

APPENDIX A: Access to Information Procedure Rules

Definition of “Clear Days”

Please note that where “clear days” are mentioned in this section this means “Clear Working Days” and includes Mondays, Tuesdays, Wednesdays, Thursdays and Fridays but does not include Saturdays, Sundays, any Bank Holidays public holidays, statutory holidays and Council holidays, the day of publication (where appropriate) and the day of the meeting.

1. Scope and Definition

- 1.1 These rules apply to all meetings of the Council, Cabinet, the Scrutiny Committee, any other Committee, area Committees (if any), the Standards Committee and other regulatory Committees (together called meetings).

2. Additional Rights to Information

- 2.1 These rules do not affect any more specific rights to information contained elsewhere in the Council’s Constitution or the law.

3. Rights to Attend Meetings

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

4. Notices of Meetings

- 4.1 The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Council Offices, Argyle Road, Sevenoaks (the designated office) and at the local offices in Swanley or, if the meeting is called at shorter notice, then at the time it is convened.

5. Access to Agenda and Reports Before Meetings

- 5.1 The Council will make copies of the agenda and reports (except where a report contains confidential or exempt information) open to the public available for inspection at the designated office at least five clear days before the meeting. Where a meeting is called at shorter notice reports will be made available from the time the meeting is convened. 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 Members. 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.

6. Supply of Copies

- 6.1 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 Chief Executive thinks fit, copies of any other documents supplied to Members 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

- 7.1 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;
 - (c) the agenda for the meeting; and
 - (d) reports relating to items when the meeting was open to the public.

8. Background Papers

List of Background Papers

- 8.1 The Chief Executive will set out in every report that is open to public inspection 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

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 and in respect of Cabinet reports, the advice of a political assistant (as defined in Rule 10)

Public Inspection of Background Papers

- 8.2 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.

In relation to Cabinet decisions the Council will make available on the Council's website and at the Council's offices (at all reasonable hours) a copy of the background papers included within the list.

9. Summary of Public's Rights

- 9.1 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 the Council Offices, Argyle Road, Sevenoaks. As the Constitution must be available to the public, these Rules constitute the written summary.

10. Exclusion to Access by the Public to Meetings

Confidential Information - Requirement to Exclude Public

- 10.1 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.

Exempt Information - Discretion to Exclude Public

- 10.2 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 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of reasons in Article 6.

Meaning of Confidential Information

- 10.3 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.

Exempt Information - Attendance of Members

- 10.4 If the public are excluded from a meeting in accordance with paragraphs 10.1 and 10.2 above, subject to any provisions relating to the declaration of interests in accordance with the provisions of Members' Code of Conduct (Appendix Q - Members' Code of Conduct.doc) of this Constitution, Members of the District Council may remain in the meeting because of their general "right to know".

Meaning of Exempt Information

- 10.5 Exempt information means information falling within the following 7 categories (subject to any qualification).

Categories of Exempt 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).
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 crime.

The following qualifications apply to the categories of exempt information:

- (i) Information falling within paragraph 3 above is not exempt information by virtue of that paragraph 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.
- (ii) 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.
- (iii) Information which
 - (a) falls within any of paragraphs 1 to 7 above; and

- (b) is not prevented from being exempt by virtue of paragraph (i) or (ii) above,

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.

11. Exclusion of Access by the Public to Reports

- 11.1 If the Chief Executive 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 the category of information likely to be disclosed.

12. Application of Rules to the Cabinet

- 12.1 Rules 13 - 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 - 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. While a Cabinet meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings is, so far as practicable, to be afforded reasonable facilities for taking their report.

- 12.2 A key decision is as defined in Part 1, paragraph 7 of the Constitution.

13. Procedure Prior to a Private Meeting of the Cabinet

- 13.1 Subject to 13.2 a decision by Cabinet to hold a meeting, or part of a meeting, in private may not be taken unless:

- (a) a notice has been published in the Notice of Key Decisions at least 28 clear days before the meeting in question and made available on the Council’s website and at the Argyle Road Council Offices. This notice is to include a statement of the reasons for the meeting being held in private;

- (b) a further notice is included on the agenda and published on the Council’s website and at the Argyle Road Council Offices five clear days before the meeting. This notice is to include:

- (i) a statement of the reasons for the meeting to be held in private

- (ii) details of any representations received by the Cabinet about why the meeting should be open to the public

- (iii) a statement of its response to any such representations.

- 13.2 If a matter has not be included in accordance with rule 13.1 then the decision to hold a meeting, or part of a meeting, in private may still be taken if the Cabinet obtains the agreement of the Chairman of the relevant

Select Committee/Performance and Governance Committee (in the Chairman’s absence the Vice-Chairman) that the meeting is urgent and cannot reasonably be deferred. As soon as it is practicably possible a notice will be published on the Council’s website and Argyle Road Council Offices setting out the reason why the meeting is urgent and cannot be reasonably deferred.

