

# **FOLKESTONE AND HYTHE DISTRICT COUNCIL** **CONSTITUTION**

## **PART 7 – OVERVIEW AND SCRUTINY RULES AND PROCEDURES**

<b>CONTENTS</b>		<b>Page Ref</b>
7.1	Overview and Scrutiny Committee and Finance and Performance Scrutiny Sub-Committee	<b>'Part 7/2'</b>
7.2	Overview and Scrutiny Procedure Rules	<b>'Part 7/4'</b>
7.3	Call-in Rules and Procedures	<b>'Part 7/12'</b>
7.4	Overview and Scrutiny Access to Information Procedure Rules	<b>'Part 7/17'</b>
7.5	Overview and Scrutiny Inter-Authority Co-operation	<b>'Part 7/23'</b>

## **PART 7 - OVERVIEW AND SCRUTINY**

### **PART 7.1 – OVERVIEW AND SCRUTINY COMMITTEE**

#### **1. OVERVIEW AND SCRUTINY COMMITTEE**

##### **1.1 Terms of reference**

- a) To contribute to the development, and review, of the Council's community plan, including the review of performance against targets.
- b) To examine how the Council engages with the community, including reviewing and monitoring the effectiveness of the Council's communication and consultation strategy, and other strategies that have an impact on relationships with the public.
- c) To consider how the Council develops relationships with its partners and review the effectiveness of those partnerships in contributing to the Council's vision and objectives.
- d) To scrutinise the work and decisions of the partnerships that the Council is involved in.
- e) To prepare responses to consultation, for consideration by the executive, on any matter that affects community services in the District, including education and health.
- f) To act as the Council's Crime and Disorder Committee and to meet for that purpose at least once a year.
- g) To co-opt members and determine whether they are entitled to vote on any matter, in accordance with the Crime and Disorder (Overview and Scrutiny) Regulations 2009.
- h) To review and scrutinise the executive's decisions, including prior scrutiny of proposed executive decisions, and decisions made by committees and officers.
- i) To contribute to the development of the Budget and other financial strategies, and review the performance of the executive against the Budget and other financial targets.
- j) To contribute to, and review, the development of the Council's corporate management policies, including risk management and corporate governance policies and strategies, and to review the performance against targets, and review the effectiveness of the policies and strategies over time.
- k) To contribute to, and review, the Council's performance plan and performance management system.

- l) To exercise the right, set out in the 'Call-in' Rules of Procedure, contained in Part 6 and 7 of this Constitution, to call-in for review, and recommend for re-consideration, any decisions made by the executive but not implemented.

## **1.2 Composition**

Must be politically balanced. No member of the executive may be a member of the Overview and Scrutiny Committee.

## **2. FINANCE AND PERFORMANCE SCRUTINY SUB-COMMITTEE**

### **2.1 Terms of reference**

1. To scrutinise the Council's performance against KPIs and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
  - the proposed performance targets for the coming year;
  - the in-year performance management data; and
  - the annual performance report.
2. To scrutinise the Council's financial monitoring data against budget and make recommendations as appropriate, to the Cabinet and / or Overview and Scrutiny Committee, particularly considering:
  - the annual Budget Strategy; and
  - the quarterly budget monitoring data for GF Revenue & Capital and HRA Rev & Capital.

### **2.2 Composition**

Must be politically balanced. Comprised of five Members, drawn from the main Overview and Scrutiny Committee. The Chairman will be appointed by Overview and Scrutiny Committee at their first meeting of the municipal year, until the next annual meeting of the Council.

## **PART 7.2 – OVERVIEW AND SCRUTINY PROCEDURE RULES**

### **1. THE ARRANGEMENTS FOR THE OVERVIEW AND SCRUTINY COMMITTEES AND SUB-COMMITTEES**

- 1.1. The Overview and Scrutiny Committee performs all scrutiny functions on behalf of the Council.
- 1.2 The terms of reference of the Overview and Scrutiny Committee are set out in Part 7 of the Constitution.
- 1.3 These rules apply to the Overview and Scrutiny Committee, and any sub-committees, with any necessary changes.

