
Cabinet Member, Policy, Leadership and Governance
Council

30 November 2012
4 December 2012

Name of Cabinet Member:

Policy, Leadership and Governance: Cllr Mutton

Director Approving Submission of the report:

Director of Finance and Legal Services

Ward(s) affected:

All

Title:

Local Authorities (Executive Arrangements) (Meetings and Access to Information)
(England) Regulations 2012: Consequential and Other Changes to the Constitution

Is this a key decision?

No

Executive Summary:

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 came into force on 10 September 2012. The Regulations amend requirements for publicity for and access to meetings and information about executive decisions taken by Cabinet, Cabinet Members and officers. These amendments will require changes to the Constitution, particularly Part 4.2, (the Access to Information Procedure Rules). This report sets out the changes that are needed and asks for approval for those amendments.

Recommendations:

Cabinet Member:

- (1) To recommend to Council that the changes to the Constitution set out in section 2 and in the Appendix 1 of the report be approved; and
- (2) To recommend to Council that the Council Solicitor be given delegated authority, in consultation with the Cabinet Member, Policy, Leadership and Governance to make additional corrections and amendments to the Constitution arising as a result of the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Council:

- (1) The changes to the Constitution set out in section 2 and in the Appendix 1 of the report be approved; and
- (2) the Council Solicitor be given delegated authority, in consultation with the Cabinet Member, Policy, Leadership and Governance to make additional corrections and amendments to the Constitution arising as a result of the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

List of Appendices included:

Appendix 1 Part 4.2 of the Constitution: Access to Information Procedure Rules

Other useful background papers:

None

Has it been or will it be considered by Scrutiny?

No

Has it been or will it be considered by any other Council Committee, Advisory Panel or other body?

Yes, Constitutional Advisory Panel on 26th September 2012.

Will this report go to Council?

Yes

Report title: Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012: Consequential and Other Changes to the Constitution

1. Context (or background)

1.1 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations) came into force on 10 September 2012. Many of their provisions are the same as in earlier regulations which have now been repealed. However, there are some important changes and amendments therefore need to be made to the Constitution to reflect the provisions which affect the Council's governance arrangements. This is particularly the case with the Access to Information Procedure Rules (Part 4.2 of the Constitution).

2. Recommended Changes to the Constitution

2.1 The paragraphs below set out the changes to the Constitution that are recommended for approval. They summarise the relevant provision of the Regulations, the change that is needed to reflect the Regulations, and the location of the change in the current Constitution. These changes were the subject of a report to the Constitutional Advisory Panel on 26th September and have been approved by the Panel.

2.2 Access to Information Procedure Rules (Part 4.2)

The Access to Information Procedure Rules at Part 4.2 set out the public's and members' rights to information about agendas, reports and minutes of meetings. The Rules reflect the regulations that were in force up to 10 September 2012 and now need to be updated to take account of changes introduced by the 2012 Regulations.

Part 4.2 of the Constitution needs to be amended as set out in the appendix to this report. This shows the changes required by the Regulations.

The following points are drawn to the Cabinet Member's attention for consideration:

2.2.1 Rule 4.2.16. Special Urgency for Key Decisions

Rule 4.2.16.3 has been deleted as it does not reflect the urgency provisions for key decisions as set out in the Regulations.

2.2.2 Rule 4.2.20.1 Rights to Copies

Under the current Rules in the Constitution, a *Scrutiny Board* has a right to copies of documents *in the possession or control of Cabinet or a Cabinet Member* that contain material relating to any business that has been transacted at Cabinet, a Cabinet Member decision or officer decision. The Regulations say that the right to copies in these circumstances belongs to *every member of a Scrutiny Board* and the right is to documents *in the possession or control of Cabinet only*.

The revised Rules have been drafted to extend the right to copies to members of Scrutiny Boards (and for the avoidance of doubt, Scrutiny Co-ordination Committee). The current situation where the right extends to documents in the possession or control of Cabinet or Cabinet Members has been retained, but members could limit this to Cabinet only if they wished.

2.2.3 Rule 4.2.21.1 Material Relating to Business to be Transacted

The current Rules give all members the right to inspect any document which is in the possession or control of the Cabinet or Cabinet Member containing material relating to any business to be transacted at a public meeting. The Regulations restrict this right to documents in the possession or control of Cabinet. The more generous right to inspect documents in the possession or control of Cabinet and Cabinet Members has been retained.

2.3 Minor changes are needed to other parts of the Constitution including Part 3 (Scheme of Delegation) and the Articles of the Constitution, along with amendments arising from cross referencing changes. The main changes are set out below but other minor consequential amendments may need to be picked up through delegated powers.

2.4 Articles of the Constitution (Part 2)

The articles of the Constitution need to be amended to delete references to the Forward Plan and reflect the new provisions for executive decisions by individual Cabinet Members and officers and Cabinet meetings likely to be heard in private. Further clarification is being sought on the exact definition of an officer executive decision.

2.4.1 Paragraphs (ii) and (iii) of Article 2.3.3 need to be amended as shown (new text is underlined).

(ii) find out from ~~Forward Plan~~ the Council what key decisions will be taken by the Cabinet, individual Cabinet Members and employees and what decisions are likely to be taken by Cabinet in private and when.

(iii) see reports and background papers, and any records of decisions made by the Council, the Cabinet, Scrutiny Boards and other Committees, individual Cabinet Members and executive decisions made by employees and.....

2.4.2 Article 2.12.2.1, which gives a presumption in favour of decision making being open and transparent, is amended as set out below to replace the reference to "private" information with a reference to "confidential" information. This is because the only business that normally can be conducted in private is information which is either "confidential" or "exempt" within the meaning given by legislation.

