

# Part 4, Section 2:

## Access to Information Rules

### Contents

Part 4, Section 2: .....	1
Access to Information Rules .....	1
Scope .....	1
Meetings .....	2
Summary of public rights .....	5
Exclusions of Access to Information .....	5
Member rights of access.....	8
Key Decision Procedure .....	11
Executive decision records .....	13
Private meetings of the Executive.....	13
Compliance with Access to Information Requirements.....	14

### Scope

- 4.2.1 These Access to Information Rules apply to all meetings of the Council, Cabinet and Overview and Scrutiny Panels, including their committees and sub-committees, together called 'Meetings', unless otherwise specified<sup>1</sup>;
- 4.2.2 Where these Rules apply, they must be followed by all councillors and employees of the Council but they do not take precedence over specific rights to information that are contained elsewhere in this Constitution or as may be provided by law<sup>2</sup>.
- 4.2.3 Within this Constitution, particularly these Rules, documents are:
- 4.2.3.1 'open to inspection' - when they are published on the Council's website;

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<sup>1</sup> Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<sup>2</sup> Such as the Freedom of Information Act 2000 or Data Protection Act 2018

- 4.2.3.2 'published' when they are posted, published or otherwise made available during normal office hours at the Council Offices, The Symington Building, Market Harborough, Leicestershire, and accessible on the Council's website.
- 4.2.4 The "Proper Officer" for the purposes of these Rules is the Monitoring Officer.

## Meetings

### Notice<sup>3</sup>

- 4.2.5 The Council will give at least five clear days' notice to the public of any Meeting by publishing details of the Meeting and making copies of the Notice of Meeting available for inspection. The Notice will specify the business proposed to be transacted at the Meeting.
- 4.2.6 The Council will summons Councillors and Co-opted Members required to attend Meetings and inform them of the business to be transacted at the Meeting to which they are summoned. Councillors are presumed to have consented to electronic transmission of the summons by email to the councillor's designated email address<sup>4</sup> unless that consent is withdrawn by notice to the Head of Paid Service, in which case alternative arrangements will be made.
- 4.2.7 Any member of the public is entitled to attend a Meeting unless excluded by these Rules or as permitted by law<sup>5</sup>.

### Reporting and Recording

- 4.2.8 Any person entitled to attend a Meeting may report on it. Reporting, for the purpose of this Constitution, means:
- 4.2.8.1 filming, photographing or making an audio recording of the Meeting;  
or
- 4.2.8.2 using any other means for enabling persons not present to see or hear proceedings at a Meeting as it takes place or later; or
- 4.2.8.3 reporting or providing commentary on proceedings at a Meeting, orally or in writing, so that the report or commentary is available as the Meeting takes place or later if the person is not present.

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<sup>3</sup> Regulation 4 of Schedule 12 to the Local Government Act 1972

<sup>4</sup> This will usually be the councillor's Council email address in accordance with the Council's ICT policies

<sup>5</sup> Section 100 A of the Local Government Act 1972

However, anyone present at a Meeting as it takes place is not permitted to conduct an oral commentary or report. This is to prevent the business of the Meeting being disrupted. The right to report and / or record is therefore subject to the Council's power to suppress or prevent disorderly conduct or other misbehaviour at a meeting of the Council.

- 4.2.9 Any person is able to film or otherwise record a Meeting to enable those not present to see or hear the proceedings, either as they take place or later, and to enable the reporting of those proceedings. Those wishing to record proceedings should, as a courtesy, inform the Chairman of the Meeting of their intention prior to the commencement of the Meeting and must comply with the provisions of the **Protocol for Filming or Recording Meetings** (see further Part 5, **Section 7** of this Constitution).
- 4.2.10 Any person attending a Meeting may take written notes of the proceedings.

