

131. AMENDMENTS TO THE COUNCIL'S CONSTITUTION – ANNUAL REVIEW (Report A.3)

There was submitted a report by the Portfolio Holder for Asset Management and Corporate Services, which asked Cabinet to recommend to Council proposed changes, which had been suggested by the Monitoring and Section 151 Officers, as part of an annual review of the Constitution.

It was reported that the main changes included proposed revised Access to Information Procedure Rules, but that small changes were also suggested in respect of both the Council's Financial Procedure Rules and its Property Dealing Procedure. It was further reported that, in addition to these, a number of minor miscellaneous amendments were necessary and had been included for openness and transparency.

The Monitoring Officer asked Cabinet to also give due consideration to an additional change, which had not been included within the report, to the effect that Council Procedure Rule 11.1 (Motions on Notice) be amended to allow for motions on notice to be received by the Democratic Services Manager no later than midday, **eight** working days before the day of the meeting. This change would bring the deadline for receipt of motions on notice, in line with that of questions received on notice.

Accordingly, it was moved by Councillor G V Guglielmi, seconded by Councillor Talbot and **RESOLVED** that Cabinet **RECOMMENDED to COUNCIL** that:

1. **The proposed changes to the Access to Information Rules, as detailed in Appendix A to the report, be approved and adopted;**
2. **The Council's Constitution be amended accordingly to reflect the proposed changes to the Financial Procedure Rules, Property Dealing Procedure and miscellaneous amendments, as set out in the report and Paragraph 3 above; and**
3. **In consultation with the Monitoring Officer, the Chief Financial Officer (Section 151 Officer) be authorised to amend the Procurement Procedure Rules to reflect the Public Contract Regulations 2015 and any future legislative amendments.**

Key Decision Required:	NO	In the Forward Plan:	NO
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CABINET

22 JANUARY 2016

REPORT OF THE ASSET MANAGEMENT AND CORPORATE SERVICES PORTFOLIO HOLDER

A.3 AMENDMENTS TO THE COUNCIL'S CONSTITUTION – ANNUAL REVIEW

(Report prepared by Lisa Hastings, Monitoring Officer)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report asks Cabinet to recommend to Council, proposed changes which have been suggested by the Monitoring and Section 151 Officers as part of an annual review of the Constitution Review.

The main changes include proposed revised Access to Information Procedure Rules, but small changes are suggested to both the Financial Procedure Rules and Property Dealing Procedure. In addition, a number of minor miscellaneous amendments are necessary and have been included for openness and transparency.

The key changes to each of these documents are highlighted within the body of this Report.

EXECUTIVE SUMMARY

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date, this function takes into account legislative requirements and best practice.

The previous Constitution Working Party undertook a substantial review of the Constitution however; the Monitoring Officer is under a continuing obligation to review the content and can make minor amendments under Article 15, as agreed by Council in June 2014. If the Monitoring Officer considers that any additional changes are required these proposals are reported to Cabinet, who in turn make recommendations to Council.

A summary of the changes compared to the existing Parts are provided under each heading below and in each case, the content has been revised to provide greater clarity for access to information and checked to ensure in accordance with legislation, where necessary.

The main proposed changes relate to the Access to Information Procedure Rules although, some small changes are also required to other parts of the Constitution and have been included within this report for openness and transparency.

As a consequence of the Public Contract Regulations 2015 the Council's Procurement Procedure Rules require amendment to reflect the new advertising requirements on the

government's Contracts Finder website for contracts of a value above £25,000. The Regulations also provide greater freedoms on pre-marketing but must be balanced against preventing distortion of competition. It is recommended that the Council's Chief Financial Officer be provided with delegated authority to amend the Procedure Rules to ensure that the Council's internal operational procedural requirements maximise procurement opportunities whilst seeking compliance with the legislation.

Subject to the recommendations set out within this report being approved by Cabinet and the changes being adopted by Council, the Members Constitution Booklet will be updated and reissued to all Members.

RECOMMENDATION

That Cabinet recommends to Council that:

- 1. the proposed changes to the Access to Information Rules and as detailed within Appendix A be approved and adopted;**
- 2. the Council's Constitution be amended accordingly to reflect the proposed changes to the Financial Procedure Rules, Property Dealing Procedure and miscellaneous amendments as set out in this report; and**
- 3. authority be delegated to the Chief Financial Officer (Section 151 Officer) to amend the Procurement Procedure Rules in consultation with the Monitoring Officer to reflect the Public Contract Regulations 2015 and any future legislative amendments.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Agreeing the proposed changes will ensure that the Council operates efficiently in pursuit of its priorities.

