

# REPORT TO CONSTITUTION COMMITTEE

**REPORT OF:** HEAD OF LEGAL AND DEMOCRATIC SERVICES

**REPORT NO:** LDS076

**DATE:** 24<sup>TH</sup> SEPTEMBER 2012

<b>TITLE:</b>	AMENDMENTS TO THE CONSTITUTION – The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012	
<b>KEY DECISION OR POLICY FRAMEWORK PROPOSAL:</b>	Statutory requirement	
<b>PORTFOLIO HOLDER: NAME AND DESIGNATION:</b>	Councillor Paul Carpenter – Portfolio Holder for Governance and Communication	
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<b>INITIAL IMPACT ANALYSIS:</b>  Equality and Diversity	Carried out and Referred to in paragraph (7) below	Full impact assessment Required: Not applicable
<b>FREEDOM OF INFORMATION ACT:</b>	This report is publicly available via the Your Council and Democracy link on the Council’s website: <a href="http://www.southkesteven.gov.uk">www.southkesteven.gov.uk</a>	
<b>BACKGROUND PAPERS</b>	The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 <a href="http://www.legislation.gov.uk/uksi/2012/2089/made">http://www.legislation.gov.uk/uksi/2012/2089/made</a>	

## 1. RECOMMENDATIONS

The Constitution Committee recommend to Council the amendments to the Constitution to incorporate the changes introduced by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the Regulations) as detailed in the Appendix to this report.

## 2. PURPOSE OF THE REPORT

The purpose of the report is to set out the requirements of the Regulations for note and for the Committee to approve the changes to the Constitution to give effect to the requirements of the Regulations.

## 3. DETAILS OF REPORT

On the 15<sup>th</sup> August 2012, the Regulations were laid before Parliament to come into force on the 10<sup>th</sup> September 2012. The Regulations revoke existing arrangements and replace them with similar arrangements with changes relating to meetings where the public are excluded, the forward plan, scrutiny and background papers.

### Meetings from which the Public are excluded

Changes are made to the provisions relating to Cabinet meetings from which the public are excluded because the reports contain exempt material.

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 and the reasons for the business to be considered in private. A 'clear day' is defined as a period of 24 hours running from midnight to midnight and excluding any days when the Council offices are not open to the public, the day the notice is given and the day on which the meeting is held ('28 clear days' is equivalent 36 days – longer if there are bank holidays during that period.)

A further notice must be published five clear days 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.

If the above timetable is impracticable, **special urgency** provisions apply: the meeting can still go ahead if the Cabinet has had **agreement** from the Chairman of the relevant PDG and the Scrutiny Committee Chairman. If either of them is unavailable, agreement should be obtained from the Chairman of the Council. Notice must then be given setting out the reasons why a meeting is urgent and cannot reasonably be deferred.

### Process for taking a key decision.

There is no longer a requirement to publish a forward plan; however, the following details must be published at least 28 clear days before a **key** decision is to be taken

- That a key decision is to be made, and details of the matter;
- The decision-maker's name and title, or, if a body, its name and full membership;
- The date on which, or period during which, the decision is to be made;

- The documents to be submitted to the decision-maker for consideration and details of how to receive copies;
- A note that other documents relevant to the decision may be submitted to the decision-maker and details of how to receive copies.

There is no longer any requirement to give details of consultation undertaken or how a member of the public may make representations to the decision-maker or proper officer. There is a **general exception**. If this timetable is impracticable, the decision can still be taken if:

- The proper officer has **informed** the Chairman of the relevant PDG and Scrutiny Committee in writing of the details of the decision to be made (or, if the Chairman is unable to act, each member of the relevant Committee);
- Notice is given of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days' notice; and
- At least five clear days have elapsed between notice being given and the decision being taken.

In addition, the rules relating to **special urgency** apply. If the general exception rule is impracticable, the decision can still be taken if the decision-maker has obtained the **agreement** of the Chairman of the PDG and Scrutiny Committee, or if either is unable to act, the Chairman of the Council, and published a notice stating that a decision is urgent and the reasons why it cannot reasonably be deferred.

#### Records of Executive Decisions

Records of Executive decisions must state:

- The decision taken and the date it was made;
- The reasons;
- Details of options considered and rejected and the reasons why they were rejected;
- Declarations of interest and details of any dispensations granted in respect of interests.

Details of any consultation undertaken are not required.

The regulations specifically state that details of any dispensations granted by the "**head of paid service**" from any "declared conflict of interest" must be included in the decision record. The Localism Act 2011 says only that authorities may grant dispensations from interests, but leaves the process to individual authorities. This was delegated to the Monitoring Officer by Council at its meeting on the 12<sup>th</sup> July 2012. Further delegation must now be provided to the Head of Paid Service.

#### Background Papers

Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection at the offices and on the Council's website.

The Council may now charge 'a reasonable fee' for access to background papers to be inspected at the offices. Background papers are to be retained and made

available for inspection for at least four years from the date on which the decision was made.

### Scrutiny

The Executive must make available any material relating to past decisions if requested by Scrutiny. This must be provided as soon as reasonably practicable and no later than 10 clear days after the request is made.

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 PDG or scrutiny committee's work programme. PDG and scrutiny members are not entitled to any exempt material which contains advice provided by a political adviser or assistant.

If the Executive determines that material will not be provided, it must set out in writing its reasons for that decision.

It is proposed the current forward plan remains in place for this month to cover the notice required for decisions to be made at the Cabinet meeting scheduled for the 1<sup>st</sup> October 2012.

A new proforma " Schedule of Decisions" will be produced with the required information for publication in readiness for the Cabinet meeting in November.

#### **4. OTHER OPTIONS CONSIDERED**

No other options have been considered in respect of these amendments. The proposed amendments relate to statutory requirements

#### **5. RESOURCE IMPLICATIONS**

There are no resource implications relating to the proposals.

#### **6. RISK AND MITIGATION**

Risk has been considered as part of this report and any specific high risks are included in the table below:

<b>Category Risk</b>	<b>Action / Controls</b>
No significant risks	

#### **7. ISSUES ARISING FROM IMPACT ANALYSIS**

Equality impact analysis not required

#### **8. CRIME AND DISORDER IMPLICATIONS**

No crime and disorder implications

**9. COMMENTS OF FINANCIAL SERVICES**

There are no financial implications relating to the amendments.

**10. COMMENTS OF LEGAL AND DEMOCRATIC SERVICES**

The Regulations are legally binding whether they are included in the constitution or not. The Constitution must be amended to ensure that current provisions do not contradict the requirements of the new legislation. It would not be practical or appropriate to include the Regulations in their entirety in the Constitution.

**11. COMMENTS OF OTHER RELEVANT SERVICES**

None relevant

Appendix - Amendments to Constitution