

**OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014**

**To: Council**

**Date: 12 May 2015**

**From: LGSS Director Law, Property and Governance**

**Purpose: The Council is asked to consider recommendations from the Constitution and Ethics Committee to amend the Constitution to reflect the requirements of the Openness of Local Government Bodies Regulations 2014.**

**Recommendation: It is recommended that Full Council:**

**a) agree that the requirement for a written record to be made of any decision taken by an officer of the council**

- i) under a specific express authorisation, or**
- ii) under a general authorisation where the effect of the decision is to**

- a. grant permissions or licences,**
- b. affect the rights of individuals,**
- c. award contracts or incur expenditure over £250k**

**be reflected in Parts 3D (Scheme of Delegation to Officers) and 4.2 (Access to Information Procedure Rules) of the Constitution, as set out in Appendices C and D respectively; and**

**b) authorise the Monitoring Officer, in consultation with the Chairman of the Constitution and Ethics Committee, to make any other minor or consequential amendments to the Constitution necessary for, or incidental to, the implementation of these proposals.**

<b><i>Officer contact:</i></b>		<b><i>Member contact</i></b>	
Name:	Quentin Baker	Name:	Cllr S Kindersley
Post:	Director of Law, Property & Governance and Monitoring Officer	Portfolio:	Chairman, Constitution and Ethics Committee
Email:	<a href="mailto:quentin.baker@cambridgeshire.gov.uk">quentin.baker@cambridgeshire.gov.uk</a>	Email:	<a href="mailto:skindersley@hotmail.com">skindersley@hotmail.com</a>
Tel:	01223 727961	Tel:	01767 651982

## 1. BACKGROUND

1.1 The Openness of Local Government Bodies Regulations 2014 came in to force in September 2014 and are intended to promote openness by requiring local authorities to:

- a) permit any person to attend council meetings and to publish/communicate, by any means, the proceedings of the meeting.
- b) to produce and publish a written record of certain types of decisions taken by officers exercising delegated authority.

## 2. REPORTING OF MEETINGS

2.1 The Regulations require councils to allow any person to attend a public meeting of a council for the purposes of reporting, and allow any persons with the aim of reporting to use any communication methods, including the internet, to publish, post or otherwise share the results of their reporting activities, during or after the meeting.

2.2 'Reporting' is defined as:

filming, photographing or audio recording of proceedings or using any other means for enabling persons not present to see or hear proceedings of a meeting as it takes place or later, and reporting or providing commentary on proceedings of a meeting, orally or in writing.

2.3 The changes do not affect the current circumstances in which a private meeting may be held or a person may be excluded (for example, where exempt information would be disclosed or in the case of disorderly conduct).

2.4 Part 4 – Rules of Procedure, Part 4.4 – Committee and Sub-Committee Meetings, Section 17. Photography and Audio Recordings of Meetings in the Council's Constitution, reflected the requirements of the Regulations before they were introduced.

## 3. RECORD OF DECISIONS AND ACCESS TO DOCUMENTS

3.1 The Regulations also require a written record to be made of any decision taken by an officer of the council

- i) under a specific express authorisation, or
- ii) under a general authorisation where the effect of the decision is to
  - a. grant permissions or licences,
  - b. affect the rights of individuals,
  - c. award contracts or incur expenditure which **materially affects** the body's financial position

3.2 The Regulations as drafted permit some local discretion as to the financial value of the decisions to be recorded because sub-para ii)c contains the phrase 'materially affects' the body's financial position. It is proposed that the Council use £250k as an appropriate level to determine materiality in this context.

### 3.3 Publishing Requirement

The Regulations require that the written records are made available to the public at the council's offices, on their website if they have one, by post if requested and on receipt of payment for copying and postage, and through any other means thought appropriate by the council. The written record must be available for public inspection for at least six years, and any supporting documentation for at least four years.

## 4. THE FORMAT FOR RECORDING DECISIONS

4.1 The written record of the officer's decision must be available for inspection at the Council's offices and on the website as soon as reasonably practicable after the decision has been taken. The written record should include:

- The decision taken and the date the decision was taken;
- the reason(s) for the decision;
- any alternative options considered and rejected; and
- any other background documents.

4.2 Where the decision was taken as a result of a specific delegation at a committee, the names of any member of the council who declared a conflict of interest in that item must be recorded. This information is available from Democratic Services. Decision makers should note that the reason/s for a decision being taken could be relatively routine – for example an application for a licence or permission which has been granted because the application complies with the Council's policy.

