

Draft Regulations laid before Parliament under section 43(3) and (4)(i) of the Local Audit and Accountability Act 2014, for approval by resolution of each House of Parliament.

DRAFT STATUTORY INSTRUMENTS

2014 No.

LOCAL GOVERNMENT, ENGLAND

The Openness of Local Government Bodies Regulations 2014

Made - - - -

Coming into force in accordance with regulation 1

The Secretary of State makes the following Regulations in exercise of the powers conferred by sections 40 and 43(2) of the Local Audit and Accountability Act 2014⁽¹⁾.

A draft of this instrument has been laid before, and approved by a resolution of, each House of Parliament pursuant to section 43 of the Local Audit and Accountability Act 2014.

PART 1

General

Citation and commencement

1. These Regulations may be cited as the Openness of Local Government Bodies Regulations 2014 and come into force on the day after the day on which they are made.

Interpretation

2. In these Regulations—

“the 1960 Act” means the Public Bodies (Admission to Meetings) Act 1960⁽²⁾;

“the 1972 Act” means the Local Government Act 1972⁽³⁾;

“the 2012 Regulations” means the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012⁽⁴⁾.

(1) 2014 c. 2.

(2) 1960 c. 67. Relevant amendments were made by the Local Government (Access to Information) Act 1985 (c. 43), section 3, Schedule 2 and Schedule 3 and the Broadcasting Act 1990 (c. 42), section 203(1) and Schedule 20.

(3) 1972 c. 70. Part 5A and Schedule 12A was inserted by the Local Government (Access to Information) Act 1985, section 1. Section 100I was amended by S.I. 2006/88.

(4) S.I. 2012/2089.

PART 2

Admission to and reporting of meetings of certain local government bodies

Amendment of the Public Bodies (Admission to Meetings) Act 1960

3.—(1) Section 1 of the 1960 Act (admission of public to meetings of local authorities and other bodies) is amended as follows.

(2) After subsection (3) insert—

“(3A) Where the public are excluded from a meeting of a relevant local government body under subsection (2), the body may also prevent any person from reporting on the meeting using methods—

- (a) which can be used without that person’s presence at the meeting, and
- (b) which enable persons not present at the meeting to see or hear the proceedings at the meeting as it takes place or later.”

(3) In subsection (4), after paragraph (c) insert—

“;

(d) in the case of a meeting of a relevant local government body, while the meeting is open to the public any person attending is to be permitted to report on the meeting.”

(4) After subsection (4) insert—

“(4A) Subsection (4)(d) does not require a relevant local government body to permit oral reporting or oral commentary on a meeting as it takes place if the person reporting or providing the commentary is present at the meeting.”

(5) In subsection (7)—

- (a) after “television broadcasting services” insert “or, in the case of a relevant local government body, for use in electronic or any other format to provide news to the public by means of the internet”; and
- (b) for “but nothing in this section” substitute “but, subject to subsection (4)(d), nothing in this section”.

(6) After subsection (8) insert—

“(9) In this Act—

“relevant local government body” means—

- (a) the Council of the Isles of Scilly;
- (b) a parish council; or
- (c) a parish meeting of a parish which does not have a separate parish council;

“reporting” means—

- (a) filming, photographing or making an audio recording of proceedings at a meeting;
- (b) using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later; or
- (c) 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.”

(7) After section 1 of that Act insert—

“Publication and dissemination of reports

1A.—(1) Any person who attends a meeting of a relevant local government body for the purpose of reporting on the meeting may use any communication method, including the internet, to publish, post or otherwise share the results of the person’s reporting activities.

(2) Publication and dissemination may take place at the time of the meeting or occur after the meeting.”

(8) In section 2(1) of that Act (application of section 1 to committees of bodies to which the Act applies)—

(a) for “the foregoing section” substitute “sections 1 and 1A”;

(b) for “as that section applies” substitute “as they apply”; and

(c) for “of that section” substitute “of section 1”.

Amendment of the Local Government Act 1972

4.—(1) Section 100A of the 1972 Act (admission to meetings of principal councils) is amended as follows.

(2) After subsection (5) insert—

“(5A) Where the public are excluded from a meeting of a principal council in England under subsection (2) or (4), the council may also prevent any person from reporting on the meeting using methods—

(a) which can be used without that person’s presence at the meeting, and

(b) which enable persons not present at the meeting to see or hear the proceedings at the meeting as it takes place or later.”

(3) In subsection (6), at the beginning of paragraph (c) insert “subject to subsection (7D),”.

(4) In subsection (7), at the beginning insert “Subject to subsection (7A)”.

