

2000 No. 3272

LOCAL GOVERNMENT, ENGLAND

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000

Made - - - - - 13th December 2000

Laid before Parliament 19th December 2000

Coming into force - - 9th January 2001

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The Secretary of State for the Environment, Transport and the Regions, in exercise of the powers conferred upon him by sections 22 and 105 of the Local Government Act 2000^(a) hereby makes the following Regulations:

PART I

GENERAL

Citation, commencement and application

1.—(1) These Regulations may be cited as the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations [2000] and shall come into force on 9th January 2001.

(2) These Regulations apply in relation to local authorities in England.

Interpretation

2. In these Regulations—

“the 1972 Act” means the Local Government Act 1972^(b);

“the 2000 Act” means the Local Government Act 2000;

“background papers”, in relation to a report or part of a report, means those documents other than published works, that—

(a) relate to the subject matter of the report or, as the case may be the part of the report; and

(b) in the opinion of the proper officer—

(i) disclose any facts or matters on which the report or an important part of the report is based; and

(ii) were relied on to a material extent in preparing the report;

“confidential information” means—

(a) information provided to the local authority by a government department upon terms (however expressed) which forbid the disclosure of the information to the public; or

(a) 2000 c. 22. For the application of sections 22 and 105 to Wales, *see* section 106 of the Local Government Act 2000. *See* section 22(13) for the definition of “prescribed”.

(b) 1972 c. 70.

(b) information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court, and in either case, a reference to the obligation of confidence is to be construed accordingly;

“copy”, in relation to any document, includes a copy made from a copy;

“decision maker” means the decision making body by which, or the individual by whom, an executive decision is made;

“decision making body”, in relation to an executive decision, means—

- (a) the executive of a local authority;
- (b) a committee of a local authority executive;
- (c) a joint committee, where all the members of the joint committee are members of a local authority executive; or
- (d) a sub-committee of a joint committee where all the members of the joint committee are members of a local authority executive,

which is authorised to discharge the function to which the executive decision relates in accordance with the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000(a);

“document” means any report or background papers, other than that only in a draft form, taken into consideration in relation to an executive decision;

“executive decision” means a decision made or to be made, by a decision maker, in connection with the discharge of a function which is the responsibility of the executive of a local authority;

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

“information” includes an expression of opinion, any recommendations and any decision made;

“joint committee” means a committee appointed under section 102(1) of the 1972 Act (appointment of committees) in accordance with regulations made under section 20 of the 2000 Act(c);

“key decision” has the meaning given in regulation 8;

“local authority” means a county council, a district council which or a London borough council which is operating executive arrangements;

“newspaper” includes—

- (a) a news agency which systematically carries on the business of selling and supplying reports or information to newspapers; and
- (b) any organisation which is systematically engaged in collecting news—
 - (i) for sound or television broadcasts; or
 - (ii) for inclusion in programmes to be included in any programme service within the meaning of the Broadcasting Act 1990 other than a sound or television broadcasting service within the meaning of Part III or Part I of that Act respectively(d);

“political adviser or assistant” means a person appointed pursuant to section 9 of the Local Government and Housing Act 1989(e) (assistants for political groups) or regulations made under paragraph 6 of Schedule 1 to the 2000 Act (mayor’s assistant);

“private meeting”, in relation to a local authority executive, means a meeting which is not a public meeting;

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

(a) The Local Government (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000/2851).

(b) Section 100I was inserted by the Local Government (Access to Information) Act 1985 (c. 43).

(c) See regulation 11 of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (S.I. 2000/2851).

(d) 1990 c. 42. The definition of “programme service” is found in section 201. Subsequently (1) (bb) of that section was inserted by the Broadcasting Act 1996 (c. 55), schedule 10, Part I, paragraph 11. The definition of “sound broadcasting service” is to be found in section 126(1), amended by the Broadcasting Act 1996, schedule 10, Part 1 and paragraph 9. The definition of “television broadcasting service” is found in section 2(5), amended by the Broadcasting Act 1996, Schedule 10, Part I paragraph 1.

