

Report to the Overview and Scrutiny Committee

Date of meeting: 29 January 2013



Report of: Constitution and Member Services Standing Scrutiny Panel

Chairman: Councillor M Sartin

Subject: Access to Information Rules

Recommendations:

That a report be submitted to the Council recommending as follows:

- (a) that the revised Access to Information Rules be approved and published in the Constitution; and**
- (b) that the Assistant to the Chief Executive be appointed 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/meetings for Local Authority Executives. We have reviewed the impact of these regulations on the Access to Information Rules in the Council's Constitution.

2. Scope of the Regulations

- 2.1 We have been advised that the 2012 Regulations are a long and complex document which makes changes to the access to information arrangements for local authority executives whilst consolidating existing provisions in other regulations made over the years.
- 2.2 The 2012 Regulations provide for the following:
 - (a) Executives must 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 can make representations to

the Council if they do not consider that making a decision in private session is appropriate and should be dealt in open session;

(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 may pass a resolution to deal with those matters in private if it so wishes after taking account of the public interest test);

(e) an Executive may also exclude the public from a meeting where a lawful power is used to maintain orderly conduct or prevent misbehaviour;

(f) the 28 days' notice of private meetings of the Executive, must be accompanied by a statement of why the meeting (or part thereof) will be held in private which must be made available at the Council offices and on its website;

(g) 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 Regulations specify publicity requirements in connection with key decisions and these are in effect the same notice notifying the public on whether business is to be dealt with in private session;

(i) general exceptions from the key decision notification 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 (to charge the latter 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 they are not entitled to a document containing certain kinds of exempt or confidential information unless the document is part of a scrutiny review of a decision which is part of a programme of work the Overview and Scrutiny Committee or a Panel, (NB the Executive must provide a statement to the Overview and Scrutiny Committee if supply of a document is refused).

2.3 In regard to items (k) and (l) above, we asked questions about the practical implications for individual members. We noted that the regulations were intended to give grounds if required to refuse access to confidential documents. We noted that

current practice was to be supportive of such requests and this kind of situation had scarcely ever arisen.

3. Response to the Regulations

3.1 Most of the provisions are already followed by this Council. We noted however, that officers already have 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 lead 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. We noted that officers had been reminded of the need to be diligent in listing background papers and having copies readily to hand and on the website for members of the public and councillors.

3.2 The Access to Information Act Rules in the Constitution now require amendment. Appendix 1 to this report shows changes in bold text. We noted that, such is the complexity of these regulations that the wording of the Rules is merely a summary designed for the public but in giving advice to Councillors and the public, reference will always be made to the Regulations themselves to reflect the new provisions for Executive meetings.

4. Executive Decisions made by Officers

4.1 We were advised that these regulations appear to require that all executive decisions made by officers must be recorded in the same way as, for instance, Portfolio Holder decisions. This has attracted much criticism from many parts of Local Government in that it may cover day-to-day management and administrative decisions within the responsibilities of Directors. The regulations also seem to imply 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 recorded separately from what is shown in the case file.

4.2 We understand that 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 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 only Executive decisions by 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.

4.3 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 would be limited to the terms of the delegation and if there were any change the officer would have to report back to the Cabinet, etc. for a revised authority. We support this proposed arrangement as a means of avoiding unnecessary administrative work.

5. Appointment of Proper Officer

- 5.1** In the Constitution's Schedule of Delegation, the Assistant to the Chief Executive is already designated for the purpose of Access to Information under the Local Government Act 1972 (as amended). We recommend that he also be authorised as Proper Officer for the 2012 Regulations for the avoidance of doubt.