### **2. MEMBERSHIP OF THE OVERVIEW AND SCRUTINY COMMITTEE**

- 2.1 All councillors, except members of the Cabinet, may be members of the Overview and Scrutiny Committee or sub-committee. However, no councillor may be involved in scrutinising a decision in which s/he has been directly involved, or where s/he has sat on an advisory panel of the Cabinet which has considered matters leading up to the decision, or has been appointed, as an adviser, to the Cabinet, on the decisions.
- 2.2 Councillor membership of the Overview and Scrutiny Committee will be in proportion to the representation of the different political groups on the Council.

### **3. CO-OPTEEES**

- 3.1 The Overview and Scrutiny Committee shall be entitled to recommend to Council the appointment of a number of people, as non-voting co-optees. Co-optees will, in any event, comprise no more than 50% of the committee membership.
- 3.2 Council may co-opt members, who are not councillors, to the Overview and Scrutiny Committee, if this is necessary to give effect to legislation.

### **4. MEETINGS OF THE OVERVIEW AND SCRUTINY COMMITTEE**

There shall be at least four ordinary meetings of the Overview and Scrutiny Committee in each year. The Overview and Scrutiny Committee, or sub-committee, when fulfilling the role of the Crime and Disorder Committee, shall meet, as such, at least once in each year. In addition, extraordinary meetings may be called, as and when appropriate. An Overview and Scrutiny Committee meeting may be called by the Chairman of the Overview and Scrutiny Committee, by any two members of the committee, or by the Head of Paid Service, if s/he considers it necessary or appropriate.

## **5. QUORUM**

The quorum for the Overview and Scrutiny Committee shall be at least one quarter of its membership and not less than two voting members.

## **6. CHAIRING OVERVIEW AND SCRUTINY COMMITTEE MEETINGS**

**6.1** The Chairman of the Overview and Scrutiny Committee shall be appointed as the first item of business, at its first meeting, following the Annual Council Meeting.

**6.2** The Vice-Chairman of the Overview and Scrutiny Committee shall be appointed, at its first meeting, following the Annual Council Meeting.

## **7. WORK PROGRAMME**

**7.1** The Overview and Scrutiny Committee will be responsible for setting its own work programme. In setting the work programme they shall take into account the wishes of councillors, on that committee, who are not members of the largest political group on the Council.

**7.2** Each year, the work programme for the Overview and Scrutiny Committee will be approved at the Annual Council Meeting. For the avoidance of doubt, the work programme may be a rolling programme, spanning more than one municipal year.

## **8. PROTOCOLS AND GUIDELINES**

**8.1** The members of the Overview and Scrutiny Committee shall abide by any protocol for overview and scrutiny committees.

**8.2** The Overview and Scrutiny Committee shall have regard to any statutory guidance on the exercise of their scrutiny functions.

## **9. AGENDA ITEMS AND THE 'CALL TO ACTION'**

**9.1** Any member of the Council may give written notice, to the Head of Paid Service, that they wish an item to be included on the agenda of the Overview and Scrutiny Committee (the 'call to action'). If the Head of Paid Service receives such a notification, s/he will include the item, on the first available agenda of the Overview and Scrutiny Committee, for discussion by the committee. The member should first consider any relevant statutory guidance. The Head of Paid Service may reject an item if it is not a 'local government matter', as defined by section 21A of the Local Government Act 2000.

**9.2** The Overview and Scrutiny Committee shall consider requests from the Council, or the Cabinet, to review particular areas of Council activity but the committee itself will decide whether or not to undertake the review, and will give reasons, if it decides not to review a matter. Where the committee decides to do so, they shall report their findings, and any recommendations, to the Cabinet and/or the Council. The Council and/or the Cabinet shall

consider the report of the Overview and Scrutiny Committee at the next meeting, following submission of the report by the Head of Paid Service, and will provide a written response, to the report, back to the committee.

## **10. POLICY REVIEW AND DEVELOPMENT**

**10.1** The role of the Overview and Scrutiny Committee, in relation to the development of the Council's Budget and Policy Framework, is set out in detail in the Budget and Policy Framework Procedure Rules in Part 4.4 of this Constitution.

**10.2** In relation to the development of the Council's approach to other matters not forming part of its Budget and Policy Framework, the Overview and Scrutiny Committee may make proposals, to the Cabinet, for developments, insofar as they relate to matters within its terms of reference.

**10.3** The Overview and Scrutiny Committee may hold enquiries, and investigate the available options, for the future direction in policy development.