14. Publicity in Connection with Key Decisions

14.1 Subject to Rule 16 (general exception) and Rule 17 (special urgency), a key decision may not be taken unless:

- (a) a notice (called here a Notice of Key Decision) has been published in connection with the matter in question;
- (b) the notice referred to in (a) has been available for public inspection for at least 28 clear days at the Argyle Road Council Offices and on the Council’s website; and
- (c) where the decision is to be taken at a meeting of the Cabinet or its Committees/Sub Committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

15. The Notice of Key Decisions

Contents of the Notice of Key Decisions

15.1 The Notice of Key Decisions will contain matters which will be the subject of a key decision to be taken by the Cabinet or the full Council in the course of the discharge of an executive function. It will give the following details:

- (a) that a key decision is to be made on behalf of the relevant local authority;
- (b) the matter in respect of which a decision is to be made;
- (c) where the decision taker is an individual, that individual’s name and title if any and, where the decision taker is a body, its name and list of its members;
- (d) the date on which, or the period within which, the decision is to be made;
- (e) 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;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available;

- (g) that other documents relevant to these matters may be submitted to the decision maker; and
- (h) the procedure for requesting details of those documents (if any) as they become available.

The Notice of Key Decisions must be published on the Council's website and at the Argyle Road Council Offices at least 28 clear days before a decision is made.

Confidential, exempt information or particulars of the advice of a political assistant need not be included in the Notice of Key Decision.

16. General Exception

16.1 Subject to Rule 17 (special urgency), where the publication of the intention to make a key decision under Rule 15 is impracticable, that decision may only be made where:

- (a) notice of the matter about which the decision is to be made and the reasons why it has been impracticable to apply Rule 15 has been given in writing to the chairman of the Scrutiny Committee or in their absence where written notice has been sent to each Member of that Committee and made available at the Argyle Road Council Offices and on the Council's website and
- (b) at least five clear days have elapsed since the notice given in paragraph (a) was made available.

17. Special Urgency

17.1 Where the date by which a key decision must be made makes compliance with Rule 16 (general exception) impracticable the decision may only be made where the decision maker had obtained agreement from the Chairman of the Scrutiny Committee (or if there is no Chairman of the Scrutiny Committee then the Chairman of the Council and in the Chairman's absence the Vice-Chairman) that the taking of the decision(s) is urgent and cannot reasonably be deferred.

18. Report to Council

When the Scrutiny Committee can require a report

18.1 Where the Scrutiny Committee thinks that an executive decision has been made and was not treated as a key decision and the Committee are of the opinion that the decision should have been treated as a key decision the Committee may require the Leader/Cabinet to submit a report to the Council within such reasonable time as the Committee specifies. The power to require a report rests with the Committee, but is also delegated to the Chief Executive, who shall require such a report on behalf of the Committee when so requested by the Chairman.

Cabinets Report to Council

- 18.2 The Leader/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 five clear days of the request from the Committee, then the report may be submitted to the meeting after that. A report to Council under this Rule must include details of the decision and the reasons for the decision, the decision maker by which the decision was made and if the Leader/Cabinet are of the opinion that the decision was not a key decision, the reasons for that decision.

Quarterly Reports on Special Urgency Decisions

- 18.3 In any event the Leader will submit a quarterly report to the Council on the Cabinet decisions taken in the circumstances set out in Rule 17 (special urgency) or annually where there have been none. The report will include particulars of each decision made and a summary of the matters in respect of when each decision was made.

19. Record of Decisions

- 19.1 As soon as reasonably practicable after any meeting of a decision making body at which an executive decision was made, the Chief Executive or the person presiding at the meeting, will produce a record of every decision made at that meeting. The record must include:
- (a) a record of the decision including the date it was made;
 - (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;
 - (d) 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
 - (e) in respect of any declared conflict of interest, a note of any dispensation granted.

20. Notice of Meetings of the Cabinet

- 20.1 Members of the Cabinet or its Committees will be entitled to receive five clear days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.
- 20.2 Where a meeting is convened at shorted notice a copy of the agenda and associated papers will be open to inspection from the time the meeting is convened. If an item is added to the agenda later, the revised agenda and additional reports will be open to inspection from the item the item was added to the agenda.

20.3 Copies will be made available at the Argyle Road Council Offices and on the Council's website.

21. Attendance at Meetings of the Cabinet

21.1 All members of the Cabinet will be served notice of all meetings of the Cabinet.

21.2 Members other than Cabinet members will not be entitled to attend Briefing meetings except by specific invitation. (Such invitation might extend to particular Members or groups of Members at the Leader's discretion, depending on the subject matter to be discussed and may be for part or all of a meeting.)