### **Agenda**

- 4.2.11 The Council will publish the agenda and any reports, unless confidential or exempt, at least five clear days before the Meeting<sup>6</sup> and make copies available for the public at the Meeting.
- 4.2.12 Where a Meeting is convened at shorter notice, or where an item is added to an agenda, the revised agenda and reports will be published and open to inspection from the time the Meeting is convened or from the time the item is added to the agenda. **Any report not open to inspection by members of the public for five clear days before the meeting can only be considered at the Meeting if the Chair of the meeting is of the opinion that it should be considered as a matter of urgency by reason of special circumstances, the details of which will be specified in the minutes.**

### **Background Papers**

- 4.2.13 The author of any report will set out in the report a list of background documents relating to the subject matter of the report which in their opinion:
- 4.2.13.1 discloses any facts or matters on which the report, or an important part of the report, is based; and
  - 4.2.13.2 which have been relied on to a material extent in preparing the report

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<sup>6</sup> Section 100B of the Local Government Act 1972

but the list will not include published works or those which disclose exempt or confidential information or, in respect of Cabinet reports, the advice of a political advisor.

### **Minutes and records of decision etc**

- 4.2.14 The Council will retain and make available for public inspection after a Meeting copies of the following:
- 4.2.14.1 the minutes of the Meeting, excluding any part of the minutes of proceedings when the Meeting was not open to the public or which disclosed exempt or confidential information;
  - 4.2.14.2 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; and
  - 4.2.14.3 the agenda and any reports considered while the meeting was open to the public.
- 4.2.15 As soon as reasonably practicable after a Significant Operational Decision is taken by an officer<sup>7</sup>, the officer will produce a written record of the decision and arrange for its publication with the report in relation to the decision made. The record will include:
- 4.2.15.1 a record of the decision including the date it was made;
  - 4.2.15.2 a statement of the reasons for the decision;
  - 4.2.15.3 details of any alternative options considered and rejected by the officer at the time of making the decision; and
  - 4.2.15.4 a record of any interest declared by any Councillor consulted by the officer who made the decision together with a note of any dispensation granted in respect of that interest.

### **Inspection and supply of copies**

- 4.2.16 Agendas, reports, minutes, decision records and background papers, (excluding reports or parts of a report which contains marked 'Not for Publication') will be published on the Council's website and made available for inspection at the Council Offices during normal office hours.
- 4.2.17 The Council will supply copies of agendas, reports, minutes, decision records and background papers (excluding reports or parts of a report which contains information marked 'Not for Publication') to any person upon request. The copies will not be provided until such time as payment of a charge to cover the costs reasonably incurred by the Council in

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<sup>7</sup> Regulation 7 of The Openness of Local Government Bodies Regulations 2014.

fulfilling the request has been received. However, copies of documents will not be provided where the Council is not the copyright owner and has no licence to reproduce copies.

## **Summary of public rights**

4.2.18 The written summary of the rights of the public to attend meetings and to inspect and copy documents are contained in these Rules, which form part of the Constitution. The Constitution is held at the Council Offices and is available on the Council's website.

## **Exclusions of Access to Information**

### **Confidential information - requirement to exclude**

4.2.19 The public<sup>8</sup> must be excluded<sup>9</sup> 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. Likewise, public access to reports and background papers relating to that business will also be excluded.

4.2.20 Confidential information means:

4.2.20.1 information given to the Council by a Government Department on terms which forbid its public disclosure; or

4.2.20.2 information the disclosure of which to the public is prohibited by or under another Act or by Court Order. Generally personal information which identifies an individual, must not be disclosed under data protection and human rights rules.

### **Exempt information**

4.2.21 The public may be excluded from meetings whenever it is likely, in view of the nature of the Non-Executive business to be transacted or the nature of the proceedings, that exempt information would be disclosed provided:

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<sup>8</sup> Unlike local council meetings, the right of admission to local authority meetings applies to the public generally, including the press – it is not restricted to council taxpayers, electors or local residents. Members of the Council and officers attending the meeting in the course of their employment shall not be considered to be members of the public.

<sup>9</sup> No resolution is required for an item of business that includes confidential information because it is a statutory requirement that requires the exclusion of the public. Therefore, it is sufficient for a meeting chairman to request that the public withdraw so that the item of business containing confidential information can be dealt with in private.