## **11. REPORTS FROM THE OVERVIEW AND SCRUTINY COMMITTEE**

**11.1** If an item is included on the agenda of the Overview and Scrutiny Committee, following a notification from a member of the Council, the committee will decide, in relation to that item, whether or not to review or scrutinise any decisions made, or actions taken; whether or not to require a member, who has exercised ward member powers, to attend before it to answer questions; and whether or not to make any report or recommendation. It must have regard to any ward member powers that the member may exercise, and any representations made by the member, as to whether it should exercise these powers. If it decides not to exercise these powers, it must notify the member of its decision and the reasons for it. If the committee decides to make a report or recommendations to the Council, or to Cabinet, it must copy the report to the member, and it may publish the report or recommendations. In so doing, it must exclude information which is 'confidential' and it may exclude information which is 'exempt' (applying the definitions set out in the Access to Information Rules). It may replace the excluded information with a summary which does not disclose that information, and it must do so if, in consequence of excluding the information, the document published, or copy provided, would be misleading or not reasonably comprehensible.

**11.2** If the Overview and Scrutiny Committee decides to make a report or recommendations to Council, or Cabinet, it must, by notice, in writing, require them, within two months from their receipt of the report or recommendations, or, if later, the notice:

- a) To consider the report or recommendations;
- b) To respond to the committee indicating what, if any, action it proposes to take;

- c) If the committee has published the report or recommendations, to publish the response;
  - d) If the committee provided a copy of the report or recommendations to the member, to provide the member with a copy of the response.
- 11.3** In order to make a report to Council or Cabinet, the Overview and Scrutiny Committee will commission and approve a formal report, from officers supporting the committee, and submit it to the Head of Paid Service, for consideration by the Council or Cabinet. Those officers will ensure that the Head of Paid Service, the Monitoring Officer and the Chief Finance Officer are given an opportunity to comment on all such reports.
- 11.4** If there is a minority view, to which, at least, three councillors on the Overview and Scrutiny Committee subscribe, those councillors can request that the report includes a summary of that minority view.
- 11.5** The Council or Cabinet shall consider a report from the Overview and Scrutiny Committee at the next ordinary meeting, following submission of the report to the Head of Paid Service.
- 12. MAKING SURE THAT OVERVIEW AND SCRUTINY REPORTS ARE CONSIDERED BY THE COUNCIL AND CABINET**
- 12.1** Reports and recommendations to Council will be considered as an item of business (a report from a committee).
- 12.2** The agenda for Cabinet meetings shall include an item entitled 'Reports from Overview and Scrutiny'. Any report or recommendations of the Overview and Scrutiny Committee, referred to the Cabinet, shall be included at this point on the agenda (unless they have been/are to be considered in the context of the Cabinet's deliberations on a substantive item on the agenda) at the next ordinary meeting of the Cabinet, following submission of the report to the Head of Paid Service.
- 12.3** The Council and the Cabinet must comply with a notice, in writing, given by the Overview and Scrutiny Committee, under Rule 11.2, subject to any regulations preventing the disclosure of 'confidential information' and permitting the exclusion of 'exempt information' from anything that is published or copied to any member.
- 13. RIGHTS AND POWERS OF OVERVIEW AND SCRUTINY COMMITTEE MEMBERS**
- 13.1 Rights to documents**
- 13.1.1** In addition to their rights, as councillors, members of the Overview and Scrutiny Committee have the additional right to documents, and to notice of meetings, set out in the Access to Information Procedure Rules in Part 7.4 of this Constitution.

- 13.1.2** Nothing in this paragraph prevents more detailed liaison and information exchanges between the Cabinet and the Overview and Scrutiny Committee, depending on the particular matter under consideration.

## **13.2 Powers to conduct enquiries**

Subject to resources being available within the agreed annual budget, the Overview and Scrutiny Committee may:

- a) Review and scrutinise decisions made and look at past performance;
- b) Investigate options for future direction in Council policy;
- c) Investigate and make reports and recommendations to the Council, or the Cabinet, on any matter which affects the authority's area, or the inhabitants of that area.

In so doing, they may, subject to resources being available within the agreed annual Budget, set up ad hoc working groups, and appoint advisers and assessors to assist them in these processes. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations, within available resources. They may ask witnesses to attend, to address them on any matter under consideration and may pay any advisers, assessors and witnesses a reasonable fee and expenses for doing so.

