

# **Terms of Reference of the full Council, Regulatory Boards and Committees and Functions Delegated to Officers**

## **Full Council**

The full Council will discharge the following functions, which may or may not be determined upon the receipt of recommendations from the Cabinet, unless otherwise stated:-

1. The approval of the financial and overall policy framework for the authority, and the making of such additional policy proposals as it deems appropriate from time to time.
2. The adoption, approval, or variation of plans, strategies, and policies of the Council upon recommendation of the Cabinet, which together constitute the authority's Policy Framework.
3. The Council's Constitution prepared in accordance with section 37 of the Local Government Act 2000, including the terms of reference and delegations in respect of non-executive functions, Standing Orders of the Council, financial regulations, the Code of Practice on Financial Regulations, the Procedure Rules for Contracts, the purchasing policy of the Council and its Code of Practice, and associated documents.
4. The appointment of the Leader of the Council on a four year term, in accordance with the requirements of the Local Government and Public Involvement in Health Act 2007.
5. The annual appointment of the Mayor and Deputy Mayor, Regulatory Boards, the Audit and Governance Committee, Scrutiny Committees, and Area Councils. Council also appoints the Chairs of Regulatory Boards, the Audit and Governance Committee, and Scrutiny Committees.
6. The approval of the authority's statement of accounts, income and expenditure, and balance sheets.
7. The preparation and financing of an overall capital expenditure programme, and the review of or necessary adjustments to that programme as required.
8. The preparation and financing of an overall revenue expenditure programme, including the Housing Revenue Account, the adoption of a Council Tax or like tax and a review of or necessary adjustments to that programme as required, insofar as such adjustments may not be agreed by the Cabinet within the approved arrangements for the virement of expenditure.

9. The determination of the levels and pensionability of Elected Members' Allowances, upon receipt of a report from the Independent Members' Remuneration Panel established by the Council for such a purpose.
10. The formulation of financial regulations, including approval of virement limits.
11. The establishment of overall management and disposal policies for the Council's land and property assets.
12. The authorisation of applications to the Secretary of State for the transfer of housing stock out of Council ownership and of applications to the Secretary of State to join the annual disposals programmes and to transfer housing land.
13. Recommendations and / or reports made to the Cabinet from time to time by Area Councils, where these would involve a change in the policy and financial framework of the authority or have financial implications outside the approved budget.
14. Recommendations from the Cabinet on action proposed in response to reports from external statutory bodies (e.g. Ofsted, CQC, External Auditor, and in the cases of reports from the Local Government Ombudsman and from the Appeals, Awards, and Standards Regulatory Board), except where the external statutory body has a right of direct access to the Council (meeting as such) and chooses to exercise that right.
15. The distribution of non-Executive functions, powers, and duties of the Council, the establishment of new arrangements for the discharge of such functions and the delegation of powers and duties within committees, and for the cycle of meetings within the frequency established under the Council's approved Constitution.
16. All matters relating to the boundaries or status of the borough or the reform or reorganisation of local government, so far as the particular interests of the Council are affected.
17. The conferment of the title of honorary alderman or the admittance to be an honorary freeman.
18. The promotion of bills in Parliament by the Council or their support of, or opposition to, bills otherwise affecting the Council's interests.
19. The making, amendment, or revocation of byelaws available to the Council under legislation.
20. Electoral issues under the European Parliamentary Elections Act 1978 and the Representation of the Peoples Acts 1983 to 2000 requiring Council decisions and approval.

21. Matters relating to Parish Councils that require Council consent.
22. Periodic reports from the Cabinet on its operation and the “state of the borough”.
23. Matters relating to local government pensions.
24. Policy matters relating to the attendance of Council Members and officers at conferences and seminars.
25. The approval of special national and European policies and programmes.
26. The Council’s relations with other countries, including requests for assistance on further twinning.
27. The nomination or appointment of Members of the Council to outside bodies, unless the nomination is to a body dealing with functions within the purview of the executive.
28. To approve the Community Strategy, insofar as the Council is concerned, and the Corporate Plan, and any similar policy plans, strategies, or initiatives.
29. All policy plans and strategies and new proposals relating to partnerships with external agencies and local authority companies.
30. To confirm the appointment by the appropriate Appointment Panel of the Head of Paid Service.
31. To approve the designation of officers as the Council’s Chief Finance Officer (Local Government Act 1972, Section 151), Head of Paid Service (Local Government and Housing Act 1989, Section 4) and Monitoring Officer (Local Government and Housing Act 1989, Section 5).
32. To approve the annual pay policy statement for Council staff, in accordance with Sections 38 to 43 of the Localism Act 2011.
33. To approve the remuneration packages of new staff appointments where these exceed £100,000 per annum, or any other amount stipulated by the Secretary of State concerned.
34. Receipt of responses by the designated Council representatives on Joint Authorities to questions on the business of those Authorities.
35. The Code of Conduct for Members and the Code of Conduct for Officers on recommendation of the Appeals, Awards, and Standards Regulatory Board.

**Note: The Council has the responsibility for the determination and discharge of the above functions. In the case of matters that may be the subject of Cabinet recommendations, the Scrutiny Committees may exercise the right to refer these back to the Cabinet once only.**

## **Delegations to Officers from the full Council**

### **A. General Provisions**

1. The Officer Delegations from Council are to be read in conjunction with Financial Regulations, the Contract Procedure Rules, and the Purchasing Policy of the Council and its Codes of Practice, in which will be found certain other specific delegated powers, and which may limit or qualify the powers conferred by this document.
2. For the purposes of this document, ‘the Council’ refers to non-executive powers exercised by the full Council, and ‘committees’ refers to bodies designated as such under the Local Government Acts 1972 and 2000, namely the Regulatory Boards, the Audit and Governance Committee, the Appeals, Awards, and Standards Regulatory Board, the Area Councils, and Overview and Scrutiny Committee(s), acting collectively or through officers acting under delegated powers conferred on them by this document. The executive powers of the Barnsley MBC are exercised by the Cabinet, Cabinet Spokespersons and officers and are detailed in other documents of the Constitution.
3. The exercise by officers of the Council in accordance with the Non-Executive powers conferred by the Local Government Act 1972 and Local Government Act 2000 and within the following Delegations is subject to:-
  - (a) Save in the cases of urgency referred to in paragraphs 16, 17 and 18, expenditure or income being within the approved estimates, approved arrangements for the virement of expenditure by the Executive and Council policy framework or having received the prior approval of the Council;
  - (b) Full consultation with the Executive Director, Core Services in matters involving legal considerations or where court proceedings are or may be involved; and
  - (c) All purchases, sales, leases or appropriations of land, not being transactions within the terms of sub-paragraph (a) above or the subject of delegations to the Executive Director, Core Services / Corporate Assets Manager, receiving the consent of the Council where such transactions are reserved to the Council for approval.
4. Where the same power referred to in this document as exercisable by the Council, a ‘committee’ or an officer, it shall be exercised at the lowest level (e.g. officer level) but no delegation shall preclude the reference of matters to the Council or a ‘committee’ as applicable for a decision nor preclude

