

Part 4 – Executive Procedure Rules

1.0 How Does the Executive Operate?

1.1 Who may make executive decisions

The arrangements for the discharge of executive functions are set out in the Constitution adopted by the Council. If they are not set out by the Council, then the Leader may decide how they are to be exercised. In either case, the arrangements approved by Council or the Leader may provide for executive functions to be discharged by means of:

- (i) the executive as a whole (The Cabinet);
- (ii) a committee of the executive (Cabinet Committee);
- (iii) an individual member of the executive (Cabinet Member);
- (iv) an officer;
- (v) arrangements with third party organisations;
- (vi) joint arrangements; or
- (vii) another local authority.

1.2 Delegation by the Leader

- (1) All of the authority's executive functions, by law, vest in the executive leader and they have the power to determine how these powers are to be discharged: either by them; or they can delegate them to the Cabinet, a Cabinet Committee, individual Cabinet Members or officers.

- (2) At the Annual Meeting of the Council, the Leader will submit a written record of delegations to individual Cabinet Members for inclusion in the Council's scheme of delegation at part 3 to this Constitution. Documents presented to the Annual Meeting will include the following information about the executive functions in relation to the coming year:
 - (i) the names, addresses and wards of the people to be appointed to the Cabinet;

- (ii) the extent of any authority delegated to Cabinet Members individually, including details of the limitation on their authority;
 - (iii) the terms of reference and constitution of any Cabinet Committees it is intended to appoint and the names of members to be appointed to them;
 - (iv) the nature and extent of any delegation of executive functions to any other authority or any joint arrangements and the names of those executive members appointed to any joint committee for the coming year;
 - (v) the nature and extent of any delegation to officers with details of any limitation on that delegation, and the title of the officer to whom the delegation is made;
 - (vi) the terms of reference and constitution of any Cabinet Committees it is intended to appoint and the names of members to be appointed to them. No executive function may be delegated to a Cabinet Group.
- (3) Once reported to the Annual Meeting of the Council, the Leader may amend the scheme of delegation relating to executive functions at any time during the year, provided that the Proper Officer reports on the changes made by the Leader to the next ordinary meeting of the Council.

1.3 Sub-Delegation of Executive Functions

- (a) Unless the Leader directs otherwise, the Cabinet may delegate further to a committee of the executive or to an officer;
- (b) Unless the Leader directs otherwise, a committee of the executive to whom functions have been delegated by the Leader, may delegate further to an officer;
- (c) Even where executive functions have been delegated, nothing shall prevent the person or body who delegated the function from discharging that function providing that a

decision on the particular issue has not already been made under the delegation.

1.4 Conflicts of Interest

Where the Leader or any member of the Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for members set out in Part 5 of this Constitution.

1.5 Cabinet Meetings - When and Where?

- (a) The Cabinet shall meet in accordance with a programme of meetings or otherwise at times to be agreed by the Leader.
- (b) The Cabinet will normally meet at Sandwell Council House or otherwise at an alternative location to be agreed by the Leader. Notice of meetings will be given as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

1.6 Public and Private Meetings of the Executive

- (a) Meetings of the Cabinet will be held in public except during consideration of confidential or exempt items as defined in the Access to Information Procedure Rules in Part 4 of this Constitution.
- (b) the Chairs of the Scrutiny Boards, Vice Chairs of Scrutiny Boards, Opposition Leader and members of the Shadow Cabinet may attend meetings of the Cabinet as observers and speak, with the agreement of the Chair, but cannot vote. However, such members will be required to withdraw from the meeting where an item is to be considered in which they would have to declare an interest either as a member or as if they were a member of the Cabinet.
- (c) Attendance by persons during consideration of confidential or exempt items at meetings of the executive shall be by invitation of the Leader, or in their absence, the Deputy Leader, only.

1.7 Quorum

- (a) The quorum for a meeting of the Cabinet shall be 3.

