

# Council Constitution

## Part 4e - Access to Information Procedure Rules

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### **1. Scope**

These Rules apply to all meetings of the Council, Scrutiny Panels, Neighbourhood Forums, the Standards Committee and Speakers Panels (regulatory committees) and public meetings of the Executive (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**

Members of the public may attend all meetings subject only to the exceptions in these Rules.

### **4. Notices of Meeting**

The Council will give at least five clear working days before a meeting (i.e. not including the day of despatch, the day of the meeting, Sundays or any other days which the Council Offices are normally closed (Bank Holidays and during the Christmas period)) notice of any meeting by posting details of the meeting in the designated office.

### **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 designated office at least five clear days before the meetings. If an item is added to the agenda later, the revised 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 complete and sent to Councillors) will be open to inspection from the time the item was added to the agenda.

A meeting may be called at shorter notice in exceptional circumstances, but the agenda and reports must be made available for public inspection when issued to Members.

## **6. Supply of Copies**

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

1. any agenda and reports which are open to public inspection;
2. any further statements or particulars necessary to indicate the nature of the items in the agenda; and
3. if the Proper Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item.

## **7. Access to Minutes and Records of Decisions**

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

1. the Minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the Executive – excluding any part of the Minutes of proceedings when the meeting was not open to the public or which disclose exempt information
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;
3. the agenda for the meeting; and
4. reports relating to items when the meeting was open to the public;

## **8. Background Papers**

### **8.1 List of Background Papers**

The Proper Officer 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:-

1. disclose any facts or matters on which the report or an important part of the report is based; and
2. 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).

### **8.2 Public Inspection of Background Papers**

The Council will make available for public inspection for six years after the date of the meeting one copy each of the documents on the list of background papers subject to Rule 10 below.

## **9. Summary of Public's Rights**

A written summary of the public's rights to attend meetings and to inspect any copy documents must be kept at and available to the public at the Dukinfield Town Hall, King Street, Dukinfield.

These Rules constitute the written summary of the Public's Rights required under legislation.

## 10. Exclusion of Access by the Public

### 10.1 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 exempt information would be disclosed.

Where the meetings 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.

### 10.2 Meaning of Confidential Information

Confidential information means:-

1. information given to the Council by a Government Department upon terms (however expressed) which forbid the disclosure of information to the public; or
2. information the disclosure of which to the public is prohibited by or under enactment or by Order of a Court.

### 10.3 Meaning of Exempt Information

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

Category	Qualification
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).	<p>Information is <b>not</b> exempt information if it is required to be registered under:-</p> <ol style="list-style-type: none"><li>1. the Companies Act 1985;</li><li>2. the Friendly Societies Act 1974;</li><li>3. the Friendly Societies Act 1992;</li><li>4. the Industrial and Provident Societies Acts 1965 to 1978;</li><li>5. the Building Societies Act 1986; or</li><li>6. the Charities Act 1993.</li></ol> <p>"Financial or business affairs" includes contemplated, as well as past or current activities.</p> <p>"Registered" in relation to information required to be registered under the Building Societies Act 1986 means recorded in the public file of any building society (within the meaning of that Act).</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.	<p>"Employee" means a person employed under a contract of service.</p> <p>"Labour relations matter" means –</p>

	<ol style="list-style-type: none"> <li>1. any of the matters specified in paragraphs (a) to (g) of Section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</li> <li>2. any dispute about a matter falling within paragraph (a) above;</li> </ol> <p>and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>“Office-holder”, in relation to the authority, means the holder of any paid office appointments to which are, or may be made, or confirmed, by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority.</p>
<p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	
<p>6. Information which reveals that the authority proposes:-</p> <ol style="list-style-type: none"> <li>1. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>2. to make an order or direction under any enactment.</li> </ol>	<p>Child means a person under 18 and anyone who is 18 and is still registered as a school pupil, or is the subject of a Care Order, within the meaning of Section 31 Children Act 1989</p>
<p>7. Information relation to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
<p>7A. Information which is subject to any Obligation of confidentiality.</p>	<p>Applies to Standards Committee only.</p>
<p>7B. Information which relates in any way to matters concerning national security</p>	<p>Applies to Standards Committee only.</p>
<p>7C. The deliberations of a Standards Committee or of a sub-committee of a Standards Committee, established under the provisions of Part 3 of the Local Government Act 2000, in reaching any finding on a matter referred under the provisions of Section 60(2) or (3), 64(2), 70(4) or (5) or 72(2) of that Act.</p>	<p>Applies to Standards Committee only.</p>

**Public Interest Test - Paragraph 10**

The above information is only 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.

## **Town and Country Planning**

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.

## **Members' Access**

All Members of the Council (but not members of the public or media) are entitled to access to documents which are 'exempt' under new paragraph 3 (unless the information relates to terms proposed or to be proposed in relation to a Council contract), and to any documents which are 'exempt' under new paragraph 6, if they so request. **Members should bear in mind that disclosure of that exempt report to the public or press could be a breach of the Statutory Code of Conduct and could result in serious sanctions being imposed.**

## **11. Exclusion of Access by the Public Reports**

If the Proper 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 10, the meeting is likely not be open to the public. Such reports will be marked "Not for publication: This report contains exempt information relating to paragraph (xx) and Rule 10 of Part 1 of Schedule 12A of the Local Government Act 1972 (as amended). It would not, on balance, be in the public interest to disclose this information to the public because (justification to be included)".

