

## **Article 17 – Decision Making**

South Kesteven District Council is committed to ensuring consistently high standards of accountability and transparency in local government. It seeks to deliver this commitment through a culture of openness in which the public, press and elected members know how best to influence decisions affecting the local community. Local people and local stakeholders deserve a consistently high standard of access to information to ensure that the Council's decision-making is responsive to what they want.

### **17.1 Access to Information Rules**

The access to information rules which apply to Council meetings and the committees are set out in Sections 100A-H and Schedule 12A of the Local Government Act 1972 (The Act). Access to Information rules that apply to the Cabinet are set out in Regulations made in accordance with Section 9G, 9GA and 105 of the Local Government Act 2000. The Freedom of Information Act 2000 also focuses attention on the Council's policy for disclosure of information.

In accordance with the above legislation there will be provision for reports to remain confidential subject to the legal tests being satisfied. Schedule 12A (The Act) (as amended)) includes definitions, qualifications and interpretations of exempt information (17.3).

The Monitoring Officer supported by the Deputy Monitoring Officer will be responsible for ensuring that the legal tests are applied and advice given so that the descriptions of exempt information relate to genuinely exempt information.

These rules apply to all meetings of the Council, Overview and Scrutiny Committees, area committees (if applicable), the Constitution Committee, the Governance and Audit Committee and regulatory committees and public meetings of the Cabinet.

### **17.2 General Access to Information Rules**

#### **17.2.1 Additional rights to information**

These rules do not affect any more specific rights to information contained elsewhere within the Constitution or law.

#### **17.2.2 Rights to attend meetings**

Members of the public may attend all meetings subject only to the exceptions in these rules (see article 17.3).

#### **17.2.3 Notices of meetings**

The Council will give at least five clear days notice (seven in the case of any proposal to dispose of land at less than best price) of any meeting by posting

details of the meeting at its offices at St Peter's Hill, Grantham; Stamford Area Office, South Kesteven Community Point and Library and Market Deeping Area Office.

#### **17.2.4 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 offices and on the Council website at least five clear days before the meeting (seven in the case of any proposal to dispose of land at less than best price). 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. 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 Councillors

#### **17.2.5 Supply of copies**

The Council will supply copies of the following documents to any person on payment of a charge for postage and any other costs, or where possible, by electronic means, including the use of modern.gov

- Any agenda and reports that are open to public inspection
- Any further statements of particulars necessary to indicate the nature of the items in the agenda
- If the Monitoring Officer thinks fit, copies of any other documents supplied to Councillors and the Leader in connection with this item

#### **17.2.6 Access to minutes, etc. after the meeting**

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

- The minutes of the meeting and 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 disclosed exempt or confidential information
- 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
- Reports relating to items when the meeting was open to the public

#### **17.2.7 Background papers**

##### **a) List of background papers**

The Monitoring 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 or her opinion

- Disclose any facts or matters on which the report or an important part of the report is based
- 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 below) and in respect of Cabinet reports, the advice of the political advisor (if any)

**b) 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. These will also be available on the Council's website.

**17.2.8 Summary of the Public's Rights**

A written summary of the public's rights to attend meetings and inspect and copy documents must be kept at and available to the public at the Council Offices, St Peter's Hill, Grantham, Lincolnshire. NG31 6PZ

**17.3 Exclusion of Access by the Public to Meetings**

**17.3.1 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.

**17.3.2 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.

**17.3.3 Meaning of confidential information**

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

#### **17.3.4 Meaning of exempt information**

Exempt information means information falling within the following 7 categories (subject to any condition as detailed in paragraphs 1-7 of Schedule 12A of the Local Government Act 1972 (as amended))

Information falling within any of paragraphs 1 -7 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.

#### **17.4 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 or her opinion relate to items during which, in accordance with 17.3, 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.

