

PART 5.5

APPENDIX A

Access to Information Rules of Procedure

1. Scope

These rules apply to all meetings of the Council, Overview and Scrutiny Committees, Local Area Councils, the Standards Committee and regulatory committees and ~~public~~ **formal** 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

Members of the public may attend all meetings subject only to the exceptions in these rules **and in any statutory provisions**.

4. Notices of meeting

The Council will give at least five clear days' notice of any meeting by posting details of the meeting on its website and at County Hall, Morpeth [the designated office] except for those that are lawfully called at less than five clear days' notice.

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 meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the Head of Paid Service shall make each such report available to the public as soon as the report is completed and sent to councillors) will be open to inspection for the time the item was added to the agenda.

Agenda and reports will also be published on the Council's website.

Documents may be available in alternative formats/languages on request.

6. Supply of copies

The Council will supply, **usually in electronic format**, copies of:

- (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 Head of Paid Service thinks fit, copies of any other documents supplied to councillors in connection with an item to any person on payment of a charge for postage and any other costs.
- (4) ***Documents will be made available to the public by the Council publishing them on its website.*** A reasonable number of copies of the agenda and reports will be made available at the meeting.

7. Access to minutes etc after the meeting

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 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;
- (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 reports relating to items when the meeting was open to the public.

8. Background papers

8.1 List of background papers

The Head of Paid Service 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:

- (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—***documents*** which disclose exempt or confidential information (as defined in Rule 10) ***unless the exemption no longer applies*** and, in respect of Cabinet reports, the advice of a political adviser.

8.2 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.

In relation to Executive Decisions the Council will make available on the Council's website and at County Hall (at all reasonable hours) a copy of the background papers included within the list.

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 available to the public at County Hall, Morpeth **and published on the Council's website**.

10. Exclusion of access by the public to meetings

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 confidential information would be disclosed.

10.2 Exempt information – discretion to exclude public

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. Any resolution to exclude the public due to the disclosure of exempt information must identify the part of the proceedings to which it applies and the description of the exempt information to be used.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, **Section 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 **Section Article 6, namely:**

- ***in the interests of morals, public order or national security***
- ***where the interests of juveniles or the protection of the private lives of the parties require the matter to be heard in private***
- ***where, due to special circumstances, publicity would prejudice the interests of justice***

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 40 categories (subject to any condition):

Descriptions of exempt information:

- (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 council 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 council or a Minister of the Crown and employees of, or office holders under, the council.
- (5) Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- (6) Information which reveals that the Council 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.
- (8) Information falling within paragraph 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.
- (9) Information is not exempt information if it relates to proposed development for which the local planning council may grant itself

planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

- (10) ***The specified categories of exemptions listed above do not apply to Licensing Act 2003 hearings, as these are required to be open to the public.***

10.5 Public Interest Test

Information which—

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraphs 8 or 9 -10 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.

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 their opinion relate to items during which, in accordance with Rule 10, 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.

12. Application of rules to the Cabinet

Rules 13 – 24 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 – 11 unless Rule 15-17 (general exception) or Rule 16 18 (special urgency) apply.

A key decision is as defined in Section **Article 13** of this Constitution as:

- (a) ***A key decision means an executive decision which is likely:***
- ***to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates; or***
 - ***to be significant in terms of effects on communities living or working in an area comprising two or more electoral divisions within the area of the Council.***

- (b) *A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules and Access to Information Procedure Rules set out in Part 5 of this Constitution.*
- (3) **Criteria for local key decisions**
- (a) *'milestone' decisions, the timing of which will be known well in advance of the decision being taken. Examples include plans and strategies outside the Policy and Budget Framework, value for money and Auditors' reviews.*
- (b) *substantive commitments within the Corporate Plan and Service Plans which involve a material change in policy and/or significant service development. In such cases it will be for the Cabinet Member to determine what is 'material' or 'significant'. It should be possible to determine the timing of required decisions well in advance of the decision being taken.*
- (c) *operational decisions within the financial limits of the delegation scheme but which in the view of the relevant Cabinet Member may involve a material change of policy, are politically sensitive or may have a significant impact on a local community or reputation of the Council*

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 forward plan by which it is to be decided, then it must also comply with Rules 1 – 11 unless Rule ~~15-17~~ (general exception) or Rule ~~16-18~~ (special urgency) apply. ~~A key decision is as defined in Section 13.03 of this Constitution.~~

This requirement does not include meetings, whose sole purpose is for officers to brief members.