(5) After subsection (7) insert—

“(7A) While a meeting of a principal council in England is open to the public, any person attending is to be permitted to report on the meeting.

(7B) Subsection (7A) does not require a principal council in England to permit oral reporting or oral commentary on a meeting as it takes place if the person reporting or providing the commentary is present at the meeting.

(7C) A person attending a meeting of a principal council in England for the purpose of reporting on the meeting must, so far as practicable, be afforded reasonable facilities for doing so.

(7D) Subsection (7C) applies in place of subsection (6)(c) in the case of a principal council in England.

(7E) Any person who attends a meeting of a principal council in England for the purpose of reporting on the meeting may use any communication method, including the internet, to publish, post or otherwise share the results of the person’s reporting activities.

(7F) Publication and dissemination may take place at the time of the meeting or occur after the meeting.”

(6) After subsection (8) insert—

“(9) In this section “reporting” means—

(a) filming, photographing or making an audio recording of proceedings at a meeting,

- (b) using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later, or
- (c) 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.”

(7) In section 100E of that Act (application to committees and sub-committees), after subsection (1) insert—

“(1A) But in section 100A, subsections (5A), (7A) to (7F) and (9) do not apply to a committee which is appointed or established jointly by one or more principal councils in England and one or more principal councils in Wales, or a sub-committee of such a committee.”

(8) In section 100J of that Act (application of Part 5A to new authorities, Common Council etc.)—

(a) in subsection (1), after “Except in this section,” insert “and subject as follows,”, and

(b) after subsection (2A) insert—

“(2B) In section 100A, subsections (5A), (7A) to (7F) and (9) do not apply to—

- (a) a joint waste authority;
- (b) the Common Council other than in its capacity as a local authority or police authority;
- (c) a joint board or a joint committee falling within subsection (2) above;
- (d) the Homes and Communities Agency; or
- (e) a Mayoral development corporation.”.

Amendment of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

5.—(1) The 2012 Regulations are amended as follows.

(2) In regulation 4 after paragraph (5) insert—

“(5A) Where the public are excluded from a meeting under paragraph (2), a decision making body may also prevent any person from reporting proceedings using methods—

- (a) which can be used without that person’s presence at the meeting, and
- (b) which enable persons not present at the meeting to see or hear the proceedings at the meeting as it takes place or later.

(5B) While the meeting is open to the public, any person attending is to be permitted to report the proceedings.

(5C) Paragraph (5B) does not require a decision making body to permit oral reporting or oral commentary on a meeting as it takes place if the person reporting or providing the commentary is present at the meeting.”

(3) In that regulation, after paragraph (6) insert—

“(7) Any person who attends the meeting to report the proceedings may use any communication methods, including the internet, to publish, post or otherwise share the results of their reporting activities.

(8) Publication and dissemination may take place at the time of the meeting or occur after the meeting.

(9) For the purposes of this regulation, reporting on proceedings at a meeting means—

- (a) filming, photographing or making an audio recording of the proceedings at the meeting,
 - (b) using any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later, or
 - (c) reporting or providing commentary on proceedings at the meeting, orally or in writing, so that the report or commentary is available to persons not present, as the meeting takes place or later.”
- (4) In regulation 20 omit paragraph (4).

PART 3

Record of decisions and access to documents

Interpretation of this Part

6. In this Part—

“background papers” in relation to a decision which falls within regulation 7(2), means those documents other than published works, that—

- (a) relate to the subject matter of the decision or, as the case may be, part of the decision; and
- (b) in the opinion of the proper officer—
 - (i) disclose any facts or matters on which the decision or an important part of the decision is based; and
 - (ii) were relied on to a material extent in making the decision;

“confidential information” means—

- (c) information provided to the local government body by a government department on terms (however expressed) which forbid the disclosure of the information to the public; or
- (d) information the disclosure of which to the public is prohibited by or under any enactment or by order of a court,

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

“decision-making officer” means an officer of a relevant local government body who makes a decision which falls within regulation 7(2);

“exempt information” has the meaning given by section 100I(1) of the 1972 Act (exempt information and power to vary Schedule 12A);

“proper officer” has the same meaning as in section 270(3) of the 1972 Act (general provisions as to interpretation);

“relevant local government body” means—

- (a) a district council,
- (b) a county council in England,
- (c) a London borough council,
- (d) the Greater London Authority,
- (e) the Common Council of the City of London in its capacity as a local authority or police authority,
- (f) the London Fire and Emergency Planning Authority,
- (g) Transport for London,

- (h) a joint authority established under Part 4 of the Local Government Act 1985⁽⁵⁾,
- (i) an economic prosperity board,
- (j) a combined authority,
- (k) a fire and rescue authority in England constituted by a scheme under section 2 of the Fire and Rescue Services Act 2004⁽⁶⁾ or a scheme to which section 4 of that Act applies,
- (l) a National Park Authority for a National Park in England,
- (m) the Broads Authority,
- (n) the Council of the Isles of Scilly,
- (o) a parish council, or,
- (p) a parish meeting.

