

Who can make an executive decision in my council?

The rules⁵ of your council define who can make a decision. The decision maker can be the executive, its committees and sub-committees, joint committees, joint sub-committees, individual councillors, and officers who have delegated responsibility from the executive to make executive decisions.

Going to meetings of your council's executive

Can a council executive choose to meet in private?

No. All meetings of an executive including meetings of its committees or sub-committees must be open to the public, except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public.

When do the national rules say that a meeting must be closed to the public?

The rules require a meeting to be closed to the public in two circumstances:

- If the presence of the public is likely to result in the council breaching a legal obligation to third parties about the keeping of confidential information; or
- a lawful power is used to exclude the public in order to maintain orderly conduct or prevent misbehaviour at a meeting.

What is confidential information?

Confidential information⁶ means:

- information provided to the council by a Government department on terms which forbid the disclosure of the information to the public; and
- information which is prohibited from being disclosed by any enactment or by a court order.

Do the national rules allow a meeting to be closed in any other circumstances?

Yes. A meeting can also be closed to the public where the executive so decides (by passing a resolution) because exempt information would otherwise be likely to be disclosed. It is open to the executive, if it chooses, to consider in public matters involving exempt information.

⁵ Each council has its own rules for doing business - its constitution and standing orders- which must be in line with any national rules

⁶ Regulation 2 of the Regulations.

What is exempt information?

The descriptions of exempt information are set out in the Schedule 12A to the Local Government Act 1972. The descriptions are listed at **Annex A** of this Guide.

Can I film the meeting?

Council meetings are public meetings. Elected representatives and council officers acting in the public sphere should expect to be held to account for their comments and votes in such meetings. The rules require councils to provide reasonable facilities for any member of the public to report on meetings. Councils should thus allow the filming of councillors and officers at meetings that are open to the public.

The Data Protection Act does not prohibit such overt filming of public meetings. Councils may reasonably ask for the filming to be undertaken in such a way that it is not disruptive or distracting to the good order and conduct of the meeting. As a courtesy, attendees should be informed at the start of the meeting that it is being filmed; we recommend that those wanting to film liaise with council staff before the start of the meeting.

The council should consider adopting a policy on the filming of members of the public speaking at a meeting, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting.

Will I be able to tweet or blog council meetings?

Similarly under the new rules there can be social media reporting of meetings. Thus bloggers, tweeters, facebook and YouTube users, and individuals with their own website, should be able to report meetings. You should ask your council for details of the facilities they are providing for citizen journalists.

How will I know about a public meeting?

Your council must give the public a notice of the meeting at least five clear days before it takes place. The details of the meeting must be published on your local authority's website and at its offices. Any background papers must also be published with the agenda. No item can be considered if the item is not available for inspection by the public with five clear days notice.

Where an item is added to the agenda within five clear days before the meeting is scheduled to take place, a revised agenda, public report and background papers must be published as soon as the item is added to the agenda. In some circumstances, the whole or part of a report may not be available for public inspection because it contains either confidential or exempt information. In this case, the report should bear the phrase 'not for publication' and state that it contains confidential information or set out the description of the exempt information.

In addition, councils must provide a copy of the agenda, public reports and other relevant papers to a member of the public or a person representing a newspaper upon payment of postage or copying charge.

Can I be asked to leave the meeting?

Yes. As a member of the public you can be asked to leave the meeting so that the executive, its committees or sub-committees can discuss matters in private, but only in the limited circumstances where the national rules allow this.

Will I know if it is proposed to hold a meeting in private?

Prior to holding a private meeting, your council must have published on its website and at its offices at least 28 clear days notice of its intention to consider a matter in private and the reasons for the private meeting. This is to ensure that members of the public have reasonable opportunity to make representations as to why the proposed private meeting should not be held in private.

At least five clear days before the meeting, your council must confirm its intention to go ahead with the private meeting through another notice on its website and at its offices. This second notice has to include details of any representations received and the council's response to them.

Can a private meeting be held if 28 days notice is not given to the public?

A private meeting can only be held without 28 days notice after the agreement of the Chairman of the Overview and Scrutiny Committee has been obtained that the meeting is urgent and cannot reasonably be delayed. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or, in their absence, the Vice Chairman) must be obtained. If this agreement is granted the council must publish a notice about why the meeting is urgent and cannot be deferred. This notice must be available at its offices and on their website. If agreement is not given then the meeting must either be held in public, or the council must comply with the 28 day notice requirements.

Can I attend an executive's pre-briefing meeting with local authority officers?

No. The rules apply only to when councillors meet as a decision making body to exercise their statutory executive responsibilities. The rules do not apply to political groups' meetings or to informal briefing meetings for councillors.

Available information about executive decisions

What happens if I am not at the meeting, how will I know of any decisions made?