FINANCE, OTHER RESOURCES AND RISK

Risk

Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Council's governance arrangements.

LEGAL

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority consider appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance.

The general principle of The Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 is for the public to have access to meetings and documents where a local authority executive, committee or individual is taking an executive decision, as defined by Regulation 2.

The Council is under a statutory duty to ensure that any contract advertised and/or awarded complies with the requirements of Public Contracts Regulations 2015 and consequently, the standing orders providing the rules in which procurement activity must be undertaken must also be consistent with the Regulations.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected / Consultation/Public Engagement.

There are no other implications arising from this report.

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION

(a) Part 2 – Access to Information Procedure Rules:

The previous review included inserting additional paragraphs to make reference legislative requirements in accordance with The Openness of Local Government Bodies Regulations 2014. The Monitoring Officer has now carried out a review of the whole Access to Information Procedure Rules and the overall aims are to:

- i. Provide an introduction to the scope of the rules and an explanation on the importance of access to information in decision making;
- ii. Reference to other access to information legislation;
- iii. Clarity to how accompanying reports and background papers can be accessed;
- iv. Provide a new timescale for draft minutes to be published within 5 working days, currently no deadline exists;
- v. Confirmation that the meaning of Exempt Information is defined by Part 1 of Schedule 12A of the Local Government Act 1972(as amended) and revise the table accordingly;
- vi. Provide a clear and concise procedure for the Council's Forward Plan consistent with the Access to Information Regulations;
- vii. Provide detailed requirements for the recording of decisions; and

viii. Reorder the rules for easier reference.

In addition, the Proper Officer Schedule contained within Part 3.47 should be amended to include reference to the Monitoring Officer being the Council's Proper Officer for Access to Information, as set out in Article 12. The Deputy Monitoring Officer is designated to act in the event of the Monitoring Officer being unable to act, for access to information; this can also be undertaken by the Democratic Services Manager.

(b) Part 5 – Financial Procedure Rules

The former review of the Scheme of Delegations to Officers revealed that some provisions would be better contained within the Financial Procedure Rules as suggested by the Chief Financial Officer;

- i. Insert a new 12.3.6 to provide authority for *“the relevant Corporate Director to approve the write off of an inventory item and adjusting stocks and stores accounts up to £250 in respect of any one item or £1,250 per annum in consultation with the Chief Financial Officer”*; and
- ii. Clarify that the determination of any rate of interest to be charged, whenever necessary, which is not determined elsewhere by legislation, rests with the Chief Financial Officer.

(c) Part 5 – Property Dealing Procedure

It is necessary to clarify that the Property Dealing Procedure applies equally to acquisitions and disposals consequently, within paragraph 2.1 following the words 'final decision on', *“acquisition, disposal or other transaction”* should be inserted.

In addition, the headings in Appendix A contained within Part 5.61 should be amended to clarify that the Reporting of a Decision made by either a Head of Department or Corporate Director is an Officer Decision and not that of Cabinet. Reporting of a Portfolio Holder and/or Cabinet decision requires a formal report and decision to be completed and published. Both of these obligations are subject to the confidentiality requirements of Schedule 12A of the Local Government Act 1972.

(d) Miscellaneous Changes required:

Whilst the following minor changes arising from legislation, the organisational structure and previous decisions of Council or Cabinet can be made by the Monitoring Officer without a formal report to Cabinet or Council, they are highlighted for information purposes and completeness, as miscellaneous amendments which will be made shortly;

i. Article 7 – the Cabinet

Paragraph 7.03 (b) refers to the Leader of the Council holding office until they cease to be a councillor. Insert *“only upon disqualification or resignation in accordance with Section 91B of the Local Government Act 2000”*.

Paragraph 7.08 – 1.2 delete *“when key decisions are to be made will”* and replace with *“and their committees must”* to comply with Regulation 3 of

Access to Information Regulations 2012.

ii. Article 12 – Officers

Amend the principal areas of service for each Corporate Director of the Council's Management Team as determined by the Chief Executive.

iii. Part 3 – Responsibility of Functions - Scheme of Delegation

Full Council – Part 3.10 – Other Matters

Insert “, *Chief Finance Officer or Monitoring Officer (following the outcome of an Independent Panel)*” after “Chief Executive” in section (a).

