

Committee: CONSTITUTION TASK GROUP

Agenda Item

Date: 19 September 2012

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**Title: SUGGESTED AMENDMENTS TO THE
CONSTITUTION**

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Item for decision

Summary

1. Members are asked to consider changes to the Access to Information Procedure Rules to accommodate new regulations coming into force on 10 September 2012.

Recommendations

2. That members recommend amendments to the Access to Information Procedural Rules contained within the Constitution.

Financial Implications

3. None.

Background Papers

4. None.

Impact

- 5.

Communication/Consultation	None
Community Safety	None
Equalities	None
Health and Safety	None
Human Rights/Legal Implications	The Access to Information Procedural Rules do not reflect the current legislation.
Sustainability	None
Ward-specific impacts	None
Workforce/Workplace	None

Situation

6. On the 10 August 2012 the Government made the Local Authorities (Executive Arrangements) (Meetings & Access to Information) (England) Regulations 2012. The Regulations were laid before Parliament on the 15 August and came into force on the 10 September. There was no government consultation prior to the regulations being made.
7. I consider that the previous Access to Information Regulations were generally reasonable. The only concern I had with regard to those Regulations was that meetings of the Cabinet which were not engaged in taking key decisions could be held in private. However, in practice this council has never adopted that course. Interpreted literally the new regulations appear to create additional layers of bureaucracy and could hamper the smooth operation of council business.
8. The headlines to the new regulations are:
 - All meetings of the executive must be in public unless dealing with exempt or confidential information.
 - Private meetings (what members will understand from our current constitution as being Part II meetings) can generally only be held if 28 clear days notice is given. A further notice must be issued 5 clear days before the meeting giving details of any representations which have been received as to why the meeting should be held in public and what the response to those representations was. The only exception to this rule is where a private meeting needs to be held urgently and the chairman of the Scrutiny Committee (or in his absence the Chairman of the Council or if there is no current chairman of the council, the Vice-Chairman of the Council) agrees that the meeting is urgent and cannot reasonably be deferred.
 - The requirement for a rolling forward plan has been abolished. Instead 28 days notice of key decisions is required to be given. This rule is subject to general exemptions and in cases of special urgency which are similar to those applying under the previous arrangements.
 - Rules relating to the recording of executive decisions have been expanded. The new regulations require every executive decision to be reduced into writing with reasons, details of alternatives considered and rejected and details of any conflicts of interest required. As most decisions taken by officers under delegated powers are caught by this provision if interpreted literally this would impose a huge burden upon the authority.
 - The rules regarding access to documents by members of the council and the Scrutiny Committee have been changed.
 - The circumstances in which the executive can be challenged for using the urgency procedures or as to whether decisions taken by the executive were key decisions have also been amended.

9. There is some tension between the Regulations and the Localism Act 2011 and other regulations made thereunder. The Localism Act refers to disclosable pecuniary interests, pecuniary interests and non-pecuniary interests. It also contains provisions for dispensations to be granted by local authorities. The Access to Information Regulations refers to conflicts of interest. This term is not defined and therefore presumably has its common-law meaning. It also refers to dispensations being granted by the council's Head of Paid Service but unlike the Localism Act there is no procedure by which dispensations from the Head of Paid Service can be applied for or granted.
10. I append the council's Access to Information procedure rules with suggested amendments to take account of the new regulations.

Risk Analysis

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Risk	Likelihood	Impact	Mitigating actions
The council's constitution is contrary to legislation.	4, the constitution is not currently consistent. The very short period of time between the regulations being laid before Parliament and coming into effect gave no realistic opportunity for the council to amend its constitution before the effective date.	1, providing the council works to the current regulations decisions of the council will not be subject to challenge.	The council ensures adherence to the 2012 regulations notwithstanding the fact that they are not reflected in the constitution and arranges for an explanatory note to be published upon its website as soon as possible.

1 = Little or no risk or impact

2 = Some risk or impact – action may be necessary.

3 = Significant risk or impact – action required

4 = Near certainty of risk occurring, catastrophic effect or failure of project.