

# **Report to the Constitution and Member Services Standing Scrutiny Panel**



**Date of meeting:** 4 December 2012

**Report of:** Assistant to the Chief Executive

**Subject:** Access to Information Rules

**Responsible Officer:** I Willett (01992 564243)  
Assistant to the Chief Executive

**Committee Secretary:** Mark Jenkins (01992 564607)  
Democratic Services Officer

## **Recommendations:**

- (1) To consider the proposed revisions to the Access to Information Rules in the light of recent Government regulations and to recommend to the Overview and Scrutiny Committee and the Council that the proposed amendments be approved (subject to any comments at this meeting) and the Constitution amended accordingly.
- (2) That the Overview & Scrutiny Committee and the Council be recommended to appoint the Assistant to the Chief Executive as Proper Officer in respect of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 in conjunction with his existing delegation in respect of the Access to Information Act 1985.

## **Report:**

### **1. Introduction**

- 1.1 On 10 September 2012, the Government brought into force new regulations concerning access to information and meetings for Local Authority Executives.

### **2. Scope of the Regulations**

- 2.1 The 2012 regulations are a long and complex document which makes changes to the access to information and meeting arrangements in respect of local authority executives. They also consolidate existing provisions in other regulations made over the years. The Council's Constitution includes "Access to Information Rules" which, in the light of these new regulations, require amendment.

3. The 2012 regulations make the following key changes:

- (a) Executives are now required to give 28 days' notice of their intention to make decisions in private session, whether the meeting is wholly private or in part;
- (b) coupled with the 28 day notice period, the public now has an opportunity to make representations to the Council if they do not consider that dealing with a decision involved in private session is appropriate and should be dealt in public;

- (c) the existing notice period for Executive meetings and providing copies of relevant agenda and reports (5 clear days) is reaffirmed but this must now be coupled with a statement of whether any representations were received at the 28 day stage about any report that being dealt with in public session and, if appropriate, the reasons why the report has remained private, if that is the case;
- (d) the present requirements for excluding the public have been reaffirmed; namely confidential business (where the executive must deal with those matters in private) and exempt business (where the executive has the opportunity to pass a resolution to deal with those matters in private if it so wishes bearing in mind the public interest test);
- (e) a new category under which an Executive may exclude the public from a meeting is introduced, namely where a lawful power is used to exclude a member or members of the public to maintain orderly conduct or prevent misbehaviour;
- (f) when giving the 28 days' notice of private meetings of the Executive, there must also be a statement of why the meeting (or part thereof) will be held in private which is available at the Council offices and on its website;
- (g) in terms of access to agenda and reports, the usual arrangements for five clear days' notice of their availability is reaffirmed and the Regulations re-state the rule that there is no entitlement for an agenda, item or report to be available for inspection by the public before a copy is available to Councillors;
- (h) the new regulations specify publicity requirements in connection with key decisions and these are in effect the same notice as would notify the public as to whether any item was to be dealt with in private session;
- (i) general exceptions from the key decision notification requirement and the 28 days' notice period are reaffirmed namely a general exception (impractical to give the notice) and special urgency, in both cases the Proper Officer must consult the Chairman of the Overview & Scrutiny Committee (or if absent the Chairman of the Council) in order to allow the item to proceed, such decisions being subject to a separate notice which must be published as and when the approval is given;
- (j) provisions relating to the inspection by the public of documents and background papers are included as is the supply of such documents to the press (with the opportunity in the latter case to charge postage, copying and other necessary charge for transmission);
- (k) additional rights are set out for access to documents by members of local authorities although there are some exclusions in terms of exempt and confidential business which can permit the Executive to refuse to supply the information;
- (l) additional rights of access to documents for members of Overview and Scrutiny Committees are also included in the regulations but the latter are not entitled to a document containing certain kinds of exempt or confidential information unless that member is reviewing or scrutinising the decision or the review of the decision is part of programme of work of the Overview and Scrutiny Committee or a Panel, the Executive must provide a statement to the Overview and Scrutiny Committee if supply of a document has been refused.

