

## **SECTION 5 – ACCESS TO INFORMATION PROCEDURE RULES**

### **1. SCOPE**

These rules apply to all meetings of the Council, the Overview and Scrutiny Commission and its Panels, the Standards Committee and 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, in particular, the public may have additional rights of access to information under the Freedom of Information Act 2000 and/or the Data Protection Act 1998.

### **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 notice of any meeting by posting details of the meeting at Easthampstead House, Town Square, Bracknell [the designated office].

### **5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports, which are open to the public, available for inspection at the designated office, at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be open to inspection from the time the item was added to the 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 completed and sent to Councillors.

### **6. SUPPLY OF COPIES**

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements, or particulars, necessary to indicate the nature of the items in the agenda; and
- (c) if the Proper Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item

to any person on payment of a reasonable charge for postage and any other costs.

Copies of agenda and those reports which are open to public inspection are available on the Council's web-site.

## **7. ACCESS TO MINUTES ETC AFTER THE MEETING**

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

- (a) the minutes of the meeting, or records of decisions made, together with reasons, for all meetings of the Executive, excluding any part of the minutes of proceedings which disclose exempt or confidential information;
- (b) 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;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

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

The originating Director 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 or her 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 does not include published works, or those which disclose exempt or confidential information, (as defined in Rule 10) and in respect of Executive reports, the advice of a political advisor.

### **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.

## **9. SUMMARY OF PUBLIC'S RIGHTS**

A copy of these Rules containing 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 during normal office hours at Easthampstead House, Town Square, Bracknell.

## **10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS**

### **10.1 Confidential Information – Requirement to Exclude the Public**

The public must be excluded from meetings whenever it is likely, in view of the nature of the business to be transacted, or the nature of the proceedings, that confidential information would be disclosed.

## 10.2 Exempt Information – Discretion to Exclude the Public

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.

Where the meeting 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.

## 10.3 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

To reflect the provisions of the Local Government (Access to Information) (Variation) Order 2006, information falling within the following 7 categories (subject to any condition listed below) is exempt information if in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the 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 authority holding that information), provided that Information in this category is not exempt information if it is required to be registered under the Companies Act 1985; the Friendly Societies Acts 1974 and 1992; the Industrial and Provident Societies Acts 1965 to 1978; the Building Societies Act 1986; or the Charities Act 1993.
- (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 officer holders under, the authority.
- (5) Information in respect of which a claim of legal professional privilege could be maintained in legal proceedings.
- (6) Information which reveals that the authority proposes
  - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or,
  - (b) to make an order or direction under any enactment.
- (7) Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime

Information falling within any of categories 1-7 above is not exempt information if it relates to proposed development for which the Local Planning Authority may grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

The decision as to whether or not information should be considered to be exempt so as to permit exclusion of the public from a meeting and if so whether the public should be excluded will rest with the Council, Committee, Executive or Executive Committee receiving the report. The Borough Solicitor is authorised to determine whether or not information is exempt for all other purposes.

#### **11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS**

If the Proper Officer thinks fit, the Council may exclude access by the public to reports which, in his or her 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" and the Agenda shall indicate the category of information likely to be disclosed.

#### **12. APPLICATION OF RULES TO THE EXECUTIVE**

Rules 13 to 24 apply to the Executive and its Committees. If the Executive, or its Committees, meet to make a key decision then it must also comply with Rules 1 to 11, unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A key decision is as defined in Article 13.03 of this Constitution.

If the Executive, or its Committees, meet to discuss a key decision to be made 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 to 11, unless Rule 15 (general exception) or Rule 16 (special urgency) applies. A key decision is as defined in Article 13.03 of this Constitution. This requirement does not include meetings whose sole purpose is for Officers to brief Members.

#### **13. DEFINITION OF AND PROCEDURE BEFORE TAKING KEY DECISIONS**

"Key Decision" means decision relating to an Executive function which is likely either:-

- (a) 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
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more Wards or electoral divisions in the Borough.

The Council has determined that "significant" means expenditure/savings of £400,000 or more.