## Description of Exempt Information

Description of exempt information		Qualification	Notes
		Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning Regulations 1992.	Applies to all categories of otherwise exempt information.
1.	Information relating to any individual	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.	Names, addresses or telephone numbers can identify individuals.  Also consider the Council's Data Protection Act responsibilities.
2.	Information which is likely to reveal the identity of an individual	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.	Names, addresses or telephone numbers can identify individuals.  Also consider the Council's Data Protection Act responsibilities.
3.	Information relating to the financial or business affairs of any particular person (including the authority holding the information)	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. Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under-	The authority is a reference to the principal Council or, as the case may be, the committee or subcommittee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined [etc]

Description of exempt information	Qualification	Notes
	<ul style="list-style-type: none"> <li>(a) The Companies Act (as defined in section 2 of the Companies Act 2006)</li> <li>(b) The Friendly Societies Act 1974</li> <li>(c) The Friendly Societies Act 1992</li> <li>(d) The Industrial and Provident Societies Acts 1965 to 1978</li> <li>(e) The Building Societies Act 1986</li> <li>(f) The Charities Act 1993</li> </ul>	<p>Financial or business affairs include 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>
4.	<p>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>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.</p> <p>The authority is a reference to the principal Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined [etc]</p> <p>Employee means a person employed under a contract of service Labour relations matter means</p> <ul style="list-style-type: none"> <li>(a) Any of the matters specified in paragraphs (a) to (g) or section 218 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)</li> </ul>

	Description of exempt information	Qualification	Notes
			(b) Any dispute about a matter falling within paragraph (a) above (applies to trade disputes relating to office holders as well as employees) Office holder in relation to the authority means the holder or any paid office appointments 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.
5.	Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings	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.	Privilege lies with the "client" which broadly is the Council. Seek the view of the relevant Chief Officer whether they wish to waive privilege.
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 (b) To make an order or direction under any enactment	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.	The authority is a reference to the principal Council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined [etc.]
7.	Information relating to any action taken in connection with the prevention, investigation or prosecution of crime.	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.	

## **17.5 Responsibility for decision-making**

Cabinet arrangements established under the Local Government Act 2000 require the Council to record and keep up to date details of who has responsibility for which decisions, and to make this available to the public.

Some decisions are for the Council to make or to delegate, or for it to delegate to committees, sub-committees and/or officers, or to joint committees or joint arrangements or joint arrangements of other authorities.

Other decisions are for the Cabinet to make, and it is for the Cabinet to decide whether to delegate the power to make any of those decisions. Only the Cabinet may decide to delegate executive functions to area committees, joint arrangements of other local authorities.

Though changes to the Constitution must be made by the Council, changes to the scheme of delegations may be made by the Cabinet so long as those changes are reported to Council.

Accordingly, the record set out in Articles 4, 8 and 16 of this Constitution identifies what part of the Council or individual has responsibility for particular types of decisions relating to particular areas or functions.

## **17.6 Principles of Decision Making**

All decisions of the Council will be made in accordance with the following principles

Under this executive form of constitution decisions are no longer confined to committees acting on officer reports or officers operating under delegated authority. A range of people and bodies may potentially take binding decisions, from an individual Cabinet member to a meeting of the Cabinet or an area committee.

In order to ensure that decisions are reached after a realistic evaluation of alternatives and due consultation and having regard to all relevant considerations and ignoring all irrelevant factors, decision makers will be mindful of the following principles of decision making

- (i) Proportionality (i.e. the action must be proportionate to the desired outcome)
- (ii) Due consultation and the taking of professional advice from officers
- (iii) Respect for human rights
- (iv) A presumption in favour of openness
- (v) Clarity of aims and desired outcomes

- (vi) An explanation of what options were considered
- (vii) The reasons for the decision will be stated

Decision making templates will be available to decision takers to assist with this process and to accurately record decisions.

## **17.7 Types of Decision**

### **17.7.1 Decisions reserved to Council**

Decisions relating to the functions listed in Article 4.2 (*Functions of the Council Meeting*) will be made by the Council and not delegated.