The fact that you are unable to attend a public meeting of your council executive, its committees or sub-committees does not mean you cannot find out about the executive decisions⁷ made. The national rules require such decisions to be recorded. A written

⁷ [An "executive decision" means a decision made or to be made by a decision maker in connection with the discharge of a function which is the responsibility of the executive of a local authority.](#)

statement must be produced, which reflects the decision along with the following information:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest of an executive member of the decision-making body; and
- a note of dispensation granted by the Head of Paid Service in respect of any declared conflict of interest.

You can then inspect these records and any reports considered at the meeting at your council's offices and on the council's website.

Apart from information about meetings, are there other means of knowing about decisions likely to be made by a decision maker?

Yes. The new national rules require a council to publish its intention to make a key decision⁸ in a document at least 28 clear days prior to when the decision is intended to be made. The notice has to include details of the individual or executive body who will make the decision, the matter that is subject to a decision, other documents to be considered, and where these other documents are available. This notice document must be available at the council's offices and on the website before the decision is made.

This allows you to have sufficient knowledge in advance of those decisions that will be of genuine concern to you and your local communities.

Can a key decision be made without giving the 28 days notice?

Yes, provided the following requirements are met:-

- the relevant Overview and Scrutiny Committee Chairman is informed in advance and in writing (or all the members of the Overview and Scrutiny Committee) about what the decision is concerning;
- a notice about the key decision to be made is made available for inspection at the council's offices and published on the website; and
- 5 clear days elapse following the day a notice is published about the key decision to be made.

⁸ ["key decision" means an executive decision which, is likely—](#)

- (a) [to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget for the service or function to which the decision relates; or](#)
- (b) [to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.](#)

If there is a case of special urgency, for example an urgent decision on a negotiation, expenditure or contract, the decision must only be made if the agreement of the Overview and Scrutiny Committee Chairman is received. In the absence of the Overview and Scrutiny Committee Chairman, the permission of the Council Chairman (or in their absence the Vice Chairman) must be obtained. If agreement is given, a notice explaining why the decision is urgent and cannot reasonably be deferred, must be published and should be available at the council's offices and on its website as soon as reasonably practicable.

Can 28 days notice of a key decision also provide 28 days notice required for a private meeting?

It is up to your council to decide whether the 28 day key decision document should contain the details required for a private meeting notice. Where there is an intention to make a key decision at a private meeting, your council must comply fully with all the national rules.

Can my council make key decisions and not follow the national rules?

No. Councils must comply with all the national rules. Should a decision be made without applying the key decision rules because the council thinks that the decision is not a key decision, but subsequently the Overview and Scrutiny Committee decides the decision is a key decision, the executive may be asked to submit a report⁹ to the full council.

Can an individual member of a council's executive, or an officer, take decisions on matters that are the executive's responsibility?

Yes, where the council's rules allow this.

What record has to be made of such a decision by a member or officer?

When a member or officer takes a decision on matters that are the responsibility of the council's executive, this must be recorded in writing. The form of the written record is for the council to decide, but the following should be included:

- details of the decision and the date it was made;
- reasons for the decision;
- any other options considered and why those options were rejected;
- details of any conflict of interest declared by any executive member consulted in relation to the decision; and
- a note of dispensation granted in respect of any declared conflict of interest.

⁹ [The report must include details of:](#)

[\(1\) the decision and the reasons for the decision;](#)

[\(2\) the individual executive member or officer by whom the decision was made; and](#)

[\(3\) if the executive of the relevant local authority are of the opinion that the decision was not a key decision, the reasons for that opinion.](#)

Are all decisions made by councils' officers to be so recorded?

No. The requirement to record decisions extends only to "executive decisions". Executive decisions can sometimes be defined in your council's rules. Decisions which are taken by officers under specific delegations from a meeting of their council's executive are clearly executive decisions. However, many administrative and operational decisions officers take on how they go about their day to day work will be delegated within the council's rules and are not in this "executive decisions" category; as such they do not need to be recorded. Such decisions might include the following examples:

- decisions to allocate social carers to particular individuals, or for example, provide walking aids;
- decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;
- decisions to give business relief to individual traders;
- decisions to review the benefit claims of an individual applicant;
- decisions to allocate market stalls to individual traders;
- a decision to instruct certain staff within the council to appear in court in connection with proceedings relating environmental issues.

Where officers have been empowered to act on behalf of their council's executive, examples of decisions that should be recorded could include:

- decisions about awarding contracts above specified individual/total values;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/or provision of allotment land and green spaces;
- decision to purchase new ICT systems;
- the opening hours of local libraries;
- the holding of car boot sales/markets on council-owned land;
- the operating hours of off-street car parks;
- a decision to close a school;
- a decision to carry out major road works.

This is not intended to be an exhaustive list, rather a series of examples to illustrate that, in the interests of maximum transparency, the new regulations require more than just key decisions to be recorded.

