

## **Appendix 4 Part 6: Access to Information Procedure Rules**

The Council has Executive and Non-Executive responsibilities. Those which are Executive are the responsibility of the Leader and Cabinet and can be delegated to an individual Cabinet Member or to officers as appropriate. Those which are Non-Executive are the responsibility of Full Council, some of which can be delegated to Committees or Officers.

### **Forthcoming Executive Decisions list**

- 6.1 Each fortnight the Head of Democratic Services will make available, at County Hall and on the Council's website, a list of Forthcoming Executive Decisions to be taken by either the Cabinet, Cabinet Portfolio Holder or officers. Each type of decision has different requirements for publication, procedure and recording.

### **Cabinet or Cabinet Member Key Decision**

- 6.2 Some of the executive decisions that elected Members take will also be 'key' decisions. Key Decisions are defined in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. In accordance with the statutory definition and Government guidance, Key Decisions are executive decisions that are likely to:
- (a) result in savings or expenditure which is significant having regard to the budget for the service or function (currently defined by the Council as in excess of £1,000,000); or
  - (b) be significant in terms of its effects on a significant proportion of the community living or working within two or more electoral divisions.
- 6.3 Decisions which should be regarded as Key Decisions because they are likely to have a "significant" effect on the Council's services to the community include:
- (a) Adoption or significant amendment of major new strategies or frameworks not included in the Policy Framework.
  - (b) Decisions that involve significant service developments, significant service reductions, or significant changes in the way that services are delivered, whether County-wide or in a particular locality.
- 6.4 All Key Decisions will be made by the Leader, the Cabinet or a Cabinet Member. Actions taken by officers to implement a Key Decision, even where they would normally satisfy one or both of the tests in 6.3, will

not require further Member approval, provided it is in accordance with the Executive Scheme of Delegation to Officers (Appendix 2 Part 4).

- 6.5 Officers should inform Democratic Services at the earliest opportunity of any future decision, Key or otherwise, in order that it can be included on the Forthcoming Executive Decisions (FED) list.
- 6.6 The FED must contain the following information:
  - (a) Whether or not the matter is a Key Decision;
  - (b) The matter in respect of which the decision is to be made;
  - (c) Where the decision maker is an individual, that individual's name, position and, where the decision maker is a decision-making body, its name;
  - (d) The date on which, or the period within which, the decision is to be made;
  - (e) A list of the documents the decision maker is likely to consider;
  - (f) The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;
  - (g) What other documents may be submitted to the decision maker;
  - (h) The procedure for requesting details of document;
  - (i) Whether the public are likely to be excluded from the meeting at which the matter is to be discussed, or whether papers relating to the matter may be excluded from publication;
  - (j) Any expected legal, financial, equality, property or Human Resources implications;
  - (k) Any consultation planned or undertaken, including the Cabinet Committee meeting at which the matter will be considered;
  - (l) Details of how the decision relates to Bold Steps for Kent
- 6.7 The Monitoring Officer is responsible for advising, where necessary, on the interpretation of the statutory definition of Key Decisions and whether the likely decision will fall within it.
- 6.8 The FED shall not contain any information which is exempt or confidential as defined in these Access to Information Procedure Rules, nor any details of the advice of a political adviser or assistant.

- 6.9 A Key Decision must appear on the FED for at least 28 consecutive days before it can be taken.
- 6.10 If a Key Decision needs to be taken but has not been included in the current FED for 28 days, it may only be taken where:
- (a) the Head of Democratic Services has informed the Chairman and Group Spokesmen of the Scrutiny Committee or, where the Chairman of the Scrutiny Committee is unavailable, has written to each member of the Scrutiny Committee, informing them of the decision to be taken;
  - (b) the Head of Democratic Services has informed any Local Members affected of the intention to take the decision.
  - (c) the Head of Democratic Services has made available at County Hall for inspection by the public, and published on the Council's website, the decision to be taken;
  - (d) five clear working days have elapsed following the day on which the notice was published.
- 6.11 All Key Decisions should be considered by the relevant Cabinet Committee before being taken. Where a Key Decision needs to be urgently taken before the Cabinet Committee meets, it can only be taken where the relevant Cabinet Committee Chairman, Group Spokesmen and affected Local Members have been given notice in writing by the Head of Democratic Services, that the decision is to be taken and where the 6.10 (c) and (d) have also been conformed to.
- 6.12 As soon as reasonably practical after the Head of Democratic Services has complied with paragraph 6.10 a notice setting out the reasons why compliance with 6.9 is impracticable must be made available at County Hall and on the Council's website.
- 6.13 When a Key Decision needs to be taken and it is so urgent that it is not practical to comply with the measures set out in 6.10 or 6.11, it may only be taken where:
- (a) the Chairman of the Scrutiny Committee has agreed that the decision cannot reasonably be deferred
  - (b) the Group Spokesmen of the Scrutiny Committee, the Chairman and Group Spokesmen of the relevant Cabinet Committee and Local Members affected, have been given written notice by the Head of Democratic Services that the decision is to be taken.
- 6.14 If the Scrutiny Committee considers that a decision taken should have been treated as a Key Decision but was not, it may require the Leader to report to the Council within a specified reasonable time details of the

decision, the reasons for it, who made it and why it was not considered to be a Key Decision.