### **17.7.2 Key decisions and the Forward Plan**

#### **a) Definition**

A key decision means a Cabinet decision, which is likely

- (i) To result in the local authority incurring expenditure which is, or the making of savings which are, significant, for these purposes, South Kesteven District Council has agreed £200,000 as the threshold at which a decision will be considered significant.
- (ii) To be significant as advised by the Chief Executive in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.
- (iii) In determining the meaning of significant for the purposes of paragraph (ii) the authority must have regard to any guidance issued by the Secretary of State in accordance with section 9Q of the Local Government Act 2000.

A decision taker may only make a key decision in accordance with the requirements below

Where the decision is to be taken at a meeting of the Cabinet or its Committees, notice of the meeting has been given in writing

#### **b) Procedure Rule**

Subject to general exception (17.7.2 c) below) and special urgency (17.7.2 d) below), a key decision must not be taken unless a notice called a Forward Plan has been published in connection with the matter and made available for public inspection at the offices of the Council and on the Council's website at least 28 clear days before the decision is made which states:

- (i) That a key decision is to be made on behalf of the local authority
- (ii) The matter in respect of which the decision is to be made
- (iii) Where the decision maker is an individual, that individual's name and title and, where the decision maker is a decision-making body, its name and a list of its members
- (iv) The date on which, or the period within which, the decision is to be made
- (v) A list of the documents submitted to the decision maker for consideration in relation to the matter in respect of which the key decision is to be made
- (vi) The address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed are available
- (vii) That other documents relevant to those matters may be submitted to the decision maker
- (viii) The procedure for requesting details of those documents (if any) as they become available

Exempt information need not be included in the Forward Plan and confidential information cannot be included.

**c) General Exception Rule**

If a matter which is likely to be a key decision has not been included in the Forward Plan, then subject to special urgency (d) below), the decision may still be taken if:

- i) 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
- ii) The Chief Executive has informed the Chairman of the relevant Overview and Scrutiny Committee, or if there is no such person, each member of the Committee in writing, by notice of the matter to which the decision is to be made
- iii) The Monitoring Officer has made copies of that notice available to the public at the offices of the Council and on the Council's website
- iv) At least 5 clear days have elapsed since compliance with (c)ii) and (c)iii) above
- v) As soon as reasonably practical after all the above have been satisfied, the Monitoring Officer must make available at the Council offices a notice setting out the reasons why compliance with the Procedure Rule at (c)ii) above is impractical; and publish that notice on the Council's website

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

**d) Special Urgency**

If, by virtue of the date by which a decision must be taken and the General Exception rule cannot be followed, then the decision can

only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, notifies in writing the Chairman of the relevant Overview and Scrutiny Committee that the taking of the decision cannot reasonably be deferred. If the Chairman of the relevant Overview and Scrutiny Committee are unable to act, then the agreement (confirmed in writing) by the Chairman of the Council, or in his or her absence the Vice-Chairman will suffice.

As soon as reasonably practicable after the decision maker has obtained agreement under this rule that the making of the decision is urgent and cannot reasonably be deferred, the decision maker must

- i) Make available at the designated offices of the Council a notice setting out the reasons that the meeting is urgent and cannot reasonably be deferred
- ii) Publish that notice on the website

### **17.7.3 Decision making by individual Members of the Cabinet**

#### **a) Reports intended to be taken into account**

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

#### **b) Provision of copies of reports to the Overview and Scrutiny Committee Chairmen**

On giving such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chairman of every relevant Overview and Scrutiny Committee Chairman and the Monitoring Officer (as soon as reasonably practicable) and make it publicly available at the same time.

#### **c) Record of Individual decision**

As soon as reasonably practicable after a Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he or she will prepare, or instruct the Monitoring 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 Article 17.2.6 (Access to minutes after the meeting) will also apply to the making of decisions by individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from any political assistant.

