council’s main offices (i.e. the Town Hall, Station Road, Clacton-on-Sea) and on the Council’s website.</i></p> <p><i>8.2.2 The Council may now charge “a reasonable fee” for access to background papers to be inspected at the Council’s offices.</i></p>	<p><b>Statutory Changes</b> imposed upon all local authorities in England where executive arrangements are applied under the provisions of the Local Government Act 2000.</p> <p>New regulations come into effect on 10 September 2012 and revoke the 2000, 2002 and 2006 Access to Information regulations, although many of those provisions form part of the new regulations.</p> <p>The regulations govern public access to meetings, and information relating to executive decisions only – that is, decisions made by the whole Cabinet, individual Portfolio Holders, Cabinet sub-committees, joint committees and sub-committees of executive members with responsibility to discharge executive functions, and executive decisions taken by officers.</p>



2	Rule 9 (Summary of Public's Rights)	Reference to Westleigh House, Carnarvon Road, Clacton-on-Sea.	<i>To be amended to refer to the Town Hall, Station Road, Clacton-on-Sea.</i>	As above
3	Rule 13 (Procedure Before Taking Key Decisions)	<p>Subject to Rule 15 and Rule 16, a key decision may not be taken unless:</p> <p>(a) A notice (the Forward Plan) has been published in connection with the matter in question;</p> <p>(b) At least 3 clear days have elapsed since the publication of the Forward Plan; and</p> <p>(c) Where the decision is to be taken at a meeting of the Executive, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).</p>	<p><i>The following details must be published at least 28 clear days before a <b>key</b> decision is to be taken:</i></p> <p><i>(a) That a key decision is to be made, and details of the matter;</i></p> <p><i>(b) The decision-maker's name and title, or, if a body, its name and full membership;</i></p> <p><i>(c) The date on which, or period during which, the decision is to be made;</i></p> <p><i>(d) The documents to be submitted to the decision-maker for consideration and details of how to receive copies; and</i></p> <p><i>(e) A note that other documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.</i></p> <p><i>There is no longer any requirement to give details of consultation undertaken or how a member of the public may make representations to the decision-maker or proper officer.</i></p>	As above