- 4.2.21.1 the meeting resolves so to exclude the public, and that resolution identifies the proceedings or part of the proceedings to which it applies; and
- 4.2.21.2 that resolution states, by reference to the descriptions in Schedule 12A to the Local Government Act 1972 (see paragraph 4.2.23), the description of the exempt information giving rise to the exclusion of the public; and
- 4.2.21.3 that resolution states, by reference to reasons given in a relevant report or otherwise, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

In these circumstances, public access to reports and background papers will also be excluded.

- 4.2.22 The public must be excluded from a meeting of the Cabinet or a Cabinet Committee where Executive business is to be transacted, or information considered, which is exempt from disclosure.
- 4.2.23 Exempt information<sup>10</sup> means the categories of information set out below, which is exempt as long as the public interest<sup>11</sup> in maintaining the exemption outweighs the public interest in disclosing the information and any additional condition indicated:

Category	Additional Condition(s)
1. Relating to any Individual:	None
2. Likely to reveal the identity of an individual	None
3. Relating to the financial or business affairs of any particular person (including the	- Information within paragraph 3 is not exempt if it must be registered under various

<sup>10</sup> This definition of exempt information is specific to local government and should therefore be brought to the attention of partners before they share information with the Council.

<sup>11</sup> The starting point of the public interest test is that there is a general public interest in the release of the information and the Council has to decide, on the facts of each case, whether it would serve the interest of the public better to either disclose or withhold the information. There is no legal definition of what the public interest is, but the following have been identified as some of the relevant considerations:

- There is a distinction between the public interest and what merely interests the public;
- Does disclosure further the understanding of, and participation in, the public debate of issues of the day?
- Would disclosure promote accountability and transparency by public authorities for decisions taken by them or in the spending of public money?
- Does the disclosure of information allow individuals and companies to understand decisions made by public authorities affecting their lives?
- Will disclosure bring to light information affecting public health and public safety?

<p>authority holding that information).</p>	<p>statutes, such as the Companies Acts or the Charities Act 2011.</p> <ul style="list-style-type: none"> <li>- “Financial or business affairs” includes contemplated, as well as past or current, activities</li> </ul>
<p>4. 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 officer-holders under the authority.</p>	<ul style="list-style-type: none"> <li>- “Labour relations matter” are as specified in paragraphs (a) to (g) of section 218(1) of the Trade Unions and Labour Relations (Consolidation) Act 1992, i.e. matters which may be the subject of a trade dispute within the meaning of that Act or any dispute about any such matter</li> </ul>
<p>5. In respect of which a claim to legal professional privilege could be maintained in legal proceedings</p>	<p>None</p>
<p>6. Revealing that the authority proposes:</p> <ul style="list-style-type: none"> <li>(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or</li> <li>(b) to make an order or direction under any enactment</li> </ul>	<p>Any reference to “the authority” is a reference to the 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</p>
<p>7. Relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.</p>	<p>Information is only exempt if its disclosure would, or would be likely to, prejudice:</p> <ul style="list-style-type: none"> <li>(a) Criminal investigations and proceedings; or</li> <li>(b) The apprehension or prosecution of offenders; or</li> <li>(c) The administration of justice; or</li> <li>(d) The assessment or collection of any tax or duty or of any imposition of a similar nature; or</li> <li>(e) Regulatory enforcement; or</li> <li>(f) Any civil proceedings; or</li> <li>(g) Health and safety; or</li> </ul>

	(h) Information obtained from confidential sources; and (i) In all the circumstances of the case, the public interest in not disclosing the information outweighs the public interest in disclosing the information.
[Standards Committee only] 7A. which is the subject to any obligation of confidentiality	None
[Standards Committee only] 7B. which relates in any way to matters concerning national security	None

- 4.2.24 Information falling within any of paragraphs **4.2.23 (1) to (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.
- 4.2.25 Where a 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.