### **Other Cabinet or Cabinet Member Decisions**

- 6.15 Decisions that do not qualify as Key Decisions but which nonetheless are significant enough to be determined at Member level should also be included in the FED, and should include the same information as listed at 6.6 above. Where possible, these decisions should also be listed for 28 days before being taken.
- 6.16 These decisions should be considered by the relevant Cabinet Committee before being taken. Where a decision needs to be taken before the Cabinet Committee meets, the decision can only be taken where:
- (a) A Cabinet Committee has agreed at a previous meeting that the decision need not be considered; and
  - (b) the relevant Cabinet Committee Chairman and Group Spokesmen have been given notice in writing from the Head of Democratic Services, that the decision is to be taken; and
  - (c) The Scrutiny Committee Chairman and Group Spokesmen have been given notice in writing from the Head of Democratic Services that the decision is to be taken;
- in addition
- (d) Decisions must be made available by the Head of Democratic Services, at County Hall for inspection by the public, and published on the Council's website, for five clear working days before they may be taken.
- 6.17 A report must be submitted to the next available meeting of the relevant Cabinet Committee to provide information on the decision and the need for expedience.

### **Officer Delegated Executive Decision**

- 6.18 The Executive Scheme of Delegation to Officers (Appendix 2 part 4 of the Constitution) allows officers to take:
- (a) Decisions which do not qualify as 'Key' under the legal definitions described above and which are not considered to be significant enough to be determined at Member level, such as day-to day running of the council, where the financial implications for the council are under £1,000,000 (Officers should ensure that they act within the financial limits agreed by Council and included at Appendix 5 of the Constitution); and

(b) Actions to implement specific decisions already taken at Member level;

6.19 In addition, responsibilities and delegated authorities to specific officers are set out in Appendix 5 of the Constitution, including the Property Management Protocol which sets out delegated authorities specific to the Director of Property.

### **Meetings**

6.20 The following Procedure Rules 6.21-6.31 apply to all meetings of the Council, Cabinet Committees, Joint Committees, Ordinary and Corporate Governance Committees and meetings of the Cabinet

### **Notice of meetings and access to agenda and reports**

6.21 The Head of Democratic Services will give notice of the time and place of a public meeting at least five clear working days before the meeting by displaying a notice at County Hall and publishing it on the Council's website. Shorter notice shall only be given in exceptional circumstances.

6.22 The Head of Democratic Services will also make available for public inspection at County Hall and on the Council's website a copy of the agenda and every report to be considered by a committee, five clear working days before the meeting takes place.

6.23 There may be excluded from publication the whole, or any part, of a report which relates only to matters during which the meeting is likely to be held in private.

6.24 Any document that is required to be available for inspection by the public must be available for at least five clear days before the meeting, except that:

(a) Where the meeting is convened at shorter notice, a copy of the agenda and associated reports must be available for inspection when the meeting is convened; and

(b) Where an item which would be available for inspection by the public is added to the agenda, copies of the revised agenda and any report relating to the item for consideration at the meeting, must be available for inspection by the public when the item is added to the agenda.

6.25 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 virtue of a Court Order.

6.26 Where the whole or any part of a report for a public meeting, or as part of a Cabinet Member Decision, is not available for inspection by the public:

- (a) every copy of the whole report or of the part of the report, as the case may be, must be marked “not for publication”; and
- (b) there must be stated on every copy of the whole or the part of the report:
  - (i) that it contains confidential information; or
  - (ii) by reference to the descriptions in Schedule 12A to the 1972 Act, the description of exempt information by virtue of which the decision-making body discharging the executive function are likely to exclude the public during the item to which the report relates

6.27 The descriptions of exempt information are as follows:

- (a) Information relating to any individual.
- (b) Information which is likely to reveal the identity of an individual.
- (c) Information relating to the financial or business affairs of any particular person (including the authority holding that information), unless it is required that the information be registered under the Companies, Friendly Societies, Industrial and Provident Societies, Building Societies or Charities Acts.
- (d) Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority of a Minister of the Crown and employees of, or office holders under, the authority.
- (e) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (f) Information which reveals that the authority proposes:
  - (i) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
  - (ii) to make an order or direction under any enactment.
- (g) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

- 6.28 Information which falls within (a)-(g) 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.
- 6.29 Except during any part of a meeting during which the public are excluded, the relevant local authority must make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting.

### **Admission of the Public to meetings**

- 6.30 Members of the public and the media may attend all meetings, subject only to the exceptions set out below:

Where:

- (a) it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that if members of the public were present during that item, confidential or exempt information would be disclosed to them; or
- (b) 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.

