Standing Orders

**in relation to**

**Access to Information**

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### E1. Scope

E1.1 Standing Orders E1 to E11, E19 and E20 (of these Standing Orders in relation to Access to Information) apply to all meetings of the Council, Boards, Council committees and sub-committees and to meetings of the Cabinet and its committees.

E1.2 Standing Orders E12 to E18 (of these Standing Orders in relation to Access to Information) apply to meetings of the Cabinet and its committees only (and in relation to associated documents).

**E2. Additional Rights to Information**

E2.1 These Standing Orders do not affect any more specific rights to information contained elsewhere in this Constitution or the law. Any Council information provided to a Member must only be used by the Member for the purpose for which it was provided i.e in connection with the proper performance of the Member’s Council duties.

**E3. Rights to Attend Meetings**

E3.1 Members of the public may attend all meetings subject only to the exceptions set out elsewhere in these Standing Orders.

**E4. Notices of Meeting**

E4.1 The Council will normally give at least five clear working days notice of any meeting by posting details of the meeting at the Town Hall, Torquay. Such notice will also be displayed at Oldway Mansion, Paignton, the Connections offices in Torquay, Paignton and Brixham and the public libraries in Torquay, Paignton, Brixham and Churston and on the Council’s website ([www.torbay.gov.uk](http://www.torbay.gov.uk)). In exceptional circumstances and where it is not possible to give five clear working days notice, the details of the meeting will be publicised as soon as reasonably practicable.

E4.2 The Democratic Services Manager, following consultation with the relevant Chairman/woman or the Chairman/woman of the Council where it is not possible to consult the relevant Chairman/woman, may alter the date of or cancel a meeting.

**E5. Access to Agenda and Reports Before and During a Meeting**

E5.1 Subject to Standing Orders E10 and E11, the Council will make copies of agendas and reports open to the public and available for inspection at the Town Hall, Torquay and other Council offices by prior arrangement, at least five clear working days before the meeting, but nothing in this Standing Order requires copies of any agenda item, or report to be open to inspection by the public until copies are available to members of the Council.

E5.2 The agenda and reports for meetings of the Cabinet will be sent to the Mayor and members of the Cabinet. Each member of the Council will be sent the agenda and reports for meetings of committees to which they have been appointed. Non-Cabinet and non-committee members will be sent copies of agenda cover sheets for Cabinet and committee meetings but shall be entitled to request and be sent copies of ordinary reports (all by electronic means where possible). Exempt and confidential reports will be provided to non-Cabinet and non-committee members in accordance with Standing Order E19, if requested on a ‘need to know’ basis.

E5.3 If an item is added to the agenda later, a revised agenda and any associated reports will be sent to relevant councillors and made available for inspection as soon as it is published.

E5.4 A reasonable number of copies of the agenda and reports to be considered at a meeting will be made available for the use of the public at that meeting.

**E6. Supply of Copies**

E6.1 Subject to Standing Orders E10 and E11, the Council will supply copies of:

(i) any agenda and reports that are open to public inspection;

(ii) any further documents necessary to indicate the nature of the items on the agenda; and

(iii) if the proper officer thinks fit, any other documents supplied to the Mayor and councillors in connection with an item

to any person on payment of a charge for postage and any other costs.

**E7. Access to Minutes etc. After a Meeting**

E7.1 The Council will make available copies of the following for six years after a meeting:

(i) the minutes of the meeting or record of decisions taken, together with reasons, for all meetings of the Cabinet;

(ii) a summary of any proceedings when the meeting was not open to the public or where exempt or confidential information was disclosed;

(iii) the agenda for the meeting; and

(iv) reports that were considered when the meeting was open to the public.

This Standing Order shall also apply to decisions taken by the Mayor or individual members of the Cabinet and Key Decisions taken by officers.

**E8. Background Papers**

E8.1 At the end of each report, the report author will set out a list of those documents (called background papers) which, in his/her opinion:

(i) disclose any facts relating to matters on which the report or an important part of the report is based; and

(ii) have been relied on to a material extent in the preparation of the report

but will not include published works or those which disclose exempt or confidential information (as defined in Standing Order E10) or, in respect of any Cabinet reports, the advice of a political advisor.

