

APPENDIX 11

ACCESS TO INFORMATION PROCEDURE RULES

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**These Rules are produced in accordance with the provisions of the
Local Authorities (Executive Arrangements)
(Meetings and Access to Information) (England) Regulations 2012**

1. SCOPE

These Procedure Rules apply to all meetings of the Council, its committees and sub-committees and formal meetings of the Cabinet.

2. RIGHTS OF THE PUBLIC TO ATTEND MEETINGS

Members of the public may attend all formal meetings of the Council (as described in Rule 1 above), subject only to the exceptions set out in these Rules and in any statutory provisions.

3. NOTICES OF MEETINGS

The Council will give at least 5 clear days' notice of any meeting (unless the meeting is convened at shorter notice under the Council's urgency procedures) by posting details of the meeting at Council Offices Castle House Newcastle-under-Lyme (the designated office) and by publication on the Council's website (www.newcastle-under-lyme.gov.uk).

4. ACCESS TO AGENDAS AND REPORTS BEFORE A MEETING

The Council will make copies of agendas and reports open to the public available for inspection at the designated office and on the website at least 5 clear days before a meeting. If an item is added to an agenda later under the Council's emergency procedures, 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 elected Members.

5. SUPPLY OF DOCUMENTS AND CHARGING

The Council will supply, usually in electronic form, 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 on the agenda; and
- (c) If the Chief Executive thinks fit, copies of any other non-exempt documents supplied to elected Members in readiness for a meeting

Documents will be made available to the public by the Council publishing them on its website. A reasonable number of copies of agendas and reports will be made available for the public present at a meeting.

Charging

No fee is charged for inspecting any of the documents referred to in this section. The Council reserves the right to make a reasonable charge for postage and copying of hard copy documents.

6. ACCESS TO DOCUMENTS FOLLOWING A MEETING

The Council will make available copies of the following for 6 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
- (d) reports relating to items when the meeting was open to the public.

7. BACKGROUND PAPERS LISTED IN REPORTS

The report author 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
- (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 9) unless the exemption no longer applies.

The Council will make available for public inspection for 4 years after the date of the meeting a copy of each of the documents on the list of background papers.

8. EXCLUSION OF THE PUBLIC FROM THE WHOLE OR PART OF A MEETING

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 exempt or confidential information would be disclosed. A committee or sub-committee are required to pass a resolution to exclude the public where exempt or confidential information will be disclosed.

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'Confidential' information means information given to the Council by a Government department on terms that forbid its public disclosure or information which cannot be disclosed publicly by Court Order.

'Exempt' information means information falling within one or more of the following categories (subject to any condition):

| | CATEGORY | |
|---|--|---|
| 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) | Includes information relating to the authority's own financial or business affairs. It does <u>not</u> include information which 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 as this information will already be in the public domain. Financial or business affairs includes past, present and contemplated activities |
| 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 | Information may only be exempt if and for so long as its disclosure to the public would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter. 'Labour relations matters' are as specified in paragraphs (a) to (g) of Section 218 of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute |
| 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 exceptions apply:

Planning Restrictions

Information is not exempt if it relates to a proposed development for which the Council as the local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992

Licensing Act 2003

The specified categories of exemptions do not apply to Licensing Act 2003 hearings, as these are required to be open to the public.

Human Rights Act 1998

Where a 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, as follows:

- (a) It is in the interests of morals, public order or national security in a democratic society, to hear the matter in private; or
- (b) Where the interests of juveniles or the protection of the private life of the parties requires that the matter should be heard in private; or
- (c) Where in the opinion of the meeting, due to special circumstances, publicity would prejudice the interests of justice.

Public interest test

Paragraphs 1-7 of the exemptions listed above are subject to the public interest test ie in determining whether information should remain exempt, the report writer and the decision maker must decide whether the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

Report writers will need to give consideration to exempt information and the public interest test, and if it is determined that the document should not be published, need to explain why or how the public interest test is best served by the information remaining exempt. The fact that a document is exempt, together with reasons, will appear in the report and the agenda relating to that item.

The Monitoring Officer will ultimately determine whether reports and related documents are exempt or not and his/her decision will be final.

