

<b>4.2</b>	<b>ACCESS TO INFORMATION RULES</b>
4.2.1	<u>Principles</u>
	<p>The access to information rules which apply to Council meetings and committees of the Council are set out in sections 100A - H and schedule 12A to the Local Government Act 1972.</p> <p>Slightly different access to information rules apply to the Executive, as set out in the Local Authorities (Executive Arrangements) (Meetings and Access To Information) (England) Regulations 2012.</p>
4.2.2	<u>Scope</u>
(1)	<u>Executive Arrangements:</u>
	Rules 4.2.2 to 4.2.12 apply to all meetings of the Council, Scrutiny Committees, the Standards Committee and regulatory committees and meetings of the Executive (together called meetings).
4.2.3	<u>Additional Rights to Information</u>
	These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.
4.2.4	<u>Rights to Attend Meetings</u>
	Members of the public may attend all meetings subject only to the exceptions in these rules.
4.2.5	<u>Notice of Meeting</u>
	The Council will give at least 5 clear days' notice of any meeting by posting details of the meeting at The Arc, Clowne.
4.2.6	<u>Access to Agenda and Reports Before the Meeting</u>
(1)	The Council will make copies of agenda and reports, which are open to the public, available for inspection at the above address at least 5 clear days before the meeting.
(2)	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.

(3)	Where reports are prepared after the summons has been sent out, the Monitoring Officer shall make each such report available to the public as soon as the report is completed and sent to Councillors.
4.2.7	<u>Supply of Copies</u>
	The Council will supply copies of:-
	(i) any agenda and reports which are open to public inspection
	(ii) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
	(iii) if the Monitoring Officer thinks fit, copies of any other documents supplied to Councillors in connection with an item
	(iv) to any person on payment of a charge for postage and any other costs.
4.2.8	<u>Access to Minutes etc, After the Meeting</u>
	The Council will make available copies of the following for 6 years after a meeting:-
	(i) the minutes of the meeting or records of decisions taken, together with reasons for all, avoiding the disclosure of exempt or confidential information;
	(ii) 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;
	(iii) the agenda for the meeting; and,
	(iv) reports relating to items when the meeting was open to the public.
4.2.9	<u>Background Papers</u>
(1)	<u>List of Background Papers:</u>
	The officer with primary responsibility for preparing a report and requesting its inclusion on the agenda, will set out in such report a list of those documents (called background papers) relating to the subject matter of the report, which in the officer's opinion:
	(i) disclose any facts or matters on which the report or an important part of the report is based; and

	(ii) 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 10).
(2)	<b><u>Public Inspection of Background Papers;</u></b>
	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.
4.2.10	<b><u>Summary of Public's Rights</u></b>
	These Rules constitute the written summary of the public's rights to attend meetings and to inspect and copy documents.
4.2.11	<b><u>Exclusion of Access by the Public to Meetings</u></b>
(1)	<b><u>Confidential Information – Requirement to Exclude public;</u></b>
	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.
(2)	<b><u>Exempt Information – Discretion to Exclude Public;</u></b>
	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 European Convention of Human Rights establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in the Article 6.
(3)	<b><u>Meaning of Confidential Information;</u></b>
	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.
(4)	<b><u>Meaning of Exempt Information;</u></b>
	Exempt information means information falling within the following <b>7</b> categories (subject to any condition) if and so long as, in all the

	circumstances of the case, the public interest in maintaining the exemption outweighs the public interest test in disclosing the information:	
	<b>Schedule 12A Access to information : Exempt Information</b>	
	<b>Part 1 Descriptions of Exempt Information : England</b>	
	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 the 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.  In all the above cases information is exempt 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.  Information falling within any of the paragraphs 1 to 7 is not exempt by virtue of that paragraph if it relates to proposed developments for which the local planning authority can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations.

#### 4.2.12 Exclusion of Access by the Public to Reports

If the Monitoring Officer thinks fit the Council may exclude access by the public to reports which in his/her opinion relate to items during which in accordance with Rule 4.2.11(4), 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.

#### 4.2.13 Application of Rules to the Executive

Rules 4.2.13 to 4.2.23 apply to the Executive. Where documents are required to be published for inspection under these Rules, that publication must be both at the Council's offices and on the Council's website.

#### 4.2.14 Procedures Prior to Consideration of Confidential or Exempt Items

- (1) At least 28 days before a meeting of the Executive, the Council will publish a notice setting out those items to be considered in private and the reasons why they will be considered in private.
- (2) Five days before a meeting of the Executive, the Council will publish a further notice stating the items that will be considered in private, the reasons for considering them in private, any representations received about why the item should be considered in public and the Council's response to those representations.
- (3) Where it is not possible to provide 28 days' notice of an item to be considered in private, the Executive may only consider that item in private if they have received written consent from the Chair of the relevant Scrutiny Committee stating that the item is urgent and cannot be reasonably deferred. Where there is no such person, or if the Chair is unable to act, then the Chair of the Council may provide permission or, in his absence, the Vice Chair.
- (4) As soon as reasonably practicable after the Council has obtained agreement under paragraph 4.2.14(3) above they will publish a notice setting out why the item was urgent and could not be reasonably deferred.