Human Resources Committee – Part 3.18

Move the appointment or dismissal of, or disciplinary action against Corporate Directors and Head of Planning from delegation of functions (currently delegated to the Chief Executive in consultation with the Manager of Human Resources) to the Human Resources Committee. This amendment is required to ensure that the Council's Standing Orders reflect the requirements of the 2001 Regulations and Section 2(7) of the Local Government and Housing Act 1989, which defines ‘a non-statutory chief officer’, consequently, the Officer Employment Procedure Rules will be amended to reflect the change and be consistent with the Statutory Officers.

iv. Part 5 – Overview and Scrutiny Procedure Rules

Rule 17 – Call-In (a)(i) (Part 5.26)

Include ‘*executive*’ before decisions and include ‘*or by Officers*’ after individual Cabinet Members to confirm that Executive Decisions made by Officers can also be called-in.

At the meeting of Corporate Management Committee on 4th January, the Monitoring Officer was asked to enhance the mediation requirement, clarifying the procedure to be followed, consequently, it is proposed a new paragraph is inserted (after 17(b)) stating the following:

“those seeking to call-in a decision shall state when providing their reasons in the call-in notice, confirmation whether they wish to enter into informal mediation with the relevant Cabinet Member and if so, what element of the decision and/or further information would they wish to discuss as part of the mediation. Once those seeking the call-in have provided this information, the relevant Cabinet Member must respond and confirm whether they wish to engage with the mediation process. Upon confirmation that parties wish to mediate, Democratic Services will set up an informal mediation, at which Officer can attend to assist with providing or clarifying any information and to record the outcome of the mediation discussion.”

v. Emergency powers for the Chief Executive and Section 151 Officer:

The annual review has revealed that the emergency powers for the Chief Executive were removed but these are required to deal with exceptional urgency situations. It is proposed that the following wording be inserted:

For non-executive functions I would suggest including the following wording in a new no. 6 (Part 3.6):

“The Chief Executive is authorised to deal with any matter on exceptional grounds of urgency, following consultation with the Leader of the Council or Deputy, the Chairman and Vice Chairman of the appropriate committee in respect of non-executive matters”.

For Executive functions, the only matter which would require ‘urgent’ decision would be the use of finances or procurement requirements in accordance with the Financial and Procurement Procedure Rules – which place restrictions on Officers approving virements or obtaining quotes. It is suggested including a new 3.8 (Part 5.33) to state:

“the Chief Financial Officer, their Deputy or Chief Executive is authorised to deal with any General Fund Revenue or HRA virement on exceptional grounds of urgency, such as civil emergencies. If this exemption is relied upon, the relevant Officer must provide a report to the responsible decision maker as soon as practicably possible”.

(e) Procurement Procedure Rules:

The Public Contracts Regulations 2015 made changes to way in which any contract notices are advertised and the types of procedure available consequently, Council’s are obligated to ensure that their Standing Orders or Contract/Procurement Procedure Rules reflect the requirements of the 2015 Regulations.

One of the most significant changes in the Regulations was designed to facilitate access by Small to Medium Enterprises to public contracts. Under Regulation 105, where local authorities advertise a contract valued at £25,000 or more (net of VAT), they are also obliged to advertise it on “Contracts Finder” a central government website, which provides access to potential tender opportunities within the public sector.

The Council’s Procurement Procedure Rules require quotations to be obtained for procurement up to the value of £50,000, internal guidance was issued to Officers upon the Regulations coming into force that for contracts from £25,000 to the regulations thresholds seeking quotations must be published on the Contracts Finder website. This requirement needs to be included within the Procurement Procedure Rules and it is suggested that the Council’s Chief Financial Officer (Section 151 Officer) is provided with delegated authority to amend the Rules to include the appropriate wording in accordance with the legislation, in consultation with the Monitoring Officer who also has delegated authority to amend the Constitution to reflect recent legislation changes. This will allow any other miscellaneous amendments to be made and Officers will circulate guidance to Members to explain the necessary changes.

BACKGROUND PAPERS FOR THE DECISION

There are no background papers (as defined by the Local Government Act 2000) arising from this report.

