

**ACCESS TO INFORMATION RULES – UPDATE**

Relevant Portfolio Holder	Councillor Mark Bullivant
Portfolio Holder Consulted	Yes
Relevant Head of Service	Claire Felton, Head of Legal, Equalities and Democratic Services
Ward(s) Affected	All
Ward Councillor(s) Consulted	N/A
Key Decision / Non-Key Decision	Non-key

**1. SUMMARY OF PROPOSALS**

- 1.1 This report proposes changes to the Access to Information Rules in the Council's Constitution. These are needed to comply with recent Regulations issued under the Localism Act.
- 1.2 The Cabinet is being asked to consider the proposals in advance of the Council since many of the changes directly affect the governance of the Cabinet.
- 1.3 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations came into force in September. They are issued under the Localism Act but were unexpected and did not include any transition arrangements.
- 1.4 The main changes introduced by the Regulations are:
  - The Cabinet is no longer required to produce a Forward Plan (of Key Decisions published 4 months in advance) or publish details of consultation being carried out for any items;
  - This is replaced by a requirement to give 28 days' notice of Key Decisions, including a notice about any key decision items where it is intended for the decision to be taken in private (exempt and confidential items). Members of the public can make representations if they feel an item should be considered in public and the Cabinet has to give notice of any such contact and its response to the request 5 clear days before its meeting;
  - Where 28 days notice of key decisions has not been given or key decisions are submitted with less than 5 clear days' notice then certain notices have to be published giving reasons for this;
  - A new requirement for officers making executive decisions to publish a notice of the decision, reasons for it and any conflicts of interest declared by the officer or a consultee;
  - A requirement to publish background papers for reports – currently these are simply listed and made available on request. In future these should be published at the same time as the report and remain accessible to the public for 4 years via the website and in paper form;
  - changes to the rights to access documents for members Overview and Scrutiny after an executive decision has been made. The previous exemption of a document in draft form has been removed..

- 1.5 The enclosed Access to Information Rules have been updated to take account of the legal requirements. In drafting these we have gone beyond the minimum requirements of the Regulations. For example, we suggest that the replacement for the Forward Plan (the "Work Programme") continues to include non-key decisions and items due more than 28 days' after publication. This is transparent and helps plan the business of the Cabinet, Overview and Scrutiny Committee and Council.
- 1.6 We are seeking clarity about the definition of Officer decisions that are required to be recorded under the legislation. At face value the Regulations appear to imply that all decisions identified in the Council's Scheme of Delegation as Executive functions would be recorded. This would include day-to-day management decisions about the running of departments, such as ordering stationery, which are already set out in the Council's scheme of delegations and details of expenditure over £500 are already published in the Council's website.
- 1.7 A reasonable approach would be to require officers to record and publish Executive decisions that are either delegated from meetings of the Cabinet for specific items or relate to expenditure over £50,000. This figure is consistent with where tenders have to be obtained for procurement purposes and with the financial cut-off for determining key Executive decisions.
- 1.8 The Regulations make it clear that a decision-making body is not required to record or film meetings or to allow any others to film them. Currently most meetings at Bromsgrove are recorded on audio tape – a practice that was introduced some time ago to aid the person taking the minutes of the meeting. However, Minute takers do not need the tapes to fulfil their role. The system is unreliable as it does not always capture all speakers, especially if they forget to use the microphone at meetings. Members of the public are not always aware when they speak at meetings that they are being recorded and what the recording is used for, which risks challenge under Data Protection rules. We therefore propose that the Council stops tape recording meetings with immediate effect.

**2. RECOMMENDATIONS**

- 2.1 Council is recommended to approve the revised Access to Information Rules for inclusion in the Council's constitution;
- 2.2 That the proposal to cease recording meetings of the Council, Cabinet and Committees be noted.

**3. KEY ISSUES**

**Financial Implications**

- 3.1 There are no financial implications arising from this report.

**Legal Implications**

- 3.3 The proposed changes to the Access to Information Rules result from the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

**Service / Operational Implications**

- 3.5.1 Most of the requirements of the Regulations can be accommodated within our existing administrative arrangements for the appropriate meetings. However, the new requirement to record executive decisions made by officers has the potential to increase the bureaucracy around day-to-day administrative decision-making. The proposals take account of this by restricting this requirement to decisions made on matters involving expenditure above £50,000.

Stopping the recording of meetings will release staff time and resources as they will no longer be required to arrange the transcription of tape recordings.

**Customer / Equalities and Diversity Implications**

- 3.7 We are proposing to achieve the changes required by the Regulations without introducing extra bureaucracy so that the information produced is accessible to the public.

**4. RISK MANAGEMENT**

- 4.1 There is a risk of less information being available to Councillors and the public if the Regulations are implemented to the letter (for example, there would be less than 4 months' notice of key decisions if the 28 days' notice of items was adhered to). The proposals continue the Council's current approach which is more transparent.
- 4.2 As with all governance items, if our processes do not comply with the law then there is a risk that decisions of the Council will be challenged.

**5. APPENDICES**

Appendix 1 - Access to Information Rules – proposed new rules for part 5 of the Constitution.

**6. BACKGROUND PAPERS**

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

<http://www.legislation.gov.uk/2012?title=access%20to%20information>

**7. KEY**

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