#### 4.2.15 Key Decisions

In these Rules, a "key decision" means an Executive decision, which is likely:-

- (a) to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the Council's budget for the service or function to which the decision relates: or;
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards in the District.

In determining the meaning of "significant" for the purposes of (a) above, the Council must have regard to any guidance for the time being issued by the Secretary of State in accordance with Section 9Q of the 2000 Act (guidance). The Council has decided that revenue income or expenditure of £75,000 or more and Capital income or expenditure of £150,000 or more is considered significant.

#### 4.2.16 Publicity in Connection with Key Decisions

- (1) Key Decisions to be taken at the forthcoming meeting of the Executive will be set out in the Council's List of Key Decisions published 28 days in advance of the meeting.
- (2) Where, in relation to any matter:-
  - (a) the public may be excluded from the meeting at which the matter is to be discussed; or
  - (b) documents relating to the decision need not be disclosed to the public because they contain confidential or exempt information; the List of Key Decisions will contain particulars of the matter but may not contain any confidential or exempt information.

#### 4.2.17 General Exception

- (1) If a matter which is likely to be a Key Decision has not been included in the List of Key Decisions then subject to paragraph 4.2.18 the decision may still be taken:-
  - (a) where the Monitoring Officer has informed the Chair of the relevant Scrutiny Committee or, if there is no such person, each Member of the Scrutiny Committee by notice in writing, of the matter about which the decision is to be made;
  - (b) where the Monitoring Officer has made available at the offices of the Council for inspection by the public and published on the Council's website a copy of the notice given pursuant to sub-paragraph (a); and;

- (c) after 5 clear days have elapsed following the day on which the Monitoring Officer made available the notice referred to in sub-paragraph (b).
- (2) As soon as reasonably practicable after the Monitoring Officer has complied with paragraph 4.2.17(1), he/she must publish a notice setting out the reasons why compliance with paragraph 4.2.16(1) was impracticable.

#### 4.2.18 Cases of Special Urgency

- (1) If by virtue of the date by which a decision must be taken paragraph 4.2.17 (General Exception) cannot be followed, then the decision can only be taken if the Monitoring Officer obtains the consent of the relevant Chair of Scrutiny Committee, that the taking of the decision cannot be reasonably deferred. If there is no relevant Chair of the Scrutiny Committee, or if the Chair of the Scrutiny Committee is unable to act, then the agreement of the Chair of the Council, or in his/her absence the Vice-Chair will suffice.
- (2) As soon as reasonable practicable after the Monitoring Officer has obtained agreement under paragraph 4.2.18(1) that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must publish a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred.

#### 4.2.19 Recording of Executive Decisions

After any meeting of the Executive or any of its Committees, whether held in public or private, the Monitoring Officer will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision, any alternative options considered and rejected as well as any conflicts of interest and dispensations noted.

#### 4.2.20 Recording of Executive Decisions Made by Individuals

- (1) An Executive Decision is defined as a decision in connection with the discharge of an Executive function, which will, or is likely to incur expenditure or savings in excess of £75,000 or generate revenue return/income in excess of £150,000 as a specific consequence of that decision.
- (2) An Executive decision made by a Member or officer which is a Key Decision will be recorded using the Council's delegated decision form available from the Governance and Civic Team.
- (3) Each decision will contain details of the decision, including the date it was made, reasons for the decision, any alternative options

considered and rejected, any conflicts of interest recorded and dispensations noted.

#### **4.2.21 Additional Rights of Access to Documents for Members of Local Authorities**

- (1) All Members are entitled to inspect any document, (except those available only in draft form), which is in the possession of or under the control of the Executive and contains material relating to any business previously transacted at an Executive meeting unless it contains exempt information under categories 1, 2, 4, 5 and 7 of Schedule 12A to the Local Government Act 1972.
- (2) The rights conferred by this section are in addition to any other rights that a Member of the Council may have.

#### **4.2.22 Additional Rights of Access to Documents for Members of Overview and Scrutiny Committees**

- (1) Subject to Rule 4.2.22(3), a Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Executive and which contains material relating to any business transacted at a meeting of the Executive or an Executive decision taken under delegated powers.
- (2) Where a member of an overview and scrutiny committee requests a document which falls within paragraph 4.2.22(1), the Executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after the executive receives the request.
- (3) Scrutiny Committees are not entitled to;
  - (a) Any document 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 the Scrutiny Committee is reviewing or scrutinising or intends to scrutinise.
- (4) Where the Executive determines that a member of a scrutiny committee is not entitled to a copy of a document or part of any such document for a reason set out in Rules (1) or (3), it must provide the overview and scrutiny committee with a written statement setting out its reasons for that decision.

#### **4.2.23 Reports to Council Where the Key Decision Procedure is Not Followed**



- (1) If a decision has been made by the Executive and it was not treated as a Key Decision but a Scrutiny Committee feels that it should have been then that Scrutiny Committee may require the Executive to submit a report to Council within a period specified by the Scrutiny Committee.
- (2) If Executive is of the view that the decision was not a Key Decision then they must provide their reasons for that opinion.

#### 4.2.24 Reports to Council on Special Urgency

The Leader will submit an annual report to Council containing details of each Executive decision taken under the Special Urgency procedure during the period since the last report.