

CABINET ITEM COVERING SHEET PROFORMA

AGENDA ITEM ____

REPORT TO CABINET

7 FEBRUARY 2013

REPORT OF CORPORATE
MANAGEMENT TEAM

CABINET DECISION

Leader of the Council – Councillor Cook

Corporate Management and Finance - Lead Cabinet Member – Councillor Harrington

EXECUTIVE ARRANGEMENTS – MEETINGS AND ACCESS TO INFORMATION

1. Summary

The report provides details, for Cabinet Members' information, of new statutory requirements which have been introduced regarding executive meetings and decisions.

2. Recommendations

It is recommended that the report is received and noted.

3. Reasons for the Recommendations

To ensure Cabinet members are aware of the new administrative requirements relating to executive meetings and decisions.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code)

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

Disclosable Pecuniary Interests

It is a criminal offence for a member to participate in any discussion or vote on a matter in which he/she has a disclosable pecuniary interest (and where an appropriate dispensation has not been granted) **paragraph 21** of the code.

Members are required to comply with any procedural rule adopted by the Council which requires a member to leave the meeting room whilst the meeting is discussing a matter in which that member has a disclosable pecuniary interest (**paragraph 22** of the code)

CABINET DECISION

EXECUTIVE ARRANGEMENTS – MEETINGS AND ACCESS TO INFORMATION

SUMMARY

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RECOMMENDATION

It is recommended that the report is received and noted.

DETAIL

Introduction

1. The Local Authorities (Executive Arrangements) Meetings and Access to Information (England) Regulations 2012 ("the Regulations") affect the arrangements for meetings and decisions of Cabinet, and of Officers when making decisions under executive powers.

The Changes

2. The majority of the provisions in the Regulations do not affect the long standing arrangements and procedures relating to Cabinet Meetings and decisions and decisions made by Officers under executive delegated powers. However, there are certain requirements which have resulted in new or revised arrangements and procedures having to be established.

Exempt/Confidential Cabinet Reports

3. Where a Cabinet meeting is to include a report during which the public are to be excluded, because it is likely that if they were present exempt or confidential information would be disclosed, at least 28 clear days before that meeting, a notice must be published at the Council's Offices and on the website. The notice must:-
 - indicate the intention to hold part of the meeting in private; and
 - include a statement of reasons why that part is to be held in private.
4. At least 5 clear days before the relevant meeting at which the public are to be excluded, a further notice has to be published at the Council's Offices and on the website. The further notice must:-

- include a statement of reasons for the relevant part of the meeting to be held in private; and
 - provide details of any representations received by the Council about why the relevant part of the meeting should be open to the public; and
 - include a statement of the Council's response to any such representations.
5. If the date when the particular meeting must be held makes compliance with these requirements impracticable, the meeting (or relevant part of it) may only be held with the public excluded if agreement has been obtained from the Executive Scrutiny Chair, or if there is no Chair or he is unable to act, the Mayor, or if there is no Chair or Mayor, the Deputy Mayor, that the meeting (or relevant part of it) is urgent and cannot reasonably be deferred.
 6. After such an agreement has been obtained, a notice must be published at the Council's Offices and on the website setting out the reasons why the (relevant part of) the meeting is urgent and cannot reasonably be deferred.
 7. In order to ensure that these notification requirements can be met, an earlier deadline by which such reports should be sent to Democratic Services has been introduced.
 8. Notwithstanding this, if it is impracticable to comply with the new exempt/confidential Cabinet item notification requirements at any time, the options available are as follows:-
 - to consider the report in public;
 - to defer the report to the next following Cabinet meeting; or
 - to seek to obtain the required agreement to submit the report as an urgent item
 9. Democratic Services will facilitate the obtaining of member agreement to report urgently if that option is preferred. They will also ensure that all of the required notices are prepared, agreed and published.
 10. It is not however anticipated that the new arrangements will need to be actioned too often given the limited number of occasions when all or part of reports to Cabinet have been made exempt in the past.