### **Disorderly Conduct – discretion to exclude public**

- 4.2.26 The public may also be excluded from meetings, where the meeting so resolves, in the exercise of a lawful power of exclusion in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

## **Member rights of access**

### **To Non-Executive information and documents**

- 4.2.27 Councillors and co-opted members of committees (together referred to as 'Members') are entitled to information and to see such documents, including those held electronically, as are reasonably necessary to enable them to carry out their duties. They are not however entitled to Council documents which contain exempt information, include the advice of a political adviser or are in draft form only.



- 4.2.28 Members should, before requesting access to any information or document, consider whether such access is necessary for them to discharge their duties.
- 4.2.29 Officers will provide relevant information, access to documents, advice and any explanation that Members may reasonably request and is necessary for the Members to fulfil their responsibilities.
- 4.2.30 Members requesting information may be asked to demonstrate a 'need to know' where this is not otherwise apparent by virtue of their membership of the Cabinet, committees, sub-committees, panels or their representational role. Members do not have a roving commission to access information and cannot demand inspection of information out of curiosity or for an improper or indirect motive. A request for information will be refused where the Member has not established a need to know the information in order to perform their duties.
- 4.2.31 The Proper Officer may withhold any document which, in their opinion, contains exempt information.
- 4.2.32 In the event of a dispute as to whether a Member has a 'need to know' and can therefore access information, the decision of the Head of Paid Service will be final.

### **To Executive information and documents**

- 4.2.33 A member of an Overview and Scrutiny Panel of a relevant local authority is entitled to a copy of any document which:
- 4.2.33.1 is in the possession or under the control of the executive<sup>12</sup> of that authority; and
  - 4.2.33.2 contains material relating to:-
    - 4.2.33.2.1 any business that has been transacted at a meeting of a decision-making body of that authority;
    - 4.2.33.2.2 any decision that has been made by an individual member of that executive in accordance with Executive Arrangements; or
    - 4.2.33.2.3 any decision that has been made by an officer of the authority in accordance with executive arrangements.
- 4.2.34 Subject to **paragraph 4.2.35**, where a member of an overview and scrutiny panel requests a document which falls within **paragraph 4.2.33**, the executive must provide that document as soon as reasonably practicable and in any case no later than 10 clear days after it receives the request.
- 4.2.35 No member of an Overview and Scrutiny Panel is entitled to a copy:

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<sup>12</sup> i.e The Leader, Cabinet, portfolio holders, cabinet committees or officers discharging executive functions.

- 4.2.35.1 of any such document or part of a document as contains exempt or confidential information unless that information is relevant to:
  - 4.2.35.1.1 an action or decision that that member is reviewing or scrutinising; or
  - 4.2.35.1.2 any review contained in any programme of work of such a committee or sub-committee of such a committee; or
- 4.2.35.2 of a document or part of a document containing advice provided by a political adviser or assistant.
- 4.2.36 Where the Cabinet determines that a member of an overview and scrutiny panel is not entitled to a copy of a document or part of it, Cabinet must provide the relevant overview and scrutiny panel with a written statement setting out its reasons for that decision.

### **Councillor attendance at Meetings**

- 4.2.37 In respect of a matter of importance relating to the Ward a Councillor represents, that Councillor may:
  - 4.2.37.1 attend any meeting or part of a meeting (of which they are not a Member) at which planning functions will be discharged by or on behalf of the authority and:
    - 4.2.37.1.1 make representations to the meeting;
    - 4.2.37.1.2 respond to any questions put to them on a matter of fact by the Chairman; and
    - 4.2.37.1.3 reply at the end of the debate to clarify any matter of fact raised during the course of the debate, and which the Councillor believes to be erroneous based upon their knowledge of the Ward represented;but may otherwise not take part in any debate and may not vote.
  - 4.2.37.2 attend any meeting or part of a meeting of a Committee, Panel or Forum of which they are not a Member and speak, take part in any debate but not vote.
- 4.2.38 In the event of a dispute as to whether there is a matter of importance to the Ward the Councillor represents and can therefore address a Committee, Panel or Forum, the decision of the Head of Paid Service will be final.