13. Reporting of Cabinet proceedings

While a Cabinet meeting is open to the public, any person attending the meeting for the purpose of reporting proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

14. Procedure prior to a private meeting of the Cabinet

14.1 Subject to 14.2 a decision by the Cabinet to hold a meeting, or part of a meeting, in private may not be taken unless:

- (a) a notice has been published in the Forward Plan at least 28 clear days before the meeting in question and made available on the council's website and at County Hall. This notice is to include a statement of the reasons for the meeting being held in private:

- (b) a further notice is included on the agenda and published on the Council's website and at County Hall five clear days before the meeting. This notice is to include:
- i. a statement of the reasons for the meeting to be held in private
 - ii. details of any representations received by the Cabinet about why the meeting should be open to the public
 - iii. a statement of its responses to any such representations

14.2 If a matter has not been included in accordance with rule 14.1 then the decision to hold a meeting, or part of a meeting, in private may still be taken if the Cabinet obtains the agreement of the chair of the relevant Overview and Scrutiny Committee (or in that person's absence the Business Chair of the Council and in the Chair's absence, the Deputy Business Chair of the Council) that the meeting is urgent and cannot reasonably be deferred. As soon as it is reasonably practicable a notice will be published on the Council's website and at County Hall setting out why the meeting is urgent and cannot be reasonably deferred.

15. Procedure before taking key decisions

Subject to Rule 17 (general exception) and Rule 18 (special urgency), a key decision may not be taken unless:

- (1) a notice ***of the intention to make a key decision*** (called here a forward plan) has been published in connection with the matter in question;
- (2) the notice referred to in (1) has been available for public inspection at least 28 clear days on the Council's website and at County Hall; and
- (3) 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).

16. The Forward Plan

16.1 Forward Plans will be prepared 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.

16.2 Contents of forward plan

The forward plan will contain matters which will be subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of

the Cabinet, officers, local area council or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. It will give the following details

- (1) that a key decision is to be taken on behalf of the County Council and the matter in respect of which a decision is to be made;
- (2) 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;
- (3) the date on which, or the period within which, the decision will be taken;
- (4) a list of the documents to be submitted to the decision taker for consideration
- (5) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any documents listed is available;
- (6) that other documents relevant to those matters may be submitted to the decision taker ; and
- (7) the procedure for requesting details of those documents (if any) as they become available.

The forward plan must be published on the Council's website and at County Hall at least 28 clear days before a decision is made.

Confidential **or** exempt information or particulars of the advice of a political assistant need not be included in the forward plan.

17. 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 18 (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 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;
- (3) the Proper Officer has made copies of that notice available to the

- public at the offices of the Council; and
- (4) at least 5 clear days have elapsed since the Proper Officer complied with (2) and (3). Where such a decision is taken collectively, it must be taken in public.

18. Special urgency

- 18.1 If by virtue of the date by which a decision must be taken Rule 17 (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 Overview and Scrutiny Committee that the taking of the decision **is urgent and** cannot be reasonably deferred. If there is no chair of a relevant Overview and Scrutiny Committee, or if the chair of each relevant Overview and Scrutiny Committee is unable to act, then the agreement of the **Business** Chair of the Council, or in their absence the **vice Deputy Business** Chair will suffice.
- 18.2 As soon as reasonably practicable after the decision maker had obtained this agreement, the decision maker must publish a notice in the Forward Plan setting out the reasons that the meeting is urgent and cannot reasonably be deferred, which must be made available at County Hall and on the Council's website.

19. Report to Council

- 19.1 When an Overview and Scrutiny Committee can require a report.

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

- (1) **treated as a key decision or not** included in the forward plan;
or
- (2) the subject of the general exception procedure **under Rule 17**;
or
- (2) the subject of an agreement with a relevant Overview and Scrutiny Committee chair, or the Business chair/Deputy Business chair of the Council under Rule 18

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 Legal Services Manager, who shall require such a report on behalf of the committee when so requested by the chair.

Alternatively the requirement may be raised by resolution passed at a meeting of the relevant Overview and Scrutiny Committee.

19.2 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 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.

19.3 Quarterly reports on special urgency decisions

In any event the Leader will submit quarterly reports to the Council on the Cabinet decisions taken in the circumstances set out in Rule 18 (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.

20. Record of decisions

After any meeting of the Cabinet or any of its committees, whether held in public or private, the Head of Paid Service 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 must include:

- (1) A record of the decision including the date it was made
- (2) A record of the reasons for the decision
- (3) Details of any alternative options considered and rejected by the decision making body at the meeting at which the decision was made
- (4) A record of any conflict of interest relating to the matter decided which is declared by any Member of the decision making body which made the decision; and
- (5) In respect of any declared conflict of interest, a note of any dispensation granted

21. Cabinet meetings relating to matters which are not key decisions

The Cabinet will hold all meetings in public except where exempt reports are to be considered

22. Notice of 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.

Where a meeting is convened at shorter notice a copy of the agenda and associated reports will be open to inspection from the time the meeting is convened. If an item is added to the agenda later, the revised agenda and additional reports will be open to inspection from the time the item was added to the agenda.

