



City of Westminster

General Purposes Committee

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| Date: | 5 November 2014 |
| Classification: | For General Release |
| Title: | Openness of Local Government Bodies Regulations 2014 |
| Wards Affected: | N/A |
| Financial Summary: | There are no financial implications |
| Report of: | Head of Legal and Democratic Services |
| Report Author: | Naomi Stauber, Senior Committee and Governance Officer |

1. Executive Summary

- 1.1 The Openness of Local Government Bodies Regulations 2014 came into force on 6th August 2014. The Regulations allow any person attending a public local government meeting to take photographs, film and audio-record the proceedings, and report on the meeting. They also require local government officers to make a written record of certain decisions and to make the record available for inspection by members of the public on request. It will therefore be an offence for an officer, without reasonable excuse, either to intentionally obstruct a person exercising the right to inspect, or to refuse a request to provide a written record or background papers.
- 1.2 This report details the key provisions contained in the Regulations; explains how these provisions impact upon the City Council's current practices and sets-out the action taken by officers to date, to ensure the City Council is fully compliant with the new legislation.

2. Recommendations

2. 1 That the Committee agrees the revised wording of Standing Order 18 (Disorder) detailed in paragraph 3.7 and recommends the revised Standing Order to the full Council for adoption;

- 2.2 That the Committee considers and agrees the threshold of £500,000 at which officers must give notice of decisions to award a contract or incur expenditure, as detailed in paragraph 3.10; and
- 2.3 That the Committee notes the action taken by officers to date to ensure the City Council is fully compliant with the 2014 Regulations and advises on any further actions to be taken.

3. Background Information

- 3.1 The Government has communicated its belief that local government decision-making should be as open and transparent as possible and that local people should have the right to report on meetings of local government bodies that are open to the public. Openness and transparency are important for robust accountability and, in the Government's view, this can only be achieved when local people have adequate rights to access meetings and information of local government bodies, thus allowing residents to be involved in decisions that will affect their day to day lives.
- 3.2 To date the Government has encouraged local government bodies to voluntarily embrace transparency by not only allowing local people to attend their meetings but also allowing them to report on public meetings by using modern communication methods such as filming, audio-recording and tweeting. Whilst some authorities have adopted this approach as a matter of good practice, some councils are still reportedly reluctant to embrace the change the digital world has brought. The Government has therefore extended and strengthened the rights of the public to utilise modern media in this way through the Openness of Local Government Bodies Regulations 2014 ("the 2014 Regulations").

Filming, Photographing and Reporting on Local Authority (Public) Meetings

- 3.3 The 2014 Regulations provide the public with strengthened rights to report at meetings of local government bodies by filming, photographing, audio-recording or by any other means to report the proceedings of an open meeting. Local people are therefore now able to film, make audio-recordings and provide written commentaries during a meeting and provide oral commentaries outside the meeting, thereby allowing those who are unable to attend the meeting to follow the proceedings.
- 3.4 The City Council already has in place an agreed 'Protocol on Conduct at Meetings and the use of Modern Media' which provides detailed guidance relating to conduct within meetings which is acceptable, particularly in the context of the use of modern media tools such as tweeting, blogging, filming and audio/video recording at meetings. The principles of protocol are reflected in the Council's Standing Order 18 contained in the Constitution.

- 3.5 The protocol details that no restrictions will be placed on members of the public attending Part 1 (public) meetings in relation to the use of modern media including still photography or filming, provided that their actions do not affect the conduct of the meeting. Under the Council's aforementioned Standing Orders, the Chairman of each meeting has powers to deal with issues relating to the conduct of those present to ensure the due and orderly despatch of business. Whilst the Council promotes and adheres to the principles of openness and transparency, including the right of the public to film and alike, any actions which adversely affect the meeting, other members of the public, sitting Councillors or the proper transaction of business will not be acceptable or tolerated. The Council therefore reserves the right to refuse the use of any type of recording equipment, if there are exceptional reasons to do so in the interests of good order.
- 3.6 The filming and recording of meetings by representatives of the media shall also be permitted provided the detailed arrangements for the use of any equipment beyond small hand-held devices (such as mobile phones or dictaphones) are agreed beforehand with the Chairman of the meeting and the Director of Communications, Policy and Performance. Through experience, representatives of the media are more likely to utilise larger and more intrusive recording equipment (such as standalone cameras, tri-pods etc) which require more planning and preparation to accommodate.
- 3.7 The priority of the City Council is to ensure that the business of its public meetings is not, in any way, adversely affected by the use of recording tools. The Council also has a duty to ensure that members of the public are not restricted from observing and witnessing our meetings due to the media's presence or otherwise negatively impacted. For these reasons, the City Council works in collaboration with representatives of the media to ensure the appropriate arrangements are agreed in advance, for logistical reasons and out of courtesy to Members, officers and the public. This has been the long-standing practice and has been implemented without issue to date. These Regulations should therefore have no impact upon the Council's positive relationship with media organisations. We would expect the media to continue to work collaboratively with the Council when requesting to film or report upon our public meetings and the Council will continue to permit and facilitate the media's requests as appropriate.
- 3.8 In light of the 2014 Regulations, officers have taken the opportunity to review the Council's Standing Orders. Officers consider that two additional standing orders which specifically address reporting on public meetings and the use of modern media tools accordingly should be introduced to ensure the Council's position on this matter is agreed, formalised and clearly set-out for Members, officers and the public.