## Key Decision Procedure

### The Forward Plan<sup>13</sup>

- 4.2.39 The Council will maintain a document, known as the 'Forward Plan', setting out forthcoming Key Decisions that will be taken. A Key Decision may not be taken until it has been published on the Forward Plan for at least 28 clear calendar days. The Forward Plan will be published and available for inspection by the public.
- 4.2.40 The Forward Plan will include for each proposed Key Decision:
- 4.2.40.1 details of the matter in respect of which it is to be made;
  - 4.2.40.2 the identity of the decision maker, whether a body or an individual;
  - 4.2.40.3 the date on which, or the period within which, it is to be made;
  - 4.2.40.4 a list of documents to be submitted to the decision maker for consideration in relation to the matter;
  - 4.2.40.5 the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed is or will be available;
  - 4.2.40.6 that other documents relevant to those matters may be submitted to the decision maker; and
  - 4.2.40.7 the procedure for requesting details of those documents (if any) as they become available.
- 4.2.41 The Forward Plan will be updated from time to time as required and will be published by the Council – usually on a monthly basis - and available for inspection by the public.
- 4.2.42 The Forward Plan may not contain confidential information, exempt information or advice from a political assistant.

### General Exception to publication of Key Decisions on the Forward Plan<sup>14</sup>

- 4.2.43 If a matter which is likely to be a Key Decision:
- 4.2.43.1 has not been published in the Forward Plan for 28 clear calendar days before the decision is planned to be taken; and
  - 4.2.43.2 the decision must be taken before it can be published for 28 clear calendar days in the Forward Plan,

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<sup>13</sup> Regulation 9 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<sup>14</sup> Regulation 10 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

then, subject to paragraph 4.2.44 below (special urgency), the decision may still be taken if:

- 4.2.43.3 the Proper Officer has informed the Chairman of the relevant Overview and Scrutiny Panel (or each member of the relevant Overview and Scrutiny Panel if there is no Chairman), by notice in writing<sup>15</sup>, of the matter about which the decision is to be made; and
- 4.2.43.4 the Proper Officer has published and made available to the public a copy of the notice given pursuant to paragraph 4.2.43.3; and
- 4.2.43.5 five clear days have elapsed following the day on which the proper officer made available the notice referred to in paragraph 4.2.43.4.

### **Special Urgency<sup>16</sup>**

- 4.2.44 If, by virtue of the date by which a decision must be taken, the general exception provisions do not apply, the Key Decision can only be taken if the decision taker (if an individual) or the Chairman of the body making the decision, obtains the agreement of:
  - 4.2.44.1 the Chairman of the relevant Overview and Scrutiny Panel; or
  - 4.2.44.2 if there is no such person available, the Chairman of the Council; or
  - 4.2.44.3 where there is no Chairman of either the relevant Overview and Scrutiny Panel or the Chairman of the Council, the Vice-Chairman of the Council,  
that the making of the decision is urgent and cannot reasonably be deferred.
- 4.2.45 As soon as reasonably practicable after agreement has been secured in accordance with paragraph 4.2.44, the decision maker must make available for inspection, and publish, a notice setting out the reasons why the meeting is urgent and cannot be reasonably deferred.

### **Decision wrongly treated**

- 4.2.46 If an Overview and Scrutiny Panel thinks that a decision has been taken which was not:
  - 4.2.46.1 treated as a Key Decision; and
  - 4.2.46.2 should have been treated as a Key Decisionthe Panel may, by resolution, require Cabinet to submit a report to the Full

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<sup>15</sup> This includes email notification

<sup>16</sup> Regulation 11 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

Council in respect of that decision<sup>17</sup> (see further paragraph 4.2.54).

## Executive decision records

4.2.47 Executive decisions will be recorded as set out at paragraphs 4.4.45 to 4.4.48 of the Executive Procedure Rules at Part 4, Section 4 of this Constitution<sup>18</sup>.