The quorum for a meeting of a Cabinet Committee shall be one quarter of the members appointed to it

- (b) An executive meeting may not commence unless there is a quorum present. If a meeting has not started within 30 minutes of the time specified on the agenda, the meeting shall be postponed.
- (c) If during any meeting, the person presiding declares that there is not a quorum present, the person presiding shall either:-
 - (i) adjourn the meeting to a date to be agreed; or
 - (ii) adjourn the meeting for a specified period. If, after the expiration of the period, there is still no quorum, the meeting shall then stand adjourned to a date to be agreed.
- (d) All business which has not been completed at a meeting which has been postponed or adjourned shall stand referred to the next ordinary meeting, unless arrangements are made for a special meeting to consider that business, or the business is dealt with as a matter of urgency, or the item is withdrawn from consideration.

1.8 How are Decisions to be Taken in the Executive?

- (a) Decisions to be taken by the Cabinet will be taken at a meeting convened in accordance with the Access to Information Rules contained in Part 4 of the Constitution;
- (b) Executive decisions may only be taken on the basis of a completed report made available in accordance with the clear days, key decisions and private meetings principles within the Access to Information Rules contained in Part 4 of

the Constitution and the urgency provisions within the Constitution.

- (c) Where executive decisions are delegated to a Cabinet committee, the rules applying to executive decisions taken by the executive, will apply.

2.0 How are Cabinet Meetings Conducted

2.1 Who Presides?

Where the Leader is present, they will preside. In their absence, or inability to act as Chair, the Deputy Leader will preside. In the absence of the Leader and Deputy Leader, then another Cabinet Member shall be appointed to preside for the duration of that meeting only.

2.2 What Business will be Conducted?

At each meeting of the executive, the following business will be conducted:

- (a) consideration of the minutes of the last meeting;
- (b) declarations of interest, if any;
- (c) to receive announcements from the person presiding or the Head of Paid Service (or their representative) or with the prior approval of the person presiding, any other Cabinet Member;
- (d) matters referred to the executive for reconsideration in accordance with the provisions contained in the Scrutiny Procedure Rules or the Budget and Policy Framework Procedure Rules set out in Part 4 of this Constitution;
- (e) consideration of reports from scrutiny boards;
- (f) to receive and consider any recommendations of any Cabinet Committee or any other fora required to report to the Cabinet;

- (g) matters set out in the agenda for the meeting and which shall indicate which are key decisions and which are not in accordance with the Access to Information Procedure Rules set out in Part 4 of this Constitution; and
- (h) the executive must ensure that any decisions it takes are consistent with the agreed strategic policy framework and take into account the needs and aspirations of the local community. The executive may, however, consider and determine matters of operational policy and may make recommendations to the Council on matters which are not in accordance with the strategic policy framework.

2.3 Consultation

All reports to the Cabinet on proposals relating to the budget and policy framework must contain details of the nature and extent of consultation with stakeholders and relevant scrutiny boards and the outcome of consultation.

Reports about other matters will set out the details and outcome of consultation as appropriate. The level of consultation required will be appropriate and proportionate to the nature of the matter under consideration.

2.4 Who Can Put Items on the Executive Agenda?

- (a) The Leader may put any matter on the agenda for a Cabinet meeting
- (b) With the prior consent of the Leader, or in their absence, the Deputy Leader, any member of the Cabinet may require the Proper Officer to place an item on the agenda for the next available meeting of the Cabinet for consideration subject to the Access to Information Rules contained in Part 4 of the Constitution.
- (c) The Proper Officer will make sure that an item is placed on the agenda of the next available meeting of the Cabinet where a relevant Scrutiny Board or the full Council have resolved that an item be considered by the Cabinet.

- (d) Any member of the Council may ask the Leader to put an item on the agenda of a Cabinet meeting for consideration and, if the Leader agrees, the item will be considered at the next available meeting of the Cabinet.

- (d) The Head of Paid Service, the Monitoring Officer or Chief Finance Officer may include an item on the agenda for a meeting of the Cabinet in pursuance of their statutory duties. In other circumstances, where any two of the statutory officers (Head of Paid Service, Monitoring Officer and Chief Finance Officer) are of the opinion that a meeting of the Cabinet needs to be called to consider a matter that requires a decision and there is no meeting soon enough to deal with the issue, a meeting shall be convened at which the matter will be considered and they may jointly include an item on the agenda for that meeting.

