

## **PART 4B - ACCESS TO INFORMATION PROCEDURE RULES**

### **1. EXECUTIVE ARRANGEMENTS**

These rules apply to all meetings of the Council, the Overview and Scrutiny Committees, the Standards Committee and regulatory panels and public meetings of the Executive (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, *specifically the rights conferred by the Freedom of Information Act 2000*.

### **3. RIGHTS TO ATTEND MEETINGS**

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

### **4. NOTICES OF MEETING**

The Council will give at least five clear days notice of any meeting by posting details of the meeting at the Council Offices, Catherine Street, Whitehaven.

### **5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING**

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office at least five clear days before the meeting. If an item is added to the agenda later, the revised agenda (where reports are prepared after the summons has been sent out, the proper officer shall make each such report available to the public as soon as the report is completed and sent to Councillors) will be open to inspection from the time the item was added to the agenda.

### **6. SUPPLY OF COPIES**

The Council will supply copies of:

(a) any agenda and reports which are open to public inspection;

(b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and

(c) if the proper 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 MINUTES ETC AFTER THE MEETING**

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

(a) the minutes of the meeting/records of decisions taken, together with reasons, for all meetings of the Executive, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;

(b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;

(c) the agenda for the meeting; and

(d) reports relating to items when the meeting was open to the public.

## **8. BACKGROUND PAPERS**

### **8.1 List of background papers**

The proper officer 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/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 Executive reports, the advice of a political advisor, but does not include published works or those which disclose exempt or confidential information (as defined in Rule 10) and in respect of Executive reports, the advice of a political advisor.

### **8.2 Public inspection of background papers**

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.

## **9 SUMMARY OF PUBLIC'S RIGHTS**

A written summary of the public's rights to attend meetings and to inspect and copy documents must be kept at and available to the public at the Council Offices, Catherine Street, Whitehaven.

## 10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

### 10.1 Confidential information – requirement to exclude 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.

### 10.2 Exempt information – discretion to exclude 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 of the 1998 Act.

### 10.3 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.

### 10.4 Meaning of exempt information

Exempt information means information falling within the following 15 categories (subject to any condition) of *Schedule 12A of the Local Government Act 1972 as amended*:

Category	Condition
1. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an office-holder under, the authority	Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular	Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the

office-holder, former office-holder or applicant to become an office-holder under, a magistrates' court committee or probation committee	description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority	Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated
4. Information relating to any particular applicant for, or recipient or former recipient of any service provided by the authority	Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority	Information is not exempt information unless it relates to an individual of that description in the capacity indicated by the description, i.e. it must relate to and be recognisable as referring to a particular individual in the roles indicated
6. Information relating to the adoption, care, fostering or education of any particular child	Child means a person under 18 and anyone who is 18 and is still registered as a school pupil, or is the subject of a care order, within the meaning of section 31 Children Act 1989
7. Information relating to the financial or business affairs of any particular person (other than the authority)	Information within paragraph 7 is not exempt if it must be registered under various statutes, such as the Companies Act or Charities Act. To be exempt the information must relate to a particular third person who must be identifiable
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services	Information within paragraph 8 is only exempt if, and for so long as, disclosure of the amount involved would be likely to give an advantage to a person entering into or seeking to enter into a

<p>services</p>	<p>into or seeking to enter into a contract with the authority in respect of the advantage would arise as against the authority or as against other such persons.</p>
<p>9 Any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services</p>	<p>Information within paragraph 9 is only exempt if, and for so long as, disclosure to the public of the terms would prejudice the authority in those or any other negotiations concerning that property or those goods or services. (The disposal of property includes granting an interest in or right over it)</p>
<p>10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services</p>	<p>For the purposes of this paragraph “tender” includes a DLO/DSO written bid</p>
<p>11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or officer-holders under the authority</p>	<p>Information within paragraph 11 is only 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 29(1) of the Trade Unions and Labour Relations Act 1974, i.e. matters which may be the subject of a trade dispute</p>
<p>12. Any Instructions to counsel and any opinion of council (whether or not in connection with any proceedings), and any advice received, information obtained or action to be taken in connection with:  (a) any legal proceedings by or against the authority; or  (b) the determination of any matter affecting the authority; authority; whether, in either case, proceedings have been commenced or are in contemplation.</p>	