Ultimately it is for local decision makers to decide what information should be recorded on the basis of the national rules.

Can I see the records of executive decisions?

Yes. You can see records of any executive decision, made by the executive, its committee or sub-committee or individual councillors or officers along with any report considered and other background papers. They have to be available for inspection at your council's offices and on its website as soon as is reasonably practicable after the decisions are made.

Can I ask for a copy of any records of executive decisions?

Yes. You can ask for a copy of any documents relating executive decisions and your council should supply the information once you have paid for the postage, copying or any other necessary charge for transmission which will be determined by your council.

What are the rights of councillors to access meeting documents?

As a councillor, you can inspect any document that contains material to be discussed at least 5 days before a public meeting is held. In case of a private meeting or decision made by an individual executive member or officer, you can inspect the document within 24 hours of the conclusion of the meeting or the decision being made.

In addition, if you are a member of an overview and scrutiny committee, you can ask for any document that contains business transacted at a meeting of the executive, its committees or sub-committees or officer of the authority. The executive must provide the document within 10 days after it (the executive) receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide you with a written explanation.

What other rights do councillors have to inspect documents of their councils?

In addition to the rights conferred on councillors by these Regulations in relation to executive decision making, councillors also have statutory rights to inspect documents of the council and its committees under Part 5A of the Local Government Act 1972. Councillors may also request information held by their council under the Freedom of Information Act 2000 (or the Environmental Information Regulations 2004 in relation to environmental information). Councillors may have rights under the common law to inspect such documents held by their council as are reasonably necessary for them to perform their duties.

What happens if documents relating to executive decisions are not made public?

It is a criminal offence if, without a reasonable excuse, a person who has in his or her custody a document¹⁰, which the national rules require to be made available to the public, refuses to supply the whole or part of the document or intentionally obstructs any other person/s from disclosing such a document.

If a person is found guilty of such a criminal offence, he/she can be fined up to £200.

¹⁰ A document can be the agenda and connected reports for public meetings, documents relating to executive decisions made by an individual member or officer, or any other background papers.

Your rights of access to meetings and information

Are there other rights I can exercise?

Yes. You can inspect a council's detailed financial accounts, ledgers and records. The Accounts and Audit Regulations 2011 cover checking not just the accounts, but also "all books, deeds, contracts, bills, vouchers and receipts related to them". More information on this right is available at: <https://www.gov.uk/government/policies/making-local-councils-more-transparent-and-accountable-to-local-people/supporting-pages/peoples-rights-to-see-council-accounts>

You can see your council's spending transactions valued over £500, senior salaries, organisational charts, contracts and the location of public land and assets. This information is among the minimum datasets that your council should publish in accordance with the Code of Recommended Practice for Local Authorities on Data Transparency. You can obtain further information on this from: <https://www.gov.uk/government/publications/local-authority-data-transparency-code>

Also, you have the right to request information held by your council by submitting Freedom of Information Act requests to your council (a similar regime exists in relation to environmental information under the Environmental Information Regulations 2004). Information on Freedom of Information Act is available on the Information Commissioner's Office website at: <http://ico.org.uk/>

You have certain rights to re-use for your own purposes documents held by the council under the Re-use of Public Sector Information Regulations 2005. These Regulations provide that any request for re-use must be in writing, and where possible and appropriate the council must make the document concerned available for re-use by electronic means. More information is available at: <http://www.legislation.gov.uk/ukxi/2005/1515/introduction/made>

Where can I find the legislation relating to access to council's executive meetings and information?

The relevant legislation relating to access to information regarding decisions made by council executives, and their committees/subcommittees and joint committees is Part 1A of the Local Government Act 2000 – see sections 9G and 9GA. It was inserted as a result of amendments made by the Localism Act 2011 and the relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/schedule/2/part/1>

The detailed provisions are contained in the secondary legislation made under the 2000 Act, that is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which can be found at:

<http://www.legislation.gov.uk/ukxi/2012/2089/contents/made>

Annex A – Descriptions of Exempt Information

The exempt information set out at Schedule 12A to the Local Government Act 1972 Act is as follows:

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
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.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
6. Information which reveals 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. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

The qualifications to the list of exempt information are as follows:

- A.** Information falling within number 3 above is not exempt information by virtue of that paragraph if it is required to be registered under--
 - the Companies Acts as defined in section 2 of the Companies Act 2006;
 - the Friendly Societies Act 1974;
 - the Friendly Societies Act 1992;
 - the Co-operative and Community Benefit Societies and Credit Unions Acts 1965 to 1978;
 - the Building Societies Act 1986; or
 - [(f) the Charities Act 2011.
- B.** Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.
- C.** Information which—

falls within any of numbers 1 to 7 above; and
is not prevented from being exempt by virtue of number A or B above,

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.