2.4A Establishment of a Shadow Cabinet

- 2.4A.1 The Council recognises that the “Leader of the Opposition” shall be the leader of the largest political group on the Council (excluding the political group of the Leader of the Council), who shall be entitled to appoint a deputy, who shall be known as the Deputy Opposition Leader.

- 2.4A.2 The Leader of the Opposition may choose to form a Shadow Cabinet in accordance with the Shadow Cabinet Protocol approved by the Governance and Constitution Committee.

- 2.4A.3 The Leader of the Opposition shall notify the Council and the Chief Executive of the names of the members nominated to form a Shadow Cabinet and of any changes in the membership of the Shadow Cabinet which may occur from time to time.

2.5 Questions

- (a) If two days' notice in writing has been given to the Monitoring Officer, a Scrutiny Board Chair, Scrutiny Board Vice Chair or Shadow Cabinet Member, may ask the Cabinet Member a question on a matter set out on the Cabinet agenda for that meeting. In the absence of the relevant Shadow Cabinet Member from attendance, a written response shall be provided and a copy of the response appended to the minutes.
- (a) Every question of which notice has been given under Rule 2.5(a) shall be put and answered without discussion.
- (c) A member under Rule 2.5(a) asking a question, once their question has been responded to, ask one relevant supplementary question which must arise directly out of the original question, whether it is answered or not, or arising from the reply. The question must be put as a direct question and not preceded by a statement.

2.6 How Are Decisions to be Taken by Individual Cabinet Members and/or Cabinet Committees

Decision Notice

- (a) Where a decision is to be made by an individual Cabinet Member, a draft decision notice outlining the proposals will be published at least five clear working days before the date on which the decision is to be taken. The draft Decision Notice will be published on the Council's website subject to the restrictions on the publication of any confidential or exempt information.
- (b) As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet, the final Decision Notice will be published on the Council's website. Subject to the restrictions on the publication of any confidential or exempt information. This will include a statement of the reasons for the decision and any alternative options considered and rejected. The decision shall then be subject to the call-in process as set out in the Scrutiny Procedure Rules.
- (c) Decisions to be taken by Cabinet Committees will be made in accordance with the Access to Information Rules contained in Part 4 of the Constitution.
- (d) A Cabinet Member and/or Cabinet committee must ensure that any decisions they take are consistent with the agreed policy framework and take into account the needs and aspirations of the local community. A Cabinet Member and/or Cabinet committee may, however, consider and make recommendations to the Cabinet on matters which are not in accordance with the policy framework.

2.7 Key Decisions

28 Day Notice (Forward Plan)

A list of key decisions will be prepared to cover a period of 28 days. A key decision is an Executive decision which is likely:

- to be significant in terms of its effect on communities living or working in an area comprising two or more wards of the Borough;
- to result in the Council incurring expenditure which exceeds that included in any approved revenue or capital budget or the limits set out within an approved borrowing or investment strategy and was not the subject of specific grants or;
- to result in the Council incurring expenditure, the making of savings or the generation of income amounting to £1million or more.

The Forward Plan details key decisions that will be taken by the Cabinet over the coming months. It will include the following information:

- a. the matter in respect of which a decision is to be made without confidential or exempt information being disclosed;
- b. where the decision maker is an individual, their name and title and where the decision is to be taken by a body, its name and details of membership;
- c. the date on which, or the period within which, the decision will be taken;
- d. a list of the documents to be submitted to the decision maker in relation to the matter.
- e. how to obtain copies of documents listed under (d), subject to any prohibition or restriction on their disclosure,
- f. how, to whom and by when representations (about the "key decision") can be made;
- g. what reports/papers are, or will be, available for public inspection;
- h. whether the report is a private report with reasons.

