

Constitution - Part 4 - Rules of Procedure – Access to Information Procedure Rules

(Last revised April 2014)

1. Scope

These rules apply to all meetings of the Council, and its committees 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. Notice of Meeting

The council will give at least five clear days notice of any public meeting by posting details of the meeting at the Civic Centre, St Luke's Avenue, Harrogate

5. Access to Agenda and Reports before the Meeting

The Council will make copies of the agenda and reports that are open to the public available for inspection at the designated office at least five clear days before the meeting, unless the meeting is convened at short notice, in which case the agenda will be made available from when the meeting is convened. 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 from the time the item was added to the agenda.

If by reason of special circumstances the chair of a meeting agrees to take an item of business which is not on the agenda, then the chair will announce that fact at the beginning of the meeting and will explain what the item is and the special circumstances which require that it be dealt with as a matter of urgency.

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;
- (c) any document to which the public is entitled under The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012; and
- (d) if the Head of Legal and Governance thinks fit, copies of any other documents supplied to councillors in connection with such 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 executive, both individual Cabinet Members and Cabinet as a whole. Any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information will not be available;
- (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 Head of Legal and Governance 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/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. This does not include published works or those which disclose exempt or confidential information (as defined in Rule 10).

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 at Council's main offices Civic Centre, St Luke's Avenue, Harrogate and available whenever a public meeting takes place. The summary of public rights will be constituted by a copy of these rules being separately available from the rest of this Constitution.

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 Meaning of exempt information

Exempt information means information falling within the following 7 categories (subject to any condition specified under the Qualifications also set out below):

1. Information relating to any individual.
2. Information which his 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 matter arising between the authority or a Minister of the Crown and employees of, or office holders 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:-
 - (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 a crime.

Qualifications

1. Information falling within paragraphs 1 – 7 above is not exempt if it is required to be registered under
 - (a) the Companies Act 1985;
 - (b) the Friendly Societies Act 1974;
 - (c) the Friendly Societies Act 1992;
 - (d) the Industrial and Provident Societies Acts 1965 to 1978;
 - (e) the Building Societies Act 1986; or
 - (f) the Charities Act 1993.
2. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to Regulation 3 of the Town and Country Planning General Regulations 1992[9].
3. Information which:-
 - (a) falls within any of paragraphs 1 to 7 above; and
 - (b) is not prevented from being exempt by virtue of the above qualifications

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.

NOTE: A detailed interpretation of these rules can be found in Part 3 of the Local Government (Access to Information) (Variation) Order 2006 – Statutory Instrument 2006 No. 88.

11. Exclusion Of Access By The Public To Reports

If the Head of Legal and Governance 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” together with details of the category of information likely to be disclosed.

12. Application Of Rules To The Executive

Rules 13 – 23 apply to the executive and its committees. If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is defined in Article 13.03 of the 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, whose sole purpose is for officers to brief members.

The term “executive decision” refers to a decision relating to an executive function. An executive decision may be taken by a Cabinet Member individually, the Cabinet as a whole, or an officer exercising powers granted to him/her by Cabinet (delegated powers) or exercising statutory powers in relation to an executive function. Some of the rules apply to different types of executive decisions. The meaning of the word “executive” used in these rules or elsewhere in the Council’s Constitution is set out in Article 7 and includes one or more of these possible decision makers.

13. Procedure Before Taking Key Decisions

Subject to Rule 14 (general exception) and Rule 15 (special urgency), a key decision may not be taken unless:

- (a) a document has been published in connection with the matter in question which states;
- (b) that a key decision is to be made on behalf of the local authority;
- (c) the matter in respect of which the decision is to be made;
- (d) 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;
- (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;
- (i) the procedure for requesting details of those documents (if any) as they become available;
- (j) at least 28 clear days before a key decision is made the document referred to in (a) above must be available for inspection by the public;
- (k) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings) above;
- (l) when a decision would involve confidential or exempt information the document referred to in (a) and (b) above must contain particulars of the matter but not the confidential or exempt information.

