

**Meeting of the Cabinet – 26<sup>th</sup> October, 2017**

**Report of the Lead for Law and Governance (Monitoring Officer)**

**Annual Review of the Constitution**

**Purpose of Report**

1. To consider the annual review of the Constitution.

**Recommendations**

2. That the Council be recommended to approve:
  - The re-titled post of Cabinet Member for Regeneration and Enterprise.
  - The revised Officer Employment Procedure Rules as set out in Appendix 1.
  - The revised Access to Information Procedure Rules, as set out in Appendix 2, including the updated definition of a 'Key Decision'.
  - The consistent application of the requirement contained in Article 4.02, so that only the full Council will approve the making, amending, revoking, re-enacting or adopting of byelaws.
  - The amendment of Article 6.05 to clarify that Members of Scrutiny Committees may participate in the scrutiny of specific decisions or items of business provided that they have not been involved in the decision(s) being scrutinised and they are not otherwise prevented from participating by virtue of having an interest in the matter under the Members' Code of Conduct.
  - The amendment of Article 11.01 to reflect the general power of competence set out in Section 1 of the Localism Act 2011.
  - The introduction of a new Article 11.06 relating to the powers to establish companies under the Local Government Act 2003 and the Localism Act 2011.
  - The specific amendments to Part 3 of the Constitution (Scheme of Delegation) as set out in paragraphs 23 to 30 below.

## **Background**

3. The Council introduced its written Constitution in May 2002. Section 37 of the Local Government Act 2000 requires the Council to keep the Constitution up to date. This is reflected in Article 15, which requires the Monitoring Officer to monitor and review the operation of the Constitution in order to ensure that the aims and principles are given full effect.
4. Full Council is responsible for approving changes to the Constitution after consultation with the Cabinet. An exception to this is that the Leader, in consultation with the main opposition Group Leader, may approve amendments to the Scheme of Delegation. From time to time, amendments are also made under the Monitoring Officer's delegated powers to update legal provisions, to reflect organisational changes and to update other governance issues.
5. The Constitution is an important vehicle by which the Council promotes its democratic governance arrangements. All previously approved amendments to the Constitution have been fully implemented. The Cabinet is asked to consider the issues referred to below and make the necessary recommendations to the Council.

## **Cabinet Member for Regeneration and Enterprise**

6. Following the organisational restructure in 2015, it has been the practice for the titles of Cabinet Members to correspond directly to the title of the appropriate Chief Officer. When the Chief Officer for Regeneration and Enterprise was appointed, the Cabinet Member's title was not updated and still remains as the Cabinet Member for Planning and Economic Development. It is now proposed that the designation of the Cabinet Member's post be amended accordingly.

## **Council Procedure Rule 11 – Questions by Members at Full Council**

7. Following consultation with Group Leaders, a proposal was made to revise the arrangements for Members asking questions under Council Procedure Rule 11 at full Council. A proposal was submitted to the Overview and Scrutiny Management Board on 6<sup>th</sup> September, 2017. The report can be viewed on the [Council's website](#).
8. In summary, the proposal was to remove the need for a separately printed 'White Book' and provide for Members to ask questions on any matters for which the Council has powers and duties or which affect the Borough. A requirement would be introduced for advance notice of questions to be given at least 5 working days before the Council meeting (unless urgency applied). The main reason for this was to ensure that full and proper responses could be provided at the Council meeting. Members would still be able to comment at the Council meeting on any specific subjects raised in the questions.
9. Once the initial question was answered, the Member who asked the original question could then raise a 'supplementary question' provided that this related to the original question or the reply.

10. The Overview and Scrutiny Management Board expressed a range of concerns with regard to the proposal and recommended that the existing 'White Book' arrangements be retained for full Council meetings. The 'White Book' is already made available electronically for Members who do not require a paper copy. The proposal for Members to ask supplementary questions was supported in principle, however, it was recommended that this could be incorporated into the existing Council Procedure Rule 11.
11. The views of the Overview and Scrutiny Management Board have been reported to the Group Leaders. Further research has also been undertaken on the approaches taken by other local authorities in the West Midlands. A report on revised proposals will be submitted to the Overview and Scrutiny Management Board in due course.