- the exercise of any powers within their competence by the Council, except where action has already been taken in the exercise of a power referred to in this document.
5. In accordance with section 101 of the Local Government 2000 and any order made thereunder the Council will indemnify officers and Members acting bona fide in the exercise of the functions of the Council in any case where proceedings may be taken against them in respect of acts done by them in discharge or purported discharge of functions delegated to them.
  6. Reference in this document to an officer in relation to the exercise of powers shall, unless statute precludes, be deemed to include any employee of the Council and his/her deputy or any other officer or employee authorised by him/her to act in cases where the officer or employee concerned is not available to act provided that where services are provided under the terms of a contract won in competition this power shall only be exercised by the Employer's Representative or his/her representative, or by some person to whom he/she has delegated that power.
  7. References herein to any enactment shall be deemed to include any statutory provisions which may from time to time replace, amend or extend the provisions of that enactment and any orders, directions, regulations, code or bylaws made thereunder and any ministerial circulars or advice notes relating thereto.
  8. In urgent matters, and subject to subsequent report to the Council or a 'committee' for a decision for future reference, the Monitoring Officer shall resolve any doubt as to the appropriate decision-making route through which the same shall be referred for action.
  9. The Scheme of Delegations does not derogate from the functions of the Chief Executive and Executive Directors in respect of the day to day management of their services or the disposition or direction of employees within their respective Directorates, Business Units, Departments and Divisions.
  10. The Chief Executive and Executive Directors are authorised to exercise, concurrently, all powers delegated from time to time to relevant Service Directors within their Directorate except where limitations of statute prevent their exercise.
  11. The Chief Executive, Executive Directors and Service Directors respectively are authorised in consultation with the Service Director, Business Improvement, Human Resources and Communications to approve appropriate payments under the Market Supplements, Recruitment and Retention Policy.

12. The Service Director, Business Improvement, Human Resources and Communications is authorised to approve restructurings resulting in changes to the grades, duties and numbers of posts or staff where the cost in any one year does not exceed £250,000 and the sum(s) can be contained within the cash limited budget for the service concerned for current and future years on receipt of a report from the Executive Director or Service Director in question.
13. The Service Director, Business Improvement, Human Resources and Communications is authorised to approve, in consultation with the Cabinet Spokesperson for Core Services, the incurring of costs arising to the Council in relation to Selective Voluntary Early retirement or retirement in the efficiency of the service or the exercise of the Council's discretionary powers under the Local Government Pension Scheme Regulations 2013 in accordance with the relevant policies of the Council where the cost in respect of any particular business case does not exceed £250,000.
14. The Chief Executive, Executive Directors and Service Directors are authorised to appoint officers on JNC Terms and Conditions of Employment within the relevant Directorate or Business Unit, provided that such posts are on previously agreed grades and establishments and subject to such other approvals and procedures as are in force from time to time.
15. The appointment of all staff not appointed in accordance with specific delegated authority contained elsewhere in these Delegations or the Constitution shall be carried out by Appointments Panels constituted in accordance with procedures approved from time to time by the Council.
16. The Chief Executive, Executive Directors and Service Directors respectively are authorised, in compliance with Council policies and procedures in force from time to time:-
  - (a) to approve special leave of absence up to five days, with or without pay;
  - (b) to determine applications under the Annual Leave Purchase Scheme
  - (c) to authorise leave of absence for attendance at vocational conferences and courses and at post-entry training courses and seminars
  - (d) to approve car and motor cycle user allowances;
  - (e) to decide the eligibility of employees to receive payment:
    - (i) of telephone and / or fax charges;

- (ii) for temporarily undertaking additional duties and responsibilities where provided for in the conditions of service;
  - (iii) in accordance with the Ex-gratia Payment Scheme, such maximum sum to be determined by the Service Director, Business Improvement, Human Resources and Communications and the Service Director, Finance, which is currently up to £500
  - (iv) in accordance with the Removal and Disturbance Scheme
  - (f) to take action, including dismissal, against an employee in accordance with the Council's Disciplinary, Performance in Employment (Capability) and Incapacity due to Sickness or Industrial Injury Procedures;
  - (g) to determine the award of facilities to employees to undertake post-entry training;
  - (h) to approve work breaks and secondments for employees in accordance with the scheme and procedures approved by the Council.
17. The Chief Executive, Executive Directors and Service Directors in consultation with the Service Director, Business Improvement, Human Resources and Communications are authorised as follows:-
- (a) to determine matters relating to the acceleration of increments where not provided for in the Conditions of Service;
  - (b) to determine questions relating to payments to employees temporarily undertaking additional duties where not specifically provided for in the conditions of service or established grading structures;
  - (c) to approve special leave of absence over five days, with or without pay;
  - (d) to extend sick pay, where the application is supported by a medical report of the Council's Medical Referee.
18. The Executive Director, Core Services is authorised to commence legal proceedings whether civil or criminal as they deems appropriate under any statutory provisions within the powers and duties of the Council, whether or not such powers and duties are exercisable by the Council, a 'Committee' or 'Sub-Committee' or officer, in consultation with the Chief Executive or relevant Executive Director or Service Director.

19. The Chief Executive, Executive Directors and Service Directors respectively are empowered, after consultation with the Leader and Deputy Leader of the Cabinet (or either of them if the other is not reasonably available) and the Chair of the relevant Regulatory Board (or the Vice-Chair if the Chair not reasonably available) to take or authorise any action on any matter which they consider cannot await a meeting of the Regulatory Board in question, provided that such action shall be reported for information to the next available meeting of the Regulatory Board.
20. Where any action or matter is to be considered which is contrary to or would require a variation to the Council's Budget (except for virement between budget heads within prescribed limits) and/or Policy Framework as defined within paragraph 1 of the matters reserved for Council but requires a decision before the next scheduled meeting of the Full Council, such a decision may be taken by the Cabinet, if it is impractical to convene a quorate meeting of the Full Council in the time available before a decision must be made, subject to the responsible Officer consulting the Chairman of the relevant Scrutiny Committee, or in his/her absence the Mayor or the Deputy Mayor, and reporting the outcome of this consultation at the relevant Cabinet meeting. Any decision so taken will be reported to the next ordinary meeting of the full Council.
21. Where any action or matter is within the purview of full Council, other than described at paragraphs 18 and 19 above, but requires a decision before the next scheduled meeting, the relevant Chief Executive, Executive Directors and Service Directors are empowered to taken such a decision, if it is impractical to convene a quorate meeting of the full Council in the time available before a decision must be made, and subject to the responsible Officer consulting the Chairman and/or Vice- Chairman of Cabinet and the Chair of the Overview and Scrutiny Committee, or in his/her absence the Mayor or the Deputy Mayor. Any decision so taken will be reported to the next ordinary meeting of the full Council.
22. The Executive Director, Core Services is authorised to negotiate, conclude and execute on behalf of the Authority any document or agreement required to give effect to any decision taken by or on behalf of the Council or a 'committee', whether or not that decision specifically records such an authorisation, provided that where expenditure is authorised under paragraph 11 above, any documentation giving effect to that expenditure may be entered into by the officer incurring the expenditure.
23. For the avoidance of doubt, where a power or duty or authority is exercisable by an officer within these Delegations, that officer is hereby given authority to further delegate any such power, duty or authority to any other officer he may nominate, in the interests of the Council or for the better performance of any such power, duty or authority.