The following additional Standing Order is suggested and is applicable to both full Council meetings as Standing Order 18(a), and Committee/Sub-Committee/Cabinet meetings as Standing Order 36(a).

Standing Orders 18(a) and 36(a)

Reporting on Public Meetings

“Members of the public, including representatives of the media, shall be permitted to report on the Part 1 (public) part of the Council’s formal meetings. Reporting may include filming, photographing or making an audio recording of proceedings at a meeting; using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later; or reporting or providing commentary on proceedings at a meeting, orally or in writing, so that the report or commentary is available as the meeting takes place or later to persons not present. The Chairman may only refuse permission if there is just reason for doing so, in exceptional circumstances, in the interests of good conduct and in accordance with Standing Orders 18 or 36 (Disorder). Such decisions shall not be open to challenge”.

Access to Information relating to Officer Decisions

- 3.9 The public can already access documents relating to those decisions made by officers under delegation from the executive of the council (i.e. executive decisions) through the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012. The new 2014 Regulations widens this provision to include access to documents relating to decisions taken by officers acting under powers delegated to them by a local government body, their committees, sub-committees or joint committees (i.e. non-executive decisions). These documents must include record of decisions taken, the reason for the decisions, any alternative options considered and rejected, and any other background documents. These documents must be available for inspection as soon as reasonably practicable. Where a person who has custody of these documents, without reasonable excuse, intentionally obstructs or refuses to disclose the whole or part of the documents, such a person can be charged with a criminal offence.
- 3.10 The 2014 Regulations specifically require all decision-making officers to produce a written record of any decision, the effect of which is:
- a) to grant a permission or licence;
 - b) to affect the rights of an individual; or

- c) to award a contract or incur expenditure which materially affects the council's financial position.

In respect of provision (c) above, officers suggest that the threshold at which officers should give notice of decisions to award a contract or incur expenditure, which is considered to "materially affect the council's financial position" should be set at £500,000. The Committee's views are sought on this figure.

3.11 It should be noted that the Council's Financial Regulations (contained in the Constitution) determine which levels and types of expenditure officers can authorise. On the basis of the suggested threshold of £500,000, the following officer decisions would require notification:

- (i) Contract awards between £500k and £1.5M (authority in excess of £1.5M is reserved to Cabinet Members)
- (ii) Authorising payment of invoices over £500k
- (iii) Expenditure relating to treasury management and investments between £500k and £1.5M (authority in excess of £1.5M is reserved to Cabinet Members)
- (iv) Expenditure relating to the operating of contracts for the pension fund over £500k
- (v) Placing of pension fund investments between £500k and £1.5M (authority in excess of £1.5M is reserved to the Superannuation Committee)

3.12 The vast majority of decisions which officers take on a daily basis either do not fall within the scope of the Regulations or have been determined locally to be exempt from the requirement. Some key examples of those decisions which do not need to be recorded are the following:

- Decisions which are already in the public domain in the form of a formal Cabinet or Cabinet Member Report or published as a result of other statutory requirements.
- Decisions which are already in the public domain through the respective service area's existing practices, providing the notice contains all the required information
- Routine administrative and organisational decisions. This includes expenditure and contract awards below the respective thresholds (as detailed above) and minor reorganisations.

- Decisions relating to an individual which contains sensitive and/or legally exempt information such as Housing Benefit, care packages or redundancy packages.
- Functions exercised under the Licensing Act 2003 for which local authorities have no discretion to refuse (i.e. no 'decision' has been taken – an admin function has been completed).