23. Attendance at meetings of the Cabinet

- (1) All members of the Council are entitled to attend all meetings of the Cabinet. Non Cabinet Members may be allowed to address meetings of the Cabinet with the Leader's approval in advance.
- (2) The Head of the Paid Service, the Chief Financial Officer and the Monitoring Officer together with any Executive Director who is submitting a report and their nominees are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Head of Paid Service has been given reasonable notice that a meeting is to take place.

In all of the above examples, the provisions of Rule 20 (recording and publicising decisions) will apply.

24. Decisions by individual members of the Cabinet

(NB The Leader's current scheme of delegation does not provide for formal decisions by individual Cabinet Members)

24.1 Reports intended to 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 5 clear days after receipt of that report.

24.2 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 of it to the chair of every relevant Overview and Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

24.3 Record of individual decision

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet, they will prepare, or instruct the relevant officers to prepare, a record of the decision, a statement including:

- (1) record of the decision including the date when it was made
- (2) A record of the reasons for the decision
- (3) Details of any alternative options considered and rejected by the Member when making the decision
- (4) A record of any conflict of interest declared by any Cabinet member who is consulted by the Member which relates to the decision; and
- (5) In respect of any declared conflict of interest, a note of any dispensation granted.

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 adviser/assistant.

Any record prepared in accordance with this rule and any report considered by the officer and relevant to the decision will be available for public inspect at County Hall and the Council's website.

25. Decisions by Officers

(NB See also Officers Scheme of Delegation at Part 4)

As soon as reasonably practicable after an officer has made a decision which is an executive decision (i.e. the responsibility of the Leader and Cabinet) a written statement will be prepared including:

- (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 officer when making the decision;
- (d) A record of the any conflict of interest declared by a Cabinet member who is consulted by the officer which relates to the decision; and
- (e) In respect of any declared conflict of interest, a note of a

dispensation granted by the Council's head of paid service

Any record prepared in accordance with this rule and any report considered by the officer and relevant to the decision will be available for public inspection at County Hall and on the Council's website

Rule 25 does not apply to the day to day administrative or operational decisions taken by officers in connection with the discharge of functions which are the responsibility of the Leader and Cabinet

26. Overview and Scrutiny Committees' access to documents

26.1 Rights to copies

Subject to Rule 26.2 below, an Overview and 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

- (1) any business transacted at a meeting of the Cabinet or its committees; or
- (2) any decision taken by an individual member of the Cabinet or an officer of the Council in accordance with executive arrangements.

Subject to rule 26.2 below where a Member of an overview and scrutiny committee requests a document which falls within (1) or (2) above this must be provided by the Cabinet as soon as reasonably practicable and in any case no later than 10 clear days after the request is received by the Cabinet.

26.2 Limit on rights

An Overview and Scrutiny Committee will not be entitled to:

- (1) any document that is in draft form;
- (2) 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
- (3) the advice of a political adviser/assistant.

Where it is determined by the Cabinet 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 above, it must provide the Overview and Scrutiny Committee with a written statement setting out its reasons for that decision.

27. Additional rights of access for members

27.1 Subject to 27.3 any document which is in the possession of or under the control of the Leader and Cabinet and contains material relating to any business transacted at a public meeting must be available for inspection by any Member of the Council at least five clear days before the meeting. Where the meeting is convened at shorter notice these documents must be available for inspection when the meeting is convened, and where an item is added to the agenda at shorter notice the document must be available for inspection when the item is added to the agenda.

27.2 Subject to 27.3 any document which in the possession of, or under the control of the Leader and Cabinet and contains material relating to any business transacted at a private meeting, or any decision made by an individual Member of the Cabinet or an officer in accordance with executive arrangements, must be available for inspection by any Member of the Council when the meeting concludes or immediately after the decision has been made and this must be within 24 hours.

27.3 Notwithstanding Rules 27 (1) and 27 (2) nothing in these Rules requires any document to be made available for inspection if it appears to the Proper Officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the Local Government Act 1972, unless the document contains exempt information of a description falling within paragraph 3 of Schedule 12 to the Local Government Act 1972 as set out in Rule 10.4 (except to the extent that the information relates to any terms proposed or to be proposed by the or to the authority in the course of negotiations for a contract) or paragraph 6.

24.3 Nothing in this Rule requires any document to be made available for inspection if it appears to the Proper Officer that it discloses the advice of a political assistant.

27.4 Nature of rights

These rights of a member are additional to any other right they may have, ***including the right to seek information which they may reasonably need in order to assist in properly discharging their duties as an elected member (the “need to know”).***

In the event of any dispute or uncertainty in relation to releasing specific information the final decision is a matter for the Monitoring Officer.

Note: Political Assistants/Advisers

Whilst Northumberland County Council does not currently employ designated Political Assistants/Advisers, references to such posts are retained in these Procedure Rules for completeness and/ or in the event that a policy decision is made to employ such post holders.