## **B. Delegations to Specific Officers**

### **1. Chief Executive**

- (a) To undertake the duties of the Head of the Paid Service in accordance with section 4 of the Local Government and Housing Act 1989.
- (b) To undertake the duties of Proper Officer for the purposes of Part I of the Local Government and Housing Act 1989 other than those which are the responsibility of the Monitoring Officer.
- (c) To take all such action as he / she considers appropriate in any emergency (as defined by the Chief Executive) in consultation with such Members and officers as he considers the circumstances will allow, subject to report to Members on action taken.
- (d) To undertake the duties of Proper Officer for the exercise of functions under section 83 of the Local Government Act 1972 (Declarations of Acceptance of Office).
- (e) To exercise the functions and duties of the Local Returning Officer and Electoral Registration Officer under the Representation of the People Acts 1983 - 2000.

### **2. Executive Director, Core Services**

- (a) To undertake the duties of Monitoring Officer in accordance with Section 5 of the Local Government and Housing Act, 1989 and the relevant provisions of Part III of the Local Government Act 2000.
- (b) In consultation with the Mayor, to grant permission for the use of the Council Coat of Arms.
- (c) In consultation with the Mayor, to take all such action as the Director may deem appropriate for the promotion and protection of the mayoralty and the image of the Borough.

## **Appeals, Awards and Standards Regulatory Board**

- (a) To exercise the functions of the Council in relation to the hearing and determination of any appeal, admission or award in respect of which the Council is vested with the responsibility of deciding the outcome either finally or as part of an appeals mechanism.
- (b) To consider matters about the standard of behaviour of Elected Members of the Council and investigate complaints about whether or not they comply with the Code of Conduct.

Appeals Panels will carry out their business in accordance with the relevant statutory provisions governing the matter the subject of the appeal

**Guidance Notes on Council Membership of Panels of the Appeals, Admissions and Awards Regulatory Board are enclosed as an Appendix to the Constitution**

## **Delegations to Officers from the Appeals, Awards and Standards Regulatory Board**

### **1. Executive Director, Core Services**

- (a) To determine the composition of any panels being selected from the Board, in consultation with the Chairperson of the Board and in accordance with the relevant statutory provisions governing the matter the subject of the appeal
- (b) To determine whether or not a complaint under the Ethical Standard Framework and Member Code of Conduct should be investigated, following consultation with the Independent Person, and to make arrangements for any complaint to be investigated accordingly.
- (c) To determine applications for dispensations from the Code of Conduct where the number of Members otherwise precluded from taking part in a decision would impede the conduct of business or interfere with the political balance of the decision making body, following consultation with the Independent Person.

## **Appointment Panels**

To exercise the functions of the Council in respect of the interviewing and appointment of the Chief Executive and, Executive Directors, in accordance with Regulations made under the Local Government and Housing Act 1989.

Appointment Panels to appoint the Chief Executive and Deputy Chief Executive will comprise the Leader of the Council (as Chairperson of the Panel) and all other Cabinet Members and such other members of the Council as is necessary to achieve political proportionality.

Appointment Panels to appoint other officers will comprise the relevant Cabinet Spokesperson (as Chairperson), the Cabinet Support Member to that Spokesperson, two other Cabinet members, and such other members of the Council as is necessary to achieve political proportionality but including the chairperson of the relevant Overview and Scrutiny Committee.

Any appointment made by the Panel to the post of Head of Paid Service (currently the Chief Executive) must be reported to the full Council for confirmation. Any other appointments made will be subject to consultation with Cabinet Members prior to confirmation in line with the requirements of mandatory standing orders.

In exceptional cases where it is necessary to hold a disciplinary hearing in respect of any member of the Senior Management Team, a Panel would be constituted on a similar basis. In the case of the Head of the Paid Service, Monitoring Officer and Chief Financial Officer the formal provisions of the Local Government (Standing Orders) Regulations 1993 which require any such Panel to have regard to the recommendation of an Independent Person also apply.

## **Delegations to Officers in respect of Appointment Panels**

### **1. Executive Director, Core Services**

- (a) To determine the composition of any Appointment Panel, in line with the requirements set out above, in consultation with the Chairperson of the Panel.

## **Planning Regulatory Board**

Within the overall policy framework approved by the Council to exercise the functions of the Council (with exceptions relating to preparation of the Local Plan, supplementary planning documents, designation of conservation areas, areas of archaeological interest and nature reserves, removal of permitted development rights through Article 4 Directions and making compulsory purchase orders which are the responsibility of the Executive) in relation to:-

All matters of town and country planning regarding development and listed building control and related regulatory functions, including the making of appropriate statutory orders, public rights of way; minerals and waste disposal planning and control; building control matters; matters connected with the safety of sports grounds; supervision of all land subject to reclamation for the time being owned by the Council; and, in particular, the following are reserved for Board unless expressly delegated:-

1. Planning applications or reserved matters where any Member of the Council raises in writing any material planning consideration that the Head of Planning and Building Control, in consultation with the Chair, agrees should be determined by the Board:
2. Planning applications that would be contrary to the provisions of the adopted Development Plan but are recommended for approval.
3. Major Planning applications (i.e. of 10 or more dwellings, more than 1,000 sq.m. of development or a site area of more than 0.5 ha) where a member of the public has submitted a material objection and has requested to speak at the Board and where the Head of Planning and Building Control, in consultation with the Chair, agrees that the application should be determined by the Board.
4. The issue of repairs notices and making compulsory purchase orders under sections 47 & 48 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
5. Confirming Tree Preservation Orders where they have been opposed.

**Arrangements for the Public to address the Planning Regulatory Board are set out in an Appendix to the Constitution.**

### **Delegations to Officers from the Planning Regulatory Board**

#### **1. Executive Director, Core Services**

- (a) The issue, replacement, amendment, suspension or revocation of a General Safety Certificate and the service of Prohibition Notices under the Safety of Sports Grounds Act 1975.