Where the public may be excluded from a meeting or part of a meeting due to an exempt report being considered, the members of the meeting will need to consider the public interest test, having given due consideration to any legal advice provided.

9. NON-DISCLOSURE OF REPORTS TO THE PUBLIC

Confidential information

Reports containing confidential information will not be disclosed to the public.

Exempt information

If the Monitoring Officer 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

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paragraph 9, the meeting is not likely to be open to the public. .
Such reports will be marked 'Not for Publication' together with the category of information likely to be disclosed.

10. THE CABINET

Access to Information Rules 11 to 21 inclusive apply to the Cabinet only

If the Cabinet meets to take a Key Decision, then it must also comply with Access to Information Rules 1-9 above unless Rule 13(exception) or Rule 14 (urgency) apply. The definition of a Key Decision is:

A decision by or on behalf of the Cabinet which is likely:

- a. To result in the Borough Council incurring expenditure or making savings of an amount which is significant having regard to the Council's budget for the service or function to which the decision relate; or
- b. To be significant in terms of its effects on communities living or working in an area comprising two or more electoral wards in the Borough

It is for the Authority to determine what is significant. For the Borough of Newcastle- under – Lyme the definition is that it will result in the Council incurring expenditure or making a saving to the value of **£100,000** or more revenue expenditure or **£250,000** capital expenditure.

But a decision will not be a key decision if it is:

- a. To give effect to a provision of the Council's Budget or Policy Framework and, where appropriate, for which financial provision has been made; or
- b. To implement nationally or locally agreed pay awards for officers in accordance with the terms of such award; or
- c. Expenditure incurred by the s151 Officer in the exercise of Treasury Management powers delegated to him or her; or
- d. Expenditure incurred by the Chief Executive in the exercise of powers delegated to him or her relating to an emergency or a disaster to which section 138 of the Local Government Act 1972 applies; or
- e. The making of savings by way of the closure or discontinuance of a Council service, or part of a service, to meet a budgetary constraint.

The Cabinet or an officer acting under delegated powers may only make a key decision in accordance with the requirements of the Council Procedure Rules set out in Part 4 of this Constitution.

If the Cabinet, or any member of the Cabinet, meets with an officer to determine a Key Decision within 28 clear days of the date according to the 28 day notice of key and/or confidential/exempt decisions (see Rule 12) by which it is to be decided, then it must also comply with Access to Information Rules 1 to 9(inclusive), unless Rules 13 or 14 apply.

This requirement does not apply to officer/member briefings or any meetings which are not taking formal decisions.

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11. CABINET KEY DECISIONS

Subject to Rules 13 and 14, a Key Decision may not be taken unless:

- (a) a notice known as the Cabinet Forward Plan) has been published in connection with the matter in question
- (b) at least 28 clear days have elapsed since the publication of the Cabinet Forward Plan ; and
- (c) where the decision is to be taken at a meeting of the Cabinet, notice of the meeting has been given in accordance with Access to Information Rule 4. (Notices of Meetings).

12. THE 28 DAY NOTICE OF CABINET DECISIONS AND/OR CONFIDENTIAL/EXEMPT DECISIONS (FORWARD PLAN)

Period covered

A 28 day notice of key and/or confidential/exempt decisions (which will be taken in private) (known as the Cabinet Forward Plan) will be prepared by Democratic Services and updated when a new notice is made and published, which will be at least 28 clear days prior to any regular scheduled meeting of the Cabinet.

At least 5 clear working days prior to the day of any private meeting of the Cabinet Democratic Services will publish a further notice on the agenda for the meeting and the Council's website confirming the Cabinet's intention to hold all or part of the meeting in private, a statement of the reasons for privacy and details of any representations received by the Council as to why the meeting should be held in public and the Cabinet's response to those representations.

