



# Reports Not on the Forward Plan / for Immediate Implementation

## Report to the Co-ordinating O&S Committee

### 1 Purpose

1.1 At the Full Council meeting on 11th June 2019, a report was submitted on *late reports not on the forward plan and those authorised for immediate implementation*. This set out which reports were either not on Forward Plan or authorised for immediate implementation for the 2015/2016, 2016/17 2017/18 and 2018/19 municipal years, and is attached in Appendix 1.

1.2 The motion agreed by Full Council was:

*That the report be noted.*

*This Council also notes with concern the increasing use of decisions authorised for immediate implementation and reports not on the forward plan.*

*This Council believes that decisions taken in this way inhibit the opportunity for full and proper scrutiny and that as such both should be used only in the very rarest and most exceptional circumstances.*

*This Council resolves to:*

- *Call on the Executive to ensure that future annual reports to full council setting out late reports and reports authorised for immediate implementation should provide detail next to each one setting out the reasons why it was necessary in those circumstances*
- *Request that Scrutiny Chairs, via the Coordinating Overview and Scrutiny Committee, give consideration to how their role in challenging decisions taken in this way can be strengthened.*

1.3 This report is intended to support the Co-ordinating O&S Committee's response to that motion by clarifying the circumstances in which Scrutiny Chair agreement is required; updating with data from the current municipal year to date; and some proposals for strengthening the scrutiny role.

### 2 The Legal and Constitutional Position

2.1 Legislation sets out how and when reports for Executive decision-making (i.e. Cabinet) are to be published. The requirements pertinent to the council motion are set out below, along with the requirements of Birmingham's Constitution.



## Reports Not on the Forward Plan / for Immediate Implementation

### Reports Not on the Forward Plan

- 2.2 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 state that where key decisions are to be taken, notification must be given 28 clear days ahead of the decision being taken. In Birmingham, this is done through the publication of the Forward Plan.
- 2.3 Where this notice is "*impracticable*" then the decision may only be taken where the officer is still able to give five clear days' notice and has informed the chairman of the relevant overview and scrutiny committee.
- 2.4 Where the five clear days' notice is "*impracticable*", then these are designated "cases of special urgency" and the decision may only be taken "*where the decision maker has obtained agreement from the chairman of the relevant overview and scrutiny committee ... that the making of the decision is urgent and cannot reasonably be deferred.*"<sup>1</sup>
- 2.5 In Birmingham's Constitution, the two requirements are combined and it is necessary for the decision-maker to obtain the agreement of the chair of the relevant overview and scrutiny committee in either circumstance (i.e. with or without five days notice). There is a requirement to complete a cover sheet for these reports, setting out the reasons for lateness and urgency.

### Notification of Intention to Consider Matters in Private

- 2.6 Where there is a proposal for a meeting of Cabinet to consider part of a report in private, Part 2 of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 requires the Council to provide notification of its intention to do so, 28 clear days in advance of the meeting.
- 2.7 In Birmingham, this is done through the Notification of Intention to Consider Matters in Private, which is published on CMIS 28 days before the meeting.
- 2.8 Under the regulations, where this notification is not given, then the matter may only be considered in private if the relevant Scrutiny Chair agrees.
- 2.9 Birmingham's Constitution states that the relevant Scrutiny Chair must agree that the report is urgent and cannot reasonably be deferred.

### Late Reports

- 2.10 Reports not submitted to Committee Services by 1200 hours on the sixth working day before the Cabinet meeting will be a late report. Officers must obtain agreement from the Leader and Chief Executive if reports are to be submitted late.

---

<sup>1</sup> The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, Regulation 11



## Decisions for Immediate Implementation

2.11 The Constitution also allows for the Chief Executive:

*If the interests of the Council are jeopardised unless an executive decision is implemented immediately then the Chief Executive in consultation with the Leader (or Deputy Leader in his/her absence) may designate such executive decision as so urgent that its implementation cannot wait until the expiry of the call-in period.*

*The exercise of such power shall be clearly noted on the record of the decision.*

## 3 Numbers of Reports Not on the Forward Plan etc

3.1 The report to Full Council (Appendix 1) sets out details of reports not on Forward Plan for the 2015/2016, 2016/17 2017/18 and 2018/19 municipal years.

