

## **IMPORTANT NOTE**

*The Access to Information Rules endeavour to reflect Part VA of the Local Government Act 1972 (in relation to non-Executive functions) and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. However, due to the complexities of that legislation, in cases of doubt or difficulty advice should be sought from Legal Services. Please note that it is a criminal offence to obstruct the inspection or copying of documents as required by these Rules. It is also a criminal offence to fail to supply a copy of a document as required by these Rules.*

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

### **1. SCOPE**

- 1.1 These rules apply to all meetings of the Council, the Overview and Scrutiny Commission and its Panels and Regulatory Committees and public meetings of the Executive (together called meetings). Following the introduction of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 some particular rules apply to decision making in relation to Executive functions. “Executive Meetings” means meetings of the Executive, a Committee of the Executive or otherwise defined as a “decision making body” by the 2012 Regulations.
- 1.2 All of these Rules are subject to Rule 19 (restrictions on publication and disclosure of Confidential Information, Exempt Information and the advice of political assistants).

### **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 (or where the meeting is convened at shorter notice at the time that the meeting is convened) notice of any meeting by posting details of the meeting at Easthampstead House, Town Square, Bracknell and publishing the notice on the Council’s website.

### **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 Easthampstead House, 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. Agenda and reports will be published on the Council's website when they are made available for inspection by the public.

## **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 Head of Democratic and Registration Services thinks fit, copies of any other documents supplied to Councillors in connection with an item

to any person or to a newspaper (in either such case) on payment being made for postage copying or other necessary charge for transmission

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 Information 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 Information 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**

At the same time as a copy of the whole or part of a report is made available for inspection by the public in accordance with Rule 5 or Rule 14.2 the following shall for a period of four years be made available for inspection at Easthampstead House and (in respect of Executive Meetings and reports available for inspection pursuant to Rule 14.2) on the Council's website, namely:-

- (a) a copy of the list of background papers, and
- (b) a copy of each of the documents in that list

## 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 **Requirement to Exclude the Public**

The public must be excluded from meetings:-

- (a) 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 (See Regulation 10.3)
- (b) the meeting passes a resolution to exclude the public during that item where it is likely, in view of the nature of the item of business, that if members of the public were present during that item Exempt Information would be disclosed to them (See Rule 10.2); or
- (c) a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or prevent mis-behaviour at a meeting

A resolution under (b) must:-

- (i) identify the proceedings, or the part of the proceedings to which it applies, and
- (ii) state by reference to the categories listed in Rule 10.4 the description of Exempt Information giving rise to the exclusion of the public

The public may only be excluded under (a) or (b) above for the part or parts of the meeting during which it is likely that Confidential Information or Exempt 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:-

- (a) information given to the Council by a Government Department on terms which forbid its public disclosure, or
- (b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court

and, in either case, a reference to the obligation of confidence is to be constructed accordingly.

### 10.4 **Meaning of Exempt Information**

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 Information for all other purposes.

## **11. PROCEDURE PRIOR TO PRIVATE EXECUTIVE MEETINGS**

11.1 This rule applies to private Executive Meetings (i.e. an Executive Meeting from which the public are to be excluded for all or part of its proceedings pursuant to Rule 10).

11.2 (A) Subject to 11.3 at least 28 clear days before the meeting:-

- (a) a notice of intention to hold the meeting in private must be placed on display at Easthampstead House. The notice must include a statement of the reasons for the meeting to be held in private, and
- (b) the notice must be published on the Council's website.

(B) At least five clear working days before the meeting:-

- (a) a notice must be placed on display at Easthampstead House giving further notice of intention to hold the meeting in private.

The notice must include:-

- (i) a statement of the reasons for the meeting to be held in private,
  - (ii) details of any representations received about why the meeting should be open to the public, and
  - (iii) a statement of response to any such representations,
- and
- (b) the notice must be published on the Council's website

11.3 Where the date by which a meeting must be held makes compliance with Rule 11.2 impracticable, the Executive Meeting may only be held in private where agreement that the meeting is urgent and cannot reasonably be deferred has been obtained from:-

- (a) the Chairman of the Overview and Scrutiny Commission or relevant Overview and Scrutiny Panel (as appropriate having regard to the subject matter of the relevant item), or
- (b) if the Chairman of the Overview and Scrutiny or relevant Overview and Scrutiny Panel is unable to act, the Mayor, or, if the Mayor is unable to act, the Deputy Mayor.