E8.2 The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

E8.3 Standing Orders E8.1 and E8.2 shall also apply to decisions taken by the Mayor or individual members of the Cabinet and Key Decisions taken by officers.

**E9. Summary of Public’s Rights**

E9.1 A written summary of the public’s rights to attend meetings and to inspect and copy documents is available at the Town Hall, Torquay, the Connections offices in Torquay, Paignton and Brixham and the public libraries in Torquay, Paignton, Brixham and Churston and the Council’s website.

**E10. Exclusion of Access by the Public to Meetings**

E10.1 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.

E10.2 Confidential information means information given to the Council by a government department on terms which forbid its public disclosure or information which cannot be publicly disclosed by Court Order or any Act.

E10.3 The public **may** be excluded from meetings upon the passing of a resolution 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.

E10.4 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 that Act.

E10.5 Exempt information means information defined in Schedule 12A of the Local Government Act 1972 (as amended (SI 88/2006) which falls within the following 7 categories (subject to any condition):

| **Category** | **Condition** |
| --- | --- |
| 1. Information relating to any individual. | Information 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. |
| 2. Information which is likely to reveal the identity of an individual. | Information within paragraph 2 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. |
| 3. Information relating to the financial or business affairs of any particular person (including the authority holding that information). | Information within paragraph 3 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. However, information under paragraph 3 is not exempt information if it must be registered under:  (a) the Companies Act (1985);  (b) the Friendly Societies Acts 1974 and 1992;  (c) the Industrial and Provident Societies Act 1965 to 1978;  (d) the Building Societies Act 1986; or  (e) the Charities Act 1993. |
| 4. 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. | Information within paragraph 4 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. |
| 5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings. | Information within paragraph 5 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. |
| 6. Information which reveals that the Council proposes:  (a) to give, under any enactment, a notice under or by virtue of which requirements are imposed on a person; or  (b) to make an order or direction under any enactment. | Information within paragraph 6 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. |

| **Category** | **Condition** |
| --- | --- |
| 7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime. | Information within paragraph 7 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. |

E10.6 Information falling within any of paragraphs 1-7 above is not exempt if it relates to proposed development for which the Council can grant itself planning permission under Regulation 3 of the Town and Country Planning General Regulations 1992.

E10.7 In addition to Standing Order E10.5, exempt information also includes categories 7A to 7C (inclusive) (Part 4 of Schedule 12A to the Local Government Act 1972 (as amended)) as set out below when the Standards Committee (or its sub-committees) are performing any function in connection with the investigation, consideration or determination of an allegation of a breach of the Members’ Code of Conduct.

| **Category** | **Condition** |
| --- | --- |
| 7A. Information which is subject to any obligation of confidentiality. | The Standards Committee or its sub-committee is to consider a matter under Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.  Information within paragraph 7A 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. |
| 7B. Information which relates in any way to matters concerning national security. | The Standards Committee or its sub-committee is to consider a matter under Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.  Information within paragraph 7B 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. |
| 7C. The deliberations of the Standards Committee or sub-committee of the Standards Committee established under the provisions of Part III of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000. | The Standards Committee or its sub-committee is to consider a matter under Section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of the Local Government Act 2000.  Information within paragraph 7C 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. |

**E11. Exclusion of Access by the Public to Reports**

E11.1 If the proper officer thinks fit, the Council may exclude access by the public to reports or parts of reports that, in his/her opinion, relate to items during which (in accordance with Standing Order E10) a meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with an explanation of the reasons why the author of the report considers that the report should be considered with the press and public excluded.

**E12. Procedure Before Taking Key Decisions**

E12.1 Subject to Standing Order E14 (general exception) and Standing Order E15 (special urgency), a Key Decision may not be taken unless:

(i) the matter in question has been published in a Forward Plan;

(ii) at least five clear working days have elapsed since the publication of the Forward Plan; and

(iii) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Standing Order E4 (notice of meetings).

(A Key Decision is defined in Article 12.03 of this Constitution.)

**E13. The Forward Plan**

E13.1 A Forward Plan will be prepared on behalf of the Mayor every month and will cover a period of at least four months beginning with the first day of the following month.