- 6.31 The public may only be excluded under 6.30(a) for the part or parts of the meeting during which it is likely that confidential information or exempt information will be disclosed.

### **Publication of Records of Decisions by Cabinet, Cabinet Members and Officers**

- 6.32 A record must be made of every decision of the Cabinet, or a Cabinet Member. In certain circumstances a record must also be made of decisions taken by an officer under the Executive Scheme of Delegations to Officers. These circumstances are:
- (a) A management decision regarding the day-to-day running of the council, where the financial implications for the council are between £100,000 and £999,999 (officers should ensure that they act within the financial limits agreed by Council and included at Appendix 5 of the Constitution)
  - (b) A decision or action taken to implement a specific Cabinet or Cabinet Member decision where the financial implications for the council are above £100,000
- 6.33 Those decisions purely administrative in nature and only remotely connected with an executive function need not normally be recorded

but officers should consider in all cases the level of public interest that might exist for the information and the context within which the decision is being taken.

- 6.34 The Record of Decision must contain:
- (a) a record of the decision
  - (b) the date that the decision was made
  - (c) a record of the reasons for the decision
  - (d) details of any alternative options considered and rejected by the decision maker
  - (e) a record of any conflict of interest declared by the decision maker or any executive member who is consulted by the body, member or officer which also relates to the decision
  - (f) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.
- 6.35 In addition the record should contain:
- (a) Any comments received when the matter was considered at Cabinet Committee
  - (b) Comments received from affected local members, where applicable
  - (c) Comments received from Members consulted as part of the urgency procedures, where applicable
- 6.36 The Record of Decision should be a public document, with any exempt information being contained within an exempt report to the decision maker.
- 6.37 The Head of Democratic Services will, as soon as reasonably practicable, make available the Record of Decision and any reports considered by the decision maker for inspection at County Hall and on the Council's website, except where information is considered to be exempt from publication or confidential.
- 6.38 Where the Record of Decision or report contains a list of background papers other relevant documents, at least one copy of each, unless exempt or confidential, will also be made available on the Council's website and at County Hall for inspection. Background papers are those documents which:



- (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

6.39 All Members will be informed in writing that the decision has been taken.

### **Access to minutes and records of decisions**

6.40 The Head of Democratic Services will retain and make available for public inspection on the Council's website for six years after a meeting, or the taking of a decision, copies of the following:

- (a) the minutes of the meeting and/or records of decisions taken, excluding those which disclose exempt or confidential information
- (b) a summary of any proceedings not open to the public
- (c) the agenda
- (d) reports relating to items when the meeting was open to the public

### **Supply of copies**

6.41 Following a request by any person or on behalf of a newspaper, and on payment by them of a reasonable charge to meet postage, copying or other necessary charge for transmission, the Council will supply copies of any agendas, reports, minutes and records of decisions which are open to public inspection

### **Additional rights of access to documents for elected members**

6.42 Members have statutory rights to inspect and be provided with copies of most documents held by officers, the Leader or the Cabinet. They also have a right at common law to inspect documents that contain information they need to know for the discharge of their duties as Members of the Council. These rights will be interpreted and applied in accordance with a presumption in favour of openness.

6.43 In addition material in the possession or under the control of the executive of the local authority; and which contains material relating to:

- (a) Any business transacted at a private meeting;

(b) Any decision made by an individual Member in accordance with executive arrangements; or

(c) Any decision made by an officer in accordance with executive arrangements;

must be available for inspection by any Member within 24 hours of the conclusion of the meeting or the decision being made, as the case may be.

6.44 Paragraphs 6.42 and 6.43 do not require a document to be available for inspection where the Head of Democratic Services agrees that:

(a) it discloses exempt information, unless that exemption has been justified under paragraphs 3 or 6 of Schedule 12A of the Local Government Act 1972 (6.27 (c) and (f) above), (except 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); or

(b) compliance with 6.42 would involve the disclosure of advice provided by a political adviser or assistant, those paragraphs will not apply to that document or part of the document.

6.45 The rights conferred by 6.42 and 6.43 are in addition to any other rights that a Member may have.

### **Additional rights of access to documents for members of the Scrutiny Committee**

6.46 A member of the Scrutiny Committee is further entitled to any document which is described in 6.42 and 6.43 above and also those documents which are exempt for reasons other than paragraphs 3 or 6 of Schedule 12A of the Local Government Act 1972 (6.27 (c) and (f) above).

6.47 Where a member of an overview and scrutiny committee requests a document, the executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the executive receives the request.

6.48 However, no member of an overview and scrutiny committee is entitled to a copy of a document or any part of a document containing:

(a) exempt or confidential information, unless that information is relevant to:

(i) an action or decision that that member is reviewing or scrutinising; or

(ii) any review contained in any programme of work of such a committee or sub-committee of such a committee; or

(b) advice provided by a political adviser or assistant.

6.49 Where the executive 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 paragraph (1) or (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.