3.13 In order to comply with the Regulations, and to adhere to the principles of openness and transparency, the City Council has implemented an online facility which allows officers to quickly and easily record the relevant decisions they have taken under delegated powers. This information is published on the Westminster City Council website and is accessible by any member of the public. The Head of Legal and Democratic Services has informed all senior council officers of the new requirements and provided practical guidance in respect of the City Council's interpretation and application of the Regulations, including usage of the new online notification facility. In practice, a very similar online facility was already in use by the council in response to the aforementioned 2012 Regulations and officers are simply now required to alter which decisions they formally notify. This will be monitored by Governance Services to ensure compliance.

4. Legal Implications

- 4.1 Section 40 of the Local Audit and Accountability Act 2014 gives the Secretary of State power, by regulations, to make provision for allowing persons to film, photograph or make sound recordings of proceedings of meetings of certain local government bodies; for allowing those not present at meetings to see and hear the proceedings; and for allowing reporting and commentating on the proceedings.
- 4.2 Section 40 also gives the Secretary of State power, by regulations, to make provision for the keeping of written records of decisions made by officers of local government bodies. Section 40(6) specifies the local government bodies to which section 40 applies.
- 4.3 Part 5A of the Local Government Act 1972 makes general provision for access to meetings and documents of certain authorities, committees and sub-committees. Section 100A concerns admission to meetings of principal councils – they must be open to the public except to the extent that they are excluded (whether during the whole or part of the proceedings) under subsection (2) or by resolution under subsection (4) (these concern proceedings where confidential or exempt information as defined in section 100I are to be discussed). Part 5A applies to principal councils (nonmetropolitan counties, districts and London boroughs) and also applies to the authorities specified in section 100J. Part 5A is applied to overview and scrutiny committees of local authorities by virtue of section 9FA(6)(a) of the Local Government Act 2000.

4.4 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 make provision for public access to meetings and to information relating to decisions of local authority executives, and their committees. In addition, they provide for access to information relating to decisions made by joint committees of local authorities where these are solely comprised of executive members and are discharging executive functions. The Regulations also make provision for public access to documents where executive decisions are made by individual members or officers.

4.5 The 2014 Regulations in question essentially expand the requirement of the above cited 2012 Regulations to include both executive and certain non-executive decisions taken by officers acting under powers delegated to them by a local government body, their committees, sub-committees or joint committees.

5. Financial Implications

5.1 The proposals detailed in this report involve no financial implications. The online facility referred to above has been created at no additional cost to the Council as part of the existing Modern.Gov committee management system.

6. Consultation

6.1 The Regulations came into force on 6th August 2014 and required immediate implementation. The Head of Legal and Democratic Services was consulted on the interim approach, prior to the General Purposes Committee's consideration of the full proposals presented in this report.

6.2 The Corporate Leadership Team, which comprise the senior officers responsible for taking officer decisions at the levels impacted by the Regulations, have been consulted. Officers were consulted on an individual basis in the cases of Planning, Licensing, Transportation and Building Control, which are areas specifically cited by Regulation guidance as falling within the scope of the provisions.

6.3 The Director of Communications, Policy and Performance has been consulted specifically in relation to the Council's approach to the filming of public meetings by media organisations and has confirmed her agreement with the long-standing arrangements referred to in section 3 above.

7. Summary and Conclusion

7.1 The Government considers that these Regulations require little or no preparatory work by affected bodies. As evidenced in this report, the City Council already adheres to good practices and actively promotes transparency and openness in respect of its decision-making. Accordingly, the impact of the Regulations upon our current practices is indeed minimal.

- 7.2 The requirements relating to the right of members of the public to film and record our public meetings mimic those good practices already in place at the City Council. The use of modern media tools to record or report on the Council's public meetings will generally be allowed without restriction, unless the usage of those tools or the conduct of the individuals using those tools in any way adversely affects the transaction of business.
- 7.3 Appropriate interim action has already been taken to ensure the City Council is fully compliant with the expanded officer decision requirements and will continue to be enforced going forward, subject to the views of the Committee on the matters set-out in the report.

If you have any queries about this Report or wish to inspect any of the Background Papers please contact:

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BACKGROUND PAPERS:

- Openness of Local Government Bodies Regulations 2014
- Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012
- Westminster City Council Constitution
- Westminster City Council Protocol on Conduct at Meetings and the use of Modern Media