

ACCESS TO INFORMATION PROCEDURE RULES

Amendments shown in red were recommended by the Joint Constitution Review Group at its meeting on 13 March 2015

1. SCOPE

These rules apply to all meetings of the Council, Overview and Scrutiny Committee, Performance and Audit Scrutiny Committee, Standards Committee and Regulatory Committees and public meetings of the Cabinet (together called Meetings).

2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

3. RIGHTS TO ATTEND MEETINGS

Public

3.1 Members of the public may attend all meetings ~~subject only to the exceptions in these rules~~ unless excluded in accordance with rules 11.1 and 11.2(a) below.

Members

3.2 A member of the Council may attend a meeting of a committee or sub-committee meeting of which he or she is not a member. A member may speak at that meeting if allowed to do so by the Committee Procedure Rules but shall not be entitled to vote.

4. NOTICES OF MEETING

4.1 The Council will give at least five clear days' notice of any meeting by putting details on its website and on lists displayed at its main offices.

5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

5.1 The Council will make copies of the agenda and reports open to the public available for inspection by publishing them on its website at least five clear days before the meeting.

5.2 If an item is added to the agenda later, the revised agenda will be available on its website from the time the item was added to the agenda. Where reports are prepared after the summons has been sent out, the Council shall make each such report available to the public on its website as soon as the report is completed and sent to Councillors.

6. SUPPLY OF COPIES

The Council will supply copies of the following documents to any person on request and may make a charge for postage and any other costs:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) if the proper officer thinks fit, copies of any other documents supplied to Councillors in connection with an item.

~~to any person on request and may make a charge for postage and any other costs~~

7. ACCESS TO MINUTES ETC. AFTER THE MEETING

The Council will as soon as practicable after a meeting make the following available on its website for six years:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

8. RECORDING OF COUNCIL MEETINGS AND USE OF SOCIAL MEDIA

8.1 People may photograph, film, record and/or broadcast those attending Council, Cabinet, committee or sub-committee meetings (other than any part of such a meeting from which the public are excluded), subject to:

- (a) the committee administrator at the meeting being told so that everyone attending can be notified; and
- (b) no flash or lighting being used, or noise created, without the prior agreement of the chairman; and
- (c) fixed points or areas for cameras or recording equipment being agreed in advance so they do not distract those involved in the democratic process or impinge on the decision-making or block viewing from the public seating area; and
- (d) Members of the public speaking at, or attending, the meeting must not be filmed if they have indicated they do not wish to be included.

8.2 Notice of the photographing, filming, recording and/or broadcasting of meetings is to be displayed in and outside the place of meeting and

included on any literature handed to persons attending a meeting as follows:

“The Council may record this meeting and permits members of the public and media to record or broadcast it as well (when the media and public are not lawfully excluded).

Any member of the public who attends a meeting and objects to being filmed should advise the Committee Administrator who will instruct that they are not included in the filming.”

8.3 People may use social media at Council, Cabinet, Committee or Sub-Committee meetings (other than any part of such a meeting from which the public are excluded), subject to:

- (a) equipment used being silent during operation; and
- (b) the use of equipment not distracting those involved in the democratic process or impinging on decision making or blocking the view from the public seating area.

9. BACKGROUND PAPERS

9.1 List of Background Papers

The report’s author will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:-

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report;

but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and, in respect of Cabinet reports, any advice of a political advisor.

9.2 Public Inspection of Background Papers

The Council will make available for public inspection for four years after the date of the meeting each of the documents on the list of background papers.

10. SUMMARY OF PUBLIC’S RIGHTS

These rules will constitute the written summary of the public’s rights to attend meetings and to inspect and copy documents and will be available to the public on the Council’s website.

11. EXCLUSION OF THE PUBLIC FROM MEETINGS

11.1 Confidential Information – Requirement to Exclude Public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

11.2 Exempt Information – Discretion to Exclude Public

(a) The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

(b) Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

11.3 Meaning of Confidential Information

Confidential information means information given to the Council by a Government Department on terms which forbid its public disclosure, or information which cannot be publicly disclosed by Court Order.

11.4 Meaning of Exempt Information

Exempt information means information falling within the following 7 categories (subject to any condition):-

- (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.

11.5.1 Information falling within paragraph 11.4.3 above is not exempt information by virtue of that paragraph if it is required to be registered under:-

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Acts 1965 to 1978;

- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

11.5.2 Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

11.5.3 Information which:-

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraph 11.5.1 or 11.5.2 above,

is exempt information if and so long as, in all circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

12. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

12.1 If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in the Monitoring Officer's opinion relate to items during which, in accordance with Rule 11, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

13. APPLICATION OF RULES TO THE CABINET

13.1 Rules 14-23 apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1-13 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 12 of this Constitution.

13.2 If the Cabinet or its committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the Decisions Plan by which it is to be decided, then it must also comply with Rules 1-12 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 12 of this Constitution. This requirement does not include meetings whose sole purpose is for officers to brief members.