## Private meetings of the Executive<sup>19</sup>

### Wholly or partially in private

4.2.48 If Cabinet or its committees wish to conduct a meeting wholly or partially in private to take a decision that involves exempt or confidential information, the Meeting can only take place if:

4.2.48.1 Notice has been published giving the reasons why the meeting is to be held in private at least 28 clear days before the meeting. This notice will be included in the Forward Plan; and

4.2.48.2 A further notice is published at least five clear days before the meeting giving the reasons for holding the meeting in private and any representations received. This will form part of the Cabinet agenda.

4.2.49 If it is not possible to comply with the terms outlined above because a decision is considered to be urgent, the following people can authorise the meeting to take place and the decision to be taken:

4.2.49.1.1 The Chairman of an Overview and Scrutiny Panel; or

4.2.49.1.2 The Chairman of Council (if no Overview and Scrutiny Panel Chairman is able to act); or

4.2.49.1.3 The Vice Chairman of Council (in the absence of the Chairman of the Council)

4.2.50 A notice setting out the reasons why a private meeting is urgent and cannot reasonably be deferred will be published as soon as reasonably practical after agreement to hold the meeting in private has been obtained.

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<sup>17</sup> See further paragraphs 4.5.64 - of the Overview and Scrutiny Procedure Rules at Part 4, Section 5 of this Constitution

<sup>18</sup> Decisions taken by officers will also be subject to the requirements of the Scheme of Delegation at Part 3 of this Constitution

<sup>19</sup> Regulation 5 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

## Attendance at a private meeting of the Executive

- 4.2.51 The media and the public must be excluded from a Meeting whenever it is likely that confidential information will be disclosed<sup>20</sup> (see further paragraphs 4.2.22 and 4.2.23).
- 4.2.52 The media and the public may be excluded from a Meeting whenever it is likely that exempt information will be disclosed and the public interest in maintaining the exclusion outweighs the public interest in disclosing the information<sup>21</sup> (see further paragraph 4.2.24 to 4.2.27).
- 4.2.53 The public may also be excluded from Meetings, where it so resolves<sup>22</sup>, to maintain orderly conduct or prevent misbehaviour at a Meeting.

## Compliance with Access to Information Requirements

- 4.2.54 The Leader will report to each ordinary Council in respect of each occasion on which the following have occurred since the last ordinary meeting of Council (unless it occurred within 14 calendar days of the next meeting, in which case the Leader may choose to make the report to the next ordinary meeting of Council):
- 4.2.54.1 Executive Decisions taken in a private meeting without 28 days notice of intention to hold a meeting in private being given (see Access to Information Rules, paragraph 4.2.48);
  - 4.2.54.2 Executive Decisions taken with notice on the Forward Plan of between 5 and 27 days (see Access to Information Rules, general exception, paragraph 4.2.43);
  - 4.2.54.3 Executive Decisions taken with notice on the Forward Plan of less than 5 days and the consent of the relevant individual (see Access to Information Rules, special urgency, paragraph 4.2.44);
  - 4.2.54.4 Executive Decisions considered by an Overview and Scrutiny Committee to have been wrongly treated (see Access to Information Rules at paragraph 4.2.46);
  - 4.2.54.5 Executive Decisions not recorded in accordance with paragraph 4.4.55 – 4.4.58 of the Executive Procedure Rules;
- 4.2.55 The report shall set out:
- 4.2.55.1 the number of decisions taken in each category;

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<sup>20</sup> Regulation 2 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<sup>21</sup> Regulation 2 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

<sup>22</sup> In accordance with either the Council Procedure Rules or the Executive Procedure Rules

4.2.55.2 the decision taken;

4.2.55.3 a summary of the circumstances which led to the exception procedures being implemented;

4.2.55.4 what steps will be taken to avoid similar future exception procedures being necessary.

4.2.56 The Monitoring Officer, in consultation with the Chairmen of the Overview and Scrutiny Panels, shall report to the full Council on the operation of the Call-in and exceptions arrangements on an annual basis.