E13.2 The Forward Plan will contain matters which the Mayor has reason to believe will be subject of a Key Decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers, area committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the Plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:

(i) the matter in respect of which a decision is to be made;

(ii) where the decision taker is an individual, his/her name and title or where the decision taker is a body, its name and details of membership;

(iii) the date on which, or the period within which, the decision will be taken;

(iv) the identity of the principal groups that the decision taker proposes to consult before taking the decision;

(v) the means by which any such consultation is proposed to be undertaken;

(vi) the steps any person might take if they wish to make representations to the decision taker about the matter on which the decision is to be made and the date by which those steps must be taken; and

(vii) a list of the documents submitted to the decision taker for consideration in relation to the matter.

E13.3 The Forward Plan must be published at least 14 days before the start of the period covered. The proper officer will publish, once a year, a notice in at least one newspaper circulating in the area, stating:

(i) that Key Decisions are to be taken on behalf of the Council;

(ii) that a Forward Plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;

(iii) that the Plan will contain details of the Key Decisions to be made for the four-month period following its publication;

(iv) that each Plan will be available for inspection between the hours of 9.30 a.m. and 4.00 p.m., free of charge, at the Council’s offices;

(v) that each Plan will contain a list of the documents submitted to the decision taker for consideration in relation to the Key Decisions on the Plan;

(vi) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the Forward Plan is available;

(vii) that other documents may be submitted to the decision taker;

1. the procedure for requesting details of documents as they become available; and
2. the dates on each month in the following year on which each Forward Plan will be published and available to the public at the Council’s offices.

E13.4 Exempt information need not be included in a Forward Plan and confidential information cannot be included.

**E14. General Exception**

E14.1 If a matter that is likely to be a Key Decision has not been included in the Forward Plan then the decision may still be taken if all of the following apply:

(i) the decision must be taken by a specified date and it is therefore impracticable to defer the decision until it has been included in the next Forward Plan;

(ii) the Proper Officer has informed the Overview and Scrutiny Co-ordinator or (if he/she cannot reasonably be contacted) the Scrutiny Lead Member that he/she reasonably considers the most relevant, or (if they are both unable to act) each member of the Overview and Scrutiny Board, by written notice, of the matter and why the decision is being made;

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

(iv) at least five clear working days have elapsed since the proper officer complied with (ii) and (iii).

E14.2 If the provisions of Standing Order E14.1 cannot be met, the provisions of Standing Order E15 (special urgency) will apply.

E14.3 Where such a decision is taken at a meeting of the Cabinet, that meeting must be held in public.

**E15. Special Urgency**

E15.1 If a decision must be taken by a specific date and Standing Order E14 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the Chairman/woman of the body making the decision obtains the agreement of the Overview and Scrutiny Co-ordinator or (if he/she cannot reasonably be contacted) the Scrutiny Lead Member that he/she reasonably considers most relevant, that the making of the decision is urgent and cannot reasonably be deferred. If the Overview and Scrutiny Co-ordinator and the Scrutiny Lead Member are unable to act, then the agreement of the Chairman/woman of the Council, or (if no Chairman/woman is appointed) the Vice-Chairman/woman of the Council must be obtained.

E15.2 The Mayor will submit reports to the next appropriate Council meeting summarising the decision of the Cabinet taken in accordance with Standing Order E15.1 in the preceding three months.

**E16. Reports to Council**

E16.1 If the Overview and Scrutiny Board thinks that a Key Decision has been taken which was not:

(i) included in the Forward Plan; or

(ii) the subject of the general exception procedure (Standing Order E14); or

1. the subject of an agreement with the Overview and Scrutiny Co-ordinator, the relevant scrutiny lead member or the Chairman/woman or the Vice-Chairman/woman of the Council under Standing Order E15;
2. the Overview and Scrutiny Board may require the Cabinet to submit a report to the Council within such reasonable time as the Board specifies. The power to require a report rests with the Board, but it is also delegated to the proper officer, who shall require such a report on behalf of the Board when so requested in writing by any five members.

E16.2 The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of the receipt of the written notice or the resolution of the Board, then the report may be submitted to the meeting after that. The report to the Council will set out the particulars of the decision, the decision taker and, if the Mayor is of the opinion that it was not a Key Decision, the reasons for that opinion.

