

EXPLANATORY MEMORANDUM TO
THE OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS
2014

2014 No. [XXXX]

1. This explanatory memorandum has been prepared by Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.
2. **Purpose of the instrument**
 - 2.1 These Regulations allow persons to report and commentate on public meetings of local government bodies. They also require a written record of certain decisions made by officers of such bodies.
3. **Matters of special interest to the Joint Committee on Statutory Instruments**
 - 3.1 None.
4. **Legislative Context**
 - 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 council (non-metropolitan 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 Section 1 of the Public Bodies (Admission to Meetings) Act 1960 makes similar provision in respect of the bodies specified in the Schedule, including the Council of the Isles of Scilly, a parish council and a parish meeting.

4.5 The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (S.I. 2012/2089) 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.

5. Territorial Extent and Application

5.1 This instrument applies to England.

6. European Convention on Human Rights

Brandon Lewis MP, Parliamentary Under Secretary of State at the Department for Communities and Local Government has made the following statement regarding Human Rights:

In my view the provisions of the Openness of Local Government Bodies 2014 are compatible with the Convention rights.

7. Policy background

- What is being done and why

7.1 Where local authority decision-making is open to the public, local people can more easily hold their authority to account, helping to ensure the authority delivers value for money in public spending, and enabling local people to be genuinely involved in decisions that will affect their day to day lives. Accordingly the Government believes that local government body decision-making should be as open and transparent as possible, and 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 this can only be achieved when local people have adequate rights to access the meetings and information of their local government bodies, thus allowing local people to be involved in decisions that will affect their day to day lives.

7.2 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 public meetings by using modern communication methods such as filming, audio-recording, and tweeting. However while some bodies have adopted this approach, some

councils are still reluctant to embrace the change the digital world has brought. This is evidenced through some incidents where local people have been ejected from meetings simply because they want use modern communication methods to report the proceedings of their local government bodies' meetings.

7.3 In addition, local people are currently enjoying more rights under the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 when they attend meetings of a council's executive, and can also access information relating to executive decisions made by officers. These rights cannot be enjoyed when the public attend public meetings of a full council, its committees, sub-committees and joint committees, parish and town councils, and other local government meetings. There is a risk that some councils use this inconsistent approach to refuse public access.

7.4 These Regulations give greater rights to report at meetings of local government bodies by filming, photographing, audio-recording or any other means to report the proceedings of an open meeting. Local people will be able to film, make audio-recordings and provide written commentaries during a meeting and provide oral commentaries outside the meeting, therefore allowing those who are unable to attend the meeting to follow the proceedings.

7.5 The public can already access documents relating to decisions made by officers under delegation from the executive of a council, through the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012. Members of the public can now access 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. These documents will include records 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.

7.6 These Regulations bring the public's rights of access to meetings and associated documents of councils and other local government bodies, their committees and sub-committees, in line with analogous existing rights in relation to meetings and decisions of a council's executive. They put beyond doubt the rights for the public attending all such meetings to use social media to report on the meeting - a practice already followed in many cases, but which in certain cases bodies have sought to prevent. The Government therefore believes that these Regulations need to come into force as soon as practicable, not least because the rights they give the public in relation to council meetings, are similar to the rights the public already have in relation to meetings of a council's executive.

7.7 The Government also considers that these Regulations will require little or no preparatory work by bodies, even where these are not currently

following good practices on transparency and openness - good practices which, if followed, would mean that they would be already acting largely in accordance with the Regulations. Moreover, there is, in the local government sector, already wide knowledge of the Government's intentions to make these Regulations, if Parliament approves.

7.8 As explained below, the Government has already undertaken a soundings exercise, in response to which, for example, the Local Government Association has commented that it is opposed to the Regulations, suggesting that they are unnecessary as bodies already act largely in compliance with what the Regulations are seeking to require. The soundings exercise also sought comments from the National Association of Local Councils (NALC), who informed all their member parish councils and network of county associations of the Government's intentions. As explained below, the Government does not share the view of NALC that the Regulations could have a costly and detrimental effect on local councils, but welcomes NALC's initiative to inform all its member parish and town councils of the Government's intentions.

7.9 Since the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012 were made, the Government has, through Ministerial statements and press notices, continually called for councils to allow filming and the use of social media in their meetings. For example, in a press notice of 23 August 2012, the Secretary of State for Communities and Local Government stressed that every decision "whether it is in a full council meeting or unheard of sub-committee, it has got to be taken in the full glare of all the press and any of the public". And in a press notice of June 2013, the Secretary of State stated that "modern technology has created a new cadre of bloggers and hyper-local journalists, and councils should open their digital doors and not cling to analogue interpretations of council rules".