## **14. COUNCILLORS AND OFFICERS GIVING ACCOUNT**

- 14.1** In addition to attending when requested, under paragraph 14.2 below, all Cabinet members will attend, if, and when, requested by the overview and scrutiny chairman, at least on one occasion per municipal year, before the Overview and Scrutiny Committee, in order to provide a general update on decisions made within their portfolio. The specific dates and scope of attendance will be agreed between the Cabinet member and the overview and scrutiny chair, and included in the overview and scrutiny work programme.

- 14.2** As well as reviewing documentation, in fulfilling the scrutiny role, the committee may require any councillor, member of the Cabinet, or officer, to attend before it, and it is the duty of those persons to attend, to explain, in relation to matters within their remit:

- a) Any particular decision or series of decisions; and/or
- b) The extent to which the actions taken implement Council policy; and/or
- c) The performance of the service.

At the discretion of their chief officer, Council officers, below third tier, may attend the Overview and Scrutiny Committee, usually accompanied by a



senior manager. Neither the Head of Paid Service, nor any officer, will be required to explain matters within the remit of the Cabinet.

- 14.3** Where any councillor or officer is required to attend the Overview and Scrutiny Committee, or sub-committee, under this provision, the chairman of that committee will inform the Head of Paid Service. The Head of Paid Service will inform the councillor, or officer, in writing, giving at least ten working days' notice of the meeting at which s/he is required to attend. The notice will state the nature of the item on which s/he is required to attend, to give account, and whether any papers are required to be produced for the committee. Where the account to be given to the committee will require the production of a report, then the councillor or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 14.4** Where, in exceptional circumstances, the councillor or officer is unable to attend on the required date, then the committee shall, in consultation with the councillor, or officer, arrange an alternative date for attendance, or a substitution agreed with the chairman and vice-chairman of the committee.
- 14.5** Where an officer is required to give evidence under the petition scheme, the provisions of paragraphs 14.2, 14.3 and 14.4 shall apply.

**15. ATTENDANCE BY OTHERS**

The Overview and Scrutiny Committee may invite people, other than those people referred to in paragraph 14 above, to address it, discuss issues of local concern and/or answer questions. It may, for example, wish to hear from contractors, or organisations, providing services on behalf of the Council; residents, stakeholders, and members and officers in other parts of the public sector; and may invite such people to attend.

**16. CALL-IN**

The call-in procedure is dealt with separately in the Call-in Rules of Procedure in this part of the Constitution.

**17. PROCEDURE AT OVERVIEW AND SCRUTINY COMMITTEE MEETINGS**

- 17.1** The Overview and Scrutiny Committee shall consider the following business:
- a) Declarations of interest;
  - b) Minutes of the last meeting;
  - c) Consideration of any matter on the agenda.
- 17.2** Where the Overview and Scrutiny Committee conducts investigations (e.g. with a view to policy development), the committee may also ask people to attend, to give evidence at committee meetings, which are to be conducted in accordance with the following principles:

- a) That the investigation is conducted fairly and all members of the committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- b) That those assisting the committee, by giving evidence, be treated with respect and courtesy; and
- c) That the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

**17.3** Following any investigation or review, officers supporting the committee shall prepare a report for debate, amendment and approval by the committee and subsequently for submission to the Cabinet and/or Council, as appropriate. The committee shall make its report and findings public.

## **18. RECOMMENDATIONS BY THE OVERVIEW AND SCRUTINY COMMITTEE**

**18.1** The Overview and Scrutiny Committee shall not make a recommendation on a matter unless:

- a) It is considering an item, following notification by a member, under Rule 9.1 (the 'call to action'); or
- b) It has received a written report, from an officer, on the matter; or
- c) In exceptional circumstances, where a report which is to be placed before the committee has not been prepared by an officer, that report has been submitted to the Head of Paid Service, Chief Finance Officer and Monitoring Officer for comment.

**18.2** Where a report, which has not been prepared by an officer, is submitted in accordance with the previous paragraph, the report shall not be submitted to the Overview and Scrutiny Committee unless:

- a) None of the officers mentioned wish to comment on it;
- b) The report incorporates any comments by officers; or
- c) A report, on the same topic, is submitted, on the same agenda, by officers.