(e) 1989 c. 42.

“public meeting”, in relation to a local authority executive, means—

- (a) a meeting which, in accordance with regulation 7, is required to be held in public; and
- (b) any other meeting of the local authority executive, or of a committee of that executive, where the executive or committee, as the case may be, determine that it shall be held in public;

“relevant local authority” means the local authority whose executive is responsible for the discharge of the function to which the executive decision relates;

“relevant overview and scrutiny committee” means an overview and scrutiny committee of the relevant local authority which has terms of reference including the power to review or scrutinise decisions made, or other actions taken, in connection with the discharge of the function to which the decision relates;

“report” in relation to an executive decision does not include a report in draft form;

“section 11(2) mayor”(a) means an elected mayor who is a member of a mayor and cabinet executive; and

“standards committee” means the standards committee of the local authority as established under section 53 of the 2000 Act (standards committees).

PART II

PROVISIONS FOR AND IN CONNECTION WITH EXECUTIVE DECISIONS

Recording of executive decisions made at meetings

3.—(1) As soon as reasonably practicable after a private meeting or a public meeting of a decision making body at which an executive decision has been made, the proper officer, or in the event that the proper officer is not present at that meeting, the person presiding, shall ensure that a written statement is produced in respect of every executive decision made at that meeting which must include the information specified in paragraph (2).

- (2) The statement referred to in paragraph (1) must include:
 - (a) a record of the decision;
 - (b) a record of the reasons for the decision;
 - (c) details of any alternative options considered and rejected by the decision making body at the meeting at which the decision was made;
 - (d) a record of any conflict of interest in relation to the matter decided which is declared by any member of the decision making body which made the decision; and
 - (e) in respect of any declared conflict of interest, a note of any dispensation granted by the local authority’s standards committee.

(3) For the purposes of paragraph (1) of this regulation “person presiding” means the person actually presiding, or the person nominated to preside, at that meeting.

(4) Executive decisions made by decision making bodies are prescribed decisions for the purposes of section 22(3) of the 2000 Act (duty to keep written records of private meetings).

Recording of executive decisions made by individuals

4.—(1) As soon as is reasonably practicable after an individual member has made any executive decision he shall produce, or if he instructs the proper officer to do so, the proper officer shall produce, a written statement in respect of that executive decision which includes the information specified in paragraph (2).

- (2) The statement referred to in paragraph (1) must include—
 - (a) a record of the decision;
 - (b) a record of the reasons for the decision;

(a) See Section 11(2) of the Local Government Act 2000 (Local Authority Executives).

- (c) details of any alternative options considered and rejected at the time by the member when he made the decision;
- (d) a record of any conflict of interest declared by any executive member who is consulted by the member, in relation to the decision; and
- (e) in respect of any declared conflict of interest a note of any dispensation granted by the local authority's standards committee.

(3) Executive decisions made by individual members of local authority executives are prescribed decisions for the purposes of section 22(4) of the 2000 Act (duty to keep a written record of decisions made by individual members of local authority executives).

(4) As soon as is reasonably practicable after an officer has made a decision which is a key decision, the officer shall produce a written statement which must include—

- (a) a record of the decision;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the officer at the time when he made the decision;
- (d) a record of any conflict of interest declared, in relation to the decision, by any executive member who was consulted by the officer who made the decision; and
- (e) in respect of any declared conflict of interest in relation to the decision a note of any dispensation granted by the local authority's standards committee.

Inspection of documents following executive decisions

5.—(1) Subject to regulation 21, after a private meeting or a public meeting of a decision making body at which an executive decision has been made, after an individual member has made an executive decision or after an officer has made a key decision the proper officer shall ensure that a copy of—

- (a) any records prepared in accordance with regulations 3 or 4; and
- (b) any report considered at the meeting or, as the case may be, considered by the individual member or officer and relevant to a decision recorded in accordance with regulations 3 or 4 or, where only part of the report is relevant to such a decision, that part,

shall be available for inspection by members of the public, as soon as is reasonably practicable, at the offices of the relevant local authority.

