

Bath & North East Somerset Council

MEETING:	Council
MEETING DATE:	8 th November 2012
TITLE:	Constitutional issues arising from new Executive arrangements, and other miscellaneous changes
WARD:	ALL
AN OPEN PUBLIC ITEM	
List of attachments to this report: None	

1 THE ISSUE

1.1 New regulations regarding executive decision making which came into effect on 10th September 2012 mean that certain decisions are required of Council with regard to the relevant Constitutional rules.

2 RECOMMENDATION

Council is asked to:

2.1 Note the amended provisions regarding private business at Cabinet meetings, as set out in paragraphs 4.3 – 4.7;

2.2 Note the arrangements regarding exceptions to advance notice of key decisions (paragraph 4.8) and agree that specific reference should be made to the relevant Policy Development & Scrutiny Panel Chair being informed;

2.3 Agree that the frequency for reports to Council from the Leader containing details of all key decisions taken under Special Urgency provisions shall be annually, or at another interval as decided by Council, as set out in paragraph 4.9;

2.4 Agree that the power to grant dispensations is delegated to the Monitoring Officer as set out in paragraph 4.11;

2.5 Note the additional provisions regarding overview and scrutiny rights to Cabinet documents, as set out in paragraphs 4.12 – 4.14;

2.6 Agree to the suggested change to the 'Recording of Meetings' Constitution section (paragraph 4.16) to enable more citizen blogging;

2.7 Nominate the Wellbeing Policy Development & Scrutiny Panel as the Council's arrangement for delivering the health scrutiny function from April 2013 (paragraphs 4.18 - 4.20 refer);

- 2.8 Agree the amendment to the Constitution regarding Council rule 37, as set out in paragraph 4.21, to remove the ability for a member, when seconding a motion or amendment, to reserve their speech until later in the debate;
- 2.9 Agree that all references to the Proper Officer shall be taken as being the Monitoring Officer and Divisional Director, Legal and Democratic Services for the purposes of the Constitution;
- 2.10 Delegate authority to the Monitoring Officer & Divisional Director - Legal and Democratic Services to make any necessary changes to the Council's Constitution arising from decisions taken at this meeting, and those required by law.

3 FINANCIAL IMPLICATIONS

- 3.1 The proposals will need to be managed within current resources.

4 THE REPORT

- 4.1 On 10th September 2012, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 came into forces. The regulations govern public access to Cabinet meetings and information relating to executive business only.
- 4.2 The 2000, 2002 and 2006 Access to Information regulations are revoked, although many of those provisions form part of the new regulations.

Private meetings of the Cabinet

- 4.3 These provisions relate to any Cabinet meeting from which the public are excluded from all or part.
- 4.4 There is now a requirement to give notice at least 28 clear days before the meeting of its intention to hold a fully or partly private meeting, if known at that stage, and the reasons for the business to be considered in private. This notification can be included as part of the entry on the Executive Forward Plan.
- 4.5 A further notice must be published five clear days (one week) before the meeting, restating the reasons for a private meeting. The notice must also include details of any representations made about why the business should be transacted in public, and the Cabinet's response to the representations. This notification can be done via the issuing of the agenda.
- 4.6 If the above timetable is impracticable, special urgency provisions apply: the meeting can still go ahead if the Cabinet has had agreement from the relevant Policy Development and Scrutiny Panel Chair, or if s/he is unable to act, from the Chairman of Council or the Vice-Chairman of Council. Notice must then be given setting out the reasons why a meeting is urgent and cannot reasonably be deferred.
- 4.7 Reports for private meetings should be marked as exempt in the usual manner. Records of decisions taken at private meetings are to be maintained under the existing provisions of the Local Government Act 2000.

Key decisions

- 4.8 Provisions relating to advance notification of key decisions to be taken by Cabinet are largely unchanged, as are the General Exception and Special Urgency provisions [Part 4(B) Access to Information, rules 15 & 16] that come into play when the timetable is impracticable. For a General Exception, the regulations require the chairman of the relevant Policy Development & Scrutiny Panel to be informed of the matter. Our current practice is that all Councillors are informed via the Weekly list publication although the PDS Chair is not specifically mentioned in the Constitutional rule.
- 4.9 The Leader is now required to submit to Council, at least once a year but at intervals determined by Council, a report containing details of all decisions taken under the Special Urgency provisions.