APPENDICES

A.1 – Appendix A: Part 5 - Access to Information Procedure Rules

ACCESS TO INFORMATION PROCEDURE RULES

The Council considers that local government derives an important part of its authority and influence from the trust and confidence of the individuals and communities it serves. Access to information in respect of decision making is a necessary prerequisite for generating that trust and confidence. Informed members of the local community are better able to contribute to, and take part in, the work of local authorities. Access to information is central to this process and requires local authorities to establish the appropriate balance between:

- making information readily and openly available to the public
- ensuring that certain areas of personal/public life remain the legitimate object of confidentiality

1 SCOPE

Rules 1 to 11 outline the rights of members of the public and apply to all meetings of the Council, the Overview and Scrutiny Committees, Cabinet, Audit Committee, Council Tax Committee, Human Resources Committee, Licensing and Registration Committee (and its sub-committees), Local Plan Committee, Planning Committee, Standards Committee and the Town and Parish Standards Sub-Committee, collectively called meetings.

Rule 12 relates to recording of Decisions by Officers.

Rule 13 deals specifically with Cabinet's schedule of key decisions by which future major decisions of the Council are publicised.

2 ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any, more specific, rights to information contained elsewhere in this Constitution or the law for example the Data Protection Act 1998 and the Freedom of Information Act 2000.

3 RIGHTS TO ATTEND MEETINGS

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

Any person is permitted to film or record any meeting of Council, a Committee, Sub-Committee or the Cabinet, save where the public have been

(Cream)

excluded for the consideration of exempt or confidential business. The rules, as prescribed by legislation, will allow for the reporting of meetings via social media of any kind. The Council will provide reasonable facilities to facilitate reporting.

Any person exercising such rights must not disrupt the proceedings. Examples of what will be regarded as disruptive include, but are not limited to, moving outside the area designated for the public, making excessive noise, intrusive lighting/flash or asking a Councillor to repeat a statement. In addition, members of the public or the public gallery should not be filmed as this could infringe on an individual's right to privacy, if their prior permission had not been obtained. Any person considered being disruptive or filming the public will be requested to cease doing so by the Chairman and may be asked to leave the meeting.

4 NOTICES OF MEETING

The Council will give at least five clear working days-notice of any meeting, except where an urgent meeting is convened, by making the agenda and reports publically available at the Town Hall, Station Road, Clacton-on-Sea, Essex CO15 1SE and on the Council's website.

5 ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda, accompanying reports and background papers that are open to the public, available for inspection at the Council Offices and on the website at least five clear working days before the meeting. If an item is added to the agenda after publication the revised agenda will be open to inspection from the time the item was added to the agenda.

Copies of the agenda and accompanying reports will be sent to the Councillors who serve on the decision-making body in question.

6 SUPPLY OF COPIES

Agendas reports and background papers listed within Cabinet reports are available to view on the Council's website. The Council will on request, and for such reasonable charge as is from time to time agreed supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any background papers listed within the reports;

Comment [LH1]: This is not currently happening and is a requirement of the legislation.

(Cream)

- (c) 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, if the Proper Officer (Monitoring Officer) thinks fit.

7 ACCESS TO MINUTES ETC AFTER THE MEETING

In addition to publishing information on the Council's website, the Council will make available, upon request copies of the following for six years after a meeting:

- (a) the minutes of meetings which will include a record of decisions taken, together with reasons. However, where the meetings discussed exempt or confidential information the minutes open to the public will only include a record of the proceedings and the decision. **The Council aims to publish minutes of meetings within 5 working days following the meeting;**
- (b) records of executive decisions taken by individual Cabinet Members or officers, including the reasons for the decision and any alternative options considered and rejected. They will be published and made available as soon as reasonably practicable after they have been taken;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

Comment [.2]: This will be a new requirement, but Democratic Services have stated that this is a reasonable request.

8 BACKGROUND PAPERS

8.1 List of Background Papers

In every report a list will be included of those documents (called background papers) relating to the subject matter of the report which in the report author's 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 do not include published works or those which disclose exempt or confidential information as defined in Rule 10.

(Cream)

8.2 Public Inspection of Background Papers

Comment [LH3]: This is not being done by anyone at TDC – requirement of the legislation

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.

Public reports must include not only a list of background papers but at least one copy of each of the documents in the list for public inspection. Arrangements for inspection should be made through the Council's Democratic Services Section at the Town Hall, and on the Council's website.

In the case of reports to Cabinet, the background papers will be published on the council's website, subject to Rule 10 below.

The Council may now charge "a reasonable fee" for access to background papers to be inspected at the Council's offices.

Comment [.4]: We have never done this.

9 SUMMARY OF PUBLIC'S RIGHTS

A written summary of the public's rights to attend meetings and to inspect and copy documents will be kept and be available to the public at the Town Hall, Station Road, Clacton-on-Sea.

