

**NEWCASTLE-UNDER-LYME BOROUGH COUNCIL**

**EXECUTIVE MANAGEMENT TEAM'S REPORT TO**

**FULL COUNCIL**

**20 November 2019**

1. **Report Title**                      **Review and Update of Access to Information Procedure Rules**
- Submitted by:**                      **Interim Head of Legal & Monitoring Officer**
- Portfolio**                                **Corporate and Service Improvement People and Partnerships**
- Ward(s) affected:**                      **All**

**Purpose of the Report**

The report summarises proposed changes to the Access to Information Procedure Rule which will require full Council approval to any amendments.

**Recommendations**

**That Council approves the proposed amendments to the Access to Information Procedure Rules.**

**Reasons**

The Access to Information Procedure Rules form part of the Council's Constitution (at Appendix 11) and deal with the requirements and processes and procedures which govern reports, decision making and access to documents. The review updates the Procedure Rules and alters the wording where clarification is helpful.

1. **Background**

1.1 The Council Procedure Rules and Committee Procedure Rules are currently at Appendix 11 Constitution. The Rules were last updated in May 2017 and so do not require a major update from a legal perspective but would benefit from simplification as the Rules are lengthy and complex in parts.

2. **Issues**

2.1 The Council should regularly review its Constitution and update the provisions.

2.2 Most of the Rules have not required any major amendments as they are compliant with the relevant legislation including the Local Authority (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which introduced the most recent changes. However, many Councils now adopt a far simpler style of drafting and so some of the wording in the current rules have been simplified. In particular reference in the Rules to the "Executive" has been altered to the Cabinet throughout.

2.3 In addition the opportunity has been taken to propose an increase to the current cap on the definition of a key decision and to increase it from £50k to £100k revenue expenditure and £250k capital expenditure, which will bring it more in line with other district Councils.

3. **Proposal**

3.1 A summary of the changes proposed includes;

New Rule	Content	Comment
1. Scope	Procedure Rules apply to all formal meetings of Council, Committees and Cabinet	No change except reference to Cabinet not Executive
2. Rights of the Public to Attend Meetings	Provides the public may attend all formal meetings subject only to the exceptions in the Rules.	No change
3. Notices of Meetings	Details of 5 clear days' notice required by posting at the offices and on the Councils website	Updates to refer to new Council offices
4. Access to Agendas & Reports Before a Meeting	Copies of agendas and reports to be available for inspection by the public at least 5 clear days before the meeting or as soon as available to members	No change
5. Supply of Documents & Charging	The Council will supply electronic copies of agendas, reports & associated documents at no charge but reserves the right to make a reasonable charge for posting & copying hard copy documents	Original wording retained with minor word change
6. Access to Documents following a Meeting	Minutes, agendas and reports will be available for 6 years after a meeting	No change except reference to Cabinet not Executive
7. Background Papers Listed in Reports	Background documents will be available 4 years after a meeting	No change
8. Exclusion of the Public from the whole or part of meeting	Sets out the 7 categories of exempt information together with exceptions to the categories. Also summarises the Public Interest Test	Wording simplified to explain exemptions under Planning Restrictions, Public Interest Test and new section on Licensing Act 2003 exemptions
9. Non-Disclosure of	The MO may exclude access by	Wording simplified to clarify

Reports to the Public	the public to exempt reports. Reports will be marked “Not for publication” and the category of exempt information.	the MO’s decision to exclude from publication any exempt reports
10. The Cabinet	Sets out the detailed definition of a key decision including a number of exceptions to the main definition	Wording amended to include the longer definition of a key decision found at section 13.2 in Part 2 of the Constitution. Also proposes increase of cap from £50k to £100k revenue and to £250k capital expenditure as this has not been reviewed for some time & is more in line with other Councils
11. Cabinet Key Decision	A Key Decision may not be taken unless a notice (known as the Cabinet Forward Plan) has been published, at least 28 days has elapsed and at least 5 clear days’ notice has been given of the Cabinet meeting itself	Wording simplified and clarification that the statutory notice requirements is within the Forward Plan.
12. 28 Day Notice of Cabinet Decisions and/or Confidential/ Exempt Decisions (Forward Plan)	Summarises the requirements to give 28 days’ notice of key decisions and of both confidential and exempt decisions in the Cabinet Forward Plan. Amends the previous requirements for consultation	Largely original wording
13. Key Decisions - General Exception	Sets out the process to be followed when a key decision or a confidential or exempt matter has not been included in the Forward Plan but it is impractical to defer it. Provides that the Chair of the Scrutiny Committee must be informed or in their absence all of the relevant Scrutiny Committee members. There must be at least 5 clear days’ notice	Wording simplified
14. Key Decisions - Special Urgency	Provides that if the decision is so urgent that the 5 days’ notice under Rule 14 cannot be given	Wording simplified and reference from Leader and Deputy Leader altered to

