

Appendix BVIII

Executive Regulations - Guidance Notes for Report Authors

1. The purpose of this briefing note is to advise you of changes to the way in which the Executive decision making process will operate, as result of new Executive regulations being introduced. This includes decisions made by the Cabinet, including individual decisions, and any committees of the Cabinet; or delegations given to officers by the Cabinet; with particular impact on any decisions which are to be taken in private. The Secretary of State has said that these regulations have been made in the interests of openness and transparency.
2. The full regulations, the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England)Regulations 2012, can be viewed here:
<http://www.legislation.gov.uk/uksi/2012/2089/contents/made>
3. The above regulations were introduced without any prior consultation or notice and came into force on 10 September 2012. There has been much debate about the regulations (Kent Secretaries, Association of Democratic Services Officers, and other legal fields, and Counsel's opinion has also been obtained by the Association of Council Secretaries and Solicitors (ACSeS), in particular with regard to the intention of the regulations, and whether the intention is consistent with the drafting of those regulations. As such there are a number of different interpretations of the regulations across Authorities.
4. Further guidance is expected regarding the regulations, and at that time additional guidance will be issued as necessary. For the time being, this note sets out Swale's approach. There will be a need to update the Access to Information Procedure Rules which are in Part 4 of the Council's Constitution:
<http://www.swale.gov.uk/assets/Constitution/4.2-Access-to-Information-Procedure-Rules-25.4.12.pdf>

What does this mean for you?

(a) Private Meetings

5. We are now required to give at least **28 days** notice of the intention to hold a decision making meeting in private (and the intention to take a Key Decision) and then to give five clear days notice of meeting.
6. We are proposing that the 28 days notice is incorporated into a revised forward plan, and that the five days notice is included as part of the agenda. (The 28 days notice includes weekends and bank holidays – as suggested by the ACSeS Counsel opinion).

7. If it is not possible to meet the above criteria, there are exception provisions to follow in cases when the decision needs to be made urgently. The Proper Officer (Mark Radford) needs to obtain the consent of the Chairman of the relevant Scrutiny Committee for the meeting to go ahead; or, if the Chairman is unable to act, the Chair of the local authority (ie. the Mayor); or if there is no such person, the Vice-Chair of the local authority (ie, the Deputy Mayor). In these circumstances, a notice must be published as soon as reasonably practicable after obtaining the required agreement, to explain why the meeting is urgent and cannot reasonably be deferred. The Leader is required to report to the Council (at least annually) on such cases of decisions being taken under this exception procedure.
8. All report authors are therefore strongly encouraged to think carefully about whether any of the information will need to be in 'private', and to seek legal advice as to which exempt paragraph this would fall within (see Appendix I which sets out the current exempt paragraphs).
9. Representations may be submitted, in response to this notice, from any interested party as to why the meeting should be held in public. The Executive must respond to any representations received. Should any representations be received, the five day notice that must be published (which will, in effect, be the agenda for the meeting) must include a statement of the responses of the Executive to any representations received.
10. There has been some debate as to the intention regarding whether the regulations should also apply to private meetings, such as informal cabinet meetings. However, as the informal cabinet meetings are not taking decisions it is not considered to fall within this requirement.

(b) Forward Plan

11. You will be aware that there has been a requirement for some time now to produce a Forward Plan on set dates. That requirement has been removed by the regulations; however, we do need to publish a list of forthcoming key decisions, which is in essence very similar, and so we have revised the content of the Forward Plan to reflect this. The Forward Plan will be renamed the Forward Plan and Notice of Key Decisions. This will continue to include all items and not just Key Decisions, as has previously been the practice at Swale. **It is intended that the Forward Plan and Notice of Key Decisions will meet the criteria to advertise 28 days in advance of the meeting, that the meeting is being convened, or that a key decision will be taken.** The Forward Plan is published on the 1st of each month and so officers are encouraged to ensure that they add their reports in time to allow for 28 days notice. Late notification will be accepted

only in exceptional circumstances, and will be subject to the procedure as set out in paragraph 7 above.

12. The revised forward plan has been updated to include two columns to record information about why a decision is to be taken in private. An example is attached at Appendix II.
13. Democratic Services will continue to publish the forward plan on a monthly basis, and we will be looking to pre-populate it with regular items. However, the onus is on report authors to add items to it, and to keep Democratic Services informed.
14. We will therefore need to make sure that any recommendations from the LDF Panel or the Joint Transportation Board that are 'private' items, are recorded on the Forward Plan as the Cabinet will be making the decision.

(c) Recording of Executive decisions

15. There continues to be requirements regarding the recording of Executive decisions being made by the Cabinet and Individual Cabinet Members. However, the regulations also extend this requirement to the recording of executive decisions made by officers. The Proper Officer is required to produce a written statement, which must include details of the decision and the date it was made; the reasons for it; any alternative options considered and rejected; any conflicts of interest declared by any executive member consulted by the officer; and any dispensations granted in respect of any declared conflict. This must be published, including on the Council's website.
16. There has been much debate as to the intention of these regulations in relation to the recording of Executive decisions made by officers. This was one of the areas that Counsel's opinion was sought, and it suggested that purely administrative decisions, such as purchasing stationery for use in connection with the discharge of an executive function, would not need to be recorded. Nevertheless, other decisions which may be fairly routine, but are closely connected to the functions of the Executive, will need to be recorded.
17. Following discussions, it is suggested that a pragmatic approach is taken to this whilst further clarification is sought on this matter. Until advised otherwise, report authors need to be aware of the following:
 - (a) where an Executive decision is taken by an officer that is within the agreed Council delegations, no written statement is required; and
 - (b) if the Executive gives delegated authority to an officer to take a decision, then this does need to be recorded in the way outlined above.

18. Officers therefore need to be mindful of this when making recommendations to the Cabinet or an individual Cabinet Member which gives an additional delegation.

(d) Background Papers

19. There is now a requirement to publish all background papers with the agenda on our website. Report authors therefore need to be mindful when including such background papers, and where information is used to inform the decision making process it is better to refer to this directly within the report.
20. Nonetheless, it is a requirement to reflect the fact that there are relevant background papers, such as previous decision making reports, minutes of meetings, or any other published information, and this can be achieved by including weblinks to such previously published information.

Descriptions of Exempt Information

The reasons by which a meeting or part of a meeting may be held in private under Schedule 12A of the Local Government Act 1972 remain unchanged and are as follows:

- 1 Information relating to any individual.
- 2 Information which is likely to reveal the identity of an individual.
- 3 Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- 4 Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- 5 Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- 6 Information which reveals that the authority proposes:-
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment.
- 7 Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Example of Forward Plan and Notice of Key Decisions

Decision item and background information	Key Decision?	Decision maker, date and time of meeting	Will the report be exempt or have any exempt appendices?	If any part of the report is exempt please state the reasons and the exempt paragraph number(s)	List of the documents submitted to the decision maker	Lead Officer
Response to the Scrutiny Committee's report on review of Complaint Handling	No	Cabinet - 07 November 2012 19:00	No			Bob Pullen, Policy and Performance Officer, 01795 417187
Policy Overview Committee: Sittingbourne Town Centre Regeneration Review	No	Cabinet - 07 November 2012 19:00	No			Bob Pullen, Policy and Performance Officer, 01795 417187.
Complaints Annual Report	No	Cabinet - 07 November 2012 19:00	No			Dave Thomas, Head of Commissioning and Customer Contact, 01795 417263