## **Examples of Justification**

- Disclosure of the personal information contained in the report would not be fair to (xxx) and would therefore be in breach of Data Protection principles.
- Disclosure would be likely to jeopardise the Council's law enforcement activities by (state in what way they would be jeopardised).
- Disclosure would be likely to prejudice the Council's position in forthcoming legal proceedings by (state in what way it would be prejudiced).
- Disclosure would be likely to put the Council at a significant disadvantage during the negotiations for (xxxx) by (state why the Council would be disadvantaged).

## **12. Application of Rules to the Executive**

**Rules 13-24** apply to the Executive and its Committees. If the Executive meets to take a Key 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 as defined in **Article 14.3** of this Constitution.

If the Executive or its Committees meet to discuss a Key Decision included in the current Forward Plan, with an Officer other than a political assistant present, within 28 days of the date when the decision is expected to be made at, then it 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:-

1. a notice (called here a Forward Plan) has been published in connection with the matter in question;
2. at least five clear days have elapsed since the publication of the Forward Plan; and
3. where the decision is to be taken at a meeting of the Executive or its Committees, notice of the meeting has been given in accordance with **Rule 4** (Notice of Meetings).

### **14. The Forward Plan**

#### **14.1 Period of Forward Plan**

Forward Plans will be prepared by the Executive Leader 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 Executive Leader has reason to believe will be the subject of a Key Decision to be taken by the Executive, a Committee of the Executive, individual Members of the Executive, 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:-

1. the matter in respect of which a decision is to be made;
2. where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
3. the date on which or the period within which, the decision will be taken;
4. the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
5. the means by which any such consultation is proposed to be undertaken;
6. the steps any person might take who wishes to make representations to the Executive or decision taker about the matter in which the decision is to be made, and the date by which those steps must be taken; and
7. 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 annually a notice in at least one newspaper circulating in the area, stating:-

1. that Key Decisions are to be taken on behalf of the Council;
2. that a Forward Plan containing particulars of the matter on which decisions are to be taken will be prepared on a monthly basis;
3. that the Plan will contain details of the Key Decisions to be made for the four month period following its publication;
4. that each Plan will be available for inspection at reasonable hours free of charge at the Council's offices;
5. 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;
6. the address from which, subject to any prohibition or restriction on their disclosure, copied of, or extracts from, any document listed in the Forward Plan is available;
7. that other documents may be submitted to decision takers;
8. the procedure for requesting details of documents (if any) as they become available; and

9. the dates on each month in the following year on which each Forward Plan will be published and available to the public at Dukinfield Town Hall, King Street, Dukinfield

Exempt information need not be included in a Forward Plan and confidential information cannot be included

**14.3** All new entries on the Council's Forward Plan will be referred for consideration to the appropriate Scrutiny Panel to which the proposed decision taker(s), together with appropriate officers, will be invited to attend the meeting of the Scrutiny Panel to afford the Scrutiny Panel Members the opportunity to discuss the proposed Key Decision as part of the consultation process.

**14.4** The monthly up-dated version of the Forward Plan shall be published on the Council's web site, the Members' Portal and supplied to all Members of the Council.

## **15. 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 16 (Special Urgency), the decision may still be taken if:-

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;
2. the Proper Officer has informed the Chair of a relevant Scrutiny Panel, or if there is no such person, each member of that panel in writing, by notice, of the matter to which the decision is to be made;
3. the Proper Officer has made copies of that notice available to the public at the offices of the Council; and
4. at least five 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 Chair of the body making the decision, obtains the agreement of the Chair of a relevant Scrutiny Panel that the taking of the decision cannot be reasonably deferred. If there is no Chair of a relevant Scrutiny Panel or, if the Chair of each relevant Scrutiny Panel is unable to act, then the agreement of the Chair of Council Business.

## **17. Report to Council**

### **17.1 When a Scrutiny Panel Can Require a Report**

If a Scrutiny Panel considers that a Key Decision has been taken which was not:-

1. included in the Forward Plan; or
2. the subject of the general exception procedure; or
3. the subject of an agreement with a relevant Scrutiny Panel Chair, or the Chair of Council Business under Rule 16;

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

## **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 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 Executive 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 Executive 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 Executive, whether held in public or private, the Proper Officer or, whether 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 and within five working days. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **19. Executive Meetings Relating To Matters Which Are Not Key Decisions**

The Executive 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 Executive**

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

## **21. Attendance at Private Meetings of the Executive**

1. Only Members of the Executive Cabinet will receive notice of a private meeting of the Executive Cabinet.
2. Only Members of the Executive Cabinet are entitled to attend the Executive Cabinet unless otherwise invited by the Executive Leader. Only Members of the Executive Cabinet may vote.
3. All Members of the Executive Cabinet are entitled to attend a private meeting of the Executive Cabinet.
4. Private meetings of the Executive Cabinet will be convened on Executive Cabinet Agenda letter headed paper.

## **22. Officers**

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 Executive Cabinet. The Executive Cabinet may not meet unless the Proper Officer has been given reasonable notice that a meeting is to take place.
2. A private Executive Cabinet meeting may only take place in the presence of the Proper Officer or his/her nominee with responsibility for recording and publicising the decisions.

There is no requirement for the Executive Cabinet to meet in the presence of an Officer.



The provisions of Rule 18 (Recording and Publicising Decisions) will apply in respect of private meetings of the Executive Cabinet.