

<b>CONSTITUTION WORKING PARTY</b>		
<b>Report Title</b>	<b>ACCESS TO INFORMATION REGULATIONS</b>	
<b>Key Decision</b>	<b>N/A</b>	
<b>Ward</b>	<b>All</b>	
<b>Contributors</b>	<b>Head of Law</b>	
<b>Class</b>	<b>Part 1</b>	<b>Date 06 Sept 2012</b>

## **1 Summary**

This report informs members about changes to the law relating to access to information which become effective on 10<sup>th</sup> September this year and will require changes to the Council's constitution and practice.

## **2. The purpose**

This report should enable CWP to advise the Council on the changes necessary to reflect the new law.

## **3. Recommendation**

Members are asked to note the new legislation and agree that changes to the Constitution be made to reflect it as set out in Appendix 1.

## **4. Background**

4.1 The general principles relating to access to information affecting local government are set out in the Local Government Act 1972. In brief, these provisions cover such matters as the requirement for meetings to be in public unless confidential or exempt information is likely to be disclosed, the requirement for 5 clear days notice to be given and for reports to be available during that period; provisions relating to urgency; the keeping of records and background papers.

4.2 After the introduction of the Local Government Act 2000, additional regulations applying to executive arrangements were introduced (SI 2000/3272; SI2002/716;SI 2006/69.) (the old regulations) These regulations are being repealed with effect from 10<sup>th</sup> September when new regulations - The Local Authorities (Executive Arrangements) (Meetings and Access to Information (England) Regulations 2012 (SI 2012/2089) - will apply.

## **5. Private meetings**

- 5.1 The old regulations provide for the executive to meet in private:-
- If it is meeting to take a decision which is not a key decision,
  - in the presence of an officer to consider a matter in respect of which a key decision will not be made within 28 days
- 5.2 Under the old regulations meetings to discuss decisions which are not key, or where a key decision will not be made until at least 28 days later, or where a political advisor/assistant is present need not be in public. In practice these exemptions have been little used in Lewisham.
- 5.3 A meeting in the presence of officers solely for the purposes of briefing on matters connected with a decision does not qualify as a meeting under the old regulations (see Reg 5 SI 2002/716)
- 5.4 Under the new regulations the executive will be required to meet in public except where very tightly drawn criteria are met. Those criteria are that confidential or exempt information is likely to be disclosed or the exclusion of the public is necessary to maintain orderly conduct. Meetings of the executive not fulfilling these criteria must be in public and all other meetings would be classified as private meetings. (Reg 4(2)). There is no definition of a meeting as there was in previous legislation. Neither is there any exemption for briefing meetings or meetings in the presence of political assistants/advisors.

## **6 Procedure prior to private meetings**

- 6.1 The procedure is as follows:-
- 28 clear days notice of intention to hold a private meeting including reasons why it is in private. This reasoning would have to comply with Reg 4(2) above.
  - At least 5 clear days notice of intention to hold a meeting in private including reasons, details of any representations about why it should be public and a statement of the Council's response.
  - There are urgency provisions if the Chair of Overview and Scrutiny (in his absence, the Chair) agrees that the matter cannot reasonably be deferred. If he agrees, then notice must be given as soon as reasonably practicable setting out the reasons why the decision cannot reasonably be deferred.

- 6.2 This procedure would apply to all pink agendas. The circumstances defined in Reg 4(2) require all meetings of a “decision making body” to be public unless there is a ground for privacy. These are defined as the executive, a committee/sub committee of it; a joint committee or area committee exercising executive functions.

## **7 Key decisions**

- 7.1 Both the old and the new regulations provide for key decisions to be defined (those affecting two wards or considered “significant”).

## **8 Forward Plan / Publicising key decisions**

- 8.1 The old regulations provide for those key decisions to be included in a forward plan covering a four month period to be published monthly. The contents of the forward plan are prescribed by the old regulations. Matters not included in the forward plan may only be considered if the provisions relating to urgency are met. Provided the Chair of Overview and Scrutiny has been given written notice which is made publicly available for at least 5 days prior to the decision, the decision may still be taken. Where it is not possible to give the 5 days notice, the decision may still be taken if the Chair of Overview and Scrutiny agrees that the decision is urgent and cannot reasonably be deferred.
- 8.2 Under the new regulations the requirement for a forward plan covering 4 months is abolished. Instead the Council must publish a document setting out defined information (defined in the regulations but a little different from the Forward Plan) and that must be available for at least 28 clear days at the Town Hall and on the website. There are urgency provisions as before with 5 days notice. However under the new regs, the notice given to the Chair of Overview and Scrutiny Committee in urgent circumstances must also be available to the public and put on the website including reasons why it was not possible to comply with the usual requirements. There are similar special urgency provisions if it is not possible to comply with the 5 day notice with the consent of the Chair of Overview and Scrutiny that the matter is urgent and cannot reasonably be deferred and notice with reasons is published to that effect.