**18.3** The Overview and Scrutiny Committee shall not scrutinise:

- a) Individual decisions relating to planning applications, quasi-judicial and personnel matters e.g. licensing, housing appeals and disciplinary appeals;
- b) Decisions of the Audit and Governance Committee, (when those decisions relate to standards matters, including the granting of dispensations to participate) or the Joint Standards Hearing Committee;

- c) Decisions which are called in, other than via the procedure set out in the Call-in Rules of Procedure.

## **PART 7.3 – CALL-IN RULES OF PROCEDURE**

### **1. WHEN CAN A DECISION BE CALLED IN?**

- 1.1** When a decision is made by the Cabinet, an individual member or a committee of the Cabinet; or where a key decision is made by an officer, under delegated authority, given to them by the Leader; or by an area committee; or under joint arrangements, the decision shall be published within three clear working days.
- 1.2** The notice of the decision will be dated and will specify that the decision will come into force, and may be implemented, on the expiry of five clear working days after the publication of the decision, unless a valid request has been received, by the Head of Paid Service, objecting to the decision and asking for it to be called in. This does not apply to an urgent decision.

### **2. WHO MAY CALL-IN A DECISION?**

Any three or more members of the Overview and Scrutiny Committee may request that a decision is called in, during the five clear working days after the publication of the notice of the decision, in 1.2 above (the call-in period).

### **3. WHAT ARE THE CRITERIA FOR CALL-IN OF A DECISION AND WHO DECIDES WHETHER IT IS VALID?**

- 3.1** The Head of Paid Service, on advice from the Monitoring Officer, will determine whether or not a call-in is valid. In order to be valid, the call-in must meet all of the criteria in (a) to (g), plus at least two of the criteria in (h) to (m), below:
- a) It is submitted by three or more members of the Overview and Scrutiny Committee, in writing;
  - b) It is received before 5pm on the fifth day after publication of the notice of the decision;
  - c) It specifies which decision is being objected to;
  - d) It gives the reasons for the call-in request;
  - e) It is not made in relation to a decision taken in accordance with the urgency procedures;
  - f) It specifies the officers and members, the councillors calling in the matter, wish to hear from;
  - g) It specifies the matters that the councillors, who called in the decision, wish to ask questions on.
- 3.2** The call-in must also meet two or more of the following criteria:

- h) It specifies that the decision is claimed to be outside, or contrary to, the Budget and Policy Framework;
- i) It specifies inadequate consultation with stakeholders prior to the decision;
- j) It specifies inadequate evidence on which to base the decision;
- k) It specifies that the action is not proportionate to the desired outcome;
- l) It specifies a potential human rights' challenge;
- m) It specifies insufficient consideration of the advice of the statutory officers.

If the Head of Paid Service decides that a call-in is not valid, he will inform the decision-taker, and those requesting the call-in, and the decision may be implemented at any time thereafter.

#### **4. THE PROCESS FOR REFERRAL OF A DECISION VALIDLY CALLED IN**

**4.1** Subject to rules 4.2 and 4.3 below, once a request for a call-in is deemed valid by the Head of Paid Service, the decision may not be implemented until the Overview and Scrutiny Committee has met to consider the called in decision. The Head of Paid Service will call a meeting of the Overview and Scrutiny Committee within 10 clear working days of a valid call-in (unless a scheduled meeting is due to take place within that period, in which case the scheduled meeting will consider the call-in).

**4.2** Where the Overview and Scrutiny Committee fails to meet, to discuss a called in decision, within 10 clear working days of the Head of Paid Service's confirmation of a decision validly called in, the decision may be implemented on the day following 15 clear working days from the date the decision was published.

**4.3** Where the Overview and Scrutiny Committee meets within 10 clear working days of the Head of Paid Service's confirmation of a valid call-in, but fails to discuss the call-in request, and no other meeting of the Overview and Scrutiny Committee is planned before 10 clear working days after the confirmation of a valid call-in, the decision may be implemented on the day following the committee meeting.

#### **5. THE PROCESS FOR CONSIDERATION OF DECISIONS VALIDLY CALLED IN**

**5.1** The Overview and Scrutiny Committee will consider the decision and the reasons for call-in. The committee may invite the decision-taker, and a representative of those calling in the decision, to attend the meeting to provide information.

**5.2** The committee may then come to one of the following conclusions:

- a) That the challenge to the decision should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Budget or Policy Framework and should therefore be referred to the Council. In such a case, the Overview and Scrutiny Committee must set out its reasoning for the Council to consider;
- c) That the matter should be referred back to the decision-taker for reconsideration. In such a case the Overview and Scrutiny Committee must set out its reasoning for the decision-taker to consider.