(2) Where a request on behalf of a newspaper is made for a copy of any of the documents available for public inspection under paragraph (1), those documents shall be supplied for the benefit of the newspaper by the local authority on payment by the newspaper to the local authority of postage, copying or other necessary charge for transmission.

Inspection of background papers

6. Subject to regulation 21, when a copy of the whole or part of a report for a private meeting or a public meeting is made available for inspection by members of the public in accordance with regulation 5 or 11, at the same time—

- (a) a copy of a list compiled by the proper officer of the background papers to the report or part of the report, must be included in the report or, as the case may be, part of the report; and
- (b) at least one copy of each of the documents included in that list,

shall be available for inspection by the public at the offices of the relevant local authority.

PART III

ADDITIONAL REQUIREMENTS IN RESPECT OF KEY DECISIONS AND PUBLIC MEETINGS

Meetings of local authority executives and their committees to be held in public

7.—(1) Subject to regulation 21, a meeting or part of a meeting must be held in public where the council leader, section 11(2) mayor or council manager, as the case may be, or any other person likely to preside at the meeting, reasonably believes that:

- (a) a decision to be made at that meeting or part of the meeting will be a key decision; or
- (b) (i) a matter which is likely to be discussed at that meeting or that part of the meeting relates to a decision included in the current forward plan, as referred to in regulation 13, where that decision is likely to be made at a meeting of the decision making body concerned within 28 days of the meeting; and
(ii) an officer, other than a political adviser or assistant or council manager, will be present at that meeting or part of the meeting where the matter is discussed; or
- (c) (i) a matter relating to a key decision to be made by the decision making body concerned is to be discussed with an officer, other than a political adviser or assistant, present; or
(ii) a decision is made,

at that meeting or part of the meeting in relation to which a notice under regulation 15 has been given.

(2) For the purposes of sub-paragraphs (b) and (c) of paragraph (1) “meeting” does not include a meeting the principal purpose of which is for an officer of the local authority to brief a decision maker or members of a decision making body on matters connected with the making of an executive decision.

(3) In accordance with section 38 of the 2000 Act, in determining the meaning of “principal purpose” for the purposes of paragraph (2), regard shall be had to any guidance for the time being issued by the Secretary of State.

Key decisions

8.—(1) In these regulations a “key decision” means an executive decision which, is likely—

- (a) to result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates; or
- (b) to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.

(2) In accordance with section 38 of the 2000 Act, in determining the meaning of “significant” for the purposes of paragraph (1) regard shall be had to any guidance for the time being issued by the Secretary of State.

Individual executive decisions

9.—(1) Where an executive member or officer receives a report, which he intends to take into consideration when he makes a key decision, he shall not make the that decision until the report has been available for public inspection, pursuant to paragraph (2), for at least three clear days.

(2) Subject to regulation 21, the member or officer making the decision referred to in paragraph (1) shall ensure that the proper officer makes the report referred to in that paragraph available for inspection by the public as soon as is reasonably practicable after that officer or member receives it.

(3) Where a report has been submitted to an executive member or officer with a view to it being considered by him when he makes a key decision, the person who submitted the report shall, as soon as is reasonably practicable, supply a copy of it to the chairman of every relevant overview and scrutiny committee or where there is no chairman to every member of the relevant overview and scrutiny committee.

(4) The proper officer shall, in any report required by paragraph (2) to be available for inspection by the public include a list of background papers for the report or part of the report, and shall ensure that sufficient copies of the background papers are available, or that facilities exist for the production of sufficient copies of those papers, to meet every reasonable request from members of the public for them.