4.	Rule 14 (The Forward Plan)	Forward plans will be prepared by the Leader to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.	<p><i>14 The Forward Plan</i></p> <p><i>14.1 The Council shall maintain a Forward Plan to include any key and other decisions to be taken over the next two months. It will be prepared on a monthly basis and subsequent Forward Plans will cover a period beginning with the first day of the second month covered in the preceding plan.</i></p> <p><i>14.2 Each Forward Plan will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Executive, individual members of the Executive, or officers in the course of the discharge of an executive function during the period covered by the Forward Plan. It will also contain matters which are not the subject of a key decision, where these are known.</i></p> <p><i>It will describe the following particulars insofar as the information is available or might reasonably be obtained:</i></p> <p><i>(a) The matter in respect of which a decision is to be made;</i></p> <p><i>(b) Where the decision-taker is an individual, his or her name and title, if any, and where the decision-taker is a body, its name and details of membership;</i></p>	As above
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			<p>(c) <i>The date on which, or the period within which, the decision will be taken; and</i></p> <p>(d) <i>A list of the documents submitted to the decision-taker for consideration in relation to the matter.</i></p> <p>14.3 <i>The Forward Plan will be published approximately 14 days before the start of the period covered. The Head of Corporate Services will publish, once a year, a notice in at least one newspaper circulating in the area, stating:</i></p> <p>(i) <i>That key, and other decisions are to be taken on behalf of the Council;</i></p> <p>(ii) <i>That a Forward Plan containing details of the matters on which decisions are to be taken will be prepared on a monthly basis;</i></p> <p>(iii) <i>That the Forward Plan will contain details of the key, and other decisions likely to be made for the two month period following its publication;</i></p> <p>(iv) <i>That where key decisions are to be made and/or meetings of the Executive are to be held in private, (1) a notice giving 28 days of this shall be published to allow for any representations, and (2) a further notice giving 5 days of this shall be</i></p>	
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			<p><i>published to include any representations received, together with the reasons given, in relation to private considerations, as to why the matter is being considered in private.</i></p> <p><i>(v) That each Forward Plan will be available for inspection at reasonable hours, free of charge, at the Council's Offices;</i></p> <p><i>(vi) That each Forward Plan will contain a list of the documents submitted to the decision-takers for consideration in relation to the key, and other decisions on the Forward Plan;</i></p> <p><i>(vii) The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, and document listed in the Forward Plan is available.</i></p> <p><i>(viii) That other documents may be submitted to decision-takers;</i></p> <p><i>(ix) The procedure for requesting details of documents (if any) as they become available; and</i></p> <p><i>(x) The approximate (week-ending) dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council's Offices.</i></p>	
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5	Rule 15 (General Exception)	<p>If a matter which is likely to be a key decision has not been included in the Forward Plan, then subject to Rule 16, the discretion may still be taken if:</p> <p>(a) The decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next forward plan relates;</p> <p>(b) The Executive Corporate Support Manager (Head of Corporate Services) has notified the Chairman of the relevant Overview and Scrutiny Committee of the matter in respect of which the decision is to be made;</p> <p>(c) The Executive Corporate Support Manager (Head of Corporate Services) has made copies of that notice available to the public at the offices of the Council; and</p> <p>(d) At least 5 clear working days have elapsed since the Executive Corporate Support Manager (Head of Corporate Services) complied with (b) and (c).</p>	<p><b>Exempt information need not be included in a Forward Plan and confidential information cannot be included.</b></p> <p><i>If the timetable referred to in Rule 13 above is impracticable, a key decision can still be taken if:</i></p> <p>(a) <i>The proper officer has <b>informed</b> the Chairman of the relevant Overview and Scrutiny Committee in writing of the details of the decision to be made (or, if the Chairman is unable to act, each member of the relevant Committee);</i></p> <p>(b) <i>Notice is given of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days' notice; and</i></p> <p>(c) <i>At least five clear working days have elapsed between notice being given and the decision being taken.</i></p>	As above
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6	Rule 16 (Special Urgency)	<p>Where such a decision is taken collectively, it must be taken in public.</p> <p>If by virtue of the date by which a decision must be taken Rule 15 (General Exception) cannot be followed, then the decision can only be taken if the decision-taker (if an individual) or the Chairman of the Body making the decision, obtains the agreement of the Chairman of the relevant overview and scrutiny committee that the taking of the decision cannot reasonably be deferred. In the absence of the Chairman of the relevant overview and scrutiny committee, the Vice-Chairman of that overview and scrutiny committee's consent shall be required. In the absence of both, the Chairman of the Council's consent shall be required and in their absence the Vice-Chairman of the Council's consent.</p>	<p><i>If the general exception rule is impracticable, the key decision can still be taken if the decision-maker has <b>received the permission</b> of the Chairman of the relevant Overview and Scrutiny Committee, or if he or she is unable to act, the Chairman or Vice-Chairman of the Council and has published a notice stating that a decision is urgent and the reasons why it cannot reasonably be deferred.</i></p>	As above
7	Rule 17 (Report to Council)	<p>17 REPORT TO COUNCIL</p> <p>17.1 When an Overview and Scrutiny Committee can Require a Report</p> <p>If an Overview and Scrutiny Committee thinks that a key decision has been taken which was not:</p> <p>(a) included in the forward plan; or</p> <p>(b) the subject of the general exception procedure; or</p>	<p>17 <i>Report to Council and Rights of Overview and Scrutiny Members</i></p> <p><i>NEW 17.2 Rights of Overview and Scrutiny Members (current Rule 17.2 and 17.3 to be renumbered)</i></p> <p><i>Upon request from a member of an overview and scrutiny committee, the Cabinet must make available any material concerning business relating to past decisions. This must be provided as soon as reasonably practicable and no later than 10 clear days after the request is</i></p>	As above

		<p>(c) the subject of an agreement under Rule 16;</p> <p>the Committee may require the Executive to submit a report to the Council within such reasonable time as the Committee specifies.</p> <p>The power to require a report rests with the Committee, but is also delegated to the Head of Corporate Services, who shall require such a report on behalf of the Committee when so requested by the Chairman. Alternatively the requirement may be made by resolution passed at a meeting of an Overview and Scrutiny Committee.</p> <p>17.2 Executive's Report to Council</p> <p>The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.</p> <p>17.3 Reports on Special Urgency Decisions</p> <p>The Leader will submit a report to the next practicable ordinary meeting of Council on the executive decisions taken in the circumstances set out in Rule 16 since the previous such report. The report will include</p>	<p><i>made.</i></p> <p><i>Exempt information does not need to be provided unless it relates to an action or decision that the member is scrutinising, or to any review in a relevant overview and scrutiny committee's work programme. Overview and Scrutiny members are not entitled to any exempt material which contains advice provided by a political adviser or assistant.</i></p> <p><i>If the Cabinet determines that material will not be provided, it must set out, in writing, its reasons for that decision.</i></p>	
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8	Rule 18 (Record of Decisions)	<p>the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.</p> <p>After any meeting of the Executive, whether held in public or private, the Executive Corporate Support Manager (Head of Corporate Services) or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.</p>	<p><i>Records of <b>any</b> Executive decisions, including those taken by officers, must state:</i></p> <p><i>(a) The decision taken and the date it was made;</i></p> <p><i>(b) The reasons;</i></p> <p><i>(c) Details of options considered and rejected and the reasons why they were rejected;</i></p> <p><i>(d) Declarations of interest and details of any dispensations granted in respect of interests.</i></p> <p><b><i>But not details of any consultation.</i></b></p> <p><i>The regulations specifically state that details of any dispensations granted by the “<b>head of paid service</b>” from any “declared conflict of interest” must be included in the decision record. The Localism Act 2011 says only that authorities may grant dispensations from interests, but leaves the process to individual authorities; it does not specifically require that dispensations be granted by the head of paid service.</i></p>	As above
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