14. PROCEDURE BEFORE TAKING KEY DECISIONS OR HOLDING EXECUTIVE MEETINGS IN PRIVATE

14.1 Key Decisions

14.1.1 Subject to Rule 16 (general exception) and Rule 17 (special urgency), a key decision may not be taken unless:-

- (a) a notice (called here a Decisions Plan) has been published in connection with the matter in question, at least 28 clear days before the decision is to be taken; and
- (b) where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

14.2 Matters to be considered in private

14.2.1 At least 28 clear days before a private meeting of the Cabinet, or a committee or joint committee of the Cabinet, the decision-making body must make available and publish on its website a notice including a statement of the reasons for the meeting, or part of the meeting, to be held in private.

14.2.2 At least five clear days before a private meeting, the decision-making body must make available and publish on its website an additional notice of its intention to hold a meeting or part of a meeting in private, including a statement of the reasons for the meeting to be held in private, details of any representations received by the decision-making body about why the meeting should be open to the public, and a statement of its response to any such representations. For ease of reference this notice will be incorporated into the agenda for the meeting in question.

15. THE DECISIONS PLAN

15.1 Publication of Decisions Plan

15.1.1 Decisions Plans will be prepared by the Leader to ensure that 28 clear days' notice of the taking of any key decision, or the holding of any meeting, or part of a meeting, in private, is given. This document will be made available for inspection at the Council's offices and on its website.

15.2 Contents of Decisions Plan

15.2.1 The Decisions Plan will contain matters which the Leader has reason to believe will be subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:-

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision taker is an individual, their name and title, if any and where the decision taker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be taken;

- (d) a list of the documents submitted to the decision taker for consideration in relation to the matter;
 - (e) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
 - (f) that other documents relevant to those matters may be submitted to the decision maker; and
 - (g) the procedure for requesting details of those documents (if any) as they become available.
- 15.2.2 The Decisions Plan will also detail any matters which it is intended will be considered in private, and the reason for the matter being considered in private.
- 15.2.3 Exempt information need not be included in a Decisions Plan and confidential information cannot be included.

16. GENERAL EXCEPTION

16.1 If a matter which is likely to be a key decision has not been publicised with 28 clear days' notice then subject to Rule 17 (special urgency), the decision may still be taken if:-

- (a) the decision must be taken by such a date that it is impracticable to defer the decision; and
- (b) the proper officer has informed the Chairman of the Overview and Scrutiny Committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made; and
- (c) the proper officer has made copies of that notice available to the public at the Council's offices and on its website; and
- (d) at least five clear days have elapsed following the day on which the proper officer made the notice available.

15.2 Where such a decision is taken collectively, it must be taken in public, unless it relates to exempt information as determined under Section 100 of the Local Government Act 1972, when the public will be excluded.

17. SPECIAL URGENCY

17.1 Key Decisions

17.1.1 If by virtue of the date by which a decision must be taken Rule 16 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the Overview and Scrutiny Committee, or if the Chairman of the Overview and Scrutiny Committee is unable to act, then the agreement of the Mayor, or in their absence, the Deputy Mayor* Vice-Chairman will suffice.

17.2 Matters to be considered in private

17.2.1 Where the date by which a meeting must be held makes publication within 28 clear days, and repeated within 5 days, impracticable, the meeting may only be held in private where agreement has been obtained from the Chairman of the Overview and Scrutiny Committee that the meeting is urgent and cannot reasonably be deferred. If there is no Chairman, or if the Chairman is unable to act, then the agreement of the ~~Mayor, or in their absence the Deputy Mayor Vice-Chairman~~* will suffice.

****FHDC rules already provide for the VC to be asked in the absence of the Chairman. It is proposed to harmonise them thus because the VC of O&S is a more appropriate person, given the apolitical stance of the Mayor.***

17.3 In the case of both key decisions and matters to be considered in private, as soon as practicable after the decision-maker has obtained such agreement, the decision-maker will make available at the Council's offices, and on its website, a notice setting out the reasons why the decision or matter is urgent and cannot reasonably be deferred.

18. REPORT TO COUNCIL

18.1 When an Overview and Scrutiny Committee can require a report

18.1.1 If the Overview and Scrutiny Committee thinks that a key decision has been taken which was not:-

- (a) treated as being a key decision; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with the Overview and Scrutiny Committee Chairman, or the ~~Mayor/Deputy Mayor~~ Vice-Chairman, under Rule 17;

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies.

18.1.2 The report will include:-

- (a) the decision and the reasons for the decision;
- (b) the decision making body by which, or the individual by whom, the decision was made; and
- (c) the reasons as to why the decision was considered not to be a key decision.