Notice

The notice will contain matters which Democratic Services consider will be the subject of a Key Decision and/or a private decision (confidential/exempt) to be taken by the Cabinet, individual members of the Cabinet an officer or under joint arrangements in the course of the discharge of an Executive function during the period covered by the notice. It will describe the following particulars insofar as the information is available or might reasonably be obtained:

- (a) the matter in respect of which a Key Decision/private decision is to be made
- (b) where the decision maker is an individual, his/her name and title, and where the decision maker 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) a list of the documents submitted to the decision maker for consideration in relation to the matter
- (e) the location from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is available

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- (f) the identity of the principal groups whom the decision maker proposed to consult before taking the decision
- (g) the means by which any such consultation is proposed to be undertaken
- (h) the steps any person might take who wishes to make representations to the Cabinet or decision maker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
- (i) the reasons why the matter will be confidential/exempt.

The notice must be produced and published at least 28 clear days before the day upon which the decision is to be taken, whether by a meeting or by an individual member of the Executive.

13. KEY DECISIONS – GENERAL EXCEPTION

If a key decision has not been included in the Cabinet Forward Plan, a decision may still be taken if:

- (a) it is impracticable to defer it until 28 clear days' notice has been given
- (b) Democratic Services have informed the Chair of the relevant Scrutiny Committee, (or if there is no such person, each member of the that Committee), by notice in writing of the matter and why compliance with the 28 day notice period is impracticable
- (c) Democratic Services have made copies of that notice available to the public, on the Council's website or at the Borough Council offices; and
- (d) At least **5 clear working days have elapsed** since Democratic Services complied with (b) and (c).

Where such a decision is taken by the Cabinet, it must be taken in public, unless the information is exempt.

14. KEY DECISIONS – SPECIAL URGENCY

14.1 Executive Key and/or Confidential/Exempt Decisions which are urgent

If the decision is so urgent that Rule 13 cannot be followed then the decision can only be taken if Democratic Services on behalf of the decision maker, obtains the agreement, in writing, of the Chair of the relevant Scrutiny Committee that the taking of the decision is urgent and cannot reasonably be deferred.

If the Chair is unable to act, the agreement of the Vice-Chair will be sought.

If neither the Chair or Vice-Chair is available, the agreement of the Mayor will suffice (and if not available, the Deputy Mayor of the Council).

As soon as reasonably practicable after the decision maker has obtained agreement that the decision is urgent, a notice must be published at the Council offices and on its website setting out the reasons for the urgency.

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14.2 Other Decisions which are urgent

Only items on an agenda which has been published 5 clear days before the date of a meeting can be considered at that meeting. However, the Chair of the meeting is permitted to add urgent items to the agenda at that meeting. Urgent items are defined as being those items that by reason of special circumstance have arisen since the despatch of the agenda and which were not known of at the time the agenda was published, provided that 14.1 above is complied with.

Urgent items cannot be dealt with as 'any other business' or 'matters arising' items.

15. REPORTS TO FULL COUNCIL

15.1 When a Scrutiny Committee can require a report

A relevant scrutiny committee can require that the Cabinet submit a report to Full Council within such reasonable time period as the committee specifies if they think that a Key Decision has been taken which was not:

- (a) treated as a Key Decision or
- (b) included in the Cabinet Forward Plan of Key Decisions or
- (c) the subject of the general exception procedure at Rule 13 or
- (d) the subject of an agreement under the Special Urgency Procedure at Rule 14 (

When directed to do so by either the Chair of the relevant scrutiny committee or by any 5 members of that scrutiny committee, the Chief Executive on behalf of the relevant scrutiny committee will serve notice in writing upon the Council Leader, requiring a report to be submitted to Full Council.

Alternatively, the relevant scrutiny committee may pass a resolution at their meeting to require a report of the Cabinet to Full Council within a specified time period.

15.2 Cabinet's report to Full Council

The Cabinet will prepare a report for the next available meeting of the Council, when required to do so in under Rule 15.1. However, if the next meeting of the Council is within 7 days of the resolution of the scrutiny committee then the report may be submitted to the meeting held next 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.

15.3 Reports on Special Urgency Provisions and General Exceptions

In any event the Leader of the Council will submit a report to full Council on any Cabinet decisions taken as an urgent decision under Rule 13 or without having given 28 days' notice under Rule 12 The since the previous Full Council meeting.

16. RECORD OF DECISIONS

16.1 Recording of Cabinet Decisions

After any meeting of the Cabinet, whether held in public or in private, a record of every decision taken at that meeting will be produced 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.

