

## **SECTION 15**

### 15. Access to Information Rules

#### 15.1 Scope

These rules apply to all Committee meetings (including Council and Cabinet) unless stated otherwise in the Constitution or legislation. They also apply to meetings called for the purposes of individual decision making. No decision shall be taken unless it is included on the agenda for that meeting and is accompanied by a report from the appropriate officer or Cabinet Member. Where the report is from a Cabinet member, it must state any advice received from officers.

#### 15.2 Additional Rights to Information

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

#### 15.3 Rights to Attend Meetings

Members of the public may attend all meetings subject only to the exceptions in these rules. Attendance includes access to the meeting being through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming where applicable.

#### 15.4 Notices of Meeting

Unless a meeting is convened at short notice, the Council will give at least five clear days' notice of any meeting by posting details of the meeting at the Council offices and on the Council's website. Reference to 'published, posted or made available at the Council offices' includes publication on the Council's website (or electronic meetings management system).

#### 15.5 Access to Agenda and Reports Before the Meeting

The Council will make copies of the agenda and reports open to the public available for inspection at the Council offices and on the Council's website at least five (5) clear days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the agenda. Where reports are prepared after the summons has been sent out, the designated Officer shall make each such report available to the public as soon as the report is completed and sent to Councillors. In the case of items or reports which fail to meet the deadline of five clear working days, the Proper Officer will need to be satisfied that:

15.5.1 the item/report is genuinely urgent; and

15.5.2 it cannot wait until a later meeting;

and the report author is responsible for furnishing these reasons to the Proper Officer.

Reference to 'inspection' in the Constitution includes being published on the Council's website (or electronic meetings management system).

#### 15.6 Access to Minutes etc after the Meeting

The Council will make available copies of the following for a period of six years after the date of a meeting:

15.6.1 the minutes of the meeting or record of decisions taken by the Cabinet, together with reasons, excluding any part of the minutes of proceedings when the meeting was not open to the public because exempt or confidential information was being considered;

15.6.2 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;

15.6.3 the agenda for the meeting; and

15.6.4 reports relating to items when the meeting was open to the public.

Access to minutes, decisions and other relevant documents and copies includes being published on the Council's website (or electronic meetings management system).

## 15.7 Background Papers

### 15.7.1 List of Background Papers

The Officer preparing a report will set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in their 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 15.8.

### 15.7.2 Public Inspection of Background Papers

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

## 15.8 Exclusion of Access by the Public to Meetings

### 15.8.1 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.

### 15.8.2 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.

### 15.8.3 Meaning of Confidential Information

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

### 15.8.4 Meaning of Exempt Information

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

NOTE: 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.

No.	Category of Exempt Information	Condition
1.	Information relating to any individual.	Public interest test applies (see below).
2.	Information which is likely to reveal the identity of an individual.	Public interest test applies (see below).
3.	Information relating to the financial or business affairs of any particular person (including the authority holding that information).	<p>Information falling within category 3 is not exempt information by virtue of that paragraph if it is required to be registered under:</p> <ul style="list-style-type: none"> <li>• The Companies Act 2006;</li> <li>• The Friendly Societies Act 1974;</li> <li>• The Friendly Societies Act 1992;</li> <li>• Co-operative and Community Benefit Societies Act 2014;</li> <li>• The Building Societies Act 1986; or</li> <li>• The Charities Act 2011.</li> </ul> <p>Public interest test applies (see below).</p>
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.	Public interest test applies (see below).
5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6.	<p>Information which reveals that the authority proposes:</p> <ul style="list-style-type: none"> <li>• to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>• to make an order or direction under any enactment.</li> </ul>	Public interest test applies (see below).
7.	Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. Public interest test applies (see below).	Public interest test applies (see below).

## 15.9 Public Interest Test

### 15.9.1 Information which:

- (a) falls within any of paragraphs 1 to 4, 6 and 7 in the table above; and
- (b) is not prevented from being exempt by virtue of the “qualifications” above,

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

15.9.2 The starting point is that there is a general public interest in release and the public authority has to decide whether in any particular case it would serve the interest of the public better to either disclose or withhold the information.