### **Officer Employment Procedure Rules**

12. Officer Employment Procedure Rules deal with the recruitment, appointment, designation and discipline of various senior officers. The Procedure Rules are required to reflect the statutory requirements of the Local Authorities (Standing Orders) (England) Regulations 2001, the Local Authorities (Standing Orders) (England) (Amendment) Regulations, 2015 and the Localism Act 2011.
13. The Officer Employment Procedure Rules set out in Appendix 1 have been updated to fully reflect the Regulations. This includes the statutory protection afforded to the Head of Paid Service, the Monitoring Officer and the Section 151 Officer in respect of disciplinary action. No disciplinary action may be taken against these Officers except in accordance with a recommendation made in a report of a Panel containing at least two independent persons. Where dismissal is recommended, that decision may only be taken by full Council.

### **Access to Information Procedure Rules**

14. Access to Information Procedure Rules mirror the statutory requirements set out in the Local Government Act 1972 (as amended) and the Local Government Act 2000 together with associated Regulations and Statutory Guidance. In particular, the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 set out detailed requirements in relation to public access to meetings, associated information and documents.
15. The Access to Information Procedure Rules, as set out in Appendix 2, have been updated to comply with all the necessary statutory requirements. Whilst it is no longer legally required, the Forward Planning process is desirable to comply with the requirement to give 28 clear days notice of the taking of Key Decisions and any executive decisions that are to be taken in private session. The Forward Plan of Key Decisions is a useful business planning tool and assists the Overview and Scrutiny Management Board to identify forthcoming items to be considered by the Cabinet. The [Forward Plan of Key Decisions](#) is available on the Council's website covering a rolling period of four months.

16. The Regulations define a 'Key Decision' as an executive decision, which is likely:
  - (a) To result in the authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates.
  - (b) To be significant in terms of its effects on communities living or working in an area comprising two or more wards in the area of the local authority.
17. In relation to paragraph (a) above, Dudley MBC has adopted a figure of £250,000 as a 'significant' level of expenditure or savings. It is recommended that this threshold be retained.
18. Paragraph (b) refers to 'two or more wards' whereas Dudley MBC has previously adopted the definition of 'one or more ward'. The up to date statutory definition is reflected in paragraph 13 of the amended Procedure Rules. Article 13 of the Constitution also needs to be amended to be consistent with the definition contained in the Regulations.

#### **Article 4.02 - Byelaws**

19. Article 4.02 of the Constitution provides that only the full Council will exercise a number of specified functions. One of the listed functions is the making, amending, revoking, re-enacting or adopting of byelaws. Functions relating to byelaws are also listed under the executive functions of several Cabinet Members. For the sake of consistency, it is recommended that the Council affirm the requirement that all such matters relating to byelaws will require full Council approval.

#### **Article 6.05 – Overview and Scrutiny - Conflict of Interests**

20. Article 6.05 currently makes a only a limited reference to the involvement of Members in scrutinising decisions and proposals in relation to Community Forums of which they are a member. It is recommended that the scope of this Article should be widened to clarify the situation for the participation of Members of Scrutiny Committees in all areas of scrutiny activity as follows:

6.05 Members of Scrutiny Committees may participate in the scrutiny of specific decisions or items of business provided that they have not been involved in the decision(s) being scrutinised and they are not otherwise prevented from participating by virtue of having an interest in the matter under the Members' Code of Conduct.

#### **Article 11.01 – Joint Arrangements**

21. Article 11.01 currently refers to 'arrangements to promote well-being'. This provision needs to be updated to reflect the general power of competence set out in Section 1 of the Localism Act 2011 as follows:

## 11.01 General Power of Competence

Pursuant to its general power of competence, the Council or the Cabinet may:

- (a) enter into arrangements or agreements with any person or body;
- (b) co-operate with, or facilitate or co-ordinate the activities of, any person or body; and
- (c) exercise on behalf of that person or body any functions of that person or body.

## **Article 11.06 - Powers to Establish Companies**

22. Under the provisions of the Local Government Act 2003 and the Localism Act 2011, Councils have powers to set up companies to trade with a view to making profit in areas relating to any of their existing functions. These powers need to be formally included in the Constitution under a new Article 11.06. Individual reports would be submitted to the Cabinet on any specific proposals for consideration by the Council.