Procedures prior to public meetings

10. An item of business shall only be considered at a public meeting—
- (a) where a copy of the agenda or part of the agenda, including the item, has been available for inspection by the public as required by regulation 11 for at least three clear days before the meeting; or
 - (b) where the meeting is convened at shorter notice in accordance with regulation 15 or 16, a copy of the agenda including the item has been available for inspection by the public from the time that the meeting was convened.

Access to agenda and connected reports

11.—(1) Subject to paragraph (2), a copy of the agenda and every report for a public meeting shall be available for inspection by the public at the offices of the local authority when they are made available to the members of the executive or decision making body responsible for making the decision to which they relate.

(2) If the proper officer thinks fit, there may be excluded from the copy of any report provided pursuant to paragraph (1) the whole, or any part, of the report which relates only to the transaction of an item of business during which, in his opinion, the meeting is likely not to be open to the public.

(3) Subject to paragraph (4), any document which is required by paragraph (1) to be available for inspection by the public shall be available for such inspection for at least three clear days before the meeting, except that—

- (a) where the meeting is convened at shorter notice in accordance with regulation 15 or 16, a copy of the agenda and associated reports shall be available for inspection at the time the meeting is convened; and
- (b) where an item which would be available for inspection by the public is added to the agenda, a copy of the revised agenda, and of any report relating to the item for consideration at the meeting, shall be available for inspection by the public when the item is added to the agenda.

(4) Nothing in paragraph (3) shall require a copy of the agenda, item or report to be available for inspection by the public until a copy is available to members of the decision making body concerned.

(5) Where by virtue of paragraph (2) the whole or any part of a report for a public meeting is not available for inspection by the public—

- (a) every copy of the whole report or of the part of the report, as the case may be, shall be marked “not for publication”; and
- (b) there shall be stated on every copy of the whole or the part of the report—
 - (i) that it contains confidential information;
 - (ii) by reference to the descriptions in Schedule 12A to the 1972 Act, the description of exempt information by virtue of which the decision making body discharging the executive function are likely to exclude the public during the item to which the report relates; or
 - (iii) that the report or the part of the report contains the advice of a political adviser or assistant as the case may be.

(6) Except during any part of a public meeting during which the public are excluded, the local authority shall make available for the use of members of the public present at the meeting a reasonable number of copies of the agenda and of the reports for the meeting.

(7) Subject to regulation 21, a local authority shall, following any request on behalf of a newspaper and on payment being made of postage charges or any other necessary charge for transmission, supply to the newspaper—

- (a) a copy of the agenda for a public meeting and a copy of each of the reports for consideration at the meeting;
- (b) such further statements or particulars, if any, as are necessary to indicate the nature of the items contained in the agenda; and
- (c) if the proper officer thinks fit in the case of any item, a copy of any other document supplied to members of the executive in connection with the item.

(8) Paragraph (3) applies in relation to copies of reports provided pursuant to paragraph (6) or (7) as it applies in relation to copies of reports provided pursuant to paragraph (1).

Publicity in connection with key decisions

12.—(1) The executive leader or, as the case may be, the section 11(2) mayor or the council manager shall instruct the proper officer to publish, in accordance with paragraph (2), a document which states—

- (a) that key decisions are to be made on behalf of the local authority;
- (b) that a plan (to be known as the “forward plan”) containing particulars of the matters in respect of which those decisions are to be made, will be prepared on a monthly basis by the local authority;
- (c) that a forward plan will contain details of the key decisions likely to be made by the local authority for the four month period following the publication of the forward plan;
- (d) that each current forward plan may be inspected at all reasonable hours and free of charge at the local authority’s offices;
- (e) that each forward plan contains a list of the documents submitted to the decision makers for consideration in relation to the matters in respect of which decisions are to be made;
- (f) the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;
- (g) that other documents relevant to those matters may be submitted to the decision makers;
- (h) the procedure for requesting details of those documents (if any) as they become available; and
- (i) the dates in each month in the following twelve months on which each forward plan will be published and available to the public at the local authority’s offices.