14. General Exception to Requirement to Give Notice

Where the publication of the intention to make a key decision is impractical, the decision can only be made when.

- (a) the Head of Legal and Governance has informed the chair of a relevant overview and scrutiny committee, or if there is no such person, each member of that committee by notice, in writing, of the matter about which the decision is to be made;
- (b) the Head of Legal and Governance has made copies of that notice available to the public at the principal office of the Council and on its website; and
- (c) at least 5 clear days have elapsed following the day the Head of Legal and Governance made available the notice at (b) above.

15. Special Urgency In Case Of Key Decisions

If by virtue of the date by which a decision must be taken Rule 14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the chair of a relevant overview and scrutiny committee that the taking of the decision cannot be reasonably deferred. If there is no chair of a relevant overview and scrutiny committee, or if the chair of the relevant overview and scrutiny committee is unable to act, then the agreement of the Mayor, or in his/her absence or unavailability to act the Deputy Mayor will be required.

16. Reports to Council Concerning Key Decisions

16.1 When an overview and scrutiny committee can require a report

Where an executive decision has been made and was not treated as a key decision and the overview and scrutiny committee are of the opinion that the decision should have been a key decision, the committee may require the executive to submit a report to the Council within such reasonable time as the committee specifies. Such a report must include details of the decision and the reasons for it, the decision maker and if the Executive are of the opinion that the decision was not a key decision, the reasons for that opinion.

16.2 Reports on special urgency decisions

The Leader will report at least annually on any decision made under the special urgency provisions.

17. Record of Decisions Of Cabinet

After any meeting of the Cabinet or any of its committees, whether held in public or private, the Head of Legal and Governance 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.

18. Cabinet Meetings Relating to Matters which are Not Key Decisions

All Cabinet meetings will normally be public with press and public excluded only where confidential or exempt information would otherwise be disclosed.

19. Private Meetings of The Cabinet

The Cabinet has the right to call a private meeting if it sees fit but this will be exceptional and will comply with paragraph 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

20. Executive Decisions by Individuals

20.1 Reports intended to be taken into account

Where an executive decision maker 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. Individual Cabinet Members will not make any decision until at least five clear days after receipt of any report whether or not it relates to a key decision.

20.2 Publication of reports relating to key decisions

When a report relating to a key decision is given to an individual decision maker, it will also be made publicly available at the same time and forwarded to all Councillors.

20.3 Record of individual decision

As soon as reasonably practicable after an executive 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 Head of Legal and Governance 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, concerning access to minutes and papers after a meeting, will also apply to the making of decisions by individual Cabinet members. This does not require the disclosure of exempt or confidential information or of advice from a political assistant.

21. Overview and Scrutiny Committees Access To Documents

21.1 Rights to copies

Subject to Rule 21.3 below, members of an overview and scrutiny committee (including its sub-committees) will be entitled to copies of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to

- (a) any business transacted at a decision-making body of the authority, of the Cabinet or its committees; or
- (b) any decision taken by an individual member of the executive.

21.2 Where a member of an overview and scrutiny committee requests a document falling within the scope of paragraph 21.1 above the Executive must provide that document as soon as reasonably practicable and in any case not later than 10 clear days after the Executive receives the request.

21.3 Limit on rights

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

- (a) 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 any review or programme of work of an overview committee or sub-committee,
- (b) the advice of a political adviser or assistant.

22. Additional Rights of Access for Members

22.1 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 unless

- (a) it contains information falling within paragraphs 1, 2, 4, 5, 7A, 7B or 7C of the categories of exempt information and the councillor in question has no bona fide “need to know”; or
- (b) it contains the advice of a political adviser.

22.2 Material relating to key decisions

All members of the Council will be entitled to inspect any document in the possession or under the control of the Executive which relates to any key decision unless it contains the advice of a political adviser.

22.3 Nature of rights

These rights of a member are additional to any other right he/she may have.