## **Scheme of Delegation**

### Appointment of Independent Person(s) – Member Complaints and Standards Matters

23. Under the Localism Act 2011 the Council is required to appoint an Independent Person (or Persons) to assist the Monitoring Officer in dealing with complaints and related standards matters. The appointment of any Independent Person(s) is a decision required by the full Council. On 18<sup>th</sup> May, 2017, the Council appointed the Bishop of Dudley (Rt Revd Graham Usher) as an Independent Person for a period of four years ending with the annual meeting of the Council in May, 2021.
24. Oversight of standards issues, including the Members' Code of Conduct, is a function of the Audit and Standards Committee. In practice, the necessary administrative process to invite applications and make a recommendation to the Council on the appointment of Independent Person(s) is undertaken by the Monitoring Officer. It is proposed that the function to make a recommendation to the Council on the appointment of Independent Person(s), as required under the Localism Act 2011 and any relevant Regulations, be included in the Constitution as an ongoing delegation to the Monitoring Officer.

## Community Council Strategy and Associated Functions

25. On 5<sup>th</sup> December, 2016, the Council approved the adoption of a specific Cabinet Portfolio relating to the Community Council Strategy and associated functions. This role was allocated to the Deputy Leader in 2016/17. At the Annual Council meeting on 18<sup>th</sup> May, 2017, the report of the Leader did not include the appointment of a separate Cabinet Portfolio for Community Council. In practice, this role was being undertaken by the previous Cabinet Member for Housing. Following the recent change in the Cabinet membership it is now proposed that responsibility for strategic direction in developing the Community Council Strategy and any associated functions be re-allocated to the Deputy Leader.

## Signing of Decision Sheets in the Absence of a Cabinet Member

26. On occasions, questions have arisen concerning the signing of urgent decision sheets in the absence (or inability to act) of a Cabinet Member. The usual convention in these circumstances is for the Decision Sheet to be referred to the Leader (or the Deputy Leader if the Leader is also absent).
27. It is recommended that the portfolio of the Leader of the Council be amended to formalise this arrangement.

## Fees and Charges

28. To ensure corporate consistency, clarification is required concerning the decision making route for fees and charges. In particular the distinction between amendments to existing fees and charges and the introduction of any new fees or charges. It is proposed that the Council adopt a consistent approach to dealing with fees and charges, namely:
- (i) That any amendments to existing fees and charges are dealt with by the appropriate Strategic Director/Chief Officer, in consultation with the relevant Cabinet Member.
  - (ii) That any new fees or charges be dealt with by way of a decision sheet signed by the relevant Cabinet Member(s), in consultation with the appropriate Strategic Director/Chief Officer.
29. This process will apply to executive functions only and will not apply to fees and charges that require specific Committee approval under the Constitution (eg: Licensing fees).

## Lead Local Flood Authority – Executive Functions

30. The portfolio for the Cabinet Member for Environmental Services needs to be updated to reflect statutory powers and functions under the Flood Risk Regulations 2009 and the Flood and Water Management Act 2010 as Lead Local Flood Authority (LLFA) in relation to local flood risk management. These powers will be included in the ongoing delegation to the Strategic Director Place.

## **Ongoing Review of the Constitution**

31. In accordance with Minute No. 12 of the Annual Council meeting held on 18<sup>th</sup> May, 2017, the Monitoring Officer has delegated powers to update the Constitution to reflect any ongoing Council restructuring activity, changes in legislative requirements, statutory provisions or associated regulations or guidance.
32. Maintaining and updating the Constitution is an ongoing duty of the Monitoring Officer. Work will continue during this municipal year and beyond to identify any required updates, consolidate various provisions, remove duplication or any content that is no longer relevant. A report on the Constitution is submitted to the Annual Council Meeting in May each year, where any amendments made to the document are confirmed.

## **Finance**

33. There are no financial implications arising from this report. Any costs arising from compliance with the Constitution are met from existing budgets.

## **Law**

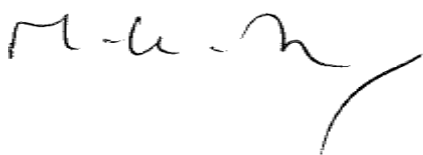
34. Section 37 of the Local Government Act 2000 requires the Council to keep its Constitution up to date.

## **Equality Impact**

35. This report complies with the Council's policies on equality and diversity and there are no particular implications for children and young people.

## **Human Resources/Transformation**

36. The ongoing review of the Constitution is undertaken by the Monitoring Officer, supported by the Democratic Services Team, within existing resources. Further work on the document will focus on simplifying and shortening aspects of the Constitution to ensure that the document is fit for purpose in the future.