2.6 General Exception

If a matter which is likely to be a key decision has not been included in the Forward Plan, the key decision may still be taken if:

- a. the decision must be taken because it is impracticable to defer the decision, in the opinion of the Proper Officer
- b. the relevant employee has informed the Chair of the Scrutiny Board or the Vice Chair in their absence, in writing, by notice, of the matter to which the decision is to be made and the reasons why rule 2.7 above cannot be complied with;
- c. Democratic Services publishes a notice available for the public; and
- d. at least five clear days have elapsed since compliance with (a) and (b).

2.9 Special Urgency Exception to the 28 Day notice

If the date by which a decision must be taken, makes compliance with section 2.8 above (general exception) impracticable, then the decision can only be taken if:

the decision maker obtains the agreement of the relevant Chair of the Scrutiny Board, or Vice-Chair of the Scrutiny Board, that the taking of the decision cannot be reasonably deferred. If there is no such Chair, or if the Chair is unable to act, then the agreement of the Mayor, or in their absence, the Deputy Mayor, should be sought to agree to the matter proceeding;

- a. Democratic Services publishes a notice available to the public setting out the reasons for the urgency;
- b. The notice under (b) is published in accordance with Rule 13.5 of the Access to Information Rules.

The Leader of the Council will submit reports to each meeting of the Council on the executive decisions taken since the preceding Council meeting under this Rule. The report will include the particulars of each decision taken and a summary of the matters in respect of which those decisions were taken.

2.10 Report to Council where the key decision procedure is not followed

If the Scrutiny Board thinks that a key decision has been taken which was not:

- a. included in the Forward Plan; or
- b. the subject of the general exception procedure; or
- c. the subject of an agreement with a relevant Chair, or the Mayor/Deputy Mayor of the Council under section 2.9 above (special urgency);

The Board may require the Cabinet to submit a report to the Full Council within such reasonable time as the Board specifies.

The report must include:

- (a) details of the decision and the reasons for the decision;
- (b) details of the decision maker;
- (c) the reasons the decision was not considered a key decision and the opinion of the decision maker as to why this was the case.

Nothing within these Rules provides for the Council to overrule an executive decision for which it has no locus or to require the decision maker to reconsider their decision.

3.0 Record of Decisions

After any meeting of the Cabinet, a Cabinet Committee or after a decision has been made by an individual Cabinet Member, whether held in public or private, the Proper Officer will produce a record of every decision taken, as soon as practicable.

The record will include:

- (a) the decision, the reasons for it and the date it was made;
- (b) any alternative options considered and rejected by the Cabinet, committee or Cabinet Member;
- (c) any conflict of interests declared by any member of the Cabinet or committee and any dispensations granted by the Head of Paid Service.

As soon as is reasonably practicable after an officer has made an executive decision, the officer must produce a written statement, to include:

- (a) the decision, the reasons for it and the date it was made;
- (b) any alternative options considered and rejected by the Cabinet, committee or Cabinet Member
- (c) any conflict of interests declared by any member of the Cabinet who is consulted on the decision and any dispensations granted by the Head of the Paid Service.

3.3 Provision of Copies of Reports to Scrutiny Boards and members of the Shadow Cabinet

On submitting a report to an executive member to be taken into account in making any key decision, the report author will give a copy of the report to the chair of every relevant scrutiny board, Opposition Leader and shadow cabinet members as soon as reasonably practicable and make it publicly available at the same time subject to the report not containing exempt or confidential information as defined under these rules.

3.4 Additional Rights of Access for Councillors

3.41 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 and contains material relating to any business previously transacted at a meeting unless either (a.) or (b.) below applies.

a. it appears to the Proper Officer that it discloses exempt information of a description falling within Part 1 of Schedule 12A

b. it contains the advice of a political adviser.

But a document referred to in (a.) will be available for inspection if:

- the information relates to the financial and business affairs of any particular person (including the Council) except to the extent that the information relates to any terms proposed or to be proposed by or to the Council in the course of negotiations for a contract or

- the information reveals that the Council proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person or to make an order or direction under any enactment.