(2) The document referred to in paragraph (1) shall be published—

- (a) in at least one newspaper circulating in the area of the local authority; and
- (b) annually, on a date at least 14 days, but not more than 21 days before the first forward plan of that year comes into effect.

Forward plans

13.—(1) A forward plan shall be prepared, in accordance with this regulation and regulation 14, by the executive leader or, as the case may be, by the section 11(2) mayor or the council manager.

(2) A forward plan shall contain details of all the matters likely to be the subject of key decisions in the relevant authority for a period of four months; and the first such plan shall have effect from the first working day of any month.

(3) A forward plan shall be updated on a monthly basis, and a new forward plan produced at least 14 days prior to the first day upon which the forward plan will come into effect, with any outstanding matters contained in the previous forward plan being included in the latest forward plan.

(4) The most recent forward plan shall be taken to have superseded any earlier plan or, as the case may be, each earlier plan.

Content of the forward plan

14.—(1) Each forward plan shall contain, as regards each matter referred to in regulation 13(1) such of the particulars specified in paragraph (2) as are available when the plan is prepared or which the person preparing it may then reasonably be expected to obtain.

- (2) The particulars referred to in paragraph (1) are—
- (a) the matter in respect of which the decision is to be made;
 - (b) where the decision maker is an individual his name, his title if any and, where the decision maker is a decision making body, its name and a list of its members;
 - (c) the date on which, or the period within which, the decision is to be made;
 - (d) the identity of the principal groups or organisations whom the decision maker proposes to consult before making the decision;
 - (e) the means by which any such consultation is proposed to be undertaken;
 - (f) the steps that may be taken by any person who wishes to make representations to the local authority executive or to the decision maker about the matter in respect of which the decision is to be made, and the date by which those steps are to be taken; and
 - (g) a list of the documents, submitted to the decision maker for consideration in relation to the matter in respect of which the decision is to be made.
- (3) Where, in relation to any matter—
- (a) the public may be excluded under regulation 21(1) from the meeting at which that matter is to be discussed; or
 - (b) documents relating to the decision need not, because of regulation 21(5), be disclosed to the public,

the forward plan shall contain particulars of the matter but may not contain any confidential or exempt information or particulars of the advice of a political adviser or assistant.

General exception

15.—(1) Where the inclusion of a matter on the forward plan is impracticable and the matter would be a key decision, that decision shall only be made—

- (a) where the proper officer has informed the chairman of the relevant overview and scrutiny committee or, if there is no such person, each member of the relevant overview and scrutiny committee by notice in writing, of the matter about which the decision is to be made;
- (b) where the proper officer has made available at the offices of the local authority for inspection by the public a copy of the notice given pursuant to paragraph (a); and
- (c) after three clear days have elapsed following the day on which the proper officer made available the notice referred to in sub-paragraph (b).

(2) Where paragraph (1) applies to any matter, regulation 14 need not be complied with in relation to that matter.

Cases of special urgency

16. Where the date by which an executive decision that would be a key decision must be made, makes compliance with regulation 15 impracticable, the decision shall only be made where the decision maker has obtained agreement from—

- (a) the chairman of the relevant overview and scrutiny committee; or
- (b) if there is no such person, or if the chairman of the relevant overview and scrutiny committee is unable to act, the chairman of the relevant local authority; or
- (c) where there is no chairman of either the relevant overview and scrutiny committee or of the relevant local authority the vice-chairman of the relevant local authority,

his agreement that the making of the decision is urgent and cannot reasonably be deferred.