Comment [.5]: This would be a new requirement

10 EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

10.1 Confidential Information – Requirement to Exclude Public

The public will 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 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.

10.3 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 which falls into one of the 7 definitions of information that is exempt from disclosure to the public and press.

(Cream)

10.4 Meaning of Exempt Information

Exempt information means any information falling within the following seven categories (subject to any condition) as defined in Part 1 of Schedule 12A of the Local Government Act 1972 (as amended):

Category	Condition
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 not exempt information if it is required to be registered under:-</p> <ul style="list-style-type: none"> (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. <p>“Financial and business affairs” includes contemplated, as well as past or current activities.</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. “Labour relations matters” means any matters specified in section 218(1)(a) to (g) of the Trade Union and Labour Relations (Consolidation) Act 1992. These matters also apply to office holders as to employees.</p>
5. Information in respect of which a claim to legal professional privilege	

(Cream)

<p>could be maintained in legal proceedings.</p> <p>6. Information which reveals that the authority proposes:-</p> <p>(a) To give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) To make an order or direction under any enactment.</p> <p>7. Information relating to any action or any action proposed to be taken in connection with the prevention, investigation or prosecution of crime.</p>	
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Notes:

- (a) Information falling within any of categories 1-7 is not exempt by virtue of that category if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.
- (b) Information which:-
 - (a) falls within any of categories 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of the condition 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.
- (c) Where the meeting will determine any person's civil rights or obligations, 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 that Article.

(Cream)

11 EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the Proper Officer (Monitoring 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 concerned.

12 RECORDING OF DECISIONS BY OFFICERS

12.1 Written Record

A written record must be produced, as soon as reasonably practicable, after a decision has been made, which was delegated to an Officer by Council, a Committee or Sub-Committee either:

- (a) under an express authorisation; or
- (b) a general authority to take decisions which grant a permission or licence, affect an individual's rights or award a contract or incur expenditure, which in either case, materially affects the Council's finances.

12.2 Prescribed Format

The written record must be in the prescribed format approved by the Monitoring Officer and Democratic Services and contain the following information:

- (a) the date the decision was made;
- (b) a record of the decision taken along with the reasons for the decision;
- (c) details of alternative options, if any, considered and rejected; and
- (d) where relevant, any conflicts of interest declared.

12.3 Public Inspection of Decision and Background Papers

The Officer making the decision must ensure that the written record and background papers are made available for inspection by the public and published on the Council's website.

(Cream)

APPLICATION OF RULES TO THE CABINET

Rules 13 to 21 apply to the Cabinet, any decisions taken by the Leader, Cabinet Members or Officers under the Scheme of Delegation. If any of these decision makers intend to take a key decision then it must also comply with Rule 13 unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A “key decision” is defined in Article 13.03 of this Constitution.

13 THE FORWARD PLAN & PROCEDURE BEFORE TAKING KEY DECISIONS

13.1 The Council’s Forward Plan provides a published schedule of key decisions to give advance notice to the public and other interested parties of key decisions, as defined in Article 13 of this Constitution, which are due to be taken.

13.2 Subject to Rules 14 and 15 below, a key decision must not be made until a notice has been published within the Forward Plan for at least 28 clear days, containing the following details:

- (a) that a key decision is to be made, and details of the matter, excluding any confidential or exempt information as referred to in Rules 10(2) and 10(4) above;
- (b) the decision maker’s name and title, if an individual, or if it a body, its name and full membership;
- (c) the date on which, or the period within which, the decision is to be made;
- (d) a list of the documents already submitted to the decision-maker for consideration in relation to the matter and details of how to obtain copies; and
- (e) a statement that documents relevant to the decision may be submitted to the decision maker and details of how to obtain copies.

14 GENERAL EXCEPTION

Subject to Rule 15, if publication under Rule 13 above is impracticable, a key decision may only be made:

- (a) where the Proper Officer has **informed** the Chairman of the relevant overview and scrutiny committee in writing of the matter about which the decision is to be made;
- (b) notice is given and published on the Council’s website of the details of the decision to be made and the reasons why it is impracticable to give 28 clear days’ notice; and

(Cream)

- (c) at least five clear working days have elapsed between notice being given and the decision being taken.

15 SPECIAL URGENCY

If the general exception rule is impracticable due to the date by which a key decision must be made, the key decision can only be taken if the decision-maker has **received the agreement** of the Chairman of the relevant overview and scrutiny committee, or if they are unable to act, the Chairman or Vice-Chairman of the **Council** and has published a notice on the Council's website, stating that the making of the decision is urgent and the reasons why it cannot reasonably be deferred.