15.9.3 There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations:

- (a) there is a distinction between public interest and what merely interests the public.
- (b) does it further the understanding of and participation in the public debate of issues of the day?
- (c) does it promote accessibility and transparency by public authorities for decisions taken by them or in the spending of public money?
- (d) does it allow individuals and companies to understand decisions made by public authorities affecting their lives?
- (e) does it bring to light information affecting public health and public safety?

## 15.10 Exclusion of Access by the Public to Reports

If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which, in his or her opinion, relate to items during which, in accordance with Rule 15.8, 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 and if applicable, why it is in the public interest it is considered that the information should not be disclosed.

## 15.11 Application of Rules to the Cabinet

15.11.1 Rules 15.12.2 - 15.21.1 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 15.1-15.10 unless rule 15 (general exception) or rule 16 (special urgency) apply. A Key Decision is as defined in Section 2 of this Constitution.

15.11.2 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 20 working days of the date according to the Forward Plan by which it is to be decided, then it must also comply with rules 15.1 – 15.10 unless rule 15.14 (general exception) or rule 17.17 (special urgency) apply. This requirement does not include meetings whose sole purpose is for officers to brief Members.

## 15.12 Procedure before taking Key Decisions

### 15.12.1 Notice of Key Decisions

Subject to rule 15.14 (general exception) and rule 15.17 (special urgency), a Key Decision may not be taken unless:

- (a) a notice (called here a “Notice of Key Decision”) has been published in connection with the matter in question;
- (b) at least 28 clear days have elapsed since the publication of the Notice of Key Decision;
- (c) 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).

#### 15.12.2 Contents of Notice of Key Decision

The Notice of Key Decision will state that a Key Decision is to be taken by the Cabinet, a Committee of the Cabinet, and individual members of the Cabinet, Officers or under joint arrangements in the course of the discharge of an Executive Function. It will describe the following particulars:

- (a) the matter in respect of which the decision is to be made;
- (b) where the decision maker is an individual, their name and title, if any and where the decision maker is a body, its name and a list of its membership;
- (c) the date on which, or the period within which, the decision is to be made;
- (d) a list of the documents submitted to the decision maker 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.

#### 15.12.3 Publication of the Notice of Key Decision

The Notice of Key Decision must be made available for inspection by the public at the Council offices and on the Council’s website.

### 15.13 The Forward Plan

15.13.1 The Council is not required by law to publish a Forward Plan. However, a Notice of Key Decision and a Notice of Private Meeting of the Cabinet published by the Council set out not just details of specific Key Decisions, but also details of Key Decisions over a four month period (including decisions to be made by the Cabinet, individual Cabinet members or delegated officers, which are not Key Decisions). In this constitution, such notices are together referred to as the “Forward Plan”.

15.13.2 The Forward Plan does not have to include exempt information and should not include confidential information, but does give notice of forthcoming Part 2 decisions.

### 15.14 General Exception

If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 15.15 (Special Urgency), the decision may still be taken if:

- 15.14.1 the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
- 15.14.2 the Proper Officer has informed the Chair 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;
- 15.14.3 the Proper Officer has made copies of that notice available to the public at the Council offices and on the Council's website; and
- 15.14.4 at least five clear working days have elapsed since the Proper Officer complied with 15.14.2 and 15.14.3. Where such a decision is taken collectively, it must be taken in public.

#### 15.15 Special Urgency

- 15.15.1 If by virtue of the date a decision which must be taken under Rule 15.14 (General Exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chair of the body making the decision, obtains the agreement of the Chair of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chair, or if the Chair is unavailable to act, then the agreement of the Vice-Chair of the Overview and Scrutiny Committee, the Chair of the Council, or in their absence, the Vice-Chair or Head of Paid Service will suffice.
- 15.15.2 As soon as reasonably practicable after the decision taker has obtained agreement under 15.15.1, the decision taker must make available at the Council Offices a notice setting out the reasons that the decision is urgent and cannot be reasonably deferred, and arrange for this notice to be published on the Council's website. The notice will be circulated to Members.

#### 15.16 Report to Council

##### 15.16.1 When the Overview and Scrutiny Committee can Require a Report

If the Overview and Scrutiny Committee think that a Key Decision has been taken which was not:

- (a) included in the Forward Plan;
- (b) the subject of the general exception procedure;
- (c) the subject of an agreement with the Overview and Scrutiny Committee Chair, or the Chair/Vice-Chair of the Council under rule 15.15;

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Proper Officer, who shall require such a report on behalf of the Committee when so requested by the Chair or any five Members. Alternatively the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

##### 15.16.2 Cabinet's Report to Council

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 seven days of receipt of the written notice, or the resolution of the Committee, then the report may be submitted to the meeting after that. 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.

