

FOR PUBLICATION

UPDATE ON THE OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014

MEETING: COUNCIL

DATE: 17 DECEMBER 2014

REPORT BY: LOCAL GOVERNMENT AND
REGULATORY LAW MANAGER AND
MONITORING OFFICER

WARD: N/A
COMMUNITY FORUM: N/A
KEY DECISION REF:

FOR PUBLICATION

BACKGROUND PAPERS FOR PUBLIC REPORTS:

TITLE: Working Papers LOCATION:

1.0 PURPOSE OF REPORT

1.1 To advise of the implications for the Council of the new Openness of Local Government Bodies Regulations 2014 (The 2014 Regulations).

2.0 RECOMMENDATIONS

2.1 That the requirements of the Openness in Local Government Bodies Regulations 2014 as outlined in this report be noted.

2.2 That Full Council approves that the 'Guidelines for members of the public attending public meetings' contained within the Constitution and on the website be updated as attached to the report.

2.3 That notices warning members of the public that they may be filmed are posted up in the public areas of the Council Chamber and the committee rooms.

2.4 That the arrangements for the publication of officer decisions as set out in this report be approved.

- 2.5 That Full Council approves that the following changes to the Councils Constitution be made:
- (i.) Rule 22.3 of the Access to Information Procedure Rules contained within Part 4 of the Council's Constitution be amended as set out in paragraph 4.18 of this report.
 - (i.) Appendix 2 to Part 3 of the Constitution be amended to the wording at Appendix D to the report.
 - (ii.) Appendix 3 to Part 3 of the Constitution be removed.

2.0 BACKGROUND

- 2.1 The 2014 Regulations were made on 5 August 2014 and came into force on 6 August 2014. They build on the Local Government (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (the 2012 Regulations) which sought to provide greater openness and transparency in decision making at Executive level meetings, including Cabinet and individual Executive Member decisions. Principally the 2012 Regulations required key decisions and items taken at meetings in private session to be advertised 28 days in advance and for all executive decisions to be recorded as soon as reasonably practicable. This included executive decisions taken by officers.
- 2.2 The 2014 Regulations impose new requirements for local authorities to allow the public to report and commentate on meetings and they also require written records to be published of certain decisions taken by officers.
- 2.3 The Secretary of State has released a plain English guide to the regulations which provides some further guidance for the public. This is available to view at:
- https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf
- 2.4 This report was considered by Cabinet at its meeting on 2 December, 2014 and it was resolved that the recommendations be supported and submitted to Full Council for approval (Cabinet Minute No. 132, 2014/15).

3.0 Implementation

Filming Council Meetings

- 3.1 The 2014 Regulations seek to make unequivocal the public's right to report on meetings in public session. Reporting includes photography, filming, audio recording and social media. Those engaged in reporting may publish, post or share the results of their reporting via any communication method whilst they are in the meeting. Authorities are not required to permit oral commentary by a person present at the meeting or to permit reporting of the meeting whilst it is in private session.
- 3.2 "Reasonable facilities" must be provided to the public to exercise these rights.
- 3.3 The business of the meeting must not be disrupted by members of the public and if they are deemed to be doing so they can be asked to leave.
- 3.4 The Council's existing arrangements for the attendance of members of the public at meetings do not expressly prohibit the filming of meetings.
- 3.5 The Council also currently provides a public wi-fi connection in Committee Rooms 1 and 2. The project for widening the provision of the public wi-fi through the Town Hall is currently within the remit of the Great Place Great Service project.
- 3.6 It is recommended that the wording of the Council's guidance on the public attending public meetings contained within the Constitution and on the Council's website is updated to reflect the legislative changes. The proposed text is attached at Appendix A.

Officer Decisions

- 3.7 The 2012 Regulations defined executive decisions as decisions made in connection with the discharge of a function which is the responsibility of the executive of a local authority. The 2014 Regulations specify further the requirements for the officer decisions that must be recorded.
- 3.8 Regulation 7 of the 2014 Regulations provides that a decision-making officer must produce a written record of any decision which would otherwise have been taken by the relevant Local Government

body (in this case Chesterfield Borough Council), or a committee, subcommittee or joint committee, but it has been delegated to an officer either:-

- (a) Under a specific express authorisation; or
- (b) Under a general authorisation to officers to take such decisions 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 that relevant local government body's financial position.

3.9 Regulation 7 goes on to specify the information which must be included in the written record of the decision:

- (a) The date the decision was taken;
- (b) A record of the decision taken along with reasons for the decision;
- (c) Details of alternative options, if any, considered and rejected; and
- (d) Where the decision is made under an express authorisation the names of any Member who has declared a conflict of interest.

3.10 If there is a separate statutory requirement to record the decision together with the date taken and reasons for the decision, then this will be sufficient to satisfy the requirement.

3.11 The plain English guide states that "*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.*" It goes on to provide a non-exhaustive list of examples of decisions that should be recorded:

- decisions about awarding contracts above specified individual or total values;
- decisions to exercise powers of Compulsory Purchase;
- decisions on disposal of and/ or provision of allotment land and green spaces;
- awarding of Discretionary Rate Relief
- the opening hours of local libraries; and
- the holding of car boot sales/markets on council-owned land.