**5.3** If the Overview and Scrutiny Committee refers back to the decision-taker under 5.2.c) above, the decision-taker must reconsider the decision in accordance with paragraph 6 below.

**5.4** If the Overview and Scrutiny Committee refers the decision to a Council meeting under 5.2.b), the decision shall be discussed at the next ordinary meeting of the Council, provided that the next scheduled meeting is within 20 clear working days of a referral of the decision from the Overview and Scrutiny Committee. If the next ordinary meeting of the Council is more than 20 clear working days after the referral of the decision from the Overview and Scrutiny Committee, the Chairman of the Council, in consultation with the leaders of all the political parties, will decide whether an extraordinary meeting of the Council is needed. If they decide that it is not, the decision will stand referred to the next ordinary meeting of the Council.

**5.5** When the Council considers the decision, it may conclude:

- a) That the challenge to the decision-taker should be taken no further and the decision may be implemented;
- b) That the decision is contrary to the Policy Framework, or the Budget, and cannot be implemented, with reasons being given;
- c) That the decision is contrary to the Budget or Policy Framework, but that the relevant framework should be amended to enable the decision to be implemented (in which case the Council meeting should make the amendment at the meeting, in order that the decision can be implemented);
- d) That the matter should be referred back to the decision-taker for reconsideration, with reasons being given.

**5.6** If the Council meeting is scheduled to, but does not, discuss the called in decision at the next ordinary meeting, or an extraordinary Council meeting called for that purpose, the decision may be implemented on the day following the meeting at which the matter was to be discussed.

**6. ACTION OF THE DECISION-TAKER AFTER A REFERRAL BACK FROM THE COUNCIL OR THE OVERVIEW AND SCRUTINY COMMITTEE**

**6.1** A decision referred back to the Cabinet, a Cabinet committee, or an area committee, as decision-taker, must be discussed at the next scheduled meeting of the Cabinet or committee (the Leader may decide to call a special meeting of the Cabinet, or the committee, if he considers it necessary). A decision referred back to a Cabinet member, or an officer, must be reconsidered by the decision-taker within 10 clear working days of receiving the referral.

**6.2** The decision-taker(s) may either reconfirm the decision, or amend the decision, in light of the comments from the Council or Overview and Scrutiny Committee, and report back, as appropriate, to the next meeting of the Council or Overview and Scrutiny Committee. In either case, the decision can be implemented, as soon as the decision has been reconfirmed or amended.

**7. CALL-IN AND URGENCY**

**7.1** The call-in procedure, set out above, shall not apply where the decision being taken is urgent. A decision is urgent if any delay, likely to be caused by the call-in process, would seriously prejudice the Council's or the public interest.

**7.2** The record of an urgent decision, and the notice by which it is made public, shall state whether, in the opinion of the person, or body, making the decision, that the decision is an urgent one, and therefore not subject to call-in.

**7.3** The Chairman of the Overview and Scrutiny Committee must agree both that the decision proposed is reasonable, in the circumstances, and should be treated as a matter of urgency. In the absence of the Chairman, the Vice-Chairman's consent is required. In the absence of both the Chairman and Vice-Chairman, the Head of Paid Service's consent is required.

**7.4** Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

**7.5** The operation of the provisions, relating to call-in and urgency, shall be monitored annually, and a report submitted to Council, with proposals for review, if necessary.

**8. DECISION NOT SUBJECT TO CALL-IN**

**8.1** The call-in procedure shall not apply to the decisions set out in rule 8.2 below.

**8.2** The decisions not subject to call-in are:

- a) Matters to be decided by full Council;

- b) Executive appointments to outside bodies;
- c) A decision of the executive to consult on a proposal;
- d) Decisions by ward members, under the Council's approved ward member budget scheme or relating to ward plans;
- e) Decisions made after considering the call-in of the original decision;
- f) An executive decision, against which there is a right to request an internal review, or an appeal to an external body, is subject to call-in; however, if the right to request an internal review is exercised, or an appeal made, the call-in shall cease to have effect and;

**8.3** No non-executive decision is subject to call-in.



## **PART 7.4 – OVERVIEW AND SCRUTINY ACCESS TO INFORMATION PROCEDURE RULES**

### **1. ADDITIONAL RIGHTS TO INFORMATION**

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

### **2. RIGHTS TO ATTEND MEETINGS**

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

### **3. NOTICE OF MEETINGS**

The Council will give at least 5 clear days notice of any meeting, by posting details of the meeting at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY and on the Council's website.