#### **d) Urgent Non-Key Decisions**

Where, due to reasons of urgency, the procedure at rules 17.7.3 (a) and (b) above cannot be followed, then the special urgency provisions relating to non-key decisions by individual members of the Cabinet will apply. The person preparing the report to be taken into account by the decision maker will notify the Monitoring Officer of the reasons for urgency. When the report is given to the individual decision maker, the Monitoring Officer will, at the same time, notify in writing the Chairman of every relevant Overview and Scrutiny Committee of the reasons for taking a non-key decision as a matter of urgency. If there is no Chairman of a relevant Overview and Scrutiny Committee Chairman or if the Chairman of each relevant Overview and Scrutiny Committee is unable to act; then the relevant Vice-Chairman will be notified.

As soon as reasonably practicable after an urgent non-key decision has been taken by an individual member of the Cabinet, he or she will instruct the Monitoring Officer to prepare a record of the decision, a statement of the reasons for it and the nature of its urgency, and any alternative option considered and rejected. The record of the decision (subject to the exclusion or any exempt or confidential information) shall be published at the same time and made available to the public at the offices of the Council. The non-key decision will take immediate effect and shall not be subject to call-in.

The Leader shall include reference to the urgent non-key decision(s) in his or her quarterly report to the Council on Cabinet decisions taken in the circumstances set out in special urgency in the preceding three months.

#### **17.8 Call In**

Call in should only be used in exceptional circumstances. This is where Members of an Overview and Scrutiny Committee have evidence which suggests that a decision was not taken in accordance with the principles set out in this Article.

Evidence may, for example, refer to inadequate consultation with stakeholders prior to a decision or an absence of good reasons on which to take a decision.

#### **17.9 Decision making by the Council**

Subject to Article 17.5, the Council meeting will follow the Council Procedure Rules set out in Article 4 of this Constitution when considering any matter.

### **17.10 Decision making by the Cabinet**

Subject to Article 17.5, the Cabinet will follow the Cabinet Procedures Rules as set out in Article 8 of this Constitution when considering any matter.

### **17.11 Decision making by the Overview and Scrutiny Committees**

The Overview and Scrutiny Committees will follow the procedures set out in Article 6 of this Constitution when considering a matter.

### **17.12 Decision making by other committees and sub-committees established by the Council**

Subject to Article 17.13, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Article 4 of this Constitution as they apply to them.

### **17.13 Decision making by Council bodies acting as tribunals**

The Council, a Councillor or an officer acting as a tribunal or in a quasi judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair trial contained in Article 6 of the European Convention on Human Rights.

### **17.14 Budget and Policy Framework Decisions**

The process by which the budget and policy framework is to be developed is regulated by statutorily prescribed standing orders incorporated within the Budget and Policy Framework Procedure Rules set out in Part 2 of this Constitution.

### **17.15 Reports to the Local Authority where the Key Decision Procedure is not followed**

- a) Where a cabinet decision has been made and
  - (i) Was not treated as being a key decision

- (ii) The relevant Overview and Scrutiny Committee is of the opinion that the decision should have been treated as a key decision, that Committee may require the Cabinet which is responsible for the decision to submit a report to the Council within such reasonable period as the Committee may specify.
- b)** A report under paragraph 17.15 (a) must include details of
- (i) The decision and the reasons for the decision
  - (ii) The decision maker by which the decision was made
  - (iii) If the Cabinet are of the opinion that the decision was not a key decision, the reasons for that opinion.

### **17.16 Additional rights of access for Members**

- a)** Any document which
- (i) Is in the possession or under the control of the Cabinet
  - (ii) Contains material relating to any business to be transacted at a public meeting, must be available for inspection by any member of the Council
- b)** Any document which is required by paragraph 17.16 (a) to be available for inspection by any member of the Council must be available for such inspection for at least five clear days before the meeting except
- (i) Where the meeting is convened at shorter notice, such a document must be available for inspection when the meeting is convened
  - (ii) Where an item is added to the agenda at shorter notice, a document that would be required to be available under paragraph 17.16 (a) in relation to that item, must be available for inspection when the item is added to the agenda
- c)** Any document which
- (i) Is in the possession or under the control of the Cabinet
  - (ii) Contains material relating to
    - a) Any business transacted at a private meeting
    - b) Any decision made by an individual member in accordance with executive arrangements
    - c) Any decision made by an officer in accordance with executive arrangements, must be available for inspection by any member of the Council when the meeting concludes or