PART IV

ADDITIONAL RIGHTS OF MEMBERS OF THE LOCAL AUTHORITY AND OF MEMBERS OF OVERVIEW AND SCRUTINY COMMITTEES

Additional rights of access to documents for members of local authorities

- 17.—(1) Subject to paragraphs (3) and (4), any document which—
- (a) is in the possession, or under the control, of the executive of a local authority; and
 - (b) contains material relating to any business to be transacted at a public meeting,
- shall be available for inspection by any member of the local authority.
- (2) Subject to paragraphs (3) and (4) any document which—
- (a) is in the possession, or under the control, of the executive of a local authority; and
 - (b) contains material relating to—
 - (i) any business transacted at a private meeting;
 - (ii) any decision made by an individual member in accordance with executive arrangements; or
 - (iii) any key decision made by an officer in accordance with executive arrangements,
- shall be available for inspection by any member of the local authority when the meeting concludes or, where an executive decision is made by an individual member or a key decision made by an officer, immediately after the decision has been made.
- (3) Where it appears to the proper officer that compliance with paragraph (1) or (2) in relation to a document or part of a document would involve the disclosure of exempt information of a description falling within any of paragraphs 1 to 6, 9, 11, 12 and 14 of Part I of Schedule 12A to the 1972 Act, paragraph (1) or (2), as the case may be, shall not apply as regards that document or part.
- (4) Where it appears to the proper officer that compliance with paragraph (1) or (2) in relation to a document or part of a document would involve the disclosure of advice provided by a political adviser or assistant, that paragraph shall not apply as regards that document or part.
- (5) The rights conferred by paragraphs (1) and (2) are in addition to any other rights that a member of a local authority may have.

Additional rights of access to documents for members of overview and scrutiny committees

- 18.—(1) Subject to paragraph (2), a member of an overview and scrutiny committee of a local authority shall be entitled to a copy of any document which—
- (a) is in the possession or under the control of the executive of that authority; and
 - (b) contains material relating to—
 - (i) any business that has been transacted at a private meeting or a public meeting of a decision making body of that authority;
 - (ii) any decision that has been made by an individual member of that executive in accordance with executive arrangements; or
 - (iii) any key decision that has been made by an officer of the authority in accordance with executive arrangements.
- (2) No member of an overview and scrutiny committee shall be entitled to a copy—
- (a) of such document or part of a document as contains exempt or confidential information unless that information is relevant to;
 - (i) an action or decision that he is reviewing or scrutinising; or which is relevant to any review contained in any programme of work of such a committee or sub-committee of the committee; or
 - (ii) of a document or part of a document containing advice provided by a political adviser or assistant.

Reports to the local authority where the key decision procedure is not followed

- 19.—(1) Where an executive decision has been made and—
- (a) was not treated as being a key decision; and

- (b) a relevant overview and scrutiny committee are of the opinion that the decision should have been treated as a key decision,

that overview and scrutiny committee may require the executive which is responsible for the decision to submit a report to the relevant local authority within such reasonable period as the committee may specify.

- (2) A report under paragraph (1) shall include details of—
 - (a) the decision and the reasons for the decision;
 - (b) the decision making body by which, or the individual by whom, the decision was made; and
 - (c) if the executive of the relevant local authority are of the opinion that the decision was not a key decision, the reasons for that opinion.

Quarterly reports to the local authority

20.—(1) The executive leader or, as the case may be, the section 11(2) mayor or the council manager shall submit to the local authority at quarterly intervals a report containing details of each executive decision taken during the preceding three months where the making of the decision was agreed as urgent in accordance with regulation 16.

- (2) A report submitted for the purposes of paragraph (1) shall include—
 - (a) particulars of each decision made; and
 - (b) a summary of the matters in respect of which each decision was made.

PART V

GENERAL PROVISIONS RELATING TO INFORMATION

Confidential information, exempt information and advice of a political adviser or assistant

21.—(1) Subject to paragraph (3), nothing in these Regulations shall prevent the exclusion of the public from a meeting of a decision making body that is exercising an executive function where—

- (a) it is likely, in view of the nature of the business to be transacted or of the nature of the proceedings, that if members of the public were present during the transaction of an item of business, confidential information would be disclosed to them in breach of the obligation of confidence;
- (b) a resolution has been passed, by the decision making body concerned, excluding the public during the transaction of an item of business where it is likely, in view of the nature of the item of business, that if members of the public were present during the transaction of that item, exempt information would be disclosed to them;
- (c) a resolution has been passed, by the decision making body concerned, excluding the public during an item of business where it is likely, in view of the nature of the item, that if members of the public were present during the transaction of that item, the advice of a political adviser or assistant would be disclosed to them; or
- (d) a lawful power is used to exclude a member or members of the public in order to maintain orderly conduct or to prevent misbehaviour at a meeting.