7.10 In all these circumstances therefore, the Government considers it would be appropriate for the Regulations to come into force on the day after which they are made.

- Consolidation

7.11 This is the first exercise of the enabling power. However the new provisions have necessitated the Regulations to make amendments to the Local Government Act 1960, Local Government Act 1972, and the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012.

8. Consultation outcome

8.1 The Department has not undertaken a consultation exercise on the Regulations. However, the Regulations have been the subject of a short, focussed, informal soundings exercise with partners – the Local Government Association, Lawyers in Local Government, the Society of Local Authority Chief Executives, and the National Association of Local Councils.

8.2 The Department received comments from the Local Government Association, Lawyers in Local Government, the National Association of Local Councils, Greater London Authority, the Association of Democratic Services Officers, Transport for London, a member of the House of Lords, some principal authorities, and some parish and town councils. All the comments were carefully considered before finalising the Regulations.

8.3 The Local Government Association did not support the Regulations as they commented that “the Government’s approach, as set out in the draft Regulations, appears completely contrary to the principles of Localism and is in fact micro-management of the sector.” They stated that guidance could have been issued. The Government does not agree with these points. The Government believes that localism requires robust local scrutiny and local accountability, so that elected representatives can be held to account for the decisions they make; there is a role for central government and Parliament to provide legal rights for the press and public to protect and entrench such local accountability. There have been examples of some councils not accepting the use of modern technology for the purpose of bringing their meetings to their local people who cannot attend. Also the Government believes that the Regulations will address the inconsistencies that exist between the rights exercisable when attending meetings of a council’s executive and those that can be exercised when attending meetings of a local government body.

8.4 The National Association of Local Councils, in their response, supported the objective of transparency and accountability but raised concerns about the practical implications of the Regulations, as did other respondents. One of the concerns was that some of the provisions in the Regulations such as filming or recording a meeting, and recording and publishing decisions taken by officers would have significant detrimental, costly and disproportionate effects on local councils. The Government does not share this view; allowing the public to attend and report meetings promotes health democracy and should not be seen as an intrusion, nor that it creates burdens on the councils or local government bodies. There is no new requirement for councils to film or audio record meetings; rather, legislation is being amended to allow the press and public to make their own recordings of a public meeting, if they wish. Part 3 of the Regulations, which relates to the recording and publishing of decisions delegated to officers by the council or local government body, its committees or sub-committees, largely mirrors the provisions in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2012. These Regulations have been in force since September 2012. The Government has the intention of working with the sector to produce a Plain English Guide analogous to the Guide applicable to the 2012 Regulations (Your council’s cabinet, going to its meetings, seeing how it works). It is envisaged that the Guide will cover matters such as what would constitute ‘disruptive behaviour’ at a meeting, and the sort of decisions that officers would be required to record and publish.

8.5 The Government has accepted certain drafting and policy points. In particular provision has been included in the Regulations requiring oral

commentary to be provided outside the meeting, expanding the materiality condition for the recording of decisions delegated to officers to apply to both the awarding of contracts and incurring expenditure, removing the requirement to record the title of the decision making officer, and avoiding duplication by providing that the requirement to produce a written record is satisfied where, in respect of a decision, a written record is already required to be produced under any other legislation, as long as the date and record of the decision with reasons are already included in that requirement.

9. Guidance

9.1 While these Regulations are considered to be self-explanatory, the Government plans to produce a Plain English Guide. The Guide will be designed to provide practical information on the Regulations, analogous to the Guide to the 2012 Regulations.

10. Impact

10.1 An Impact Assessment has not been prepared for this instrument as it has no impact on business, charities or voluntary bodies, and minimal impact on local government as local authorities currently following good practices on transparency and openness are already largely acting in accordance with these Regulations.

11. Regulating small business

11.1 The legislation does not apply to small business.

12. Monitoring & review

12.1 The Department does not intend to put in place any formal mechanism for monitoring and reviewing the Regulations. Any issue arising from these Regulations will be addressed through the Department's on-going dialogue with the Local Government Association,

13. Contact

Tayo Peters at the Department of Communities and Government Tel: 0303 444 2551 or email: tayo.peters@communities.gsi.gov.uk can answer any queries regarding the instrument.