<p>13. Information which, if disclosed to the public, would reveal 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>Information within paragraph 13 is exempt only if and so long as disclosure to the public might afford an opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be given or made</p>
<p>14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime</p>	
<p>15. The identity of a protected informant</p>	<p>A “protected informant” means a person giving the authority information which tends to show that</p> <p>(a) a criminal offence;</p> <p>(b) a breach of statutory duty;</p> <p>(c) a breach of planning control; or</p> <p>(d) a nuisance, has been, or is being, or is about to be committed</p>

Information falling within any of paragraphs 1-15 is not exempt by virtue of that paragraph 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.

## 11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the proper 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 Rule 10, the meeting is likely not to be open to the public. Such reports will be marked "Not for publication" together with the category of information likely to be disclosed.

## **12. APPLICATION OF RULES TO THE EXECUTIVE**

Rules 13 – 24 apply to the Executive and its committees. If the Executive or its committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is defined as:-

An Executive decision which, is likely-

(a) to result in the local 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; or

(b) to be significant in terms of its effects on communities living or working in an area comprising one or more ward or electoral division in the area of the local authority.

If the Executive or its committees meet to discuss a key decision to be taken collectively, with an officer other than a political assistant present, within 28 days of the date according to the forward plan by which it is to be decided, then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. This requirement does not include meetings, whose sole purpose is for officers to brief members.

## **13. PROCEDURE BEFORE TAKING KEY DECISIONS**

Subject to Rule 15 (general exception) and Rule 16 (special urgency), a key decision may not be taken unless:

(a) a notice (called here a forward plan) has been published in connection with the matter in question;

b) at least 3 clear days have elapsed since the publication of the forward plan; and

(c) where the decision is to be taken at a meeting of the executive or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).

## **14. THE FORWARD PLAN**

### **14.1 Period of forward plan**

Forward plans will be prepared by the proper officer in consultation with the Executive to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

### **14.2 Contents of forward plan**

The forward plan will contain matters which the proper officer has reason to believe will be subject of a key decision to be taken by the Executive, a committee of the Executive, individual members of the Executive or officers, in the course of the discharge of an Executive function during the period covered by the plan. It 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, and where the decision is to be taken by the Executive collectively, the date of the meeting when it is expected that 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 Executive 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.

The forward plan must be published at least 14 days before the start of the period covered. The proper officer will publish once a year a notice in at least one newspaper circulating in the area, stating:

- (a) that key decisions are to be taken on behalf of the Council;
- (b) that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;
- (c) that the plan will contain details of the key decisions to be made for the four month period following its publication;
- (d) that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;
- (e) that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (g) that other documents may be submitted to decision takers;



(h) the procedure for requesting details of documents (if any) as they become available; and

(i) the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.

Exempt information need not be included in a forward plan and confidential information cannot be included.

## **15. GENERAL EXCEPTION**

If a matter which is likely to be a key decision has not been included in the forward plan, then subject to Rule 16 (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 until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;

(b) the proper officer has informed the chair of the relevant Overview and Scrutiny Committee (OSC), or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made;

(c) the proper officer has made copies of that notice available to the public at the offices of the Council; and

(d) at least 3 clear days have elapsed since the proper officer complied with (b) and (c).

Where such a decision is taken collectively, it must be taken in public.

## **16. SPECIAL URGENCY**

If by virtue of the date by which a decision must be taken Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the chair of the relevant OSC that the taking of the decision cannot be reasonably deferred. If there is no chair of the relevant OSC, or if the chair is unable to act, then the agreement of the Mayor or in his/her absence the Deputy Mayor will suffice.