As soon as reasonably practicable after any such meeting a notice setting out the reasons why the meeting is urgent and cannot reasonably be deferred must be put on display at Easthampstead House and published on the Council's website.

## 12. DEFINITION OF AND PROCEDURE BEFORE TAKING KEY DECISIONS

- A. "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.

- B. Subject to Paragraph D (General Exception) and Paragraph E (Special Urgency), a Key Decision may not be made unless the procedure set out below is complied with.
- C. A Key Decision cannot be made (whether by the Executive, an Executive Committee, an individual Executive Member or an officer) unless at least 28 clear days before the decision is taken a notice is placed on display at Easthampstead House and published on the Council's website stating:-
- (a) that a Key Decision is to be made
  - (b) the matter in respect of which the decision is to be taken
  - (c) where the decision is an individual that individuals' name and title
  - (d) where the decision is to be taken at an Executive Meeting, its name and list of its Members
  - (e) the date on which, or the period within which, the decision is to be made
  - (f) a list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the Key Decision is to be made
  - (g) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available(h) that other documents relevant to those matters may be submitted to the decision maker, and
  - (i) the procedure for requesting details of these documents (if any) as they become available.

If the public may be excluded from the meeting at which the matter is to be discussed or, pursuant to these Rules, the documents relating to the decision

need not be disclosed to the public, the notice must contain particulars of the matter but may not contain any Confidential Information, Exempt Information or particulars of the advice of a political adviser or assistant.

**D. General Exception**

Subject to paragraph E, where publication of the intention to make a Key Decision under paragraph C is impracticable, the decision may only be made:-

- (a) where the Head of Democratic and Registration Services has informed the Chairman of the Overview and Scrutiny Commission or Chairman of the relevant Overview and Scrutiny Panel (as appropriate) or if there is no such person each Member of the Overview and Scrutiny Commission or relevant Overview and Scrutiny Panel (as appropriate) of the matter about which the decision is to be made, and
- (b) a copy of the notice given pursuant to (a) has been displayed for public inspection at Easthampstead House and on the Council's website for at least 5 clear working days.

As soon as reasonably practicable after the Head of Democratic and Registration Services has complied with (a) he or she shall make available for inspection at Easthampstead House and publish on the Council's website a notice setting out the reasons why compliance with paragraph B is impracticable.

**E. Special Urgency**

Where the date by which a Key Decision must be made makes compliance with paragraph D impracticable, the decision may only be made if the decision maker has obtained agreement that the making of the decision is urgent and cannot reasonably be deferred from:-

- (a) the Chairman of the Overview and Scrutiny Commission or the Chairman of the relevant Overview and Scrutiny Panel (as appropriate), or
- (b) if there is no such person or they are unable to act, the Mayor, or
- (c) if the Mayor is unable to act, the Deputy Mayor

As soon as reasonably practicable after obtaining any such agreement a notice of the reasons that the matter is urgent and cannot be deferred must be made available for public inspection at Easthampstead House and published on the Council's website.

**13.. REPORT TO COUNCIL**

**13.1 When the Overview and Scrutiny Commission can Require a Report**

Where an Executive decision has been made and was not treated as a Key Decision but the Overview and Scrutiny Commission or relevant Overview and Scrutiny Panel (as appropriate) are of the opinion that the decision should have been treated as a Key Decision the Commission or the Panel (as the case may be) 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 Head of Democratic and Registration Services, 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.

### **13.2 Executive's Report to Council**

Where a report is required pursuant to Rule 13.1 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 Commission or Panel, then the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the reasons for the decision, the individual or body making the decision, and, if the Executive is of the opinion that it was not a Key Decision, the reasons for that opinion.

### **13.3 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 12D (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.

## **14. RECORDING OF EXECUTIVE DECISIONS**

### **14.1 This Paragraph 14 applies to:-**

- (a) decisions made at Executive Meetings.
- (b) decisions made by individual Executive Members, and
- (c) decisions made by officers in the exercise of Executive functions
  - to incur expenditure or the making of a saving of £10,000 or more
  - following public consultation
  - which will have a material impact upon ten or more persons
  - in exercise of an express delegation made to an officer by an Executive Meeting or an individual Executive Member
  - whether or not to list a property as an Asset of Community Value
  - whether or not to accept an expression of interest submitted under the Community Right to Challenge

### **14.2 As soon as reasonably practicable after the Executive Meeting or the decision has been made the Head of Democratic and Registration Services must produce a written statement of the decision which must include:-**

- (a) the decision including the date it was made



- (b) the reasons for the decision
- (c) details of any alternative options considered and rejected
- (d) any conflict of interest relating to the matter decided which was declared by any Member, and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the Chief Executive.