**E17. Record of Decisions**

E17.1 After any meeting of the Cabinet (or any of its committees), the proper officer or, where no officer was present the person presiding at the meeting, will produce a record of every decision taken at that meeting as soon as practicable. The record of decision will include:

(i) details of the decision taker;

(ii) details of the decision;

(iii) the reason for the decision;

(iv) background information;

(v) alternative options considered and rejected at the time of the decision;

(vi) whether the decision is a Key Decision;

(vii) whether the call-in procedure applies;

(viii) any declarations of interest;

(ix) the published date; and

(x) the anticipated implementation date.

E17.2 Where a Key Decision is taken without consideration of a duly completed report in the Council’s usual format, the record of that decision shall, within the section entitled “background information” explain how and why the decision was reached and include the key risks relating to the decision and any relevant financial, legal or equalities implications.

E17.3 When a decision is made by the Cabinet or a committee of the Cabinet, the decision shall be published as soon as reasonably practicable, including where possible by electronic means, and shall be available at the Town Hall, Torquay normally within five clear working days of being made. All councillors will be sent copies of the records of all such decisions within the timescale by the person responsible for publishing the decision.

E17.4 The notice of the decision will bear the date on which it is published 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 the call-in procedure is triggered (as set out in the Standing Orders in relation to Overview and Scrutiny).

**E18. Decisions by the Mayor or Individual Members of the Cabinet**

E18.1 **Reports intended to be taken into account**

Where the Mayor or an individual member of the Cabinet receives a report which he/she intends to take into account in making any decision, then he/she will not make the decision until at least five clear days after receipt of the report. On the giving of such a report to an individual decision maker, the proper officer will give a copy of it to the Chairman/woman of the Overview and Scrutiny Board and make it publicly available at the same time.

E18.2 **Record of individual decision**

As soon as reasonably practicable after a Cabinet decision has been taken by the Mayor or an individual member of the Cabinet, he/she will instruct the proper officer to prepare a record of the decision in accordance with Standing Order E17. The provisions of Standing Orders E7 and E8 (inspection of documents after meetings) will also apply to the making of decisions by the Mayor or individual members of the Cabinet. This does not require the disclosure of exempt or confidential information or advice from a group assistant (either the Mayor’s Assistant or a Group Assistant).

**E19. Key Decisions by Officers**

E19.1 Where an officer receives a report which he/she intends to take into account in making any Key Decision, then he/she will not make the decision until at least five clear days after receipt of the report. On giving of such a report to the officer, the proper officer will give a copy of it to the Mayor and the Chairman/woman of the Overview and Scrutiny Board and make it publicly available at the same time.

E19.2 As soon as reasonably practicable after a Key Decision has been taken by an officer, he/she will instruct the proper officer to prepare a record of the decision in accordance with Standing Order E17. The provisions of Standing Orders E7 and E8 (inspection of documents after meetings) will also apply to the making of Key Decisions by officers. This does not require the disclosure of exempt or confidential information.

**E20. Access to Information – Members**

E20.1 All members will be entitled to receive reports submitted to the Mayor, individual members of the Cabinet, the Cabinet, committees of the Cabinet, officers (in relation to Key Decisions), the Overview and Scrutiny Board or other committees, unless those reports contain confidential and exempt information (where disclosure is not in the public interest), and

(i) in the case of confidential information, disclosure would be contrary to a court order or government guidance; or

(ii) a member has (in the reasonable opinion of the Monitoring Officer) a personal and prejudicial interest in the subject matter of the report; or

(iii) the report contains the advice of a political assistant.

E20.2 The rights set out in Standing Order E20.1 are in addition to (and do not detract from) a member’s common law rights to access documents on a ‘need to know basis’. Members have a prima facie right to inspect Council documents so far as access to the documents is reasonably necessary to enable the Member to properly perform their duties as a member of the Council. The Monitoring Officer shall determine requests for disclosure of documents under the ‘need to know’ criteria.

E20.3 The Member has to be able to demonstrate the necessary ‘need to know’. A Member does not have a right to a ‘roving commission’ to examine Council documents. The question will be determined by the Monitoring Officer in the event of any refusal by a Head of Service which holds the document in question.

E21. **Freedom of Information Act 2000**

E21.1 So far as there is any conflict between these Standing Orders and the Freedom of Information Act 2000 the latter shall prevail.