- (2) A resolution under paragraph (1) (b) shall—
 - (a) identify the proceedings, or part of the proceedings, to which it applies; and
 - (b) state by reference to the descriptions in Schedule 12A to the 1972 Act (access to information: exempt information) the description of exempt information giving rise to the exclusion of the public.

(3) An exclusion of the public under sub-paragraph (a), (b) or (c) of paragraph (1) shall apply only to the part or parts of the meeting during which it is likely that confidential information, exempt information or the advice of a political adviser or assistant would be disclosed.

(4) Nothing in these Regulations shall authorise or require a local authority to disclose to the public or make available for public inspection a part of any document if, in the opinion of the proper officer, it is likely that confidential information, exempt information or the advice of a political adviser or assistant would be disclosed.

(5) Where a member of an executive or an officer makes an executive decision in accordance with executive arrangements, nothing in these regulations shall require documents relating to that decision to be disclosed to the public, or made available for public inspection where—

- (a) the documents contain confidential information;
- (b) in the opinion of the member or officer making the decision, disclosure of the documents would be likely to give rise to disclosure of exempt information; or
- (c) in the opinion of the member or officer making the decision, disclosure of the documents would be likely to give rise to disclosure of the advice of a political adviser or assistant.

(6) Nothing in these Regulations shall require a decision making body or decision maker to permit the taking of any photographs of any proceedings, or the use of any means to enable persons not present to see or hear any proceedings (whether at the time or later), or the making of any oral report on any proceedings as they take place.

Documents to be available for inspection at the offices of the local authority

22.—(1) Any document required by regulation 5, 6 or 11 to be available for inspection by members of the public shall be available for inspection—

- (a) at all reasonable hours at the offices of the local authority; and
- (b) in the case of documents to be available for inspection pursuant to regulation 6, upon payment by the person seeking to inspect the documents of any reasonable fee required by the local authority.

(2) Subject to paragraph (3), where a document is to be available for inspection by a person under any provision in these Regulations, the person may—

- (a) make a copy of the whole or part of the document; or
- (b) require the person having custody of the document to supply him with a copy of the whole or part of the document,

upon payment by the person requiring the copy of any reasonable fee required by the local authority.

(3) Paragraph (2) does not require or authorise the doing of any act which infringes the copyright in any work except that, where the owner of the copyright is the local authority, nothing done pursuant to that paragraph shall constitute an infringement of the copyright.

(4) Where any document required by these Regulations to be open to inspection by the public—

- (a) is supplied to, or available for inspection by members of the public; or
- (b) is supplied for the benefit of any newspaper, pursuant to regulation 11(7),

the publication thereby of any defamatory matter contained in the document shall be privileged unless the publication is proved to be made with malice.

(5) Any written record of an executive decision or any report required by regulation 5 to be available for inspection by the members of the public, shall be retained by the local authority and made available for inspection by the public for a period of at least six years beginning on the date on which the decision to which the record or report relates, was made.

(6) Any background papers required by regulation 6 to be available for inspection by members of the public shall be retained by the local authority and be available for inspection by the public for a period of at least four years beginning on the date on which the decision, to which the background papers relate, was made.

(7) The rights conferred on any person by these Regulations to inspect, copy or be supplied with documents are in addition to any such rights that he may have apart from those under these Regulations.

Offences

23.—(1) A person who has custody of a document which is required by regulation 5, 6 or 11 to be available for inspection by members of the public commits an offence if, without reasonable excuse—

- (a) he intentionally obstructs any person exercising a right conferred under these Regulations to inspect, or to make a copy of the whole or part of the document; or

(b) he refuses to supply a copy of the whole or part of the document in accordance with regulation 22(2).

