
REVIEW OF CONSTITUTIONAL PROCESSES APPLYING TO URGENT DECISIONS

To: **Constitutional Review Working Party – 26 June 2012**

By: **Democratic Services & Scrutiny Manager**

Classification: **Unrestricted**

Summary: **At the request of the Standards Committee, to reconsider previous decisions taken by the Working Party**

For Decision

1.0 Introduction and Background

1.1 On 22 March 2012 the Overview & Scrutiny Panel agreed:

“That after an urgent decision has been made, the Ward Members of the affected Ward are notified.

“That Cabinet Member decisions and key decisions by Council officers are recorded and distributed to Members along with the advice from officers leading to the decision.”

1.2 When it considered the matter on 26 April 2012 the Constitutional Review Working Party agreed:

“That Access to information Procedure Rule 20.1 be amended to read:

‘Reports intended to be taken into account

‘When an individual Cabinet Member is taking a key decision they must make that decision considering a report from the relevant officer and that decision must not be made until 5 clear working days after receipt of that report.

‘When an officer is taking a key decision they must make that decision considering a report and that decision must not be made until 5 clear working days after receipt of that report.’

1.3 This recommendation was considered by Standards Committee on 9 May 2012. Members of the Standards Committee felt that the recommendation of the Working Party did not address the issue of Ward Members being notified of an urgent decision. They also expressed concern with the decision of the Constitutional Review Working Party suggesting that urgent (individual) decisions could not be delayed for five clear working days. Standards Committee deferred consideration of the report, advising that it should be referred back to the Working Party for review.

2.0 Current Situation

2.1 The Constitutional Review Working Party is now asked to reconsider the decisions it took on 26 April 2012, in the light of the views expressed by the Standards Committee.

2.2 Informing Ward members of Urgent decisions

- 2.2.1 One of the difficulties in prescribing how and when Ward Members are informed of urgent decisions relates to the nature of urgent decisions themselves. For the sake of simplicity, such decisions could be divided into those that are of a commercial or contractual nature, and those that are not. The latter might be urgent because of a natural disaster or urgent simply because, for unforeseen reasons, there ends up being no scheduled Cabinet meeting at which the decision can be taken.
- 2.2.2 If an urgent decision is of a commercial or contractual nature it is possible that the content of a decision report could be “exempt” from publication within the meaning of Schedule 12A of the Local Government Act 2000. Whilst elected Members have a generalised right to access exempt information, officers naturally try to limit access to information which, if inadvertently made public, might compromise commercial negotiations or a bidding process.
- 2.2.3 On the other hand, there may be very little confidential about a policy document that needs to be approved urgently for want of a scheduled Cabinet meeting to which it can be put. Naturally, officers would programme such work to be approved at a scheduled meeting, but sometimes, for example, late publication of statutory Regulations relevant to the decision may mean that original timetables cannot be achieved.
- 2.2.4 Thus it appears that access by Ward Members to urgent decisions might need to vary according to the nature of the decision being taken. The following sets out possible options that the Working Party may wish to consider:
- a) In cases where the content of the decision report is not exempt within the meaning of Schedule 12A of the Local Government Act 2000, Ward Members will be notified of the decision as soon as the decision is taken
 - b) In cases where the content of the decision report is exempt within the meaning of Schedule 12A of the Local Government Act 2000, and that exemption does not relate to commercial or contractual matters, Ward Members will be notified of the decision as soon as the decision has been taken, but without disclosure of the exempt matters (for example, if the exemption relates to the identification of individual or personal matters, those details will not be disclosed until after the decision has been implemented)
 - c) In cases where the content of the decision report is exempt within the meaning of Schedule 12A of the Local Government Act 2000, and that exemption relates to commercial or contractual matters, Ward Members will be notified of the decision as soon as the decision has been implemented

2.3 Period for implementing urgent decisions

- 2.3.1 The Constitutional Review Working Party on 26 April 2012 agreed the following:

“That Access to information Procedure Rule 20.1 be amended to read:

‘Reports intended to be taken into account

‘When an individual Cabinet Member is taking a key decision they must make that decision considering a report from the relevant officer and that decision must not be made until 5 clear working days after receipt of that report.

'When an officer is taking a key decision they must make that decision considering a report and that decision must not be made until 5 clear working days after receipt of that report.'

2.3.2 It is suggested that this decision can be reaffirmed, despite the concerns expressed by the Standards Committee on 9 May 2012. The suggested requirement to produce decision reports for executive decisions taken by portfolio holders or officers, and not to implement the decisions for five clear working days, is consistent with the general requirements of the Access to Information Regulations and other provisions within the constitution. However, the suspension of implementation for the five clear working days would clearly be over-ridden by any application of the various urgency procedures covered elsewhere within the constitution. In those circumstances, a decision report would still be required, but the decision could then be implemented immediately following compliance with the relevant urgency procedures.

2.3.3 Note that such a decision report would be published through the Council's committee document management system, in compliance with any "exemption" that is applied under Schedule 12 of the Local Government Act 2000.

3.0 Corporate Implications

3.1 Financial and VAT

3.1.1 There are no direct financial implications arising from this report.

3.2 Legal

3.2.1 Any changes made to procedure rules will require the Council's constitution to be amended.

3.3 Corporate

3.3.1 The Council's constitution sets out the rules governing the Council's business.

3.4 Equity and Equalities

3.4.1 None specific

4.0 Recommendation(s)

4.1 That the Constitutional Review Working Party considers any changes necessary to the constitutional procedure rules. In particular:

4.1.1 Whether to adopt any of the suggestions outlined in section 2.2.4 to govern informing Ward Members about urgent decisions.

4.1.2 Whether to reaffirm its previous decision regarding reports to be taken into account when individual executive decisions are taken, as set out at section 1.2 above

5.0 Decision Making Process

5.1 Further recommendations by the Working Party will be submitted verbally to the next meeting of the Standards Committee, whose agreed recommendations will then be referred to full Council.

Future Meetings:

Standards Committee	28 June 2012
Council	12 July 2012

Contact Officer:	Glenn Back, Democratic Services & Scrutiny Manager, Ext 7187
Reporting to:	Harvey Patterson, Corporate & Regulatory Services Manager and Monitoring Officer, Ext 7005

Annex List

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Background Papers

Title	Details of where to access copy
None	

Corporate Consultation Undertaken

Finance	N/A
Legal	Harvey Patterson, Corporate & Regulatory Services Manager and Monitoring Officer, Ext 7005