- 3.12 The granting or renewal of licences made by officers as delegated decisions are recorded using the Council's licensing software and are publically available on the Public Register on the Council's website. Planning and building control decisions made by officers under delegated powers are reported to Planning Committee and these are publically available through the minutes of those meetings.
- 3.13 The category of decisions that "affect the rights of an individual" will be limited to such decisions that have a direct impact by changing the nature of an individual's legal rights. Where a decision is simply implementing an existing framework of legal rights, it will not fall within the rules. In addition, information regarding individuals will often be classed as exempt information and would not be published.
- 3.14 It is also proposed that the reporting of officer decisions, under these Regulations, to award a contract or incur expenditure be limited to those that meet the financial thresholds set out in the definition of a Key Decision within the Constitution. These limits are as follows:
- a decision to spend £50,000 or more from an approved budget,
 - a decision to vire more than £10,000 from one budget to another,
 - a decision which would result in a saving of £10,000 or more to any budget head,
 - a decision to dispose or acquire any interest in land or buildings with a value of £50,000 or more,
 - a decision to propose the closure of, or reduction by more than ten (10) percent in the level of service (for example in terms of funding, staffing or hours of operation) provided from any facility from which Council services are supplied.
- 3.15 The existing template used by the Council for recording individual Executive Decisions has been adapted for the recording of officer decisions that are not already routinely published (Attached at Appendix B). The template can be completed by decision making officers on a web-form on the intranet site. These decisions will be published on the Council's website by Democratic Services using the modern.gov application.
- 3.16 Where decisions are delegated to officers under specific express authorisation, for example expressly stated in Cabinet decisions, the relevant officer should complete the decision record as soon as practicable after the decision is made

3.17 Rule 22.3 of the Access to Information Procedure Rules contained within Part 4 of the Council's Constitution currently states "*In respect of officer decisions, only those executive decisions closely connected to the discharge of executive functions by officers need to be recorded.*"

3.18 It is recommended that this paragraph of the Constitution be amended as follows:

"In respect of officer decisions, the following decisions will be recorded, where not already published elsewhere:

- a) Decisions under a specific express authorisation;*
- b) Decisions under a general authorisation to officers to take such decisions 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 that relevant local government body's financial position."*

An officer decision will be reported under part (iii) if it meets the financial thresholds as set out in the definition of a key decision:

- *a decision to spend £50,000 or more from an approved budget,*
- *a decision to vire more than £10,000 from one budget to another,*
- *a decision which would result in a saving of £10,000 or more to any budget head,*
- *a decision to dispose or acquire any interest in land or buildings with a value of £50,000 or more,*
- *a decision to propose the closure of, or reduction by more than ten (10) percent in the level of service (for example in terms of funding, staffing or hours of operation) provided*
- *from any facility from which Council services are supplied.*

3.19 Appendices 2 and 3 to Part 4 of the Constitution also set out how officer delegated decisions should be reported under the current arrangements. (attached to this report at Appendix C) This is via the Delegation Report presented to Cabinet on a monthly basis and a list of the officer delegations that would be reported is set out at Appendix 3.

3.20 It is proposed that the list of delegated decisions in Appendix 3 be removed and that references to Appendix 3 also be removed". The categories of delegated decisions that would fall under the reporting

requirements may vary from time-to-time and it would not be feasible to regularly update this list in the Constitution to reflect such changes.

- 3.21 The remaining text may also be simplified to refer to the amended Access to Information Procedure Rules which would set out the criteria for the reporting of officer decisions. The proposed wording is attached at Appendix D.

4.0 RISK MANAGEMENT

Risk	Likelihood	Impact	Mitigating Action	Revised Likelihood	Residual Impact
Decision making officers failing to report decisions that meet the regulatory requirements	Medium	High	Learning and Development training will be delivered to all senior managers	Low	Medium
Failing to maintain an up-to-date record of decisions, impacting on reputation of council	Low	Medium	Report of delegated decisions reviewed at Management Team meetings.	Low	Low
Councillors/ Officers/Members of the public being filmed without their knowledge	Medium	Medium	Request that notice is given to Democratic Services in advance, Notices to be displayed advising that members of the public have a right to film	Low	Low

5.0 EQUALITIES

5.1 The Regulations state that no impact assessment had been produced in relation to the 2014 Regulations because no impact on the private or voluntary sector was foreseen and there is only minimal impact on local authorities. Whilst there is no requirement to publish equality and diversity considerations within the records of key decisions, the Equality Act 2010 requires equality analysis to be undertaken as part of the development of new or changed policies, procedures, projects, functions etc. It is important that members are able to consider this information as part of the decision making process. The Council's corporate report writing requirements ensure that this is a key part of the decision-making process.

6.0 FINANCIAL IMPLICATIONS

6.1 There may be resource implication in terms of officer time involved in recording decisions made by officers and ensuring that such records are published and retained in accordance with the Regulations. However, it is not possible at this stage to fully analyse implications of these changes on employees.

7.0 LEGAL CONSIDERATIONS

7.1 The legal implications are set out in the body of the report.

8.0 RECOMMENDATIONS

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9.0 REASON FOR RECOMMENDATIONS

- 9.1 To ensure the Council is compliant with the Openness in Local Government Regulations 2014.

GERARD ROGERS
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MONITORING OFFICER

You can get more information about this report from Donna Cairns on 01246 345277.
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