#### **4. Response to the Regulations**

- 4.1 The Regulations relate to the Executive but may reflect problems which have not been experienced in this Council. Most of the provisions are already followed by this Council. Officers of the Council have, however, already been briefed on the importance now attaching to the 28 day period of notice in respect of decisions in private, which if not adhered to and not covered by the general exception or special urgency provisions, might be liable to challenge. It is planned to give the 28 days' notice of the private meetings through the existing forward plan, the format for which has been amended. Officers have also been reminded of the need to be diligent in listing background papers and having copies readily to hand and on the website for review by members of the public and other Councillors.
- 4.2 It is now necessary to amend the Access to Information Act Rules in the Constitution to reflect the provisions for Executive meetings and decisions show of the Regulations. Many features of the existing rules are applicable to all Council bodies (not just the Executive) and are therefore left unchanged. The alterations made by these regulations are set out in a separate section of the rules for future reference.
- 4.3 Such is the complexity of these regulations that the wording of the new section of the Rules is merely a summary designed for public consumption but in giving advice to Councillors and the public, reference will always be made to the Regulations themselves.

## **5. Executive Decisions made by Officers**

- 5.1 The most novel aspect of these regulations is that they require all officer decisions made under the umbrella of the Executive to be recorded in the same way as, for instance, a Portfolio Holder decision. This has attracted much criticism from many parts of local Government in that it appears to cover day-to-day management and administrative decisions within the responsibilities of Directors. The regulations also seem to imply that routine delegated authorities of the kind set out in Part III of the Constitution would also have to be recorded in the same way. One example might be that every decision on allocation of housing accommodation would have to be dealt with in this way.
- 5.2 These concerns have been directed to the Government and as a result Ministerial advice has been received which indicates that the purpose of the regulations is not to ensure written recording of every managerial decision made within authorities but to concentrate on those key decisions being made by officers on behalf of the Executive. With this in mind, a new section has been added to the Rules stating that the Executive decisions of officers which must be recorded are those which derive directly from a decision by the Cabinet, a Cabinet Committee or a Portfolio Holder to delegate a task to a Director.
- 5.3 Thus, the decision of the Cabinet to delegate the function would be subject to call-in and the delegated authority would only be exercised by the officer once the call-in period had expired. The action of the officer concerned will be strictly limited to the terms of the delegation and if there were any change in the situation the officer would have to report back to the Cabinet, etc. for a revised authority.

## **6. Draft Access to Information Rules**

- 6.1 A revised version of the Access to Information Rules for inclusion in the Constitution is attached to this report. The sections which have been altered are shown in bold type underlined and, subject to any comments from the Panel at this meeting, these should be recommended to the Overview and Scrutiny Committee and the Council for

approval before the Constitution is amended.

## **7. Appointment of Proper Officer**

**7.1** In the Schedule of Delegation in the Constitution, the Assistant to the Chief Executive is already designated for the purpose of Access to Information under the Local Government Act 1972 (as amended). It is recommended that he be authorised to be Proper Officer for the 2012 regulations for the avoidance of doubt.

### **Reason for Decision:**

The existing Access to Information Rules in the Constitution are need revision following the publication of the 2012 regulations.

### **Options Considered and Rejected:**

To make no changes to the existing rules and risk the confusion that this could create.

### **Consultation Undertaken:**

Corporate Governance Group, Management Board and Extended Management Board.

### **Resource Implications:**

None.

### **Community Plans/BVPP Reference:**

None.

### **Relevant Statutory Powers:**

Local Government Act 2000 Sections 9G, 9GA and 105.  
Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

### **Background Papers:**

Ministerial advice letter dated 2.10.12

### **Environmental/Human Rights Act/Crime and Disorder Act Implications:**

None.

### **Key Decision Reference:**

|None.