

COUNCIL BUSINESS COMMITTEE

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

8 November 2012

Report of the Monitoring Officer

PURPOSE OF REPORT

To inform the Committee of recent Meetings Regulations which impact upon the Council's Procedure Rules and to seek approval for the necessary changes to the Council's Constitution.

This report is public

RECOMMENDATION

- (1) **That the Committee notes the requirements of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and approves the necessary changes to Part 4, Section 2 of the Council's Constitution, shown at Appendix A and agrees that consequential textual changes, as set out in Paragraph 3.9 of this report be made by the Monitoring Officer.**

1.0 Introduction

- 1.1 New regulations, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, came into force on 10 September 2012. These impact on several issues and changes will be required to the Council's Constitution to comply with the new requirements. This report explains the changes that the regulations make to the decision making procedures and to access to information.

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

- 3.1 This new set of regulations make changes to the statutory access to information requirements which apply to the executive arrangements of local authorities in England.
- 3.2 The regulations have removed the need for an authority to produce a "Forward Plan" and introduced new notice requirements for key decisions instead. These relate only to decisions made by the whole Cabinet, Cabinet committees, and joint committees of Executive Members with responsibility to discharge executive

functions, and officer delegated key decisions.

- 3.3 In summary, the key points from the Regulations are:-
- At least 28 days notice must be given of a Cabinet meeting (or part of a meeting) to be 'held in private' (ie to discuss exempt or confidential information). The notice must be published and must give the reasons for the meeting, or part of the meeting, to be held in private.
 - At least 5 clear days before the meeting the decision-making body must publish another notice, giving details of any representations received asking for the item to be discussed in public and the response of the decision-making body to any representations.
 - At least 28 days before taking any key decision, a forthcoming key decision notice must be published. This should include details of the decision to be made, the decision maker's name or title or, if a body, its name and full membership; the date the decision is to be made, the documents to be submitted to the decision-maker for consideration and details of how to obtain copies.
 - Background papers to reports must now be published on the Council's website and copies made available at Council Offices.
- 3.3 The regulations include urgency provisions for holding meetings in private and for taking key decisions without the required 28 days notice and these are detailed in 3.4 and 3.5 below.
- 3.4 A meeting or part of a meeting can be held in private without giving 28 days notice provided the Chairman of the O&S Committee agrees that the meeting is urgent and cannot reasonably be deferred. If the Chairman of O&S is not available, the Mayor may give consent. If the Mayor is not available, the Deputy Mayor may give consent. A notice must then be published setting out the reasons why the meeting is urgent and that the Chairman of O&S has given agreement to hold the meeting (or part) in private.
- 3.5 A key decision can still be taken without the required 28 days notice if the Chairman of O&S has been informed of the decision to be taken or, in their absence, if every Member of the O&S Committee has been informed and 5 clear days have elapsed after publication of a forthcoming key decision notice. If a matter is so urgent that it needs to be taken immediately, the key decision can be taken if the Chairman of O&S gives consent. In the absence of the Chairman of O&S, the Mayor can give consent. In the absence of the Mayor, the Deputy Mayor.
- 3.6 The new regulations also set out the rights of Overview and Scrutiny Members to access material relating to past Cabinet decisions within 10 days of making the request. If Cabinet determines that material should not be supplied it must set out its reasons in writing for that decision.
- 3.7 Regulation 13 concerns the recording of executive decisions made by individuals and states that as soon as reasonably practicable after an officer has made a decision which is an executive decision, the officer must produce and publish a written statement of the decision and any alternative options considered and rejected when making the decision. At the time of drafting this report, it is not clear

what level or type of decision this regulation should apply to. The Department for Communities and Local Government recently said that the regulations do not apply to officer decisions at all, so further clarification is awaited.

- 3.8 In the light of the new Regulations, Part 4, Section 2 of Constitution, the Access to information Procedure Rules, have been re-drafted and are attached for consideration at Appendix A. The re-drafting does not incorporate any rules regarding access to information about officer decisions because the position is so unclear at this stage.
- 3.9 It will be necessary for the Monitoring Officer to make several other minor textual changes to parts of the Constitution, including the Urgent Business Procedure Rules which are referred to elsewhere in this agenda, in line with the new Regulations. Replacing references to the Forward Plan with the words 'Key Decision Notices', for example.

4.0 Conclusion

- 4.1 Since the introduction of the new Regulations, Democratic Services have made every effort to comply with the requirements.
- 4.2 However, the Constitution must reflect the new requirements too, since to comply with the Regulations without changing the Constitution might leave the Council open to legal challenge. The Committee is therefore requested by the Monitoring Officer to approve the necessary changes.

RELATIONSHIP TO POLICY FRAMEWORK
None.
CONCLUSION OF IMPACT ASSESSMENT (including Diversity, Human Rights, Community Safety, Sustainability and Rural Proofing)
None.
LEGAL IMPLICATIONS
The changes to the Access to Information Procedure Rules in the Constitution are necessary to comply with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
FINANCIAL IMPLICATIONS
There are no significant financial implications as a result of this report.
OTHER RESOURCE IMPLICATIONS
Human Resources: None.
Information Services:

None.

Property:

None.

Open Spaces:

None.

SECTION 151 OFFICER'S COMMENTS

The Section 151 Officer has been consulted and has no further comments.

MONITORING OFFICER'S COMMENTS

The Monitoring Officer has been involved in the preparation of this report, and has no further comments.

BACKGROUND PAPERS

Constitution Part 4, Procedure Rules.

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

The Transparency Conundrum, Municipal
Journal 20.09.12.

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