Subject to Rule 15 (General Exception) and Rule 16 (Special Urgency), a key decision may not be made unless it has been included in a Forward Plan (see Rule 14).

Where an individual Executive Member or an Officer receives a report in connection with a Key Decision which they will be making, the decision cannot be made until the

report has been made available for public inspection for five clear working days, unless the report contains confidential or exempt information. Also, the person submitting the report must, at the same time, send a copy to the Chairman of the Overview and Scrutiny Commission.

Decisions may be made at a meeting of the Executive or its Committees, only when 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 Leader to cover a period of four months, beginning with the first day of any month. These will be prepared on a monthly basis and subsequent Plans will cover a period beginning with the first day of the second month covered in the preceding Plan.

### **14.2 Contents of Forward Plan**

The Forward Plan will contain matters which the Leader has reason to believe will be subject of a key decision to be made 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 insofar as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a decision is to be made;
- (b) where the decision-maker is an individual, his or her name and title, if any, and where the decision-maker is a body, its name and details of membership;
- (c) the date on which, or the period within which, the decision will be made;
- (d) the identity of the principal groups, whom the decision-maker proposes to consult before taking the decision;
- (e) the means by which any such consultation is proposed to be undertaken;
- (f) the steps any person might take who wishes to make representations to the Executive or decision-maker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (g) a list of the documents submitted to the decision-maker for consideration in relation to the matter.

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

- (a) that key decisions are to be made on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be made will be prepared on a monthly basis;

- (c) that the Plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each Plan will be available for inspection during normal office hours, free of charge, at the Council's Offices;
- (e) that each Plan will contain a list of the documents submitted to the decision-makers for consideration in relation to the key decisions on the Plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available;
- (g) that other documents may be submitted to decision-makers;
- (h) the procedure for requesting details of documents (if any) as they become available; and
- (i) the dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council's Offices.

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

#### 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 made if:

- (a) the decision must be made by such a date that it is impracticable to defer the decision until it has been included in the next Forward Plan and until the start of the first month to which the next Forward Plan relates;
- (b) the Proper Officer has informed the Chairman of the Overview and Scrutiny Commission, or if there is no such person, each Member of that Commission in writing, by Notice, of the matter to which the decision is to be made;
- (c) the Proper Officer has made copies of that Notice available to the public at the Offices of the Council; and
- (d) at least 5 clear working days have elapsed since the Proper Officer complied with (a) and (b).

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

#### 16. **SPECIAL URGENCY**

If, by virtue of the date by which a decision must be made, Rule 15 (general exception) cannot be followed, then the decision can only be made if the decision-maker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Commission that the taking of the decision cannot be reasonably deferred. If there is no Chairman, or if the Chairman is unable to act, then the agreement of the Mayor, or in his or her absence, the Deputy Mayor will suffice.

## **17. REPORT TO COUNCIL**

### **17.1 When the Overview and Scrutiny Commission can Require a Report**

If the Overview and Scrutiny Commission thinks that a key decision has been made which was not:

- (a) included in the Forward Plan; or
- (b) the subject of the general exception procedure; or
- (c) the subject of an agreement with the Chairman of the Overview and Scrutiny Commission, or the Mayor or Deputy Mayor under Rule 16;

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

### **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 Leader is of the opinion that it was not a key decision, the reasons for that opinion.

### **17.3 Quarterly Reports on Special Urgency Decisions**

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

## **18. RECORD OF EXECUTIVE DECISIONS**

18.1 As soon as reasonably practicable, and in any event, within two days after any:

- (i) decision of the Executive;
- (ii) decision by a Committee of the Executive, whether held in public or in private;
- (iii) decision made by an individual Member of the Executive; or
- (iv) key decision made by an Officer

a written statement shall be prepared specifying:-

- (a) a record of the decision;
- (b) a record of the reasons for the decision;

- (c) details of any alternative options considered and rejected by the decision-making body at the meeting at which the decision was made, or, in the case of a decision made by an individual, at the time when he or she made the decision;
- (d) a record of any conflict of interest in relation to the matter decided which is declared by a Member of the decision-making body which made the decision or, in the case of an individual, any conflict of interest declared by any Executive Member consulted; and
- (e) in respect of any declared conflict of interest, a note of any dispensation granted by the Council's Standards Committee.