#### 15.16.3 Annual Report on Special Urgency Decisions

The Leader of the Council will submit an annual report to the Council on the Cabinet decisions taken in the circumstances set out in 15.15 (special urgency) in the preceding year. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

### 15.17 Record of Decisions of the Cabinet

#### 15.17.1 The Decision Record

- (a) As soon as reasonably practicable after any meeting, the Proper Officer, or if they were not present at the meeting, the Chair of the meeting, must ensure that a written record is made of every Executive Decision made by the Cabinet and its Committees (if any) and by individual Cabinet Members, and Joint Committees and Joint Sub-Committees whose Members are all Members of a local authority executive.
- (b) This decision record will include a statement, for each decision, of:
  - (i) the decision made;
  - (ii) the date the decision was made;
  - (iii) the reasons for that decision;
  - (iv) any alternative options considered and rejected at the meeting;
  - (v) any personal interest declared; and
  - (vi) any dispensation granted.

### 15.18 Cabinet Meetings to be held in Public

Meetings of the Cabinet will be held in public, unless it is likely that exempt or confidential information would be disclosed or whenever a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent misbehaviour at a meeting. The public may only be excluded for the part or parts of the meeting which it is likely that exempt or confidential information would be disclosed.

### 15.19 Key Decisions by An Individual Member of the Cabinet

#### 15.19.1 Reports Must Be Taken Into Account

Where an individual Member of the Cabinet receives a report which they intend to take into account in making any Key Decision, then they will not make the decision until at least three clear working days after receipt of that report.

#### 15.19.2 Provision of Copies of Reports to Overview and Scrutiny Committee

On giving such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chair of the Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

### 15.19.3 Record of Individual Decision

The decision recording rules in paragraph 15.17.1 will apply.

## 15.20 Overview and Scrutiny Committee Access to Documents

### 15.20.1 Rights of Access

Subject to paragraph 15.20.2 below, the Overview and Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet or its Committees and which contains material relating to:

- (a) any business transacted at a meeting of the Cabinet or its Committees; or
- (b) any decision taken by an individual Member of the Cabinet.

### 15.20.2 Limit on Rights

A Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains confidential or exempt information, unless that information is relevant to an action or decision that the Committee are reviewing or scrutinising or intending to scrutinise; or
- (c) advice provided by a political advisor or assistant.

With regard to 15.20.2(b) above, the Overview and Scrutiny Committee will need to demonstrate to the Monitoring Officer that the information requested is relevant to them and the Monitoring Officer shall take the decision as to whether the information should be made available, supplying reasons as appropriate.

## 15.21 Additional Rights of Access for Members

15.21.1 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 contain material relating to any business to be transacted at a public meeting unless 15.21.1(a), 15.21.1(b) or 15.23.1(c) applies:

- (a) it contains exempt information falling within paragraphs 1, 2, 4, 5 or 7 of the categories of exempt information; or
- (b) it contains exempt information falling within paragraph 3 of the categories of exempt information and that information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract; or
- (c) where it appears to the Proper Officer that allowing the Member to inspect the document would involve the disclosure of advice provided by a political advisor or assistant.

15.21.2 Any document which is required by Rule 15.21.1 to be available for inspection by any member of the Council must be available for such inspection for at least five (5) clear days before the meeting except that-



- (a) where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available under Rule 15.21.1 in relation to that time must be available for inspection when the item is added to the agenda.

## 15.22 Material relating to previous business

15.22.1 All members will be entitled to inspect any document (except those available only in draft form) 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 or to any decision made by a Member or Officer in accordance with executive arrangements unless 15.21.1(a) or 15.21.1(b) applies.

15.22.2 Any document required to be made available for inspection under 15.22 must be made available when the relevant meeting concludes or, where an executive decision is made by an individual member or officer, immediately after the decision has been made, and in any event, within twenty four (24) hours of the conclusion of the meeting or the decision having been made as the case may be.

### 15.22.3 Nature of Rights

These rights of a Member are additional to any other right they may have.