## **9 Procedure prior to public meetings**

No change is proposed to the notice requirements.

## **10 Reporting on public meetings.**

- 10.1 Under the new regulations reasonable facilities must be afforded, so far as is reasonably practicable, to any person attending the meeting for the purposes of reporting the proceedings. This is broader than the current reporting requirements which relate just to the press. However

the regulations (Reg 20) also provide that a decision making body need not permit the taking of any photographs of any proceedings or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later) or the making of any oral report on any proceedings as they take place. In practice this seems to be little different from the current situation.

- 10.2 Under the new regulations there is a duty imposed on Councils to provide to newspapers requesting it, a copy of the agenda for a public meeting, other particulars necessary to indicate the nature of the business and any other documents supplied to the executive as the proper officer thinks fit, subject to payment of transmission charges.

## **11 Access to documents**

- 11.1 *By the public* - After executive decisions have been made whether by the exec or an individual member or officer, the records and papers must be available with a copy of the background papers for public inspection at the Town Hall and on the website.
- 11.2 *By members generally*– members are to have a right to any document in the possession of the Executive containing material relating to any business to be transacted at a public meeting, at least 5 clear days before the meeting. Documents containing material relating to a decision by an individual officer/member or at a private meeting must be available to all members within 24 hours of the meeting concluding or the decision being made. There are exceptions for certain confidential/exempt information and the advice of a political advisor.
- 11.3 *By overview and scrutiny members* – Members of the Overview and Scrutiny Committee are entitled to documents relating to any business transacted at any meeting of the executive or by an individual officer/member (irrespective of whether public or private meeting or if it contains a political advisor's advice) as soon as reasonably practicable but in any event within 10 days. O and S members are entitled to documents containing exempt/confidential information if they relate to a matter they are scrutinising or to a review they are conducting as part of a programme of work. If the overview and scrutiny member is refused a document, they must be given written reasons.
- 11.4 A person with custody of a document who without reasonable excuse prevents a person so entitled having access to it or refuses to supply a copy commits an offence and may incur a fine up to level 1.

## **12 Public right to comment**

The public may reproduce documents given to them under the access to information provisions by the Council and have a right to comment on them in public media. Publication of any defamatory material in documents supplied by the Council is subject to qualified privilege.

Breach of copyright is not authorised by the Regulations, but there will be none if the owner of the copyright is the Council.

### **13 Record of decisions**

Once executive decisions are made a record will have to be available, no matter whether it was made by the exec, a committee or subcommittee or individual officer or member. This will need to contain not only the record but the reasons for the decision, details of options considered and rejected, a record of conflicts of interest declared and any dispensation in respect of the conflict of interest.

### **14 Conclusion**

Formally, the Constitution and practice will clearly need to change. Procedures for transparency before private meetings, and the tight definition of when a private meeting is permissible, are likely to mean bureaucratic requirements which must be followed if a challenge of procedural irregularity is to be avoided. Though the regulations come into effect on 10<sup>th</sup> September, there is no transitional provision. We need to comply from that date.

### **15 Legal implications**

These regulations will be effective from 10 September, and full Council should be asked to amend the constitution to reflect them at the earliest opportunity.

### **16 Financial implications**

None

### **17 Equalities implications**

17.1 The Equality Act 2010 (the Act) brings together all previous equality legislation in England, Scotland and Wales. The Act includes a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality. The duty covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

17.2 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.

- foster good relations between people who share a protected characteristic and those who do not.

17.3 As was the case for the original separate duties, the new duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

17.4 The Equality and Human Rights Commission (EHRC) issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides can be found at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>

17.5 The EHRC guides do not have legal standing, unlike the statutory Code of Practice on the public sector equality duty, which was due to be produced by the EHRC under the Act. However, the Government has now stated that no further statutory codes under the Act will be approved. The EHRC has indicated that it will issue the draft code on the public sector equality duty as a non statutory code following further review and consultation but, like the guidance, the non statutory code will not have legal standing.

11.5 Members must be mindful of this duty in considering any proposed amendments to the Constitution.

## **18 Crime and Disorder implications**

None

## **19 Background papers**

None

For further details contact Kath Nicholson 0208 314 7648