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## **List of Background Papers**

The Council's Constitution - Full copy on the Council's Website

## **Officer Employment Procedure Rules**

### **1. Recruitment and appointment**

#### **1.1 Declarations**

- (a) The Council will draw up a statement requiring any candidate for appointment as an officer to state in writing whether they are the parent, grandparent, partner, child, stepchild, adopted child, grandchild, brother, sister, uncle, aunt, nephew or niece of an existing Councillor or officer of the Council; or the partner of such persons.
- (b) No candidate so related to a Councillor or an officer will be appointed without the authority of the Monitoring Officer or an officer nominated by him/her.

#### **1.2 Seeking support for appointment**

- (a) The Council will disqualify any applicant who directly or indirectly seeks the support of any Councillor for any appointment with the Council.
- (b) No Councillor, co-opted Member to a Council Committee or employee will seek to support any candidate for appointment. Councillors or co-opted Members to a Council Committee must not stand as referees for officers or candidates for appointment as officers of the Council.

### **2. Recruitment of Chief Executive, Strategic Directors, Chief Officers and Designated Statutory Officers**

2.1 Where the Council proposes to appoint the Chief Executive, a Strategic Director, a Chief Officer or any posts which are proposed to be designated as the Monitoring Officer or the Section 151 Officer, and it is not proposed that the appointment will be made exclusively from amongst their existing officers, the Council will:

- (a) draw up a statement specifying:
  - (i) the duties of the officer concerned; and
  - (ii) any qualifications or qualities to be sought in the person to be appointed;
- (b) make arrangements for the post to be advertised in such a way as is likely to bring it to the attention of persons who are qualified to apply for it; and
- (c) make arrangements for a copy of the statement mentioned above to be sent to any person on request.



### 3. **Appointment of Chief Executive (Head of Paid Service)**

- 3.1 The full Council will appoint the Chief Executive (Head of Paid Service) following a recommendation by the Appointments Committee. The Appointments Committee must include at least one Cabinet Member.
- 3.2 The Council may only make or approve the appointment of the Chief Executive where no well-founded objection has been made by any Member of the Cabinet in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001.

### 4. **Appointment of Strategic Directors, Chief Officers and Designated Statutory Officers (Monitoring Officer and Section 151 Officer)**

- 4.1 The Appointments Committee will appoint Strategic Directors and Chief Officers, including any posts that are to be given the statutory designation of Monitoring Officer or Section 151 Officer. The designation of statutory officers is subject to the approval of full Council. The Appointments Committee must include at least one Cabinet Member.
- 4.2 An offer of employment as a Strategic Director, Chief Officer or Designated Statutory Officer shall only be made where no well-founded objection from any Member of the Cabinet has been received in accordance with the Local Authorities (Standing Orders) (England) Regulations 2001.
- 4.3 Any new appointments or severance packages of £100,000 or above (excluding pension) will be the subject of a recommendation from the Appointments Committee to full Council.

### 5. **Other Appointments**

- (a) **Officers below Chief Officer** - Appointments of officers below Chief Officer are the responsibility of the Chief Executive, Strategic Directors, Chief Officers or their nominee(s), and may not be made by Councillors.
- (b) **Assistants to political groups** - Appointment of an assistant to a political group shall be made in accordance with the wishes of that political group provided that such is in compliance with any relevant statutory requirements.
- (c) **Appointment of Director of Public Health** - Where the Council proposes to appoint a Director of Public Health, the Council will follow any necessary statutory requirements that apply to that post and comply with any specific guidance issued by the Secretary of State.

## 6. **Disciplinary action – statutory protected officers**

- 6.1 **Suspension** - The Head of Paid Service, the Monitoring Officer and the Section 151 Officer may be suspended by the Appointments Committee whilst an investigation takes place into alleged misconduct. That suspension will be on full pay and last no longer than two months. The suspension periods may only be extended beyond two months following a decision by the Appointments Committee.
- 6.2 **Independent Panel** - No disciplinary action may be taken in respect of any of the officers referred to in rule 6.1 above except in accordance with a recommendation in a report made by a Panel established under the provisions of the Local Authorities (Standing Orders) (England) (Amendment) Regulations, 2015 containing at least two independent persons appointed under Section 28(7) of the Localism Act 2011.
- 6.3 **Decision making** – Any proposed disciplinary action of the said officers that is a lesser sanction than dismissal shall be determined by the Appointments Committee. Where a recommendation is made that dismissal of those officers is the appropriate action, that final decision shall only be undertaken by full Council.