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

**4.1** The Council will make copies of the agenda and reports, which are open to the public, available for inspection at the Civic Centre and on the Council's website, at least 5 clear days before the meeting.

**4.2** Where the meeting is convened at shorter notice than set out in Rule 3 (notice of meetings), copies of the agenda and reports shall be open to inspection from the time the meeting is convened.

**4.3** If an item is added to the agenda, 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 or agenda has been sent out, the Head of Paid Service shall make each such report available to the public, as soon as the report is completed and sent to councillors.

### **5. SUPPLY OF COPIES**

The Council will supply:

- a) Copies of any agenda and reports which are open to public inspection;
- b) Copies of any further statements, or particulars, necessary to indicate the nature of the items on the agenda; and
- c) Where the Head of Paid Service considers it appropriate, 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, including copying and administration costs. All relevant documentation will be available, from the Council's website, free of charge.

## **6. ACCESS TO DOCUMENTS AFTER MEETINGS**

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

- a) the minutes of the meeting, 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.

## **7. BACKGROUND PAPERS**

### **7.1 Background Papers**

The chief officer, responsible for the report, 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) In the case of reports to the Cabinet, Cabinet committees, Cabinet members or officers, when taking executive decisions, relate to the subject matter of the report or, as the case maybe, the part of the report;
- b) Disclose any facts or matters on which the report, or an important part of the report, is based; and
- c) Which have been relied on, to a material extent, in preparing the report but will not include, in such a list, published works or those which disclose exempt or confidential information (as defined in Rule 9) and, in respect of Cabinet reports, the advice of a political assistant.

In addition, in the case of a report to the executive, a copy of the background papers must be made available, for inspection, at the Council or on the Council's website.

### **7.2 Public inspection of background papers**

The Council will make available, for inspection, for four years after the date of the meeting, one copy of each of the documents on the list of background papers.

## **8. SUMMARY OF THE PUBLIC'S RIGHTS**

Article 3 of this Constitution, in conjunction with these rules, is the written summary of the public's rights to attend meetings and to inspect and copy documents. These documents will be kept, and be available, to the public at the Civic Centre, Castle Hill Avenue, Folkestone, Kent CT20 2QY, and on the Council's website.

## **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 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 because of a Court Order.

### **9.3 Exempt information – discretion to exclude the public**

**9.3.1** 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.

**9.3.2** 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 Human Rights Act 1998.

### **9.4 Meaning of exempt information**

Exempt information means information falling within the following categories (defined by Part 1 of Schedule 12A to the Local Government Act 1972, as amended), provided that two conditions are met. The first condition is set out in the second column of the following table:

<b>Category</b>	<b>Condition</b>
<b>1.</b> Information relating to any individual.	Information falling within paragraph 1 is 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.
<b>2.</b> Information which is likely to reveal the identity of an individual.	Information falling within paragraph 2 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.
<p><b>3.</b> Information relating to the financial or business affairs of any particular person (including the authority holding that information)</p> <p>'Financial or business affairs' includes contemplated as well as current activities.</p>	<p>Information falling within paragraph 3 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 paragraph 3 is not exempt information if it is required to be registered under:</p> <p>The Companies Act (as defined in section 2 of the Companies Act 2006)  The Friendly Societies Act 1974  The Friendly Societies Act 1992  The Industrial and Provident Societies Act 1965 to 1978  The Building Societies Act 1986  The Charities Act 1993</p>
<p><b>4.</b> 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>Information falling within paragraph 4 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.</p> <p>'Labour relations matters' are as 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 any dispute about a matter within this paragraph).</p>
<p><b>5.</b> Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.</p>	<p>Information falling within paragraph 5 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.</p>
<p><b>6.</b> Information which reveals that the authority proposes:</p> <p>to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</p> <p>to make an order or direction under any enactment.</p>	<p>Information falling within paragraph 6 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.</p>

<p><b>7.</b> Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>Information falling within paragraph 7 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.</p>
--	---

The second condition is that 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 General Regulations 1992.

