

PART 8 – OTHER RULES OF PROCEDURE

E – ACCESS TO INFORMATION PROCEDURE RULES

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ACCESS TO INFORMATION PROCEDURE RULES

1 SCOPE

These rules apply to all meetings of the Council, its Committees, Forums, Panels and Regulatory panels and public 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.

4 NOTICES OF MEETING

The Council will give at least **5** clear working days' notice of any meeting by posting details of the meeting at the Town Hall, St Ives Road, Maidenhead, SL6 1RF and on the Council's website (www.rbwm.gov.uk).

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 working 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 designated officer 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. These items will also be available on the Council's website (www.rbwm.gov.uk).

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 Monitoring Officer 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.

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 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;
- (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; and
- (c) the agenda for the meeting.

8 BACKGROUND PAPERS

8.1 List of background papers.

The Head of Governance will ensure that there is set out in every report a list of those documents (called background papers) relating to the subject matter of the report which in his/her opinion:

- (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 Cabinet 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 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 the Town Hall, St Ives Road, Maidenhead, SL6 1RF

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.

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 **Meanings of exempt information.**

Exempt information means information falling within the following 7 categories (subject to any condition) in the following table.

Exempt Information

| Categories | |
|-------------------|--|
| 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) |
| 4. | Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officeholders under the authority. |
| 5. | Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. |
| 6. | Information which reveals that the authority proposes – <ul style="list-style-type: none"> 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 |

In addition the seven criteria listed above are subject to a 'Public Interest Test' i.e. that there is a greater public interest in the information being exempt, than in making the report public. Guidance issued in relation to the Public Interest Test as applied to Freedom of Information exemptions, gives some assistance in assessing the

public interest. The following are examples of factors which would encourage disclosure:

- furthering the understanding and participation in the public debate of issues of the day
- promoting accountability and transparency by public authorities for their decisions
- promoting accountability and transparency in the spending of public money
- allowing individuals and companies to understand decisions made by public authorities affecting their lives and in some cases assisting individuals in challenging such decisions

11 EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his/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" together with the category of information likely to be disclosed.

12 APPLICATION OF RULES TO THE CABINET

Rules 13 to 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 to 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is defined in Article 12 of this Constitution.

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 (general exception) or Rule 16 (special urgency) apply. This requirement does not include meetings the sole purpose of which is for Officers to brief Members.

Wherever possible, Cabinet meetings and reports to those meetings will also seek to comply with Rules 1-12.

13 PROCEDURES BEFORE TAKING KEY DECISIONS

Subject to Rule 15 (general exception) or Rule 16 (special urgency) a key decision may not be taken unless:

- a) A notice (called here a forward plan) has been published in connection with the matter in question at least 28 days before the decision is due to be made stating:
 - (i) that a key decision is to be made on behalf of the relevant local authority;
 - (ii) the matter in respect of which the decision is to be made;

- (iii) where the decision maker is an individual, that individual's name and title if any and, where the decision maker is a decision-making body, its name and a list of its members;
 - (iv) the date on which, or the period within which, the decision, the decision is to be made;
- b) Where the decision is to be taken at a meeting of the Cabinet or its committees, 5 days' 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 Democratic Services Team Manager on behalf of the Leader to cover a period of at least four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

14.2 Contents of forward plan

The forward plan will contain matters which the Leader has reason to believe will be the subject a key decision to be taken by the Cabinet, a committee of the Cabinet, individual Members of the Cabinet, Officers, or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

- a) the matter in respect of which a decision is to be made;
- b) where the decision taker is an individual, his/her name and title, if any and where the decision taker is a body, its name and details of membership;
- c) the date on which, or the period within which, the decision will be taken;
- d) the identity of the principal groups whom the decision taker 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 Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken;
- g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

The forward plan must be published at least 14 days before the start of the period covered. The Monitoring 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 taken on behalf of the Council;
- b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;

- c) 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 at reasonable hours free of charge at the Council's offices.
- e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;
- 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 takers;
- h) that 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 taken if:

- a) 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;
- b) the Democratic Services Team Manager has informed the Chairman of the relevant Overview and Scrutiny Panel, or if there is no such person, each member of that Panel in writing, by notice, of the matter to which the decision is to be made;
- c) the Democratic Services Team Manager has made copies of that notice available to the public at the offices of the Council; and
- d) at least 5 clear days have elapsed since the Democratic Services Team Manager complied with (b) and (c).