## 7. **Involvement of Councillors**

Councillors will not be involved in the dismissal of any officer below Chief Officer level except where such involvement is necessary for any investigation or inquiry into alleged misconduct. The Council's disciplinary, capability and related procedures, as adopted from time to time may, however, allow a right of appeal to members in respect of dismissals.

## 8. **Dismissal of the Director of Public Health – requirement for consultation with the Secretary of State for Health**

The officer undertaking the statutory role of Director of Public Health may be suspended by the Appointments Committee whilst an investigation takes place into alleged misconduct. However, the Director of Public Health may not be dismissed, except following consultation with the Secretary of State.

## **Access to Information Procedure Rules**

### **1. Scope**

These rules apply to all meetings of the Council, the Overview and Scrutiny Management Board, Scrutiny Committees, the Audit and Standards Committee, regulatory committees and 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 working days notice of any meetings by publishing the agenda and any reports to be considered at the meeting concerned. The agenda and public reports will be published on the Council's website.

### **5. Access to Agenda and Public Reports Before the Meeting**

The Council will make the agenda and public reports available for inspection at the Council House during normal office hours and on the website at least five clear working days before the meeting. If an item is added to the agenda later, the revised agenda will be made available from the time the item was added to the agenda.

### **6. Supply of Copies**

The Council will supply copies of:

- (a) the 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 Documents After the Meeting**

The Council will make the following available for a minimum of six years after a meeting:

- (a) the agenda for the meeting;
- (b) all reports relating to items when the meeting was open to the public;
- (c) the minutes of the meeting excluding any part of the minutes which might disclose exempt or confidential information.

## **8. Background Papers**

### **8.1 List of Background Papers**

The Monitoring Officer will ensure that every report sets out 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 and in respect of Cabinet reports, the advice of a political advisor.

### **8.2 Public Inspection of Background Papers**

The Council will make background documents available for public inspection for a minimum of four years after the date of the meeting.

## **9. Exclusion of Access by the Public to Meetings**

### **9.1 Confidential Information - Requirement to Exclude the 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.

## 9.2 Exempt Information - Discretion to Exclude the 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.

## 9.3 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.

## 9.4 Meaning of Exempt Information

Exempt information means information falling within the following categories (subject to any conditions):

**(NB: Paragraph numbers of the categories mirror those contained in Schedule 12A to the Local Government Act 1972)**

**Note – Information is only 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.**

| Category  | Qualifications/Definitions   |
|---|--|
| 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). | Information is not exempt information if it is required to be registered under –<br><br>(a) the Companies Act 1985;<br>(b) the Friendly Societies Act 1974;<br>(c) the Friendly Societies Act 1992;<br>(d) the Industrial and Provident Societies Acts 1965 to 1978;<br>(e) the Building Societies Act 1986; or<br>(f) the Charities Act 1993. |

|   |   |
|---|---|
|   | <p>'financial or business affairs' includes contemplated, as well as past or current activities.</p> <p>'registered' in relation to information required to be registered under the Building Societies Act 1986 means recorded in the public file of any building society (within the meaning of that Act)</p>  |
| <p>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.</p> | <p>'employee' means a person employed under a contract of service</p> <p>'labour relations matter' means –</p> <p>(a) any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992 (matters which may be the subject of a trade dispute, within the meaning of that Act); or</p> <p>(b) any dispute about a matter falling within paragraph (a) above;</p> <p>and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>'office-holder', in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority.</p> |
| <p>5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>   |   |

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|--|--|
| <p>6. Information which reveals that the authority proposes -</p> <p>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>(b) to make an order or direction under any enactment.</p> |  |
| <p>7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>  |  |

Information falling within any of the above categories is not exempt if it relates to proposed development for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

## 10. **Exclusion of Access by the Public to Reports**

10.1 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 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.

10.2 The Council will give 28 clear days notice of the intention to take an executive decision in private session. If the 28 clear days notice cannot be complied with (eg: in cases of urgency), then an executive decision may only be taken in private session with the approval of the Chair of the appropriate Scrutiny Committee (or the Mayor/Deputy Mayor in his/her absence). Notice will be given as to why the matter is urgent and cannot reasonably be delayed.

## 11. **Definition of a Key Decision**

A Key Decision means an executive decision which is likely -

- to result in the Council incurring expenditure, or the making of savings, of £250,000 or more (revenue or capital); or
- to be significant in terms of its effects on communities living or working in two or more wards in the Borough.