	the decision may be taken with the agreement of the Chair of the relevant committee or in their absence the Vice Chair or Mayor or Deputy Mayor	Mayor and Deputy Mayor since a member of the Executive ought not to sign off urgent executive items where there has been no opportunity to scrutinise the item
15. Reports to Full Council	A Scrutiny Committee can require the Cabinet to take a report to full Council if they are concerned the procedures for key decisions have not been followed. The Leader must report to full Council on Cabinet decisions on reports taken to Cabinet using the urgency procedures	Wording simplified and updated
16. Record of Decisions	Sets out when decisions must be recorded and what must be included including reasons for the decision and alternative options considered	Wording simplified
17. Attendance of Private Meetings of Cabinet	Sets out the process for private meetings of Cabinet and the right of statutory officers to attend	Wording largely unchanged
18. Decisions of Individual Members of Cabinet or Officers	Summarises the requirements where an individual Cabinet member makes a decision and adds more detail around formal officer decision making	Wording largely unchanged but clarifies which requirements also apply to officer decisions
19. Scrutiny Committee Access to Information	Sets out when Scrutiny Committees may see copies of documents in the control of the Cabinet which contain relevant information and the exceptions which apply	Original wording retained
20. Additional Rights of Access to Documents by Members	Provides all councillors are entitled to inspect documents due to be considered at public meetings of the Cabinet. Sets out the right to inspect document due to be considered in private session and entitlement to see documents after a decision has been made. Special rules apply to the disclosure of confidential or exempt information.	Wording largely unchanged

21. Members Access to Information – “Need to Know”	Summarises the “need to know” where members need information so they can reasonably discharge their duties giving the final decision on release to the MO	Original wording retained
22. Confidentiality of Council Business	Sets out the process for dealing with confidential and exempt information. Adds the process for information received by Working Parties	Adds category of exempt information as well as confidential
23. Additional Rights to Information	States the rules do not affect any more specific entitlement to information enshrined elsewhere in the Constitution	Original wording retained
24. Offences	Summarises the provisions in the Regulations which make it an offence to obstruct the entitlement to information	Original wording retained but reference to regulations added

A copy of the Access to Information Procedure Rules with tracked changes (showing) is appended to this report at Appendix A.

4. **Reasons for Proposed Solution**

- 4.1 To update the current rules to reflect changes in legislative requirements since the last review and to clarify procedural requirements,

5. **Options Considered**

- 5.1 There is an option to do nothing but this would mean continuing to work with Rules which are complex to understand and follow as a whole.

6. **Legal and Statutory Implications**

- 6.1 All local authorities are required to have a written Constitution which must be kept under regular review and publicised. Any amendments to the Constitution require the approval of full Council

7. **Equality Impact Assessment**

- 7.1 Where any equality impact has been identified it has been addressed.

8. **Financial and Resource Implications**

- 8.1 No significant additional resources will be required in relation to the recommendations.

9. **Major Risks**

- 9.1 That the Access to Information Procedure Rules do not reflect up to date legal requirements and /or best practice resulting in challenge to Council decisions and/or reputational damage.

10. **Sustainability and Climate Change Implications**

- 10.1 There are no direct implications.

11. **Key Decision Information**

- 11.1 This is not a key decision which requires inclusion on the Cabinet Notice of Decisions/ Forward Plan.

12. **Earlier Cabinet/Committee Resolutions**

The previous meeting of the Working Group requested a review Access to Information Procedure Rules.

13. **List of Appendices**

- 13.1 A copy of the Access to Information Procedure Rules with tracked changes is attached at Appendix A to this report.

14. **Background Papers**

- 14.1 There are no background papers for consideration/inclusion.