**2. Head of Planning & Building Control in consultation with the Service Director, Legal**

- (a) All Notices served under the Building Act 1984 but excluding those under Sections 80, 81 and 82 which are expressly delegated to the Head of Highways and Engineering.
- (b) Notices under Part II of the Mines and Quarries (Tips) Act 1969.
- (c) To determine applications for and issue of Certificates of Lawfulness under the Town and Country Planning Act 1990.
- (d) To exercise the Council's powers and functions under Part 7 of the Town and Country Planning Act 1990 (enforcement), and section 330 (but excluding sections 191 to 196 relating to certificates of lawfulness of existing or proposed development or use).
- (e) To exercise the Council's powers and functions under Sections 215 to 219 (proper maintenance of land) and 224 - 225 (enforcement and removal of advertisements and posters) of the Town and Country Planning Act 1990.
- (f) To undertake enforcement action in relation to sections 220 and 224 of the Town and Country Planning Act 1990 and the Town and Country Planning (Control of Advertisements) (England) Regulations 2007.
- (g) To undertake enforcement under part 1 chapter 4 of the Planning (Listed Buildings and Conservation Areas) Act 1990 in respect of breaches of control under the said Act
- (h) To decide a complaint and serve, withdraw or enforce a High Hedge Remedial Notice under Part 8 of the Anti-Social Behaviour Act 2003
- (i) The service of Notices in relation to trees under part 8 of the Town and Country Planning Act 1990, and the making of Tree Preservation Orders and the confirming of unopposed Tree Preservation Orders.

**3. Head of Planning and Building Control following consultation with Planning and Regulatory Board Members (subject to members rights in I and III of this scheme)**

- (a) Planning applications submitted on behalf of the Council for its own development.
- (b) Planning applications submitted by or on behalf of a Member of the authority or any officer employed in Development Management, or their respective spouse or partner.

- (c) The determination of the matters to be included in Section 106 Agreements or Unilateral Undertakings in relation to Planning Applications within the officers delegation.

#### **4. Head of Planning and Building Control**

- (a) To process and determine all applications under the Building Regulations.
- (b) In consultation with the Service Director, Finance, to make recommendations to the Place (Regeneration and Culture) Cabinet Spokesperson for the variation of the standard scales of Building Regulation Fees in the Local Government Model Scheme by plus or minus 10% in appropriate cases.
- (c) To approve the numbering of properties.
- (d) To determine proposals submitted under the Hedgerow Regulations and to serve hedgerow retention notices where appropriate.
- (e) To determine applications made under the South Yorkshire Act 1980.
- (f) In consultation with Yorkshire Water the granting of consent to building over sewers.
- (g) To deal with any matters related to safety under the Safety of Sports Grounds Act 1975 and the Fire Safety and Safety of Places of Sport Act 1987, including the issue and service of prohibition notices.
- (h) To advise appropriate licensing bodies in respect of applications received under various licensing legislation on matters relating to Building Regulations or other safety issues.
- (i) In consultation with the Chairperson of the Planning Regulatory Board, to determine submissions of development details in Enterprise Zones in respect of which approval is not granted under the scheme, but in accordance with the overall requirements of the planning schemes.
- (j) To determine submissions under the prior notification procedure pursuant to the Town and Country Planning (General Permitted Development) Order 2015 (as amended).
- (k) To respond to consultations from Government and other bodies in relation to Town and Country Planning and related matters.
- (l) To respond to appeals (written representations, hearings and public inquiries) made under Town and Country Planning Acts and Regulations.

- (m) To determine all other matters (not dealt with in this scheme) relating to Town and Country Planning (save for matters expressly dealt with in this scheme of delegation).

**5. Head of Highways and Engineering in consultation with the Service Director, Legal**

- (a) Enforcement action under the Highways Act 1980.
- (b) The prosecution of persons who fail to pay or secure advance payment deposits under section 219 of the Highways Act 1980.
- (c) The making and advertising of Orders under section 21 of the Town Police Clauses Act 1847 or section 16A of the Road Traffic Regulation Act 1984 for the purpose of appropriate events in highways.
- (d) The temporary closure of public rights of way under the Road Traffic Regulation Act 1984.

**6. Head of Highways and Engineering**

- (a) To administer the provisions of the New Roads and Street Works Act 1991 as respects Streets, Street Works and Undertakers.
- (b) Protection of the rights of the public to use a highway under section 130 of the Highways Act 1980.
- (c) To control the placing of builders' skips on highways under section 139 of the Highways Act 1980.
- (d) To take enforcement action considered necessary in pursuance of the Council's duty to protect the rights of the public to the use of public highways and/or public rights of way as prescribed in the Highways Act 1980.
- (e) The enforcement of legislation on obstruction to public rights of way under sections 134 and 137 of the Highways Act 1980 as amended by the Rights of Way Act 1990.
- (f) The granting of consent for licensed obstructions (e.g. gates, stiles, etc.) under the Highways Act 1980.
- (g) To accept dedications of public rights of way under section 25 of the Highways Act 1980 subject to consultation with user groups, Local Members and, where appropriate, parish councils.

- (h) To approve or refuse any proposal to divert, create or stop up a public right of way under the Highways Act 1980 or Town and Country Planning Act 1990, following consultations with user groups, Ward Members and, where applicable, Parish Councils, except where:
  - A Member of the Council requests that the proposal be considered by the Planning Regulatory Board.
  - The Head of Highways and Engineering is of the opinion that the issues raised should be considered by the Planning Regulatory Board.
- (i) To determine whether the Definitive Map and Statement should be modified following the discovery of relevant evidence.
- (j) To enter into permissive path agreements under Section 39(1) of the Wildlife and Countryside Act 1981.
- (k) To accept deposits made under section 31(6) of the Highways Act 1980.
- (l) To grant consent to planting in the highway by individuals under section 142 of the Highways Act 1980.
- (m) To control the erection of scaffolding on the highway under section 169 of the Highways Act 1980.
- (n) To control the deposit of building materials and the making of excavations in the highway under section 171 of the Highways Act 1980.
- (o) To control the erection of hoardings adjacent to the highway under section 172 of the Highways Act 1980.
- (p) To regulate the placing of cables, pipes, wires etc. over highways under section 178 of the Highways Act 1980.
- (q) To regulate the construction of cellars under highways under section 179 of the Highways Act 1980.
- (r) To regulate the construction of openings into cellars under streets under section 180 of the Highways Act 1980.
- (s) To grant consent to the placing of private apparatus within the highway under sections 50 of the New Roads and Street Works Act 1991.
- (t) Notices and appeals under sections 81 and 82 of the Building Act 1984.
- (u) Content and enforcement of notice requiring works under section 99 of the Building Act 1984.

- (v) Appeal against notice requiring works under section 102 of the Building Act 1984.
- (w) To determine applications for modifications to the Definitive Map and Statement of Public Rights of Way.
- (x) To grant permission for provision etc of services, amenities, recreation and refreshment facilities on the highway under Section 115 of the Highways Act 1980.