16 REPORTS TO COUNCIL

16.1 When an Overview and Scrutiny Committee can require a Report

If the relevant overview and scrutiny committee thinks that a key decision has been made and was not:

- (a) included in the Forward Plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement under Rule 15;

the Committee, by resolution at one of its meetings, may require the Cabinet to submit a report to full Council, within such reasonable time as the Committee specifies. The report to Council must include details of the decision, the decision maker and reasons why the Cabinet are of the opinion that the decision was not a key decision. The power to require a report rests with the Committee but may also be exercised by the Proper Officer on receipt of a written request, providing valid reasons to do so, from five members of the Committee.

16.2 Reports on Special Urgency Decisions

The Leader will submit a report to the next practicable ordinary meeting of Council on Cabinet decisions or executive decisions taken by individual Portfolio Holders or **officers** where the making of the decision was agreed as urgent in accordance with Rule 15 since the last such report. The report will include the number of decisions made, the particulars of each decision made and a summary of the matters in respect of which those decisions were made.

Comment [LH6]: Currently we do not report urgent Officers Decisions and we should in accordance with the legislation

(Cream)

17 RECORD OF DECISIONS

A written record must be produced, as soon as reasonably practicable, after a Cabinet (executive) decision has been made, including where Cabinet Members have made individual decisions and Officer's decisions have been made exercising executive functions in accordance with the Responsibility of Functions – Delegated Powers contained within Part 3 of this Constitution.

Each record must be in the prescribed format approved by the Monitoring Officer and Democratic Services and contain the following information:

- (a) the decision and the date it was made;
- (b) the reasons for the decision;
- (c) details of any alternative options considered and rejected; and
- (d) declarations of interest and details of any dispensations granted in respect of those interests.

The Record of the Executive Decision will be published on the Council's website together with any report considered at the meeting or by the individual Portfolio Holder or officer and must be available for inspection, as soon as reasonably practicable. Any background paper must also be listed and one of each of the documents available for public inspection and published on the Council's website.

18 PROCEDURES PRIOR TO A PRIVATE MEETING

Comment [.7]: New insertion to comply with the 2012 Regulations

18.1 At least 28 days before a private meeting of the Cabinet:-

- (a) notice of intention to hold the meeting must be made available at the Council's offices; and
- (b) that Notice must be published on the Council's website.

The Council's Forward Plan will be used to publish notice under this rule.

18.2 The Notice under 20.1 must include a statement of the reasons for the meeting being held in private.

18.3 At least five clear days before a private meeting, a further notice of the intention to hold a meeting must be available and published on the Council's website. This will form the Cabinet agenda for the meeting.

(Cream)

19 ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

All Members of the Cabinet will be served notice of, and are entitled to attend, all private meetings of the Cabinet or Committees of the Cabinet.

The Chief Executive, the Chief Financial Officer, the Monitoring Officer (or Deputies) and Corporate Directors in the light of items to be discussed, or their nominated representatives, at the discretion of the Chief Executive can attend.

20 RIGHTS OF OVERVIEW AND SCRUTINY MEMBERS

20.1 Upon request from a member of an overview and scrutiny committee, the Cabinet **must** make available any document which contains material relating to any business transacted at a public or private meeting of the Cabinet or and any decisions made (whether by individual Cabinet Members or Officers).

20.2 This request must be complied with and the documentation provided as soon as reasonably practicable, but no later than 10 clear days after the request is made.

20.3 If the Cabinet determines that material will not be provided, it must provide the member of the overview and scrutiny committee with a written statement, setting out its reasons for that decision.

Limits on Rights

The member of an overview and scrutiny committee will not be entitled to

- (a) any document in draft form; or
- (b) any part of a document which contains exempt or confidential information unless it relates to an action or decision that is being scrutinised or to any review in a relevant overview and scrutiny committee's work programme; or
- (c) any exempt material which contains advice provided by a political adviser or assistant.

21 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS

21.1 Material Relating to Previous Business

All Members will be entitled to inspect any document that is in the possession of, or under the control of, the Cabinet and contains material relating to any business previously transacted at a private meeting unless it contains exempt or confidential information, or the advice of a political adviser or assistant.

21.2 Material Relating to Key Decisions

(Cream)

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, which relates to any key decision unless paragraph 21.1 above applies.

21.3 Nature of Rights

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

(Cream)

(Amended Page – April 2015) 5.12