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

Signed by authority of the Secretary of State
for the Environment, Transport and the Regions

Hilary Armstrong

Minister of State,

13th December 2000

Department for the Environment, Transport and the Regions

EXPLANATORY NOTE

(This note is not part of the Regulations)

These Regulations apply to county councils and district councils in England, and to London borough councils, which are operating executive arrangements under Part II of the Local Government Act 2000. They make provision relating to public access to meetings of local authority executives and their committees. They also deal with access to information relating to decisions made by joint committees of local authorities where these are solely comprised of executive members and are discharging an executive function. As, under executive arrangements individual members and officers will be able to make executive decisions the Regulations also make provision in respect of access to documents where executive decisions are made by individual members or officers.

The general principal of the Regulations is for the public to have access to meetings, documents and decisions where a local authority executive, a committee or an individual is to take a “key” decision. The factors which make a decision a key decision are set out in regulation 8.

Part I of the regulations contains introductory material and definitions of terms used in the regulations.

Part II contains general matters which relate to all executive decisions. In particular regulations 3 and 4 provide that executive decisions must be recorded. Where an executive decision is recorded a note must be made of the reasons for the decision, any alternatives considered when the decision was made and details of any conflict of interest. The provisions concerning recording apply to collectively made executive decisions, decisions made by individual members and key decisions made by officers.

Part III provides for additional requirements in respect of key decisions. Under regulation 7, generally a meeting must be held in public where a key decision will be made or where there will be discussion of matters relating to a key decision to be made subsequently. Where a meeting is to be held in public there must be advance publication of agendas, reports and background papers for the meeting and this is dealt with in regulations 10, 11 and 12. Likewise, where key decisions are to be made by individuals the documents relating to these decisions must be available to the public (regulation 9).

The public must also have a longer term advance notification of key matters that are to be dealt with under executive arrangements. Regulations 12, 13 and 14 provide that a forward plan detailing the key decisions to be made over the following four months must be published by the authority. The authority must also publish details about the forward plan, and its availability in a local newspaper annually.

As the executive will not know about every key decision far enough in advance for it to be included on the forward plan there is provision in regulation 15 for a decision to be made without it being on the forward plan. The regulation sets out the procedure for the making of such a decision which includes informing the relevant overview and scrutiny committee chairman. Regulation 16 provides for cases of real urgency where a decision can be taken at short notice but only with the agreement of the chairman of the relevant overview and scrutiny committee or chairman of the authority.

Members of local authorities are given additional rights in relation to access to information in part IV The common law position of “the need to know” is preserved. Regulation 18 sets out additional rights of members of overview and scrutiny committees in relation to decisions that they are scrutinising. In certain circumstances these members can have access to exempt or confidential information.

Where a matter has not been treated as a key decision and an overview and scrutiny committee are of the opinion that it should have been treated as such, the overview and scrutiny committee can require the executive to make a report to the local authority on the matter (regulation 19). Regulation 20 requires that the executive reports to the local authority quarterly on all matters which have been treated as urgent under regulation 16.

Part V contains general provisions relating to information. Regulation 21 sets out where matters should not be made public due to confidentiality or where making the matter public would involve disclosure of exempt information. In addition the regulation provides that the advice of a political adviser or assistant does not have to be disclosed. Regulation 22 sets out the manner in which documents have to be available at the offices of the authority. Regulation 23 creates offences.

2000 No. 3272

LOCAL GOVERNMENT, ENGLAND

**The Local Authorities (Executive Arrangements) (Access to
Information) (England) Regulations 2000**

£3.00

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Printed and published in the UK by The Stationery Office Limited
under the authority and superintendence of Carol Tullo, Controller of
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.
E2323 12/2000 574488 19585

ISBN 0-11-018946-9



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