18.2 The statement required by 18.1 above shall be prepared by:-

- (i) in the case of decisions made by the Executive or a Committee of the Executive, the Proper Officer present at the meeting;
- (ii) in the case of a decision made by an individual Member of the Executive, the Proper Officer instructed by the Member;
- (iii) in the case of a key decision made by an Officer, the Officer making the decision.

18.3 An individual Member of the Executive making a decision shall, forthwith, instruct a Proper Officer to prepare a statement, as required by 18.1 above, and shall supply to the Proper Officer all information necessary for the proper preparation of the statement.

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

## 21. **ATTENDANCE AT PRIVATE MEETINGS OF THE EXECUTIVE**

### 21.1 **Executive Members**

All Members of the Executive will be served notice of all private meetings of Committees of the Executive, whether or not they are Members of that Committee, and will be entitled to attend.

### 21.2 **Other Members**

Members other than Executive Members and Executive Support Members will not be entitled to attend private meetings of the Executive, and its Committees.



### 21.3 **Officers**

- a) The Chief Executive, the Borough Treasurer and the Monitoring Officer, and their nominees, shall be entitled to attend any meeting of the Executive and its Committees. The Executive may not meet unless the Proper Officer has been given reasonable notice that a meeting is to take place.
- b) A private meeting of the Executive or any of its Committees may only take place in the presence of the Proper Officer, or his or her nominee, with responsibility for recording and publicising the decisions.

## 22. **INSPECTION OF DOCUMENTS AFTER EXECUTIVE DECISIONS**

- 22.1 A copy of any report, or part report, considered by the Executive, a Committee of the Executive or individual Member of the Executive when making a decision, or considered by an Officer when making a key decision, will be open to inspection by the public for six years from the date the decision was made. Documents containing confidential or exempt information, or the advice of a political adviser, need not be disclosed. If a document is not disclosed because it contains exempt information, the Proper Officer will prepare a statement. The statement will describe the category of exempt information. The statement will be open to inspection for 6 years from the date of the meeting.
- 22.2 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 Executive. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

## 23. **DECISIONS BY INDIVIDUAL MEMBERS OF THE EXECUTIVE**

### 23.1 **Reports intended to be taken into Account**

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

### 23.2 **Provision of copies of reports to Chairman of Scrutiny Commission**

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 Chairman of the Overview and Scrutiny Commission as soon as reasonably practicable, and make it publicly available at the same time.

## 24. **OVERVIEW AND SCRUTINY BODIES - ACCESS TO DOCUMENTS**

### 24.1 **Rights to Copies**

Subject to Rule 24.2 below, the Overview and Scrutiny Commission, or its Overview and Scrutiny Panels, will be entitled to copies of any document which is in the possession or control of the Executive or its Committees and which contains material relating to

- (a) any business transacted at a public, or private, meeting of the Executive or its Committees; or

- (b) any decision made by an individual Member of the Executive.

## **24.2 Limit on Rights**

An overview and scrutiny body will not be entitled to:

- (a) any document that is in draft form;
- (b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action, or decision, it is reviewing or scrutinising or intend to scrutinise; or
- (c) the advice of a political adviser.

## **25. ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **25.1 Material Relating to Previous Business**

All Members will be entitled to inspect any document which is in the possession, or under the control of, the Executive or its Committees and contains material relating to any business previously transacted at a private meeting, unless either (a) or (b) below applies.

- (a) it contains exempt information falling within Paragraphs 1 to 6, 9, 11, 12 and 14 of the categories of exempt information; or
- (b) it contains the advice of a political adviser.

### **25.2 Material Relating to Key Decisions**

All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control of, the Executive or its Committees which relates to any key decision, unless Paragraph 25.1 (a) or (b) above applies.

### **25.3 Nature of Rights**

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