3.2 Since May 2019, there have been four Cabinet meetings (including two special meetings). The following decisions were either not on the Forward Plan, were late or were authorised for immediate implementation:

Date of Meeting	Title	Detail
22 May 2019 (Special Cabinet)	Home to School Transport – Medium Term Service Provision Arrangements	Not on the Forward Plan Late report Immediate Implementation (cover sheet can be found <a href="#">here</a> )
22 May 2019 (Special Cabinet)	Disposal of Surplus Properties	Intention to consider matters in private not notified
22 May 2019 (Special Cabinet)	Enablement Service Redesign	Intention to consider matters in private not notified Late report (cover sheet can be found <a href="#">here</a> )
25 June 2019	Highway Maintenance and Management PFI Contract	Immediate Implementation
25 June 2019	Procurement of Fleet Waste Vehicles	Late report (cover sheet can be found <a href="#">here</a> )
25 June 2019	CAZ Charging Order	Late report (cover sheet can be found <a href="#">here</a> )
15 July 2019 (Special Cabinet)	Contract Award: Home to School Transport	Late report Immediate Implementation

3.3 Looking at the data for the year 2018/19 and the current year to date, the key themes are:

- Two events – the waste dispute and the collapse of ATG (Home to School transport) – accounted for over half of reports not on the Forward Plan (7 out of 12); and a similar proportion of decisions for immediate implementation (5 out of 9, including Joint Cabinet Member/Chief officer decisions);
- Seven special Cabinet meetings were held in this period (i.e. Cabinet meetings held in addition to the scheduled meetings): half of reports not on the Forward Plan (6 out of 12) were



## Reports Not on the Forward Plan / for Immediate Implementation

determined at a special cabinet meeting, as were three of the five Cabinet decisions for immediate implementation.

- Not all of the decisions had cover reports posted on CMIS, setting out the reasons for lateness and/or urgency.

### 4 For Consideration

- 4.1 The motion to Full Council requested *that Scrutiny Chairs, via the Coordinating Overview and Scrutiny Committee, give consideration to how their role in challenging decisions taken in this way can be strengthened*. As part of this, members may consider, given the roles as outlined above, how to ensure proper scrutiny whilst not slowing the decision-making process where circumstances require rapid action.
- 4.2 Members are therefore asked to consider the following points and the Chair of the Committee will write to the Leader after the meeting, setting out the committee's views.

#### **Reports Not on the Forward Plan**

- 4.3 Scrutiny Chairs are being not asked to agree to the content of the report or the recommendations when asked to give agreement to a decision not on the Forward Plan; but they must satisfy themselves that it is impracticable to defer the decision and cannot reasonably be deferred.
- 4.4 Therefore, in order to ensure Scrutiny Chairs have all necessary information to make that judgement, the relevant officer(s) should make efforts to speak to the relevant Chair (accepting that this may not always be possible) and provide a full account of the circumstances leading to the request.
- 4.5 Where Scrutiny Chairs give their agreement, this should be in writing. A cover sheet should be completed and this should include the reason for lateness/why not on the Forward Plan; reason for urgency; and when the request was received and agreement given. There should be the option for Scrutiny Chairs to record any comments on the cover sheet.
- 4.6 Scrutiny Chairs may ask the relevant Chief Officer/Cabinet Member to attend the next Scrutiny Committee to give further details.

#### **Decisions Authorised for Immediate Implementation**

- 4.7 Where decisions are exempt from call-in, the relevant scrutiny chair can ask the relevant chief officer/Cabinet member to attend the next Scrutiny Committee to give further details to mitigate the reduced transparency of these decisions.

#### **Contact Officer:**

Emma Williamson  
Head of Scrutiny Services