21.3 The Council's Statutory Officers (the Head of the Paid Service, the Section 151 Officer and the Monitoring Officer), and their nominees are entitled to attend any formal meeting of the Cabinet. The Cabinet may not meet formally unless the Chief Executive has been given reasonable notice that a meeting is to take place.

21.4 A Briefing meeting may only take place in the presence of the Chief Executive or his/her nominee.

22. Decisions by Individual Members of the Cabinet

Provision of Copies of Reports to Select Committees/Performance and Governance Committee

22.1 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 Scrutiny Committee as soon as reasonably practicable, and make it publicly available at the same time.

Record of Individual Decision

22.2 As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet, he/she will prepare, or instruct the Chief Executive to produce a written statement of the executive decision including:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the member when making the decision;
- (d) a record of any conflict of interest declared by any executive member consulted by the decision taker which relates to the decision; and
- (e) in respect of any declare conflict of interest, a note of dispensation

granted by the Chief Executive.

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.

23. Rights of Access to Documents for Members of Scrutiny Committee/Audit Committee

Rights to Copies

23.1 Subject to Rule 23.2 below, a Member of the Scrutiny Committee/Audit Committee will be entitled to a copy 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 that has been transacted at a formal meeting of the Cabinet or its Committees; or
- (b) any decision taken by an individual member of the Cabinet

Subject to 23.2 below where a Member of the Scrutiny Committee/Audit Committee requests a document which fall within (a) or (b) this must be provided by the Cabinet as soon as reasonably practicable and in any case no later than 10 working days after the request is received by Cabinet.

Limit on Rights

23.2 No Member of the Scrutiny Committee/Audit Committee will be entitled to:

- (a) any report that is in draft form; or
- (b) any report or part of a report or background paper that contains exempt or confidential information, unless that information is relevant to
 - (i) an action or decision they are reviewing or scrutinising
 - (ii) any review contained in any programme of work of that Committee or
- (c) a document or part of a document containing advice provided by a political assistant.

Where it is determined by the Cabinet that a Member of the Scrutiny Committee/Audit Committee is not entitled to a copy of a document or part of any such document for a reason set out above it must provide the Committee with a written statement setting out its reasons for that decision.

24. Additional Rights of Access to documents for Members of the Council
- 24.1 Copies of all exempt reports to Council will be provided to all Members and copies of all exempt reports to Committees established by the Council will be provided to the Members of the Committee.
- 24.2 Subject to paragraph 24.4 any document which is in the possession of or under the control of the Leader and Cabinet and contains material relating to any business to be transacted at a public meeting must be available for inspection by any Member of the Council at least five clear days before the meeting. Where the meeting is convened at shorter notice these documents must be available for inspection when the meeting is convened and where an item is added to the agenda at shorter notice the document must be available for inspection when the item is added to the agenda.
- 24.3 Subject to paragraph 24.4 any document which is in the possession of, or under the control of the Leader and Cabinet and contains material relating to any business transacted at a private meeting or any decision made by an individual Member of the Cabinet or an officer in accordance with executive arrangements must be available for inspection by any Member of the Council when the meeting concludes or within 24 hours after the decision has been made.
- 24.4 Notwithstanding Rules 24.2 and 24.3 nothing in these Rules requires any document to be made available for inspection if it appears to the Chief Executive that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the Local Government Act 1972 unless the document contains exempt information of a description falling within paragraph 3 of Schedule 12A to the 1972 Act and as set out in Rule 10.4 (except to the extent that the information relates to any terms proposed or to be proposed by or to the Authority in the course of negotiations for a contract) or paragraph 6.
- 24.5 Nothing in this Rule requires any document to be made available for inspection if it appears to the Chief Executive that it discloses the advice of a political assistant.

Nature of Rights

- 24.6 These rights of a Member set out in Rule 24 are additional to any other rights he/she may have.

25. Decisions by Officers

- 25.1 Certain decisions made by officers must be captured in a written record. These are decisions that have been delegated to an officer of the Council under a specific express authorisation, or under a general authorisation where the effect of the decision is to:

- grant permissions or licences;
 - affect the rights of individuals;
 - award contracts or incur expenditure which materially affects the body's financial position.
- 25.2 The written record is made available to the public at the Council Offices, on the Council's website, by post if requested and on receipt of payment for copying and postage.
- 25.3 The written record will be available for public inspection as soon as reasonably practicable for at least six years, and any supporting documentation for at least four years. These can be kept in electronic format.

References:

Sections 100A - 100H and Schedule 12A Local Government Act 1972
Section 22 of The Local Government Act 2000
The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012