## **10. EXCLUDING PUBLIC ACCESS TO REPORTS**

The public may be denied access to reports if the Head of Paid Service believes that the report relates to matters which, in accordance with Rule 10, will not be considered in a public meeting. Such reports will be marked 'Not for publication' together with the category of information likely to be disclosed.

## **11. OVERVIEW AND SCRUTINY COMMITTEE ACCESS TO DOCUMENTS**

**11.1** Subject to Rule 11.2 below, a member of the Overview and Scrutiny Committee will be entitled, on request, 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 meeting of a decision-making body; or
- b) Any decision taken by an individual member of the Cabinet;
- c) Any decision, taken by an officer, in the circumstances mentioned in the agreed protocol for officers taking executive decisions.

These rights are additional to any other rights that members of the Council may have, as defined in Rule 12.

**11.2** A member of the Overview and Scrutiny Committee (or its sub-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 assistant.

### **11.3 Timescale**

Where a request for a document, to which a member of the Overview and Scrutiny Committee is entitled, is made, the executive must provide that document as soon as reasonably possible and, in any case, no later than 10 clear days after the executive receives the request.

### **11.4 Refusal**

Where the executive determines that a member of the Overview and Scrutiny Committee is not entitled to a copy of the document, it must provide the Overview and Scrutiny Committee with a written statement setting out the reason for the decision.

## **12. ADDITIONAL RIGHTS OF ACCESS FOR COUNCILLORS**

### **12.1 Material relating to previous business**

All councillors will be entitled to inspect any document which is in the possession or under the control of the Cabinet, or its committees, and contains material relating to any business previously transacted at a private meeting; a decision made by an individual member; or a decision taken by an officer, in the circumstances mentioned in the agreed protocol, unless it contains:

- a) Exempt information, as defined in Rule 9, apart from information falling within categories 3 (except in relation to proposed contracts), 6 and
- b) The advice of a political assistant.

### **12.2 Timescale**

Any document required to be available for inspection under Rule 12.1 must be made available for inspection, in any event, within 24 hours of the conclusion of the meeting on the decision being made, as the case maybe.

### **12.3 Material relating to key decisions**

All councillors will be entitled to inspect any document (except those available only in draft form) in the possession, or under the control, of the Cabinet or its committees, which relates to any key decision, unless Rule 12.1 a) or b) applies.

### **12.4 Nature of rights**

These rights of a councillor are additional to any other right he/she may have. A fuller statement of these rights is set out in the protocol on councillor and officer relations, contained in Part 8 to this Constitution.

## **PART 7.5 - OVERVIEW AND SCRUTINY INTER-AUTHORITY CO-OPERATION**

### **1. AIM OF THE PROTOCOL**

To ensure the overview and scrutiny committees of all Kent local authorities can review issues, of community interest, effectively and with efficient use of all local authority staff resources.

### **2. PRINCIPLES**

**2.1** All authorities should be supported in considering issues, of community well-being, wider than the responsibilities of their councils.

**2.2** Authorities should work together to maximise the exchange of information and views, minimise bureaucracy and make best use of the time of members and officers of local and other authorities.

### **3. PROCEDURES**

**3.1** Authorities should seek to exchange information on programmes and results of reviews.

**3.2** If an overview and scrutiny committee wishes to review an issue in which another authority has a statutory role, or in which evidence from the officers of another authority would be helpful, it should consult with that authority about:

- a) The purpose of the review;
- b) The areas of interest to the other authority;
- c) The input that can be given by members or officers of the other authority.

**3.3** Consideration should be given to whether the issue is more appropriately discussed in another forum, for example, a joint committee, or whether there is scope for joint action, including the co-opting of members of the other authority onto the overview and scrutiny committee for the purpose of the review.

**3.4** Where a proposal is subject to a public consultation process, scrutiny is most helpful if conducted as part of that process e.g. allowing any findings and recommendations to be available in time to influence the final decision.

**3.5** Subject to such prior consultation, authorities will seek to respond positively to requests for information; or for a member, or officer, to attend meetings of overview and scrutiny committees.

**3.6** While it is ultimately for each authority to decide who it considers the most appropriate person(s) to speak, on its behalf, to an overview and scrutiny committee, consideration will be given to meeting specific requests.

- 3.7** Dates and times of member and officer attendance, at overview and scrutiny meetings, should be agreed with them.
- 3.8** Each authority will nominate a contact officer for the operation of these procedures.