The statement must include:

- (a) a record of the decision including the date it was made and reasons for the decision
- (b) details of any alternative options considered and rejected by the Cabinet at the meeting
- (c) a record of any conflict of interest relating to the decision which is declared by any member of the Cabinet which made the decision together with a note of any dispensation granted by the Audit and Standards Committee

16 .2 Recording of Cabinet decisions made by individuals

As soon as reasonably practicable after an individual Member has made an Executive decision, that Member must prepare, or instruct the relevant officer to prepare, a written statement of that decision which includes the information specified below:

- (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 considered and rejected by the Member when making the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the Audit and Standards Committee

16.3 Recording of Executive decisions made by officers

As soon as reasonably practicable after an officer has made a decision which is an Executive decision, that officer must produce a written statement which includes the information specified below:

- (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 officer when making the decision
- (d) a record of any conflict of interest declared by any Cabinet Member who is consulted by the Officer which relates to the decision; and
- (e) in respect of any declared conflict of interest, a note of dispensation granted by the Chief Executive.

17 ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET

All Members of the Cabinet will be served notice of all private meetings of the Cabinet, and all Cabinet Members are entitled to attend.

The statutory officers (Head of the Paid Service, Chief Financial Officer and Monitoring Officer) are entitled to attend any meeting of the Cabinet..

The Cabinet may not meet unless Democratic Services have been given reasonable notice that a meeting is to take place. A private Cabinet meeting may only take place in the presence of a member of Democratic Services with responsibility for recording and publishing the decisions.

18 DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET

18.1 Decision reports

Where an individual member of the Cabinet receives a report which he/she must consider prior to making any decision, then he/she will not make the decision until at least 5 working days after the receipt of that report.

However, if the decision is a Key Decision and/or Confidential/Exempt Decision, the 28 day notice provisions in Rule 12 will apply.

18.1 Provision of copies of reports to scrutiny committees

When providing such a report to an individual member of the Cabinet, Democratic Services will provide a copy of it to the Chair and Vice-Chair to the relevant scrutiny committee as soon as reasonably practicable.

At the same time, Democratic Services will make the report publicly available by publishing it on the Council's website, unless it is deemed confidential or exempt in accordance with Rule 8 above.

18.2 Record of Individual Member 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, Democratic Services will prepare a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Access to Information Rules 6 and 7 (inspection of documents after meetings) will also apply to the making of decisions by individual Members of the Executive, subject to Access to Information Rule 8

19 SCRUTINY COMMITTEE ACCESS TO DOCUMENTS

19.1 Right to documents

Subject to Access to Information Rule 19.2 below, Scrutiny Committees will be entitled to copies of any document which is in the possession of 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 or its committees; or

- (b) any decision taken by an individual member of the Cabinet; or
- (c) any decision taken by an officer authorising an Executive function.

Copies of documents requested under this Rule must be supplied within 10 working days of receipt of the request.

19.1 Limitation

Subject to Access to Information Rule 20, the relevant Scrutiny Committee 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, or is accessible in accordance with Access to Information Rule 20.4 below.

20 ADDITIONAL RIGHTS OF ACCESS TO DOCUMENTS BY MEMBERS

20.1 Documents relating to business to be transacted at a public meeting

All Members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession of or under the control of the Cabinet or its committees which contains material relating to any business to be transacted at a public meeting. Any document must be available for inspection at least 5 clear days before the day of the meeting except:

- (a) where the meeting is convened at shorter notice the document must be available for inspection when the meeting is convened; and
- (b) where an item is added to the agenda at shorter notice, a document that would be required to be available must be available for inspection when the item is added on the agenda

All such documents will be made available by publishing on the Council's website.

20.1 Documents relating to business to be transacted at a private meeting

Any document which is in the possession of or under the control of the Cabinet and contains material relating to any business transacted at a private meeting will be available for Members to inspect at the office of Democratic Services, subject to Access to Information Rule 20.4 below. This Rule does not provide a right to copy such documents.

Where access is restricted to a document under this provision, the restriction is determined by Democratic Services, having taken account of the advice of the Monitoring Officer.