- d) where an Cabinet decision is made by an individual member or any officer immediately after the decision has been made
- d) Any document which is required by paragraph 17.16(c) to be available for inspection by any member of the relevant local authority must be available for such inspection, in any event, within 24 hours of the conclusion of the meeting or the decision being made, as the case may be
- e) Paragraphs 17.16(a) and 17.16(c) do not require a document to be available for inspection if it appears to the proper officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A to the 1972 Act (Descriptions of exempt information: England).
- f) Notwithstanding paragraph 17.16(e), paragraphs 17.16(a) and 17.16(c) do require the document to be available for inspection if the information is information of a description for the time being falling within
  - (i) Paragraph 3 of Schedule 12A to the 1972 Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract)
  - (ii) Paragraph 6 of Schedule 12A to the 1972 Act
- g) Where it appears the proper officer that compliance with paragraph 17.16(a) or 17.16(c) in relation to a document or part of a document would involve the disclosure of advice provided by a political advisor or assistant that paragraph will not apply to that document or part.
- h) The rights conferred by paragraph 17.16(a) and 17.16(c) are in addition to any other rights that a member or a local authority may have.

## 17.17

## Local Choice Functions

Function		Decision Making body	Delegation of Function
1.	Local Acts in force in South Kesteven other than a function specified or referred to in Part 2 or Schedule 1  <i>(currently none in force in South Kesteven)</i>	The Council	-
2.	The determination of an appeal against any decision made by or on behalf of the authority	Appeal Panel – 5 Members of a Regulatory Committee	-
3.	The appointment of review boards under regulations under subsection (4) or Section 34 (determination of claims and reviews) of the Social Security Act 1998	Review Board – 5 members of a Regulatory Committee	-
4.	The conducting of best value reviews in accordance with the provisions of any order for the time being having effect under Section 5 (best value reviews) of the Local Government Act 1999	Cabinet	Cabinet Member with responsibility for performance management
5.	Functions relating to contaminated land	Cabinet	Assistant Director, Environment
6.	Discharge of function relating to the control of pollution and the management of air quality	Cabinet	Assistant Director, Environment
7.	Service of abatement notices in respect of statutory nuisance	Cabinet	Assistant Director, Environment
8.	The passing of a resolution that Schedule 2 to the Noise and Statutory Nuisance Act 1993 should apply in the authority's area	Cabinet	Assistant Director, Environment
9.	Inspection of the authority's area to detect any statutory nuisance	Cabinet	Assistant Director, Environment
10.	Investigation of any complaint as to the existence of a statutory nuisance	Cabinet	Assistant Director, Environment
11.	Obtaining information under Section 330 of the Town and Country Planning Act 1990 as to the interest in land	Cabinet	Assistant Director, Growth & Development

12.	Obtaining of particular persons interest in land under Section 16 of the Local Government (Miscellaneous Provisions) Act 1976	Cabinet	Strategic Director, Corporate
13.	Appointment of any individual:-  a) To any office other than an office in which he or she is employed by the authority; b) To anybody other than – i) the authority; ii) a joint committee of two or more authorities; or c) to any committee or sub-committee of such a body, and the revocation of any such appointment.	Council	
14.	Membership of the Overview and Scrutiny Committee 7 members	Council	
15.	By way of clarification no committee, board or panel has the power to establish a panel for the purpose of advising officers on the exercise of authority delegated to them by Council.		
17.	The approval of key people and organisational development strategies and policies that have significant financial implications e.g. remuneration/pay, pensions, redundancy.	Cabinet	Cabinet Member with responsibility for people and organisational development
18.	The approval of operational people and organisational development policies, working procedures, protocols	Head of Paid Service and the Strategic Management Team	Chief Executive
19.	The approval of Neighbourhood Development Plan following a referendum result where more than half of those voting are in favour of the proposal	Council	Cabinet Member Growth