

TRANSPARENCY AND ACCOUNTABILITY

**THE PUBLICATION OF COUNCIL, COMMITTEE
AND SUB-COMMITTEE AGENDAS**

1. BACKGROUND

- 1.1 The Local Government Act 1972 sets out the statutory requirements for the publication of Council, Committee and Sub Committee meetings.
- 1.2 These statutory requirements have recently (August 2012) been emphasised and strengthened for councils operating executive arrangements by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 1.3 Although these Regulations do not apply to Maldon District Council (MDC) nevertheless they represent Parliament’s current view on good practice with regard to the publication of agendas.
- 1.4 Also last month the Rt Hon Eric Pickles MP issued a policy paper entitled:
‘Making local councils more transparent and accountable to local people’
with the following opening statement

The public should be able to hold local councils to account about the services they provide. To do this, people need information about what decisions local councils are taking, and how local councils are spending public money
- 1.5 I have set out below the statutory requirements and good practice with regard to:
1. Publication of Agendas;
 2. Confidential and Exempt Information;
 3. Urgent Business;
 4. Withdrawing reports from a Published Agenda.

2. PUBLICATION OF AGENDAS

- 2.1 A copy of the agenda and every report for a meeting of the Council, a Committee or Sub-Committee must be made available for inspection by the public:
- (a) at the Council’s offices; and
 - (b) on the Council’s website.
- 2.2 Agendas and accompanying reports must be published at least five clear days before a meeting – ‘five clear days’ is calculated by excluding the day of publication and excluding the day of the meeting.

2.3 What does this mean in practice?

- 2.3.1 It means that reports have to be with the Committee Team in sufficient time to enable them to publish the agenda and accompanying reports in accordance with the statutory requirements.
- 2.3.2 It means that reports will not be allowed ‘to follow’ the agenda front sheet.

3. CONFIDENTIAL AND EXEMPT INFORMATION

- 3.1 Access to council meetings and meeting documents are ways to make sure the workings of the Council, its committees and sub committees are as transparent and accessible as possible to the communities it serves.
- 3.2 The Rt Hon Eric Pickles MP has indicated that it is clearly in the public interest for individuals to be able to see how a council applies its policies and procedures in practice.
- 3.3 The Council’s core values include a commitment to transparency and accountability and decision making in private session, excluding the public and the press, should be the exception. This should occur only when members have considered the public interest test in respect of ‘exempt’ information and are satisfied that it is in the public interest to exclude the public.

3.4 What does this mean in practice?

- 3.4.1 It means that meetings will be held in public, unless it is necessary for the public to be excluded due to the consideration of “confidential” or “exempt” information.
- 3.4.2 Confidential information cannot be considered in an open meeting or disclosed to the public.
- 3.4.3 In contrast, there is a discretion about whether information falling within the “exempt” categories should be kept private and it can only be “exempt” 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 it.
- 3.4.4 A specific resolution must be passed at the meeting to this effect and Officers must explain the nature of the exemption and also address the issue of ‘public interest’ in the first paragraph of their report and come to a conclusion. Members can then take this advice into account when deciding whether or not to exclude the public and press.
- 3.4.5 It is also common practice for items containing commercially or legally sensitive information to include as much information as possible in an open paper and have a closed appendix (or, if necessary, report) on Part 2 of the agenda. Unless Members want to discuss the confidential or exempt information, the whole item can be considered in public session.
- 3.4.6 Directors are expected to review and challenge a draft report which proposes that the matter be discussed in private session because of ‘exempt’ information contained

within the report. They should explore whether the inclusion of ‘exempt’ information is essential to enable Members to make a decision.

3.5 Definition of “confidential” or “exempt” information

3.5.1 Information which is “confidential” or “exempt” is defined in the Local Government Act 1972:

(A) ‘Confidential information’ means:

- (a) information furnished to the Council by a Government department upon terms (however expressed) which forbid the disclosure of the information to the public; and
- (b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court;

and, in either case, the reference to the obligation of confidence is to be construed accordingly.

3.5.2 The public shall be excluded from a meeting of the Council during an item of business whenever it is likely, in view of the nature of the business to be transacted or the nature of the proceedings, that, if members of the public were present during that item, confidential information would be disclosed to them in breach of the obligation of confidence

(B) ‘Exempt information’ means:

- 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.

and it 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.

4. URGENT BUSINESS

4.1 The legislation states that an item of business may not be considered at a meeting unless either:

- (a) a copy of the agenda is open to inspection by members of the public for at least five clear days before the meeting; or
- (b) by reason of special circumstances, which shall be specified in the minutes, the chairman of the meeting is of the opinion that the item should be considered at the meeting as a matter of urgency.

4.2 Consideration of ‘Urgent business’ should be a very rare occurrence as it goes against the principles of transparency; accountability and openness advocated by the Government (see reference to policy paper by Rt Hon Eric Pickles M.P. above).

4.3 What does this mean in practice?

4.3.1 This requires that the Chairman must specifically agree, on the basis of special circumstances which have to be stated in public at the meeting and recorded in the Minutes, to the consideration of an urgent matter which is not on the agenda.

4.3.2 An item of urgent business must relate to an item that was:

- unforeseen at the deadline for the publication of the agenda, and
- the decision on the item cannot wait until the next meeting.

4.3.3 The Officer preparing the report must set out his opinion as to why a decision should be made, and the reasons why the urgency of the matter is such that it is not practicable to wait until the next meeting of the Committee.

4.3.4 This will assist the Chairman in coming to a decision as to whether or not to allow the ‘urgent’ item to be considered.

4.3.5 Reasons may include:

- (a) in order to prevent or reduce the risk of damage to persons or property or
- (b) in order to prevent or reduce a risk to the interests of the Council
- (c) There is a need to meet a statutory deadline
- (d) There is a need to meet a consultation deadline
- (e) Failure to make a decision will result in the Council suffering a financial loss

5. WITHDRAWING REPORTS FROM A PUBLISHED AGENDA

5.1 A member of the public, having seen an item in which they are interested on the published committee agenda, will have a reasonable expectation that the item will be considered by the committee. The member of the public may well have made arrangements to ensure that he can be present when the item is discussed. It is, therefore, a breach of the Council's commitment to the principles of transparency, accountability and openness for an Officer to withdraw the report as the matter is now in the public domain.

5.2 What does this mean in practice?

5.2.1 Once an agenda has been published then the decision as to whether or not an item on the agenda should be withdrawn or deferred is properly a decision made in public by the Committee, having regard to any advice from its professional advisors.

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17 December 2012

MADC/115