There is a presumption in favour of decision making being open and transparent. All decisions should be taken in public and members of the public should be

afforded access to all relevant information (unless the decision concerns ~~private confidential~~ or exempt business).

The same amendment needs to be made in **Article 2.12.3.3**. where there is again reference to information being either "private" or "exempt".

Whichever body or individual is responsible for taking a decision, the decision will be formally minuted and recorded and unless it contains ~~private confidential~~ or exempt information, will be open to public inspection.

2.4.3. Article 2.12.2.12, also refers to "private" information and this should be deleted since the only business that can be conducted in private is that which contains confidential or exempt information.

In some instances (in case of urgency or where ~~private~~, confidential or exempt business is being considered) it may not be appropriate to comply with all these principles. Decision makers must be satisfied that the principles have been complied with as far as practicable and that in all the circumstances it is appropriate to take the decision.

2.5 Scheme of Delegation (Part 3)

The new regulations give a number of new powers and duties in connection with executive meetings, decision making by individuals and access to information. These need to be reflected in the Scheme of delegation. The suggested changes are set out below.

2.5.1 Notes of Dispensation for Conflicts of Interest

Regulations 12 and 13, which deal with records of executive decision made at meetings and by individual councillors and officers both refer to the need to record any notes of dispensation given to councillors by the head of paid service in connection with any conflict of interest declared by the councillors in prescribed circumstances. These are:

- (a) when an executive decision is made by Cabinet and a member of that Cabinet declares a conflict of interest in the matter decided
- (b) where an individual Cabinet member has made an executive decision and before doing so has consulted another Cabinet member and the Cabinet Member who is consulted has declared a conflict of interest.
- (c) where an employee has made an executive decision and before doing so has consulted a Cabinet Member who has declared a conflict of interest.

Part 3 of the Constitution needs to be amended to include the following text at page 83 to give this new power to the **Chief Executive**:

<i>Local Government Act 2000 and any regulations made thereunder</i>	<i>Nominee/Limitations</i>
<i>To give to any Cabinet Member with a declared conflict of interest a note of dispensation in connection with: (a) any matter which is to be decided by the Cabinet of which the Cabinet Member is a member ;or (b) any matter upon which the Cabinet Member is consulted by another Cabinet Member who is making the decision; or (c) any matter upon which the Cabinet Member is consulted by an employee who is making an executive decision.</i>	<i>Council Solicitor</i>

2.5.2 Additional Duties to Publish Information about Meetings and Records

The Director of Customer and Workforce Services is the proper officer for the purposes of the Access to Information provisions of the Local Government Act 1972 and the 2000 Regulations. These delegated powers need to be amended to reflect the changes made by the new regulations including the removal of the Forward Plan and the introduction of new notice provisions for private Cabinet meetings.

Part 3 of the Constitution at page 88 and 89 needs to be amended to give additional powers to the **Director of Customer and Workforce Services** as shown below. Additional text is underlined.

<u><i>Local Government Act 2000 and any regulations made thereunder</i></u>	<i>Nominee/Limitations</i>
<i>All Proper Officer functions including to hold on deposit the list of politically restricted posts <u>and Proper Officer functions relating to provisions in connection with access to information and meetings</u></i>	<i>Assistant Director (Democratic Services)</i>
<i>Ensuring publication of <u>notices</u> containing details of key decisions / urgency provisions <u>and private meetings of Cabinet</u></i>	<i>Assistant Director (Democratic Services)</i>
<i><u>To consider and respond to representations from the public as to why an item of business of the Cabinet should be held in public</u></i>	<i>Council Solicitor</i>

<p><i>To produce a record of every decision taken at a meeting, <u>including decisions by individual Cabinet Members</u>, including a statement of:</i></p> <p><i>(a) the reasons for the decision;</i></p> <p><i>(b) alternative options considered and rejected;</i></p> <p><i>(c) <u>any conflict of interest declared by any Cabinet Member, either in connection with a decision of Cabinet, or who is consulted by the Cabinet Member or employee making the decision; and</u></i></p> <p><i>(d) <u>in respect of any declared conflict of interest, a note of dispensation granted by the Chief Executive.</u></i></p> <p><i>Power of rectification of the record of decision</i></p>	<p><i>Assistant Director (Democratic Services)</i></p>
<p><i>To produce a record of every executive decision taken by employees, including a statement of:</i></p> <p><i>(a) the reasons for the decision;</i></p> <p><i>(b) alternative options considered and rejected.</i></p>	<p><i>Assistant Directors</i></p>

3. Results of consultation undertaken

3.1 This matter has been considered by the Constitutional Advisory Panel in September.

4. Timetable for implementing this decision

4.1 As the Regulations are in force, the amendments need to take effect immediately.

5. Comments from Director of Finance and Legal Services

5.1 Financial implications

None

5.2 Legal implications

The Council needs to make the changes to its Constitution to ensure that it reflects the changes made by the Regulations.

6. Other implications

Any other specific implications

6.1 How will this contribute to achievement of the Council's key objectives / corporate priorities (corporate plan/scorecard) / organisational blueprint / Local Area Agreement (or Coventry Sustainable Community Strategy)?

The Constitution sets out the governance arrangements of the Council and it is important for the good governance of the Council that these reflect changes in legislation.

6.2 How is risk being managed?

Having a Constitution that reflects changes in legislation will ensure that the Council meets its legal obligations and will also provide better and more accurate information for the public, stakeholders, councillors and employees on how the Council is governed.

6.3 What is the impact on the organisation?

To put in place appropriate governance arrangements that reflect the provisions of the Regulations.

6.4 Equalities / EIA

None

6.5 Implications for (or impact on) the environment

None

6.6 Implications for partner organisations?

None

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Appendices

See attached separate document.