Recording of executive decisions

- 4.10 The regulations describe the written notice that is required to record executive decisions made at meetings and by individual Cabinet Members and the information these notices must contain. We cover all these requirements in the way we currently record executive decisions.
- 4.11 The decision notice as described in the above paragraph must now contain a record of conflicts of interests declared by Cabinet Members, and any dispensations granted by the Head of Paid Service. The regulations do not restrict delegation of the power to grant dispensations and so it is proposed that this is delegated to the Monitoring Officer.

Overview & Scrutiny access to documents

- 4.12 Upon request from a member of a Policy Development and Scrutiny Panel, the Cabinet must make available any material relating to business relating to past decisions. This is covered within our Constitution. The new requirement is a timeframe for this - this must be provided as soon as reasonably practicable and no later than 10 clear days after the request is made.
- 4.13 Exempt information does not need to be provided unless it relates to an action or decision that the member is scrutinising, or to any review in a relevant Policy Development & Scrutiny Panel's work programme. Policy Development & Scrutiny Members are not entitled to any exempt material which contains advice provided by a political adviser or assistant. This is covered within our Constitution. The new requirement is that, if the Cabinet determines that material will not be provided, it must set out in writing its reasons for that decision.
- 4.14 The provisions covering action where a Policy Development & Scrutiny Panel consider that the key decision procedure has not been followed are already covered by our Constitution.

Public Recording at Meetings

- 4.15 With these new executive arrangements, there is a clear intention to open up meetings to the 'citizen blogger' and permit blogging, tweeting etc to take place by visitors to meetings. Our Constitution currently allows photographs, broadcasts, and audio and visual recordings at meetings only once the legitimacy of the purpose has been verified by the Communications and Marketing Manager, who

will then arrange for permission to be sought from the meeting [Part 4(A) Council rule 20].

4.16 It is proposed that the rules are amended to permit blogging and tweeting with no prior notice, and that only photographs or recordings will need to be agreed in the current way.

4.17 The Cabinet is now intending to pilot webcasting at its meetings but the above provisions do not apply to that pilot. Should the Council subsequently decide to proceed with webcasting beyond the trial, a separate protocol would be needed to cover arrangements.

Other Constitutional business – designation of health scrutiny Panel

4.18 The Health & Social Care Act 2012 expresses the Government's intentions to strengthen and streamline the regulations on local authority health scrutiny. Consultation was recently undertaken on certain aspects of the Act, and the legislation will come into force in April 2013.

4.19 One part of the Act that is not open to consultation is that health scrutiny functions will be conferred on the local authority itself, rather than on an overview and scrutiny committee specifically. Councils will no longer be obligated to have an overview and scrutiny committee through which to discharge their health scrutiny functions, but will be able to discharge these functions in different ways through such arrangements as they decide upon, including through overview and scrutiny committees, if they so determine.

4.20 It is recommended that the Wellbeing Policy Development & Scrutiny Panel should continue to deliver the health scrutiny function.

Other Constitutional business – Council rule 37

4.21 It has been the practice for Council for some years to suspend this rule at each of its meetings. There is now an opportunity to bring the Constitution in line with current practice and therefore the proposal is for the following sentence to be removed;

A member when seconding a proposal or amendment may reserve her or his speech until a later period of the debate.

5 RISK MANAGEMENT

5.1 No risk assessment related to the issue and recommendations has been undertaken, as it is not relevant.

6 EQUALITIES

6.1 The proposals will not have any specific impact on persons with protected characteristics.

7 CONSULTATION

7.1 Chief Executive; Monitoring Officer; Group Leaders

8 ISSUES TO CONSIDER IN REACHING THE DECISION

8.1 None applicable.

9 ADVICE SOUGHT

9.1 The Council's Monitoring Officer (Divisional Director – Legal and Democratic Services) and Section 151 Officer (Divisional Director - Finance) have had the opportunity to input to this report and have cleared it for publication.

Contact person	Jo Morrison, Democratic Services Manager (ext. 4358)
Background papers	None
Please contact the report author if you need to access this report in an alternative format	