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CABINET – TO FOLLOW

Date: Tuesday 11 September 2012

Time: 2.00 pm

Venue: COUNCIL HOUSE, PLYMOUTH

Members:

Councillor Evans, Chair

Councillor Peter Smith, Vice Chair

Councillors Coker, Lowry, McDonald, Penberthy, Vincent and Williams.

Members are invited to attend the above meeting to consider the items of business overleaf.

Members and officers are requested to sign the attendance list at the meeting.

TO FOLLOW – Please find enclosed additional information for your consideration under agenda item number 17.

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CABINET

- 17. THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND ACCESS TO INFORMATION) (ENGLAND) REGULATIONS 2012 (TO FOLLOW)** **(Pages 1 - 6)**

The Monitoring Officer will submit a report about the recently published regulations relating to executive arrangements.

PLYMOUTH CITY COUNCIL

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

Committee: Cabinet

Date: 11 September 2012

Cabinet Member: Cllr Peter Smith, Deputy Leader

CMT Member: Tim Howes

Author: Tim Howes, Assistant Director for Democracy and Governance

Contact: Tel: 01752 305403

Ref:

Key Decision: No

Part: 1

Purpose of the report:

To advise Cabinet of these new Regulations and to delegate responsibility for functions under the Regulations.

Corporate Plan 2012 – 2015:

There are no direct implications in relation to the Corporate Plan.

**Implications for Medium Term Financial Plan and Resource Implications:
Including finance, human, IT and land**

There will be significant resource implications to implement the new measures set out in these regulations.

Other Implications: e.g. Child Poverty, Community Safety, Health and Safety, Risk Management and Equality, Diversity and Community Cohesion:

None other than in respect of decision making, where the new processes are likely to result in significant delays.

Recommendations & Reasons for recommended action:

It is recommended:

1. That the Monitoring Officer is designated as the 'proper officer' under these Regulations
2. That the Cabinet delegate to the Monitoring Officer the publication of notices under Regulation 5 including the authority to respond to representations received in response to those notices. (Where Cabinet gives advance notice of an intention to consider matters in the absence of the press or public)
3. That Cabinet recommend to Council that they receive an annual report on the use of the 'special urgency' provision under Regulation 11 (where key decisions are taken without prior public notice)

The reason for recommendation 1 is that these matters are within the functions and responsibilities of the Monitoring Officer.

The reason for recommendation 2 is to avoid the need for additional Cabinet meetings to consider the publication of notices and representations received.

The reason for recommendation 3 is that there are a handful of 'special urgency' decisions a year and more regular reporting is unnecessary.

Alternative options considered and reasons for recommended action:

These are new statutory provisions and no alternative action is therefore being recommended.

Background papers:

None other than the Regulations which are already in the public domain.

Sign off:

Fin		Leg	TH0 054	HR		Corp Prop		IT		Strat Proc	
Originating SMT Member											
Have you consulted the Cabinet Member(s) named on the report? Yes / No											

1.0 Introduction

Last week the Government published the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012, these Regulations come into force on the 10th September 2012.

The purpose of these Regulations according to the Government, are to '*clarify and extend the circumstances in which local authority executive decisions are to be open to the public*'. Whilst these are laudable aims, in reality, they will have little impact (in that regard) in the way the Council presently operates. This is because the Council already holds its Cabinet meetings (including Cabinet sub-committees) in public except when considering confidential or exempt information. We have also recently opened up our meetings to make it easier for social media reporting of Cabinet through internet bloggers, tweeting and hyperlocal news forums.

Indeed in their explanatory memorandum the DCLG say '*local authorities currently following good practice are largely acting in accordance with these Regulations*',

The Regulations however make many administrative changes including those relating to executive decisions made by officers, the calling of meetings, provision of information, and amendments to Forward Plan requirements. These are set out below together with recommendations on how the new requirements might be managed and implemented at the City Council.

2.0 Cabinet and cabinet committee meetings to be held in public

Regulations 3 and 4 say that Cabinet meetings and Cabinet Committee meetings must be held in public. They can be held in private when confidential or exempt information might be disclosed or where the public are excluded to maintain order.

Any person attending the meeting for the purpose of reporting the proceedings is, so far as is reasonably practicable, to be ordered reasonable facilities for taking their report.

The Council currently complies with these provisions and no further action is required.

3.0 New procedures to be followed prior to private meetings

Regulation 5 includes a new requirement to publish notices in advance, if the Cabinet intends to consider exempt or confidential matters.

At least 28 clear days before holding a meeting where exempt or confidential information is to be considered, the Cabinet must publish (including on the website) a notice of the intention to hold the meeting without the press and public with the reasons. The 28 clear days excludes weekends and bank holidays.

It is recommended that rather than meet to agree to do this on every occasion, the Cabinet delegates the publication of the notice to the Monitoring Officer or an officer acting on his behalf.

At least 5 clear days before the meeting, the Cabinet must publish (including on the website) a further notice of the intention to hold the meeting without the press and public. That notice should include any representations received in respect of the 28 day notice and the responses to those representations.

It is recommended that rather than meet to agree the 5 day notice on every occasion, the Cabinet delegate the response to the representations and the publication of the further notice to the Monitoring Officer or an officer acting on his behalf.

In exercising this responsibility, the Monitoring Officer would seek the views of the person presiding at the respective meetings.