#### 14.3 Subject to Rule 19

As soon as reasonably practicable after a decision has been made to which this Rule applies the Head of Democratic and Registration Services must ensure that a copy of:-

- (a) the written statement required to be produced pursuant to Regulation 14.2, and
- (b) any report considered at the Executive Meeting or considered by the individual Executive Member or officer and relevant to the decision (or where only part of the report is relevant to the decision, that part)

is as soon as reasonably practicable available for inspection by the public at Easthampstead House and on the Council's website.

Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection those documents shall be supplied on payment to the Council of postage, copying or other necessary charge for transmission.

### 15. **NOTICE OF PRIVATE MEETINGS 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.

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

#### 16.1 **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.

#### 16.2 **Other Members**

Members other than Executive Members will not be entitled to attend private Executive Meetings

#### 16.3 **Officers**

- a) The Chief Executive, the Borough Treasurer and the Monitoring Officer, and their nominees, shall be entitled to attend any Meeting. An Executive

Meeting may not meet unless the Head of Democratic and Registration Services has been given reasonable notice that a meeting is to take place.

- b) A private Executive Meeting may only take place in the presence of the Head of Democratic and Registration Services or his or her nominee, with responsibility for recording and publicising the decisions.

## **17. ADDITIONAL RIGHTS OF ACCESS – ALL MEMBERS**

17.1 Subject to the following provisions of this Rule any documents which contain material relating to business to be transacted at a public meeting shall be open to inspection by any Member for at least five clear working days before the meeting except that:-

- (a) where the meeting is convened at shorter notice the documents must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at shorter notice the documents must be available for inspection when the item is added to the agenda.

17.2 Subject to the following provisions of this Rule any document which contains material relating to:-

- (a) any business transacted at a private meeting of the Executive
- (b) any decision made by an individual Executive Member, or
- (c) any decision made by an officer in respect of an Executive function

shall be available for inspection by any Member within twenty four hours of the meeting or decision being taken.

17.3 This Rule does not authorise the disclosure of Confidential Information.

17.4 This Rules does not require the inspection of any document if it appears that the document discloses Exempt Information **unless** the Exempt Information falls within Categories 3 (Information relates to the financial or business affairs of any particular person including the Council) or 6 (Information which reveals that the Council proposes to give a statutory notice imposing requirements or to make any statutory order or direction) of Schedule 12A to the Local Government Act 1972, provided that information falling within Category 3 is not required to be open for inspection to the extent that the information relating to any terms proposed or to be proposed by or to the Council in the course of negotiating for a contract.

17.5 This Rule does not require the disclosure of advice by a political adviser or assistant.

17.6 The rights conferred by this rule are in addition to any rights which Members may have at common law.

## **18. ADDITIONAL RIGHTS OF ACCESS – OVERVIEW AND SCRUTINY MEMBERS**

18.1 Subject to the following provisions of this Rule, a Member of the Overview and Scrutiny Commission or an Overview and Scrutiny Panel is entitled to a copy of any document which contains material relating to:-

- (a) any business that has been transacted at the Council, a Committee, a sub-Committee or at an Executive Meeting
- (b) a decision made by an individual Executive Member, or
- (c) a decision made by an officer in relation to an Executive function

Documents requested must be provided as soon as reasonably practicable and in any event within ten clear days.

- 18.2 This Rule does not require disclosure of any document which discloses Exempt Information or Confidential Information unless the information is relevant to:-
- (a) an action or decision that the Member is reviewing or scrutinising, or
  - (b) any review contained in any programme of work of the Commission or Panel.
- 18.3 This Rule does not require the disclosure of the advice of a political assistant.
- 18.4 If disclosure of a document is declined the Commission or Panel shall be provided with a written statement setting out the reasons for the decision.

## **19. EXCLUSION OF PUBLIC ACCESS TO DOCUMENTS**

- 19.1 Nothing in these Rules shall require publication of or the disclosure to the public of any document which contains:-
- (a) Confidential Information
  - (b) Exempt Information, or
  - (c) the advice of a political assistant.
- 19.2 The whole or any part of a report not available for inspection by the public:-
- (a) must be marked "Not for Publication", and
  - (b) must state that it contains Confidential Information or by reference to the descriptions of categories of Exempt Information in Rule 10.4 a description of the Exempt Information applicable to the report.