## 12. **The Forward Plan**

### 12.1 Period of Forward Plan

The Forward Plan will be prepared to comply with the ongoing requirement to give at least 28 clear days notice of the making of Key Decisions.

### 12.2 Contents of Forward Plan

The Forward Plan will contain matters which will be the subject of a Key Decision to be taken by the Cabinet, individual Cabinet Members, Officers, or under joint arrangements in the course of the discharge of an executive function. It will also include any executive decisions that are to be considered in private session.

The Forward Plan 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; and
- (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.

## 13. **General Exception – Key Decisions Not Included in the Forward Plan**

If a matter which is likely to be a Key Decision has not been included in the Forward Plan, then subject to Rule 14 (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;
- (b) the Monitoring Officer has informed the Chair of the relevant Scrutiny Committee, or if there is no such person, each member of that Committee in writing, by notice, of the matter on which the decision is to be made;
- (c) the Monitoring Officer has given notice to the public at the offices of the Council and on the Council's Website; and



- (d) at least 5 clear working days have elapsed following the day on which the Monitoring Officer gave notice as referred to above.

#### **14. Special Urgency – Key Decisions Not Included in the Forward Plan**

- 14.1 Where it is impracticable to comply with Rule 13, a Key Decision can only be taken if the decision maker obtains the agreement of the Chair of the relevant Scrutiny Committee that the taking of the Key Decision cannot be reasonably deferred. If there is no Chair of a relevant Scrutiny Committee or if the Chair of the relevant Scrutiny Committee is unable to act, then the agreement of the Mayor or in his/her absence the Deputy Mayor will suffice.
- 14.2 As soon as reasonably practicable after the decision taker has obtained agreement that the decision is urgent and cannot reasonably be deferred, the decision taker must give notice at the offices of the Council and on the Council's website setting out the reasons why the Key Decision is urgent and cannot reasonably be deferred.

#### **15. Report to Full Council – Non-Compliance with these Rules**

- 15.1 When the Overview and Scrutiny Management Board can require a report

If the Overview and Scrutiny Management Board thinks that any decision has been taken which was not in accordance with these Procedure Rules the Board may require the Cabinet to submit a report to the Council within such reasonable time as the Board specifies. The Monitoring Officer may also require a report to be submitted to the Council on behalf of the Board in appropriate circumstances.

- 15.2 Cabinet's Report to Council

The Cabinet will prepare a report for submission to the next available meeting of the Council. The report to the Council will set out particulars of the decision, the individual or body making the decision and the reasons for compliance or non-compliance with these Procedure Rules.

- 15.3 Reports to the Council on Special Urgency Decisions

Details of all executive decisions taken under the special urgency provisions will be reported to the Council. This report will include the particulars and a summary of the matters in respect of which those decisions were taken.

#### **16. Decisions by Individual Members of the Cabinet and Key Decisions Taken by Officers**

- 16.1 Decision Sheets

Where a decision is to be made by an individual Cabinet Member, or a Key Decision is to be made by an Officer, a draft decision sheet outlining the proposals will be published at least five clear working days before the date on which the decision is to be taken. The draft Decision Sheet will be published on the Internet subject to the restrictions on the publication of any confidential or exempt information.

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, the final Decision Sheet will be published on the Internet. This will include a statement of the reasons for the decision and any alternative options considered and rejected. The decision shall then be subject to the Call-In process as set out in the Scrutiny Committee Procedure Rules.

## **17. Scrutiny Committee's Access to Documents**

### **17.1 Rights to Copies**

A Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Cabinet and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet, or
- (b) any decision taken by an individual member of the Cabinet.

### **17.2 Limit on Rights**

A 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
- (c) the advice of a political adviser.

Where a decision is made that a member of a Scrutiny Committee is not entitled access to a document, or part of it, a written statement will be given to the member setting out the reasons for such a decision.

The rights for Scrutiny Committees conferred by this Rule are in addition to any other rights that any member of the Council may have to access information or to inspect documents.

## **18. Additional Rights of Access For Members**

### **18.1 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 and contains material relating to any business previously transacted unless either (a) or (b) below applies:-

- (a) it contains confidential or exempt information falling within the categories of exempt information; or
- (b) it contains the advice of a political adviser.

## 18.2 Material Relating to 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 which relates to any Key Decision unless paragraph (a) or (b) above applies.