## General Licensing Regulatory Board

Subject to:

- the overall policy framework of the Council; and
- having regard to the Council's safeguarding arrangements and duties and particularly in relation to the prevention of Child Sexual Exploitation;

to exercise the functions of the Council in relation to:-

1. In respect of hackney carriage and private hire licences:-
  - a. To determine licence applications which have not been determined by the Service Director Law and Governance Legal Services pursuant to their delegated powers, where consideration by the Sub-Committee is not appropriate.
  - b. To receive reports for information on the suspension and revocation of licences and also to suspend and/or revoke licences where adverse reports have been received in those instances where the Service Director Law and Governance has referred the matter to the Board for a decision as to whether disciplinary action would be appropriate.
  - c. To receive, at regular intervals, a report of all licences issued, renewed, or refused.
  - d. To receive an annual report of all hackney carriage and private hire licences issued or renewed where the vehicle in question is over the age of five years.
  - e. To receive periodic reports of the Service Director Law and Governance on random inspections carried out.
  - f. To vary, amend or revoke the standard conditions of hackney carriage or private hire operators, vehicle and drivers' licences.
  - g. To determine the fees payable for the issue and renewal of hackney carriage and private hire licences (including inspections), subject to the consideration of any policy aspects by Cabinet and/or full Council as appropriate.
  - h. To determine the hackney carriage tariff from time to time, subject to the consideration of any policy aspects by Cabinet and/or full Council as appropriate.
  - i. After consultation with the Head of Highways and Engineering to approve the siting or relocation or removal of hackney carriage ranks and to authorise the appropriate statutory notices.

2. In relation to amusements with prizes permits and licences, betting track licences, sex establishments and house to house collections etc:-
  - a. To grant and renew licences and permits on recommendations from the appropriate officers and outside bodies and to impose conditions, except for the renewal of Sex Shop licences where officers have delegated powers in the circumstances referred to at 2(h) below.
  - b. To vary the conditions attached to an existing licence.
  - c. To determine the licence fee payable in respect of sex establishments.
  - d. To vary, amend or revoke the standard conditions imposed upon the grant of amusements with prizes permits and licences.
  - e. To receive reports on applications for permits for small lotteries where adverse comments have been received from the police and to determine the application.
3. To determine, where there is discretion, the amount to be charged for such approvals, licences, permits or registrations falling within the remit of the Board, subject to the consideration of any policy aspects by Cabinet and/or full Council as appropriate.
4. To receive reports on applications for permits for house to house collections and street collections where adverse reports are received and to determine the application.
5. To determine appeals received in respect of the refusal of applications for the registration of premises for civil marriages.

### **General Licensing Sub-Committee**

1. To determine hackney carriage and private hire licence applications which have not been determined by the Service Director Law and Governance pursuant to their delegated powers.
2. To suspend and / or revoke hackney carriage and private hire licences where adverse reports have been received in those instances where the Service Director Law and Governance has referred the matter to the Board for a decision as to whether disciplinary action would be appropriate.
3. To determine appeals against the suspension or revocation of hackney carriage or private hire operators, vehicle and drivers' licences.

4. To determine applications for or suspension / revocation of licences or appeals against suspension or revocation of licenses falling within the remit of the General Licensing Regulatory Board when referred to it for a decision by the Service Director Law and Governance.

**The General Licensing Sub-Committee is comprised of any 3 Members of the General Licensing Regulatory Board**

## **Delegations to Officers from the General Licensing Regulatory Board**

### **1. Executive Director, Core Services**

- (a) To receive and administer the registration of charities including those under the War Charities Act 1940 and the National Assistance Act 1948.

### **2. Service Director Customer Information and Digital Services**

- (a) As Proper Officer for Registration, to approve those applications for approval of premises for civil marriages which comply with the standard conditions and to refuse those which do not, and to determine as to whether or not premises are seemly and dignified.

### **3. Head of Service Customer Support and Development**

- (a) To act as the Representative of the Proper Officer for Registration, as appropriate.

### **4. Service Director Law and Governance**

- (a) To exercise the Council's powers in relation to the Licensing aspects of the following legislation:
  - Caravan Sites and Control of Development Act 1960
  - Celluloid and Cinematograph Act 1922
  - Children and Young Persons Act 1933
  - The Health Protection (Coronavirus, Collection of Contact Details etc and Related Requirements) Regulations 2020
  - Food Safety Act 1990
  - Health Protection (Coronavirus Restrictions) (England) Regulations 2020
  - Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020
  - The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (2020 No 1374)
  - Housing Act 1985 (Parts 9 and 10 - Slum Clearance and Overcrowding)

- Housing Act 2004 (Part 1 [Housing Conditions], Part 2 [Licensing of houses in multiple occupation], Part 3 [Selective licensing areas], Part 4 [management orders], Section 216 [overcrowding], Part 7 [supplementary provisions] insofar as it relates to any of these functions, Section 232 (maintenance of register of licences and management orders)
- Local Government Miscellaneous Provisions Acts 1976 and 1982
- Local Government Act 2003, Section 120 (insofar as it amends Section 15 of the Local Government (Miscellaneous Provisions) Act to add the regulation of cosmetic piercing and semi-permanent skin colouring businesses)
- Noise and Statutory Nuisance Act 1993
- Nurses Agencies Act 1957
- Performing Animals (Regulations) Act 1925
- Pet Animals Act 1951
- Poisons Act 1972
- Public Health Acts 1936-1961
- Public Health (Control of Disease) Act 1984
- Scrap Metal Dealers Act 1964
- Scrap Metal Dealers Act 2013 (when legislation allows)
- Slaughterhouses Act 1974
- Town Police Clauses Act 1847
- Zoo Licensing Act 1981

And, notwithstanding the generality of the above:

- (b) Under the Town Police Clauses Act 1847 and Part II of the Local Government (Miscellaneous Provisions) Act 1976 to:
- (i) issue hackney carriage licences and private hire licences, when he / she is satisfied that the application fulfils the statutory requirements and any criteria or policies of the Council for the time being in force;
  - (ii) in consultation with the Chairperson of the Licensing Regulatory Board, refuse applications for hackney carriage and private hire licences where he is not satisfied that the application fulfils the statutory requirements and any criteria or policies of the Council for the time being in force, subject to any such decisions being reported for information to the next meeting of the Licensing Regulatory Board;
  - (iii) to suspend Hackney Carriage and Private Hire Vehicle Licences on vehicle defects being found.
  - (iv) to suspend or revoke licences in other circumstances those at (iii) above, and to report the action to a subsequent meeting of the General Licensing Regulatory Board or Sub-Committee.