Key Decisions

11. A document providing details of proposed key decisions by Cabinet and Officers under executive delegated powers, must be published under the Regulations at least 28 clear days before any of those key decisions are made.
12. This document is the equivalent of the statutory forward plan. The details to be provided are effectively the same, but the timescale for publication is different. The statutory forward plan used to be published on the 16th/17th of each month, for the following three month period.
13. Whilst the format of the statutory forward plan has remained substantially the same, it is now being published on dates at least 28 clear days before each relevant Cabinet meeting at which a key decision is to be taken.
14. Where it is not practicable to provide the required 28 days clear notice of a key decision (whether a Cabinet or Officer key decision), the options available are to:-

- Defer the decision;
 - Use the new general exception procedure provided in the Regulations (give notice of proposed decision to the Executive Scrutiny Chair or if no such Chair, the whole Committee and public notice by the Proper Officer), allowing the decision to be made 5 clear days after these notifications;
 - use the new special urgency procedure in the Regulations if at least 5 clear days notice of the proposed decision cannot be given. The special urgency procedure requires agreement from either the Executive Scrutiny Chair; the Mayor if there is no Executive Scrutiny Chair or he is unable to act; or if there is neither of these, the Deputy Mayor, that the decision (meeting) is urgent and cannot reasonably be deferred.
15. If the general exception or special urgency procedures are used, public notice of the reasons for their use must be given at the Council's Offices and on the website.
 16. Details of Special urgency decisions also have to be reported subsequently to full Council by the Leader of the Council. At least one such report has to be presented annually, whether or not any special urgency decisions have been taken.
 17. These new provisions are very similar to the former general exception and special urgency provisions.

Executive Decisions by Officers

18. An executive decision is defined in the regulations 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. In our case, this would include decisions taken by Officers under powers specified in Part 3 of the Constitution – Executive Functions.
19. The regulations require a written statement to be produced of each of these decisions, and for the details to be made available for public inspection and placed on the Council's website.
20. Written records of significant officer (executive) decisions; officer executive decisions taken in consultation with Cabinet Members and key officer executive decisions have always been produced. The latter two types of records are published by Democratic Services on the Council website. Significant officer decisions were also published by Democratic Services, but only on the intranet.
21. "Other" executive Officer decisions have also been recorded within Services but they were not otherwise publicised.
22. The officer decision records previously used have been reviewed to ensure they comply with the requirements of the Regulations. The only obvious additional provision in the regulations is where there is any conflict of interest declared by any executive member who is consulted by an officer. In that event, the Regulations require the decision record to include a note of any dispensation granted by the Council's head of paid service.
23. The forms have been amended where appropriate to reflect this and where appropriate the decision-maker will consult the Monitoring Officer, in the first instance, where there is a potential conflict of interest and another Cabinet Member without a

conflict of interest is not going to be consulted. The Monitoring Officer can then liaise with the Chief Executive regarding a possible dispensation.

24. All recorded executive decisions by Officers will be provided to Democratic Services, so that they can be published via agenda on the Council's website.

Background Papers

25. Background papers have always been itemised in Cabinet reports and have been accessible to the public from the relevant report writer/service. They were not usually provided to Democratic Services as part of the reporting arrangements prior to Cabinet.
26. The Regulations introduce one specific change to what used to happen. There is a requirement now to not only make background papers available for inspection at the Council Offices, but also to publish them on the Council's website.
27. Background papers are specified as:-

"those documents other than published works, that:-
 - (a) relate to the subject matter of the report or, as the case may be, the part of the report; and
 - (b) in the opinion of the proper officer:-
 - i. disclose any facts or matters on which the report or an important part of the report is based; and
 - ii. were relied on to a material extent in preparing the report"
28. Where there are background papers referred to in Cabinet reports, arrangements will be made by report writers with Democratic Services to ensure that they are accessible on the Council's website. A link can then be provided to them in the relevant Cabinet item.

Offences

29. New Criminal offences are introduced of intentionally obstructing anyone, without reasonable excuse, from exercising their right to inspect or copy, or be provided with a copy of Cabinet agendas, reports, background papers or decision records.

FINANCIAL AND LEGAL IMPLICATIONS

Financial

30. There are no direct financial implications arising from the report.

Legal

31. The Regulations establish new administrative requirements prior to certain executive decisions being taken. Any failure to comply with those requirements could lead to the related decisions being challenged.

RISK ASSESSMENT

32. The new requirements are considered to be a low risk, provided the described administrative arrangements are put into place.

SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS

33. Enhancing democratic engagement in relation to the Council's executive decision-making arrangements.

EQUALITY IMPACT ASSESSMENT

34. An assessment has not been considered necessary.

CONSULTATION

35. Relevant Officers and Members have been consulted in relation to the new requirements of the Regulations and the administrative changes described in the report.

Director of Law & Democracy

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Background Papers:

Not applicable

Ward(s) and Ward Councillors:

The report is not ward specific

Property Implications:

Not applicable