## **17. REPORT TO COUNCIL**

### **17.1 When an Overview and Scrutiny Committee can require a report**

If the relevant Overview and Scrutiny Committee thinks that a key decision has been taken which was not:

(a) included in the forward plan; or

(b) the subject of the general exception procedure; or

(c) the subject of an agreement with an OSC Chair, or the Mayor/Deputy Mayor under Rule 16;

the committee may require the Executive to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the committee, but is also delegated to the proper officer, who shall require such a report on behalf of the committee when so requested by the Chairman of the relevant OSC. Alternatively the requirement may be raised by resolution passed at a meeting of the relevant OSC.

## **17.2 Executive's report to Council**

The Executive will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within 7 days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting 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.

## **17.3 Quarterly reports on special urgency decisions**

In any event the proper officer will submit quarterly reports to the Council on the Executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

## **18. RECORD OF DECISIONS**

After any meeting of the Executive or any of its committees, whether held in public or private, the proper officer or, where no officer was present, the person presiding at the meeting, 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 and any alternative options considered and rejected at that meeting.

## **19. ATTENDANCE AT MEETINGS OF THE EXECUTIVE**

- (a) All members of the Council are entitled to attend meetings of the Executive and to speak with the consent of the Chair of the Executive.
- (b) All members of the Executive are entitled to attend a meeting of any committee of the Executive.

## **OVERVIEW AND SCRUTINY COMMITTEES**

- (a) Notice of meetings of the Executive and its committees will be served on the chairs of all the Overview and Scrutiny Committees at the same time as notice is served on members of the Executive.
- (b) Where a matter under consideration at a meeting of the Executive, or a committee of it, is within the remit of the relevant OSC, the chair of that OSC or in his/her absence the vice chair may attend that meeting with the consent of the person presiding, though not speak unless those present agree, on matters within the remit of the OSC.
- (c) the Head of the Paid Service, the Chief Financial Officer and the Monitoring Officer, and their nominees are entitled to attend any meeting of the Executive and its committees. The Executive may not meet unless the proper officer has been given reasonable notice that a meeting is to take place.
- (d) An Executive meeting may only take place in the presence of the proper officer or his/her nominee with responsibility for recording and publicising the decisions.

In all of the above examples, the provisions of Rule 18 (recording and publicising decisions) will apply.

## **20. DECISIONS BY INDIVIDUAL MEMBERS OF THE EXECUTIVE**

### **20.1 Reports intended to be taken into account**

Where an individual member of the Executive receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least 5 clear days after receipt of that report.

### **20.2 Provision of copies of reports to the Overview and Scrutiny Committee**

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the chair of the relevant OSC as soon as reasonably practicable, and make it publicly available at the same time.

### **20.3 Record of individual decision**

Immediately after an Executive decision has been taken by an individual member of the Executive or a key decision has been taken by an officer, he/she will prepare, or instruct the proper officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of Rules 7 and 8 (inspection of documents after meetings) will also apply to the making of decisions by individual members of the Executive. This does not require the disclosure of exempt or confidential information or advice from a political assistant.

## **21. OVERVIEW AND SCRUTINY COMMITTEES -ACCESS TO DOCUMENTS**

### **21.1 Rights to copies**

Subject to Rule 21.2 below, the relevant Overview and Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Executive or its committees and which contains material relating to

(a) any business transacted at a public or private meeting of the Executive or its committees or

(b) any decision taken by an individual member of the Executive.

### **21.2 Limit on rights**

The Overview and Scrutiny Committees 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

## **22 ADDITIONAL RIGHTS OF ACCESS FOR MEMBERS**

### **22.1 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 Executive or its committees and contains material relating to any business previously transacted at a private meeting unless either (a) or (b) below applies.

(a) it contains exempt information falling within paragraphs 1 to 6, 9, 11, 12 and 14 of the categories of exempt information; or

(b) it contains the advice of a political adviser if appointed.

### **22.2 Material relating to key decisions**

All members of the Council will be entitled to inspect in the office of the proper officer, any document (except those available only in draft form) in the possession or under the control of the executive or its committees which relates to any key decision unless paragraph (a) or (b) above applies.

### **22.3 Nature of rights**

These rights of a member are additional to any other right he/she may have.