- (c) To grant, vary, transfer and revoke licences in respect of cinemas and theatres after consultation with the appropriate officers and outside bodies.
- (d) To issue permits in respect of house to house collections, street collections, and to receive returns in respect of the same and where adverse reports are received to refer the matter to the General Licensing Regulatory Board for determination.
- (e) To issue permits in respect of small lotteries after consultation with the police and where adverse reports are received to refer the matter to the General Licensing Regulatory Board or Sub-Committee for determination.
- (f) To determine applications for minibus permits of those vehicles under the control of the Council.
- (g) To receive and administer applications for the registration of motor salvage operators under the Vehicles (Crime) Act 2001 (Motor Salvage Operators Regulations 2002), to approve applications for registration where statutory consultation with the Police reveals no contrary indications and to maintain a register which shall be available for public inspection;
- (h) To determine, following consultation with the Chairperson of the General Licensing Regulatory Board, applications for the renewal of Sex Shop premises Licences where no adverse comments have been received to the statutory consultation process and where there are no concerns or substantial changes made regarding the operation of the premises.

## **5. Service Director Public Health and Regulation**

- (a) To exercise the Council's powers in relation to the Licensing aspects of the following legislation:
  - The Public Health Control of Disease Act 1984
  - The Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020
  - The Health Protection (Coronavirus, Restrictions) (No.3) (England) Regulations 2020
  - Health Protection (Coronavirus Collection of Contact Details etc. & related requirements) Regulations 2020
  - The Health Protection (Coronavirus, Restrictions) (Obligations of Undertakings) (England) Regulations 2020
  - Health Protection (Coronavirus, Restrictions) (England) (No. 4) Regulations 2020
  - The Health Protection (Coronavirus, Restrictions) (All Tiers) (England) Regulations 2020 (2020 No 1374)

## **Statutory Licensing Regulatory Board**

Subject to:

- the overall policy framework of the Council; and
- having regard to the Council's safeguarding arrangements and duties and particularly in relation to the prevention of Child Sexual Exploitation;

to exercise the functions of the Council in relation to the Licensing Act 2003:-

1. To monitor the operation of the Council's Licensing Policy Statement
2. To monitor the operation and performance of the Sub Committees (comprising three Members each) established to determine applications for and reviews of licences.
3. To determine the procedure/protocol to be adopted by the Sub Committees in dealing matters referred to them.

## **Statutory Licensing Sub Committees**

To determine, in accordance with the procedure/protocol agreed by the Statutory Licensing Regulatory Board, applications for and reviews of Licences made under the provisions of the Licensing Act 2003 where adverse comments have been received.

## **Delegations to Officers from the Statutory Licensing Board**

1. **Service Director Legal Services**
  - (a) To exercise the Council's powers in relation to the Licensing aspects of the Licensing Act 2003.
  - (b) To exercise powers under the Criminal Justice Act 2001 to close premises that are in breach of the conditions of licences granted under the Licensing Act 2003

## **Audit and Governance Committee**

**The Terms of Reference of the Audit and Governance Committee are as follows:**

As regulated via the Non-Disclosure Agreement signed annually by members of the Committee, members will have appropriate access to information to discharge their responsibilities in fulfilment of these Terms of Reference.

### **A. General Remit**

1. To provide independent assurance of the adequacy of the risk management framework and the associated control environment.
2. To provide independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment.
3. To oversee the financial reporting process.
4. To promote the application of and compliance with effective governance arrangements across the Authority and its partner organisations.

### **B. Internal Control incorporating Risk Management, Financial Probity and Stewardship**

- a. To consider the overall adequacy and effectiveness of the system of internal control and the arrangements for risk management, control and governance processes and securing economy, efficiency and effectiveness (value for money).
- b. To ensure that the highest standards of financial probity and stewardship are maintained throughout the Authority, within policies set by the Council from time to time.
- c. To consider such policies for consideration and approval by the Council.
- d. To promote effective internal control by the systematic appraisal of the Authority's internal control mechanisms and by the development of an antifraud culture.
- e. To promote effective risk management throughout the Council in accordance with the Council's Risk Management Policy Objectives Statement.
- f. To periodically review the Authority's strategic risk register and to invite, when appropriate, a Member of the Senior Management Team to meetings to discuss strategic risks within their specific service area.

- g. To consider, challenge and comment on the Annual Governance Statement.
- h. To receive periodic reports on additional corporate functions contributing to overall assurance against the corporate priorities and specifically in relation to:
  - Business Improvement, Human Resources and Communications
  - Health & Safety
  - Business Continuity and Emergency Resilience
  - Governance, Member and Business Support
  - Information Governance
  - Procurement
  - Asset Management
  - Ethical Framework
  - Equality and Inclusion
  - Partnership and Collaboration Governance
  - Environmental Governance
- i. To encourage wider dialogue with members of the Senior Management Team by inviting them to meetings on a periodic basis to give assurance about issues identified within reports relating to various Directorate activities and in particular those which are subject to Internal Audit recommendations.

**C. Internal Audit**

- j. To oversee, in consultation with internal auditors, the preparation and approval of an annual audit plan for the Authority and to receive periodic reports from the internal auditor on performance against the plan.
- k. To monitor compliance with internal audit reports following their consideration by management.
- l. To examine reports previously submitted to the Cabinet in respect of ongoing activities and investigations conducted by internal auditors and to make appropriate comments and recommendations.
- m. To review the performance of the internal audit function by way of quarterly performance management reports.
- n. To consider the Head of Internal Audit and Corporate Anti-Fraud's annual audit report and opinion, and a summary of internal audit activity (actual and planned) and the level of assurance it can give over the Council's corporate governance arrangements.
- o. To enhance the profile, status and authority of the internal audit function and demonstrate its independence.

- p. To approve and periodically review the Internal Audit Strategy and Audit Charter

**D. External Audit and other Inspectorates or Regulatory Bodies**

- q. To oversee, in consultation with external auditors, the preparation of the annual audit plan for the Authority and to receive periodic reports from the external auditor on performance against the plan.
- r. To consider and report to Cabinet and the Council the annual audit and inspection letter.
- s. To consider the appointment of the Council's external auditor.
- t. To monitor compliance with external audit, external inspectorate and Ombudsman reports following their consideration and resolution by the Cabinet and/or Council.
- u. To consider any payments in excess of £2000 or provide other benefits in cases of maladministration by the Authority within the scope of section 92 of the Local Government Act 2000 or as directed by the Local Government and Social Care Ombudsman (LGSCO) and any other recommendations made by the LGSCO falling under the remit of the Committee.

**E. Other**

- v. To consider general issues and statistics in relation to the Council's Confidential Reporting (Whistleblowing Policy) "Whistleblowing" Policy.
- w. To review the Authority's arrangements for establishing appropriate anti-fraud policies and procedures.
- x. To monitor compliance with and the effectiveness of anti-fraud and corruption policies and procedures.
- y. To monitor compliance with the Authority's Partnership Governance Framework.
- z. To consider and review compliance with the Authority's Treasury Management policy.