20.2 Disclosure of documents after the decision

Any document which is in the possession or under control of the Cabinet and contains

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material relating to:

- (a) any business transacted at a public meeting
- (b) any decision made by an individual member of the Cabinet in accordance with Executive Arrangements
- (c) any decision made by an officer in accordance with Executive Arrangements

must be available for inspection by a Member immediately after the meeting concludes, or where an Executive decision is made by an officer, immediately after the decision has been made (and in any event, within 24 hours).

20.3 Access to confidential and exempt information

The entitlement to access to, or inspection of, documents does not extend to a document that contains confidential or exempt information unless the exemption solely relates to paragraphs 3 or 6 of the exemptions in Access to Information Rule 8 (except where the information relates to any terms proposed by or to the Council in the course of negotiations of contract).

Nothing in these Rules requires the disclosure of confidential information that breaches the obligation of confidence.

Members may therefore often be able to access reports which are exempt, but there are occasions when information:

- (a) is highly sensitive and involves complex negotiations
- (b) relates to a significant litigation risk

relates to sensitive personal information where the data subject would reasonably expect such information to be restricted only to decision makers.

21 MEMBER ACCESS TO INFORMATION – ‘NEED TO KNOW’

21.1 Members have the right to seek information which they may reasonably need in order to assist them in properly discharging their duties as an elected Member of the Council. This can range from a request for general information about an aspect of the Council’s activities to a request for specific information on behalf of a constituent.

21.2 Where there may be any discretion the normal test which is applied is whether the request which a Member has made for a particular piece of information is relevant to the capacity in which they are asking for it, e.g. as a member of a particular Committee, on a ward matter or similar. The need to know would only extend to personal information in exceptional cases and there are specific exemptions which are set out more fully in Access to Information Rule 8. In case of dispute or uncertainty, the final decision on whether information should be released or not is a matter for the Monitoring Officer.

22 CONFIDENTIALITY OF COUNCIL BUSINESS

22.1 Confidential information

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Any item of business at Full Council, a committee or sub-committee which is deemed to be confidential or exempt shall require that the relevant body's discussion in relation to the item be kept confidential and may only be disclosed to, and discussed by, the following:

- (a) Elected Members of the Council
- (b) other persons appointed under Section 102 of the Local Government Act 1972 as members of committees or sub-committees
- (c) such officers of the Council as are concerned with the matter in the course of their duties, including the Monitoring Officer and the Chief Financial Officer
- (d) such other persons to whom, in the opinion of the Monitoring Officer, the item of business or report ought to be disclosed in order to comply with the Human Rights Act 1998 or any rule of law to avoid maladministration by the Council

and there shall be no further disclosure of such report, item of Council business or discussion thereof to any other person

The business referred to in this Rule consists of any item of Council business which has been agreed as being confidential or exempt by the Council, its committees or sub-committees or by the Monitoring Officer in accordance with the Local Government Act 1972.

Information which has been deemed to be confidential or exempt may at some point in the future cease to be confidential and may be disclosed.

Advice should be sought from the Monitoring Officer in respect of confidential information.

22.2 Working parties

Subject to the Council Procedure Rules, a member of a working party set up by the Council shall not disclose a matter dealt with or brought before it, without its permissions until the proceedings of that working party have been reported to the Council or to the committee or sub-committee which set it up, or the working party shall otherwise have concluded action on that matter.

23 ADDITIONAL RIGHTS TO INFORMATION

These Rules do not affect any more specific rights to information contained elsewhere in the Council's Constitution or the law.

24 OFFENCES

24.1 A person who has custody of a document that relates to a meeting of the Cabinet (agenda, reports, background papers or decisions) which is required to be available for inspection by members of the public commits an offence if, without reasonable excuse, that person:

- (a) intentionally obstructs any person exercising a right conferred under these Rules to inspect, or to make a copy of the whole or part of the document; or

(b) refuses to supply a copy of the whole or part of the document in accordance with these Rules.

24.2 A person who commits an offence under Rule 24 is liable on summary conviction to a fine not exceeding level 1 on the standard scale (see Regulation 22 of the Local Authorities(Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012)