

PART 4.2 - ACCESS TO INFORMATION PROCEDURE RULES

1. Scope

These rules apply to all meetings of the Council, Cabinet, Scrutiny Committees, Committees, Forums and Panels etc.

2. Additional Rights to Information

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

3. Rights to Attend Meetings

Members of the Public may attend meetings subject to the exceptions outlined in these rules. There is public seating for 36 people in the Council Chamber and 22 people in the Committee Room. For numbers exceeding this it may be necessary to wait in the foyer/adjoining room.

4. Notices of Meetings

The Council will give at least 5 clear days notice by posting details of the meeting at the Council's Offices in Sittingbourne, at the District Offices in Faversham and the Gateway at Sheerness. Details will also be posted on the website www.swale.gov.uk/dso. If the meeting is called at shorter notice, then details will be made available at the time the meeting is convened.

5. Access to Agenda and Reports Before Meetings

The Council will make copies of the agenda and reports (except where they contain exempt or confidential information) for inspection at least five clear days before the meeting, and on the website www.swale.gov.uk/dso. Where a meeting is called at shorter notice, this information will be made available for inspection from the time the meeting is convened. Where reports are prepared after the summons has been sent out the designated officer shall make the report available to the public as soon as it is completed and sent to Members.

6. Supply of Copies

The Council will supply copies of any agenda, reports (unless they contain confidential or exempt information); any further statements of particulars necessary to indicate the nature of the items in the agenda; and if the Proper Officer thinks fit, copies of any other documents supplied to Members in connection with an item. This will be subject to payment of a charge for postage and any other costs. The agenda and reports can be viewed on line www.swale.gov.uk/dso. A reasonable number of copies of agenda, reports and minutes will be made available at meetings (free of charge).

7. Access to Minutes etc after the meeting

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

- (a) The minutes of the meeting or records of decisions taken, together with reasons for all meetings of the Executive, excluding any part of the meeting which was not open to the public or which disclose confidential or exempt information.

- (b) A summary of the 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
- (d) Reports relating to items when the meeting was open to the public.

8. Background Papers

8.1 List of background papers

The author of each report will include a list of documents (called background papers) in their report, relating to the subject matter of the report and where they can be inspected which in his/her opinion:

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

but does not include published works or those that contain exempt or confidential information (as defined in Rule 10 of these rules).

8.2 Public inspection of background papers

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

9. Summary of Public's Rights

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and be made available to the public at the Council's offices. As this Constitution must be made available to the public, these rules constitute that written summary.

10. Exclusion of Access by the Public to Meetings

10.1 Confidential Information - Requirement to Exclude the 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.

10.2 Exempt Information - Discretion to Exclude the Public

Section 100B and Schedule 12A of the Local Government Act 1972 provide that a meeting may only exclude press and public by reason of exempt information where it is of the opinion that the public interest in maintaining confidentiality over-rides the public interest in disclosure.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their positions, Article 6 of the Human Rights Act 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.

10.3 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.

10.4. Meaning of Exempt Information

Exempt information means information falling within the following categories:

Category
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). See note below
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 any 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 in connection with the prevention, investigation or prosecution of crime.
7 (a) Information which is subject to any obligation of confidentiality.
7 (b) Information which relates to matters concerning national security.
7 (c) The deliberations of the Standards Committee or Standards Committee Sub Committees in reaching any finding on a matter referred under the provisions of sections 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.

Relevant to No. 3 - Information falling within No. 3 is not exempt information if its 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 - 1978
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

Information is not exempt if it relates to a 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.

Relevant to all: Information 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.

11. Exclusion of Access by the Public to Reports

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which, in his opinion, relate to items during which, in accordance with 10 above, 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 which is likely to be disclosed.

12. Application of Rules to the Executive

Rules 13 - 24 apply to the Cabinet and its committees. If the Cabinet or its committees meet to take a decision then it must also comply with Rules 1 -11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is defined in Article 13 of this constitution.

If the Cabinet or its Committees meet to take a key decision they must also comply with Rules 1 - 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. This requirement does not include meetings whose sole purpose is for officers to brief Members.