**F. Accounts**

- aa. To review the financial statements, external auditor's opinion and reports to Members, and monitor management action in response to the issues raised by External Audit.
- bb. To contribute to the annual review, consideration and challenge of the financial statements.

## Procedures for recording decisions taken by officers

### Background

1. Regulations in 2012 introduced a requirement for officers taking an executive decision to publish a written statement about the decision as soon as practically possible after the decision is taken. Further Regulations in 2014 extended this requirement to non-executive decisions taken by officers.
2. Whilst the 2012 regulations simply identify the need to record executive decisions taken by officers, the 2014 regulations make reference to decisions that would otherwise have been taken by the Council or a committee / sub-committee if not otherwise delegated to officers. This therefore includes delegated decisions on non-executive functions.
3. The 2014 regulations also state that the requirement to record applies to decisions made:
  - (a) under a specific express authorisation; or
  - (b) under a general authorisation to officers to take such decisions and the effect of the decision is to:
    - (i) grant a permission or licence;
    - (ii) affect the rights of an individual; or
    - (iii) award a contract or incur expenditure which, in either case, materially affects that relevant local government body's financial position.
4. A specific express authorisation is an issue where full Council, Cabinet, a Cabinet Spokesperson or Regulatory Board has authorised an officer to take action on a specific matter.
5. A general authorisation is an issue where the authority derives from a function listed in the Schemes of officer delegations and otherwise meets the requirements of 3(b) above. The Council has determined that the amount of a contract or expenditure that materially affects the Council's financial position is £250,000.
6. In the case of officer executive decisions, the record must include:
  - (a) the decision taken, including the date it was made;
  - (b) the reasons for the decision;
  - (c) details of any alternative options considered and rejected by the officer when making the decision;
  - (d) any conflict of interest declared by any executive member consulted by the officer which relates to the decision; and
  - (e) in respect of any declared conflict of interest, a note of dispensation granted by the relevant local authority's head of paid service.

7. In the case of other officer decisions covered by the 2014 regulations, the record must include:
  - (a) the date the decision was taken;
  - (b) a record of the decision taken along with reasons for the decision;
  - (c) details of alternative options, if any, considered and rejected; and
  - (d) where the decision falls under paragraph 3(a) above, the names of any Member who has declared a conflict of interest in relation to the decision
8. The regulations also require that the statement and any supporting documents be available for inspection by the public and on the Council's website.

### **Guidance on decisions to be recorded**

9. The regulations require the recording of all executive officer decisions and those non-executive decisions that fall under the requirements set out at paragraph 3 above. These will either be as stated in the officer delegations (see links below) or as a result of a specific express authorisation given by Council or a Regulatory Board.
10. This will inevitably give rise to concerns about the officer decisions that should be recorded under the Regulations. The intention of the Regulations is to give the public access to information about local authority decisions. However, it can be assumed that Parliament would expect this to be interpreted in a common sense way, and not result in a bureaucratic burden that would have no public benefit nor meet any reasonable public interest. The intention, therefore, is to give access to information on those decisions that they would reasonably expect to be publicly available and which are appropriate for public access
11. On this basis, any decision that is merely administrative in nature, with only a remote connection with an executive function, or otherwise minor and routine need not be reported. Although the decision might involve large amount of expenditure, the nature of the decision might still mean it is minor (for example, paying a gas bill), so doesn't need to be recorded separately.
12. Equally, where the decision affects one individual rather than the general public and/or contains confidential or exempt information, this need not be published. However, the service concern will need to maintain records on the decision made and the background to it.
13. It should be borne in mind that an apparently minor decision might be taken against a wider context that makes it more sensitive than would otherwise be the case. A key consideration is whether an individual or group might seek to challenge the decision in the light of this. This will always be a matter for judgement and the officer should take this into

account in deciding how to record and report the decision and if a Member decision-making route should be followed.

14. A general principle of delegated officer decision making is that particularly sensitive issues might be “referred up” for approval by the relevant Cabinet Spokesperson or Cabinet. As a result of the Regulations, officers should consider if a decision is sufficiently important and/or sensitive so that a reasonable member of the public would reasonably expect it to be “referred up”. If so, the officer responsible should arrange for this to be done. The decision would then be recorded as part of the normal Member decision-making process.

### **Procedure for recording decisions**

15. The officer named in the Officer Delegations as responsible for specific decisions should use the form (‘the decision notice’) attached at Appendix 1 to record the decision taken. This provides space to give basic information about the subject and date of the decision taken and the authority/delegated power under which the decision is taken. The decision notice should be signed by the officer(s) taking the decision, and, if required, by any Cabinet Spokesperson who should be consulted.
16. If services already use a pro forma to record decisions taken by officers, this can continue to be used, provided it complies with the recording requirements set out in this procedure. If services use a system to record and publish decisions taken (e.g. Planning Explorer, YorTender), there is no requirement to produce a separate record provided that the record meets the requirements set out at paragraph 6 or 7, as appropriate.
17. The decision notice should be accompanied by documentation that provides information on the reasons for any decision and any options considered, where this is too detailed or complex to be set out on the decision notice itself. Provided it gives the necessary information, this documentation need not be in the same format as a report for Cabinet or Spokesperson delegated decision.
18. Officers should take care not to include in the supporting documentation any confidential or exempt information that might prejudice the public interest if published. Where information of this type has been referred to in the course of making the decision, this should be stated as one of the background papers. A reference should be made to it containing confidential information or exempt information under the Local Government Act 1972, Part 1, Schedule 12A.
19. Where an executive decision is being taken, any conflict of interest declared by an Executive Member on that matter should be recorded, together with any dispensation granted. Where a non-executive decision is being taken under a specific express authorisation, the record should include any conflict of interest declared by a Member on that matter.

20. Once the notice of decision and any supporting documentation has been fully completed, the officer making the decision should make arrangements for it to be scanned as one document and e-mailed to the Council Governance Unit at [governance@barnsley.gov.uk](mailto:governance@barnsley.gov.uk) for publication in the website. The original documentation should be kept on file by the decision making officer according to their normal procedures.