18.1.3 The power to require a report rests with the Overview and Scrutiny Committee but is also delegated to the ~~proper officer~~ **Monitoring Officer***, who shall require such a report on behalf of the Committee when so

requested by the Chairman or any 5 Members. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

****FHDC's constitution already delegates this to the MO.***

18.2 Cabinet's Report to Council

18.2.1 The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that.

18.2.2 The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

18.3 Quarterly Reports on Special Urgency Decisions

18.3.1 The Leader will submit quarterly reports to the Council on the Executive decisions taken (if any) in the circumstances set out in Rule 17 (special urgency) in the preceding three months.

18.3.2 The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken together with the reasons for the decision and why the matter was considered to be urgent.

19. RECORD OF DECISIONS

19.1 After any meeting of the Cabinet or any of its Committees, whether held in public or private, the proper officer or his/her nominee will produce a record of every decision taken at that meeting as soon as practicable.

19.2 The record will include:-

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the decision making body at the meeting at which the decision was made;
- (d) a record of any conflict of interest in relation to the matter decided which is declared by any member of the decision making body which made the decision; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted by the Council's Head of Paid Service.

20. EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

20.1 The Cabinet will meet in public to consider matters which are not key decisions, unless confidential or exempt information is being discussed.

21. OFFICERS

21.1 The Head of the Paid Service, the Chief Finance Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Chief Executive has been given reasonable notice that a meeting is to take place.

21.2 A Cabinet meeting may only take place in the presence of the Chief Executive or his/her nominee with responsibility for recording and publicising the decisions and the provisions of rule 19 will apply.

22. DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

22.1 Reports Intended to be Taken into Account

(a) Where a Cabinet member or officer receives a report, which will be taken into consideration when a key decision is made, he or she shall not make that decision until the report has been available for public inspection for at least five clear days.

(b) The member or officer making the decision shall ensure that Democratic Services make the report available for inspection by the public as soon as is reasonably practicable after that officer or member receives it.

(c) The officer who prepares the report shall, in any report to be available for inspection by the public, include a list of background papers for the report or part of the report, and shall ensure that the background papers are available on the Council's website.

22.2 Provision of reports to Overview and Scrutiny Committees

22.2.1 Where a report has been submitted to a Cabinet Member or officer with a view to it being considered when a key decision is made, the person who submitted the report shall, as soon as is reasonably practicable, ensure that it is available electronically to the Chairman of the Overview and Scrutiny Committee or, where there is no Chairman, to every member of the Overview and Scrutiny Committee.

22.3 Record of Individual Decision

22.3.1 As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet, or after an officer has taken a decision closely associated with the discharge of an executive function, they will prepare, or instruct the proper officer to prepare, a record of the decision which must include:-

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;

- (c) details of any alternative options considered and rejected at the time when the decision was made;
- (d) a record of any conflict of interest declared by any Cabinet Member who is consulted in relation to the decision; and
- (e) in respect of any declared conflict of interest a note of any dispensation granted by the Council's Head of Paid Service.

22.3.2 The provisions of Rules 7 and 9 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information.

23. OVERVIEW AND SCRUTINY COMMITTEE MEMBERS' ACCESS TO DOCUMENTS

23.1 Rights to Copies

Subject to Rule 23.2 below, a Member of an Overview and Scrutiny Committee will be entitled, no later than 10 clear days after the Cabinet receives the request, to copies of any document which is in the possession or control of the Cabinet and which contains material relating to:-

- (a) any business transacted at a public or private meeting of the Cabinet or its Committees; or
- (b) any decision taken by an individual Member of the Cabinet; or
- (c) any decision that has been made by an officer of the authority which is closely associated with the discharge of an executive function.

23.2 Limit on Rights

A Member of an Overview and Scrutiny Committee will not be entitled to:-

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or any review contained in any programme of work of such a committee or sub-committee of such a committee; or
- (c) any document or part of a document containing the advice of a political adviser or assistant.

23.3 Where the Cabinet determines that a Member of an Overview and Scrutiny Committee is not entitled to a copy of a document or part of any such document for a reason set out in paragraphs 23.1 or 23.2 it must provide the Overview and Scrutiny Committee with a written statement setting out its reasons for that decision.

24. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

24.1 Material Relating to Previous Business

All Members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees, and

contains material relating to any business previously transacted at a private meeting unless it contains:-

- (a) exempt information falling within paragraphs 1, 2, 3 (to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract), 4, 5 and 7 of the categories of exempt information; or
- (b) the advice of a political adviser.

24.2 Material Relating to Key Decisions

All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its Committees which relates to any key decision unless paragraph (a) and/or (b) in 24.1 above applies.

24.3 Nature of Rights

These rights of a Member are additional to any other rights he or she may have.

25. CONFIDENTIALITY

25.1 No member of the Council, nor any co-opted member of any committee, sub-committee, panel or working group, shall without the permission of the Council or (in respect of Cabinet functions) the Cabinet, or (in respect of their functions) of the appropriate committee, sub-committee, panel or working group, disclose any exempt or confidential matter unless and to the extent only that that matter shall have been placed in the public domain by the Council, Cabinet, committee, sub-committee, panel or working group (as the case may be).