As soon as reasonably practicable after the Democratic Services Team Manager has complied with (a)-(c) above he/she must make available at the council offices a notice setting out the reasons why compliance with paragraph 13 is impracticable and publish that notice on the Council's website.

16 SPECIAL URGENCY

If by virtue of the date by which a key decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of the Chairman of the relevant Overview and Scrutiny Panel that the taking of the decision cannot be reasonably deferred. If there is no Chairman of the relevant Overview and Scrutiny Panel, or if the Chairman of the relevant Overview

and Scrutiny Panel is unable to act, then the agreement of the Mayor of the Council, or in his/her absence the Deputy Mayor will suffice.

As soon as reasonably practicable after the decision maker has received confirmation that the making of the decision is urgent, the Democratic Services Team Manager must make available at the Council offices a notice setting out the reasons why compliance with paragraph 16 is impracticable and publish that notice on the Council's website.

17 REPORT TO COUNCIL

17.1 When the relevant Overview and Scrutiny Panel can require a report

If the relevant Overview and Scrutiny Panel thinks that a key decision has been taken which was not:

- (a) included in the forward plan; or
- (b) the subject of the General Exception procedure under Rule 15; or
- (c) the subject of the Special Urgency Procedure under Rule 16;

the Panel may require the Cabinet to submit a report to the Council within 8 weeks. The power to require a report shall be made if a resolution is passed at a meeting of the relevant Overview and Scrutiny Panel.

17.2 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 clear working days of receipt of the written notice, or the resolution of the Panel, 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 taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

18 RECORD OF DECISIONS

After any meeting of the Cabinet or any of its committees, whether held in public or private, the Democratic Services Team Manager 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 will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting, 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 in respect of any declared conflict of interest, a note of dispensation granted.

19 EXECUTIVE MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS

The Cabinet will, wherever possible, hold meetings relating to matters which are not key decisions in public.

20 NOTICE OF OTHER 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.

21 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

21.1 Reports intended to be taken into account

Where an individual member of the Cabinet receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least 5 clear days after receipt of that report.

21.2 Provision of copies of reports to Overview and Scrutiny Panel

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 relevant Overview and Scrutiny Panel as soon as reasonably practicable, and make it publicly available at the same time.

21.3 Record of individual decision

As soon as reasonably practicable after a decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he/she will prepare, or instruct the Democratic Services Team Manager to prepare a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. 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 assistant.

22 OVERVIEW AND SCRUTINY PANELS' ACCESS TO DOCUMENTS

22.1 Rights to copies

Subject to Rule 22.2 below, the relevant Overview and Scrutiny Panel will be entitled to receive within 10 clear days of request, copies of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to:

- a) any business transacted at a public or private meeting of the Cabinet, its committees; or
- b) any officer making a delegated executive decision; or
- c) any decision taken by an individual member of the Cabinet.

22.2 **Limit on rights**

The relevant Overview and Scrutiny Panel 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 they are reviewing or scrutinising or intend to scrutinise;
- c) or the advice of a political adviser

If determined that a member of an Overview and Scrutiny Panel is not entitled to a copy of the document or part of any such document, the decision maker must provide the Overview and Scrutiny Panel with a written statement stating the reasons for that decision.

23 **ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

23.1 **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 Cabinet 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 the categories of exempt information detailed in 10.4; or
- b) it contains the advice of a political adviser

23.2 **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 Cabinet or its committees, which relates to any key decision unless paragraph (a) or (b) above applies.

23.3 **Nature of rights**

These rights of a Member are additional to any other right he/she may have. Where access is restricted to a document identified in 22.2 23.1 or 23.2 the reason for the restriction shall be determined by the Leader and Cabinet on advice of the Monitoring Officer. An explanation would be provided to Members on the reason for the restriction to access to the document, and attendance at meeting.

24 FREEDOM OF INFORMATION**24.1 Public right to copies of Information held by the Council**

The public has a right to request copies of any information held by the Council in any format, unless the information is exempt under the Data Protection Act or the Freedom of Information Act, and the public interest test, where it applies, does not support the information being made public, copies of the information must usually be supplied within 20 days. More information on the rights under the Freedom of Information Act and Environmental Information Regulations are available on the Council's website at www.rbwm.gov.uk.

25 NEED TO KNOW

25.1 The common law principle of "need to know" refers to the requirement that access to the information is necessary for the conduct of one's official duties.