If these timetables cannot be complied with, then the agreement of the Chair of the Overview and Scrutiny Management Board (or in her absence the Lord Mayor or in his absence the Deputy Lord Mayor) is required to confirm that the meeting is urgent and cannot be deferred. The Council must then publish notice of that agreement at the offices and on the website.

4.0 Procedures prior to public meetings

Regulation 6 says that we need to give 5 clear days notice of the time, date and place of public meetings by displaying it at our offices and on the website.

In accordance with our current practice, we will continue to publish both public meetings and those where the press and public may be excluded.

Regulation 7 says that a copy of the agenda and every report for a meeting must be made available for inspection by the public at the offices or on the website at least 5 clear days before the meeting.

The need for reports to be available means that there should be no 'to follow' reports.

5.0 Key decisions

Regulation 8 gives the definition of what is a key decision. A key definition is a decision which is likely:

To result in the Council incurring expenditure which is or the making of savings which are significant having regard to the council's budget for the service or function to which the decision relates); or

To be significant in terms of its effect on communities living or working in an area comprising two or more wards

6.0 The Forward Plan

Regulation 9 replaces the Leader's four month Forward Plan, with a document which looks suspiciously like a one month forward plan. This new document has to be published 28 days before a key decision is made, and must state:

- That a key decision is to be made
- The matter to be decided
- The name of the decision maker either an individual or a body (with a list of members)
- The date when the decision will be made
- A list of documents submitted to the decision maker
- The address where the documents are available
- A statement that other documents may be submitted to the decision maker
- The procedure for obtaining access to additional documents

A material difference is the increase in the notice period to 28 days compared to 14 days in the old Forward Plan. In addition, there is now no requirement to include a description of who and how others might be consulted.

In other respects the publication of the new document will mirror the same internal processes as for the Forward Plan.

Regulation 10 retains the 'general exception', where a key decision may be made with only 5 days' notice with the consent of the Chair of the Overview and Scrutiny Management Board or each Overview and Scrutiny Board member. The notice must explain why non-compliance with the requirement for 28 days' notice has been agreed, now needs to be published. Previously, there was no need to publish this notice.

Regulation 11, preserves the 'special urgency' provision where the giving even 5 days' notice is not possible. The use of this provision requires the agreement of the Chair of the Overview and Scrutiny Management Board or the Lord Mayor or the Deputy Lord Mayor. We then publish the notice evidencing that agreement.

7.0 Recording of decisions

Regulations 12 requires Cabinet to formally record its proceedings. In this respect we will maintain our present procedures in respect of providing minutes of meetings.

The Regulations require us to record every 'conflict of interest' declared by a member. It is not clear from the regulations what a 'conflict of interest' is or how it is defined. It is assumed that these 'conflicts of interests' cover the gaps left by the Governments new standards regime. At present our local code adequately covers this gap, but we may wish to define a 'conflict of interest' as part of our new standards code. Under the Regulations, it is said that the Head of Paid Service can give dispensations in respect of these conflicts of interest.

In order to mirror the Council's standards regime it will be recommended to the Head of Paid Service that he delegates the granting of dispensations to the Monitoring Officer.

Regulation 13 sets out similar provisions in respect of the recording of delegated decisions and again, we will follow our current procedures. In practice, following the making of an executive decision, a statement must be produced setting out the following (which is similar to that required for a Cabinet decision):

- A record of the decision and the date it was made
- A record of the reasons for the decision
- Any alternative options considered and rejected
- Any conflicts of interests declared by any executive member consulted about the decision
- Any dispensation given by the Head of Paid Service

Regulation 13 also makes any 'executive decision' made by an officer subject to the same requirements. This is a change from the current regulations which only relate to officers when they are making 'key decisions', which is an extremely rare occurrence.

An 'executive decision' is defined as '*a decision made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of a local authority*'.

Detailed work will be required to determine which officer decisions fall within this definition. As a starting point, a delegation from Cabinet to an officer to discharge a function will come within the definition. This will potentially include delegations to working groups and project teams. There is a subtle but real distinction between 'carrying out an action' and 'discharging a function' and legal and democratic support officers will be working to create clarity in this area.

Regulation 14 requires the record of decisions and supporting reports to be made available as soon as reasonably practicable to the public (at the offices and on the website) and to newspapers.

8.0 Rights of other local authority members to access to documents

Regulation 16 gives all members access to any document relating to matters to be transacted at a public meeting of the Cabinet at least 5 days before the meeting (unless they contain exempt or confidential information).

Documents relating to matters considered when the press and public were excluded or to decisions by an individual cabinet member must be made available to members after the decision is made or in any event, within 24 hours of the end of the meeting (unless they contain exempt or confidential information).

Regulation 17 gives members of an overview and scrutiny committee access to any document related to a decision by Cabinet, individual members or officers. Such documents must be provided within 10 days of a request.

Documents containing exempt or confidential information need only be provided if it is relevant to a call-in or scrutiny process or any review contained in a scrutiny programme of work.

9.0 Reports to council where the key decision procedure is not followed

Regulation 18 entitles an Overview and Scrutiny Committee to report a failure by the executive to follow the key decision process to Council.

10.0 Executive reports to the Council

Regulation 19 says the Leader must report at least annually to Council with details on the use of 'special urgency' provisions where no notice was provided of a key decision.

It is recommended that Cabinet recommend to Council that they consider such a report annually.

11.0 Offences

Under Regulation 22, a person commits a criminal offence, if they intentionally obstruct any person exercising a right to inspect or make a copy of a document under the regulations.