

**TO: GOVERNANCE AND AUDIT COMMITTEE
24 SEPTEMBER 2014**

**THE OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014
Director of Corporate Services – Legal**

1 PURPOSE OF REPORT

- 1.1 This report seeks to appraise the Committee of the substance of the Openness of Local Government Bodies Regulations 2014 (“the Regulations”). It also proposes recommendations to Council to secure, so far as is reasonably practical, the implementation of the recommendations.

2 RECOMMENDATIONS

- 2.1 **That the Council’s Protocol for Photography, Audio/Visual Recordings and the Use of Social Media at Council and Committee Meetings be rescinded.**
- 2.2 **That the Director of Corporate Services be authorised to issue guidance to persons wishing to exercise the right to record Council meetings, such guidance to incorporate those provisions of the current Protocol which are not inconsistent with the regulations.**
- 2.3 **That the Regulations be implemented as proposed in paragraph 5.12 of this report.**

3 REASONS FOR RECOMMENDATIONS

As set out in Section 5.

4 ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None.

5 SUPPORTING INFORMATION

- 5.1 The Openness of Local Government Bodies Regulations 2014 were made on 5 August 2014. With indefatigable if hopelessly misplaced, optimism, the regulations were expressed to come into force the day after they were made. The regulations may be considered in two parts, namely those concerning:-

- the recording of meetings, and
- the recording of decisions and access to documents

The Recording of Meetings

- 5.2 At its meeting on 27 November 2013 the Council adopted a “Protocol for Photography, Audio/Visual Recording and Use of Social Media at Council and Committee Meetings” which is shown as Annexe A. The Protocol endeavoured to strike a balance between three (possibly competing) interests namely:-

- the desire to maximise the accessibility of Council meetings
 - the need to ensure that meetings can be conducted without undue interruption or distraction, and
 - the privacy of persons attending Council meetings
- 5.3 The regulations have been promulgated in order to address a perceived concern that a (possibly very limited) number of local authorities have adopted an unduly obstructive approach to permitting the filming and recording of meetings. Almost inevitably, in seeking to address those concerns through the mechanism of regulations the ability to achieve the balancing of interests referred to in paragraph 5.2 has been removed.
- 5.4 The regulations provide that when a meeting of a Council is open to the public any person attending is to be permitted to report on the meeting. "Reporting" is defined to mean:-
- filming, photography or making an audio recording of proceedings
 - using any other means for enabling persons not present to see/hear proceedings as it takes place or later
 - reporting/providing commentary on proceedings at a meeting, orally or in writing (although Councils are not required to permit oral reporting/commentary on a meeting as it takes place if the person providing the commentary is present at the meeting).

Persons who wish to record meetings must "so far as practicable, be afforded reasonable facilities for so doing" and any person reporting may use any communication method, including the internet, to publish, post or otherwise share the results of the reporting activities.

- 5.5 Although it remains possible for the Council to issue guidance as to how the rights conferred by the Regulations might be exercised it can no longer make requirements. Accordingly, it is proposed that the existing Protocol be rescinded but that the Director of Corporate Services be authorised to approve guidance (based on the existing Protocol) which those persons wishing to exercise the right to record conferred by the regulations will be requested (but not required) to observe.

Recording of Decisions and Access to Documents

- 5.6 In September 2012 the Local Authorities (Executive Arrangements) (Meeting and Access to Information) (England) Regulations 2012 came into force. Included within the Regulations was (inter alia) a requirement that for all decisions made in respect of Executive decisions, however mundane or routine and whether made by Members or officers, a record should be made of the decision and a record of the reasons for the decision. That requirement was almost universally regarded as hopelessly impractical and incapable of complete implementation. At its meeting on 29 January 2013 the Committee decided that it would implement the regulations in relation to those decisions made in discharge of Executive functions which met specified criteria including (inter alia):-

Unrestricted

- any decisions to incur expenditure/make savings of £10,000 or more
- any decisions taken following public consultation
- any decisions which would have a material impact upon ten or more persons

5.7 In respect of officer decisions discharging non-Executive functions the regulations seek to emulate the 2012 regulations, albeit in modified and slightly less impractical form.

5.8 The regulations require that for specified officer non-Executive function decisions a record should be made of:-

- the date of the decision
- reasons for the decision
- details of alternative options, if any, considered and rejected, and
- any declared conflict of interest

The specified types of decision are:-

- (a) any decision taken by an officer under a specific express authorisation (this should probably be interpreted to exclude decisions made under delegated powers set out in the Constitution unless they fall within (b) below), and
- (b) under a general authorisation 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 the local authority's financial position

As regards (iii) above if there is budgetary provision for proposed expenditure (whether pursuant to a contract or otherwise) the incurring of such expenditure may be considered not to "materially affect" the Council's financial position.

If under existing law the requirements of the regulations are already met there is no need for a duplicate record to be produced. So, for example, Planning legislation requires a notice of refusal of planning permission to set out the reasons for refusal – there will be no need for a separate record to be made of the decision. However, refusals of planning permission do not currently require "details of alternative options, if any, considered and rejected" to be recorded.

5.9 In addition to the requirements alluded to in paragraph 5.8, the regulations require that the decision record together with background papers "must as

soon as reasonably practicable after the record is made” be made available for inspection **and** published on the Council’s web site.

- 5.10 In considering what measures should be taken in order to implement the regulations it is relevant to note that the recent report of the Overview and Scrutiny Panel on the delegation of functions expressed no general concern as to the exercise of delegated powers. Also, the Council publishes on its web-site, as required by CLG’s Data Transparency Code, all items of expenditure in excess of £500.
- 5.11 The practical implications of full implementation of the regulations, especially the requirement to publish background papers are difficult to anticipate, but it is considered that it would require significant additional resource.
- 5.12 It is proposed that the Council should adopt the following approach to implementation. A record (in accordance with the regulations) should be made and published of the following decisions:-
- decisions made under a specific delegation from Council, a Committee or sub-Committee
 - decisions to grant a permission or licence (other than a licence to occupy land)
 - decisions which will entail the incurring of expenditure for which there is no current budgetary provision

The category of decisions which “affects the rights of an individual” is one which will be very difficult if not impossible to interpret. In any event, most decisions which fall into that category will contain exempt information and therefore even under the terms of the regulations will not require to be published.

6 ADVICE RECEIVED FROM STATUTORY AND OTHER OFFICERS

Borough Solicitor

- 6.1 The Borough Solicitor is the author of this report.

Borough Treasurer

- 6.2 There are no financial implications directly arising.

Equalities Impact Assessment

- 6.3 Not required.

Strategic Risk Management Issues

- 6.4 Not applicable.

Other Officers

- 6.5 Not applicable.

7 CONSULTATION

Principal Groups Consulted

7.1 Corporate Management Team

Method of Consultation

7.2 CMT meeting 27th August 2014.

Representations Received

7.3 Not applicable.

Background Papers

None.

Contact for Further Information

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