13. Procedure Before Taking Key Decisions

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a forward plan) has been published in connection with the matter in question;
- (b) at least 5 clear days have elapsed since the publication of the Forward Plan; and
- (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 meeting).

14. The Forward Plan

14.1 Period of Forward Plan

Forward plans will be prepared by the Leader of the Council to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

14.2 Contents of Forward Plan

The Forward 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, Area Fora 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, his 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) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;

- (f) the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

The Forward Plan must be published at least 14 days before the start of the period covered. The Proper Officer will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (i) that key decisions are to be taken on behalf of the Council;
- (ii) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (iii) that the plan will contain details of the key decisions to be made for the four month period following its publication;
- (iv) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices; and available to view on the Council's website at www.swale.gov.uk/dso;
- (v) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;
- (vi) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (vii) that other documents may be submitted to decision takers;
- (viii) the procedure for requesting details of documents (if any) as they become available; and
- (ix) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a forward plan and confidential information cannot be included.

For agenda planning purposes, the Council will aim to include all items on the forward plan, including those that are not key decisions.

15. General Exceptions

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 16 below (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 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;
- (b) the proper officer has informed the Chairman of a relevant 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;

- (c) the proper officer has made copies of that notice available to the public at the offices of the Council; and
- (d) at least 5 clear days have elapsed since the proper officer complied with (b) and (c).

Where such a decision is taken collectively, it must be taken in public.

16. Special Urgency

If by virtue of the date by which a decision must be taken Rule 15 (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 a relevant Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If there is no Chairman of a relevant Scrutiny Committee, or if the Chairman or Vice-Chairman of each relevant Scrutiny Committee is unable to act, then the agreement of the Mayor, or in his absence the Deputy Mayor will suffice.

17. Reports to Council

17.1 When a Scrutiny Committee can require a report

If a Scrutiny Committee thinks that a key decision has been taken which was not:

- (a) included in the forward plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with a relevant Scrutiny Committee Chairman or Vice-Chairman or the Mayor or Deputy Mayor under rule 16 above,

the Committee may require the Executive 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 Chairman or any 5 Members. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Scrutiny Committee.

17.2 Executive's report to Council

The Executive 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. 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.

17.3 Quarterly reports on special urgency decisions

In any event the Leader will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

18. Record of Decisions

After any meeting of the Cabinet or any of its Committees, whether held in public or private, the Democratic Services Representative or, where no officer was present, the person presiding at the

meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

19. Cabinet Meetings Relating to Matters which are not Key Decisions

The Cabinet will decide whether meetings relating to matters which are not key decisions will be held in public or private.

20. Notice of Private Meeting of the Cabinet

Members of the Cabinet or its Committees will be entitled to receive five clear working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.

21. Attendance at Private Meetings of the Cabinet

All Members will be served notice of all meetings of Committees of the Cabinet, whether or not they are Members of that Committee.

All Members of the Cabinet are entitled to attend a private meeting of any Committee of the Cabinet.

22. Decisions by individual Members of the Cabinet

22.1 Reports intended to be taken into account

Where an individual member of the Cabinet receives a report which he/she intends to take into account when making any key decision, then he/she will not make the decision until at least five clear days after receipt of that report.

22.2 Provision of copies of reports to overview and scrutiny committees

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy to the chair of every relevant overview and scrutiny committee as soon as reasonably practicable, and make it publicly available at the same time.

22.3 Record of individual decision

As soon as reasonably practical after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 (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 or advice from a political or mayor's assistant.

23. Scrutiny Committees - Access to Documents

23.1 Rights to copies

Subject to rule 23.2 below, a Scrutiny Committee (including its Sub-Committees) 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 public or private meeting of the Cabinet or its Committees; or

- (b) any decision taken by an individual Member of the Cabinet;
- (c) the Members of the relevant Scrutiny Committees are entitled to sight of papers in relation to private decisions of the Cabinet before the decision is made.

23.2 Limit on rights

A Scrutiny Committee will not be entitled to:

- (a) any document that is in draft form; or
- (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 scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

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 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) or (b) above applies.

24.3 Nature of rights

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