4.3 Guidance to officers on recording decisions is attached at **Appendix A** and a copy of the decision notice to be published on the Council's website is attached at **Appendix B**.

## 5. CRIMINAL SANCTION

5.1 There is a criminal penalty for non-compliance: a person who has custody of documents which should be available for inspection, will commit an offence if that person refuses to disclose or intentionally obstructs the disclosure of such documents under these regulations.

5.2 The penalty for the offences is a fine not exceeding level 1 on the standard scale (currently £200). This replicates the existing penalty for failure to disclose or obstructing the disclosure of documents in the 2012 Regulations, and is in line with the sanctions under the 2012 Regulations. The Council is not aware of any prosecutions which have taken place, although quite a lot of 'local difficulty' about access to meetings was reported following the introduction of the 2012 Regulations.

## 6. CONSEQUENTIAL CHANGES TO THE CONSTITUTION

6.1. The Constitution and Ethics Committee, at its meeting held on 28 April, recommended the Council to approve the amendment of the Constitution to reflect the new requirements of the Openness of Local Government Bodies Regulations 2014 in relation to recording of officer's decisions as indicated in paragraph 3.1 above. Proposed amendments to Part 3D of the Constitution (Access to Information Procedure Rules) are set out in Appendix C to this report, whilst Appendix D proposes amendment of Part 4.2 of the Constitution (Access to Information Procedure Rules).

Source Documents	Location
Openness of Local Government Bodies Regulations 2014	<a href="http://www.legislation.gov.uk/ukdsi/2014/9780111113554">http://www.legislation.gov.uk/ukdsi/2014/9780111113554</a>

### **Draft Guidance as to which Decisions Must be Recorded.**

Due to the broad scope of the regulations and the large number of decisions that they could cover, it would be extremely difficult to produce an exhaustive list of the decisions which must be recorded and published. This briefing note does not attempt to do this. Instead, it has been designed to raise awareness of the requirements and provide some guidance and advice for officers charged with making such decisions.

Examples of decisions that should be recorded under these regulations include:

- A decision to awarding a contract or incur expenditure above the threshold of (£250k - £500k);
- A decision to grant a permission for major road works;
- A decision to grant, suspend or revoke licences or concessions;
- A decision to determine a permission, such as for planning permission or to serve a planning contravention, breach of condition or stop notice; and
- A decision which could result in the rights of a specific individual differing from those of the majority of the general public (e.g. a vexatious individual being banned from council premises).

### **Exceptions and Decisions which do not need to be Recorded**

It is important to note that where decisions are already required to be published by other legislation, they do not need to be recorded again provided that the record published includes the date the decision was taken and the reasons for the decision.

The Government has also issued guidance which states that decisions which are operational and administrative – in other words decisions which the public would reasonably expect to be taken by an officer in order for the council to operate on a day-to-day basis - do not need to be recorded. Decisions which do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions such as giving permission to a local society to use the authority's premises;
- Decisions on operational matters such as day to day variations in services;
- Decisions to issue permissions or licences which are purely routine such as a licence for a skip;
- Decisions to give business relief to individual traders;
- Decisions taken in response to requests under the Data Protection Act 1998 or the Freedom of Information Act 2000.

There are also important exemptions which outline circumstances in which records of decisions must not be published:

- Information relating to any individual (e.g. decisions relating to deprivation of liberty of elderly dementia sufferers or putting children into care)
- Information which is likely to reveal the identity of an individual.
- Information relating to the financial or business affairs of any particular person (including the authority holding that information).
- Information relating to any consultations or negotiations in connection with any labour relations matter arising between a council and its employees.

- Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
- Information which reveals that the authority proposes to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or to make an order or direction under any enactment.
- Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Please note that these decisions must still be recorded – they are just exempt from the requirement to publish a record of the decisions.

**Cambridgeshire County Council Record of Decision****Decision taken by an officer of the Council**

<b>Title of decision</b>	
<b>Date decision taken</b>	
<b>Decision maker</b>	
<b>Details of decision taken</b>	
<b>Reasons for taking decision</b>	
<b>Options considered</b>	
<b>Details of any conflict of interests declared</b>	
<b>Details of any disclosable pecuniary interest or non-statutory disclosable interest declared</b>	

Signature of decision maker (if appropriate)

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