### **Appendices**

Appendix 1 Pro forma notice of decision

Appendix 2 Categories of exempt information as described in the Local Government Act, Part 1, Schedule 12A

### **Links to Regulations:**

Executive Decisions: [Local Authorities \(Executive Arrangements\) \(Meetings and Access to Information\) \(England\) Regulations 2012](#)

Non-Executive Decisions: [Openness of Local Government Bodies Regulations 2014](#)

Details of the schemes of officer delegations are available in [the Council's Constitution](#)

**Officer Decision Record (ODR)**

The following decision was taken on **(insert date)** by the **(insert officer title)**

**IMPORTANT NOTE: This information will be published on the Council’s website as a record of the decision. Any exempt or confidential information should be detailed within the **Not for Publication – Exempt Information** box.**

**Title**

*Insert a short title to be displayed on the Council’s website.*

**Decision Taken**

*Provide a clear and succinct description of the decision taken.*

**Reasons for Decision**

*Include a statement of reasons for the decision taken. Information on those consulted on the proposed action/decision should also be included.*

**Alternatives Considered**

*Outline any options for action considered and rejected.*

**Authority**

*Insert reference to relevant section of the Scheme of Delegation or Council/ Cabinet/Regulatory Board Minute Number, where appropriate, to show where the delegated powers on this matter was authorised.*

**NOT FOR PUBLICATION – EXEMPT INFORMATION**

This information is not available to the public and press because it contains exempt information described in paragraph X **[insert relevant Paragraph Number from the table on page 2]** of Schedule 12 A to the Local Government Act 1972 as amended.

*Insert any information in relation to the decision taken that is not for publication on the Council’s website here.*

**Elected Member Conflicts of Interest**

*Record any conflicts of interest, and dispensations granted*

*Signature*  
 \_\_\_\_\_  
 (Insert Officer name)

\_\_\_\_\_  
 (Insert more Officer names as required)

*Signature*  
 Cabinet Spokesperson  
 (if required)

### EXEMPT / PRIVATE PARAGRAPHS

A report may only be exempt from publication if the public interest in maintaining confidentiality outweighs the public interest in disclosing the information.

The categories of exempt information referred to above are described as follows:

<b>Paragraph</b>	<b>Description</b>
1	Information relating to any individual - This information may subsequently be disclosed when the public interest would no longer be served by withholding publication.
2	Information which is likely to reveal the identity of an individual.
3	Financial and Business Affairs – Information which, if disclosed to the public would, or would be likely to, prejudice the financial or business affairs of any particular person (including the Local Authority holding the information). Financial or business affairs include contemplated, as well as past or current activities.
4	Labour Relations – Information which, if disclosed to the public would, or would be likely to, prejudice consultations or negotiations, or contemplated consultations or negotiations in connection with any labour relations matter, as defined in Section 218 (1) of the Trade Union and Labour Relations (Consolidation) Act 1992, arising between the Authority or a Minister of the Crown and employees of, or office holders under, the Authority. This information may subsequently be disclosed once the consultations or negotiations are concluded.
5	Legal Privacy – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6	Enforcement Proceedings – Information which, if disclosed to the public, would reveal that the authority 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.
7	Crime Prevention – Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.

## APPENDIX 2

### **Restrictions on the Publication of Reports Considered by Meetings within the Council**

The Cabinet and other Council meetings are generally required to consider all reports in public. However, the facility exists to consider a report in private if it contains certain categories of information. The relevant legal provision is Schedule 12A to the Local Government Act 1972.

This note gives practical guidance on how exemptions from publication can be “claimed” and what qualifications to this apply. However, on a general note, any information which gives rise to an exemption must be specific, not theoretical, and must be relevant to the decision being sought from Members. The whole intention of the Freedom of Information Act is to ensure the availability of information, including reports, to the public and the starting point, therefore, is that all reports will be made available for publication.

Report authors are encouraged to contact the Council Governance Unit for assistance and advice in applying these provisions.

### **Exempt Information under the Terms of the Local Government Act 1972, Schedule 12A (as amended)**

Council meetings may consider reports following the exclusion of the public and press from the meeting if it contains some types of information, other than personal information, as described above. These categories of so-called exempt information are set out in Schedule 12A to the Local Government Act 1972, which has been amended to be consistent with the Freedom of Information Act.

The Categories of Exempt Information are given below and report authors need to consider these when seeking an exemption from publication, having regard to the qualifications that apply to each of the exemptions.

A particular issue that report authors need to bear in mind is the application of the public interest test included in the Freedom of Information Act. This means that a report cannot be exempt from publication unless, in all circumstances of the case, the public interest in maintaining confidentiality outweighs the public interest in disclosing the information. Even so, the exemption from publication may be time limited: For example it may not be in the public interest to publish the budget allocation for a particular contract, as this might affect the tender bids received; however, once the contract has been let there is no reason for this report to continue to be withheld from publication. Therefore, where there is a valid public interest justification for withholding the publication but this is time limited, report authors should include this information in the report.

To identify that a report contains exempt information, report authors should complete the Public or Private information at the top of the Cabinet report template.

The categories of exempt information are as follows:-

<b><u>Paragraph Number/ Information Type</u></b>	<b><u>Qualification</u></b>
<b>Paragraph 1</b> Information relating to any individual.	Information falling within this Paragraph is subject to the public interest test referred to above. Exemption from publication will also generally be time limited, requiring report authors to consider the date on which the public interest will no longer be served by withholding publication.  Information in this Paragraph is not exempt 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
<b>Paragraph 2</b> Information which is likely to reveal the identity of an individual.	Information falling within this Paragraph is subject to the time-limited public interest test referred to above.  Information in this Paragraph is not exempt 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
<b>Paragraph 3</b> Information relating to the financial or business affairs of any particular person (including the Local Authority holding the information).	Information falling within this Paragraph is subject to the time-limited public interest test referred to above. Financial or business affairs includes contemplated, as well as past or current activities.

**Paragraph Number/  
Information Type**

**Qualification**

**Paragraph 3 (cont/d...)**

Information falling within this Paragraph is not exempt information by virtue of that Paragraph if it is required to be registered under:

- a. The Companies Act 1985
- b. The Friendly Societies Act 1974
- c. The Friendly Societies Act 1992
- d. The Industrial & Provident Societies Acts 1965 to 1978
- e. The Building Societies Act 1986 or
- f. The Charities Act 1993

Information in this Paragraph is not exempt 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

**Paragraph 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 falling within this Paragraph is subject to the time-limited public interest test referred to above. Note that it is therefore likely that, once the consultations or negotiations are concluded, the information is no longer exempt from publication.

In this context, “Labour relations matters” means (a) any of the matters specified in Paragraphs (a) to (g) of Section 218(l) of the Trade Union and Labour Relations (Consolidation) Act 1992 (ie matters which may be the matter of a trade dispute within the meaning of that Act) or (b) any dispute about a matter falling within Paragraph (a) above.

Information in this Paragraph is not exempt 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

**Paragraph Number/  
Information Type**

**Qualification**

**Paragraph 5**

Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Information in this Paragraph is not exempt 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

**Paragraph 6**

Information which, if disclosed to the public, would reveal that the authority proposes:

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or

Information in this Paragraph is not exempt 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

(b) to make an order or direction under any enactment

**Paragraph 7**

Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime

Information falling within this Paragraph is subject to the time-limited public interest test referred to above.

Information in this Paragraph is not exempt 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