Recording of decisions

7.—(1) The decision-making officer must produce a written record of any decision which falls within paragraph (2).

(2) A decision falls within this paragraph if it would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body 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) The written record must be produced as soon as reasonably practicable after the decision-making officer has made the decision and must contain the following information—

- (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 falls under paragraph (2)(a), the names of any member of the relevant local government body who has declared a conflict of interest in relation to the decision.

(4) The duty imposed by paragraph (1) is satisfied where, in respect of a decision, a written record containing the information referred to in sub-paragraphs (a) and (b) of paragraph (3) is already required to be produced in accordance with any other statutory requirement.

Decisions and background papers to be made available to the public

8.—(1) The written record, together with any background papers, must as soon as reasonably practicable after the record is made, be made available for inspection by members of the public—

- (a) at all reasonable hours, at the offices of the relevant local government body;

(5) 1985 c. 51. Relevant amendments were made by the Police and Magistrates' Courts Act 1994 (c. 29), section 93 and Schedule 9; the Greater London Authority Act 1999 (c. 29), section 328, 423 and Schedule 34; the Civil Contingencies Act 2004 (c. 36), section 32 and Schedule 2 and the Local Transport Act 2008 (c. 26), section 77 and Schedule 4.

(6) 2004 c. 21.

- (b) on the website of the relevant local government body, if it has one; and,
- (c) by such other means that the relevant local government body considers appropriate.

(2) On request and on receipt of payment of postage, copying or other necessary charge for transmission, the relevant local government body must provide to the person who has made the request and paid the appropriate charges—

- (a) a copy of the written record;
- (b) a copy of any background papers.

(3) The written record must be retained by the relevant local government body and made available for inspection by the public for a period of six years beginning with the date on which the decision, to which the record relates, was made.

(4) Any background papers must be retained by the relevant local government body and made available for inspection by the public for a period of four years beginning with the date on which the decision, to which the background papers relate, was made.

(5) In this regulation “written record” means the record required to be made by regulation 7(1) or the record referred to in regulation 7(4), as the case may be.

Confidential and exempt information

9.—(1) Nothing in this Part is to be taken to authorise or require the disclosure of confidential information in breach of the obligation of confidence.

(2) Nothing in this Part—

- (a) authorises or requires a relevant local government body to disclose to the public or make available for public inspection any document or part of a document if, in the opinion of the proper officer, that document or part of a document contains or may contain confidential information; or
- (b) requires a relevant local government body to disclose to the public or make available for public inspection any document or part of a document if, in the opinion of the proper officer, that document or part of a document contains or is likely to contain exempt information.

Offences

10.—(1) A person who has custody of a document which is required by regulation 8 to be available for inspection by members of the public commits an offence if, without reasonable excuse, that person—

- (a) intentionally obstructs any person exercising a right conferred under this Part in relation to inspecting written records and background papers; or
- (b) refuses any request under this Part to provide written records or background papers.

(2) A person who commits an offence under paragraph (1) is liable on summary conviction to a fine not exceeding level 1 on the standard scale.

Signed by authority of the Secretary of State for Communities and Local Government

Date

Name
Parliamentary Under Secretary of State
Department for Communities and Local
Government

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations make provision to allow members of the public to report and commentate on public meetings of local government bodies in England. They also require written records to be kept of certain decisions taken by officers of these bodies.

Regulation 3 amends the Public Bodies (Admission to Meetings) Act 1960 to allow entry to the meetings of specified local government bodies for the purposes of reporting and to allow the results of the reporting to be published or disseminated. “Reporting” includes filming and providing commentary on proceedings and allows for the use of a wide range of methods including social media.

Regulations 4 and 5 make similar amendments to the Local Government Act 1972 and the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

Regulation 7 provides for the making of a written record of certain decisions taken by officers of relevant local government bodies; regulation 8 provides for the publication of that record; regulation 9 provides an exemption for confidential information and regulation 10 imposes a criminal sanction in relation to obstruction of persons in providing information under regulation 8, punishable on summary conviction to a fine not exceeding level 1 on the standard scale.

An impact assessment has not been prepared for this instrument as it will have no impact on the costs of business or the voluntary sector.