

EXPLANATORY MEMORANDUM TO
THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) (MEETINGS AND
ACCESS TO INFORMATION) (ENGLAND) REGULATIONS 2012

2012 No. 2089

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. **Purpose of the instrument**

These Regulations, which are made under the re-enacted powers inserted into the Local Government Act 2000 by the Localism Act 2011, clarify and extend the circumstances in which local authority executive decisions are to be open to the public.

3. **Matters of special interest to the Joint Committee on Statutory Instruments**

None.

4. **Legislative Context**

4.1 Section 21 of, and Schedule 2 to, the Localism Act 2011 (“the 2011 Act”) inserted a new Part 1A (Arrangements with respect to local authority governance in England) into the Local Government Act 2000 (“the 2000 Act”), to apply to England only, and limited existing Part 2 of the 2000 Act to Wales. Chapter 2 of Part 1A of the 2000 Act makes provision for local authority executive arrangements in England. Under executive arrangements, a local authority may operate either a mayor and cabinet executive or a leader and cabinet executive within the meaning of section 9C of the 2000 Act.

4.2 Sections 9G and 9GA of the 2000 Act provide for meetings of local authority executives, their committees, or sub-committees to be held in public or private as determined by the executive. However this is subject to regulations made under section 9GA (4). In addition, section 9G requires local authority executives to keep written records of prescribed decisions made at meetings of the executive or their committees or sub-committees and prescribed decisions made by individual members. These Regulations revoke and replace the Local Authorities (Access to Information) (England) Regulations 2000 (“the 2000 Regulations”) (which were made under the old powers), to establish the presumption that meetings of a local authority executive, its committees or sub-committees, must be held in public. The Regulations prescribe the circumstances in which such meetings may be held in private. They also set out circumstances in which written records relating to executive decisions are to be made and when those records are to be open to the public.

5. Territorial Extent and Application

This instrument applies to England.

6. European Convention on Human Rights

As the instrument is subject to negative resolution procedure and does not amend primary legislation, no statement is required.

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 executive decision making should be as open and transparent as possible, and local people should have rights to access the meetings and information of a local authority executive, its committees or sub-committees.

7.2 The 2000 Act gives the local authority executive the power to decide whether its meetings should be held in public or private. This decision currently must be taken in accord with the provisions of the 2000 Regulations, which require meetings at which key decisions are to be made to be held in public except in certain broadly defined circumstances, where it is open to the executive to decide to hold the meeting in private. The Government believes that this has resulted in practice in more meetings being held in private than could be properly justified on the basis of well founded reasons. Indeed, in their evidence to the Localism Bill Committee, the Newspaper Society commented that their “members feel that local authorities do exploit the exceptions to public rights access to meetings and information, enabling the exclusion of the public and press from meetings and the omission of information (other than a summary) from documents open to public inspection”¹.

7.3 These Regulations materially strengthen transparency and openness, by providing a clear presumption that all meetings of the executives, their committees or sub-committees, must be held in public except in limited prescribed circumstances where meetings can be closed. Moreover, local authorities must provide reasonable facilities to any member of the public who may wish to report the proceedings. In addition, where it is proposed to hold a meeting in private, the public must be allowed to make representations about why the meeting should not be closed and should be open to public.

7.4 The Regulations also strengthen the rights of local authority members to access information relating to business to be discussed at a public meeting, or business transacted at a private meeting, or decisions made by individuals. For instance, members can now

¹ <http://www.publications.parliament.uk/pa/cm201011/cmpublic/localism/memo/loc137.htm>:

inspect any document that contains material to be discussed at least 5 days before a public meeting is held or in case of a private meeting, the document must be available for inspection when the meeting concludes.

7.5 Similarly, the rights of the members of overview and scrutiny committees have been strengthened in that, where they have asked for any document that contains business transacted at a meeting or any decision made by an executive member or officer of the authority, the executive must provide the document within 10 days after the executive receives the request. In an instance where the executive cannot release the whole or part of the document, the executive must provide a written explanation. These provisions, which were not in the 2000 Regulations, secure members' prospects to have a say on decisions that affect their communities.

- ***Consolidation***

These Regulations revoke and replace the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and subsequent amending regulations.

8. Consultation outcome

8.1 In drafting the Regulations, the Department has significantly drawn on existing provisions in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000². The Department has not therefore undertaken a consultation exercise on the Regulations.

8.2 However, the Regulations have been the subject of a short, focussed informal soundings exercise with partners – the Local Government Association, Society of Local Authority Chief Executives, Association of Council Secretaries and Solicitors, Centre for Public Scrutiny, Local Government Regulation, and The Chartered Institute of Public Finance and Accountancy.

8.3 The Department received responses from the Local Government Association, Centre for Public Scrutiny, and The Chartered Institute of Public Finance and Accountancy, all of which it has carefully considered before finalising the Regulations.

8.4 The Local Government Association is opposed to the Regulations for their own sake as they commented that “we are committed to transparency and accountability but the current rules and regulations already allow for maximum transparency”. The Local Government Association stated that accordingly their response was “the proposed regulations are unnecessary and should not be made”. However the Government does not share the view that the Regulations are unnecessary. Whilst under the current Regulations, maximum transparency is allowed, it is not required and can be avoided hence the need for the new Regulations.

² S.I. 2000/3272; amended by S.I. 2002 and S.I. 2006/69.

8.5 The Centre for Public Scrutiny, and The Chartered Institute of Public Finance and Accountancy raised certain drafting and minor policy points, the majority of which the Government has accepted. In particular, the Government has included provisions in the Regulations requiring the use of websites in certain circumstances in addition to publishing information by more conventional means, and that where urgency procedures have been used, a decision maker should be required to publish the reasons why the making of the decision is urgent.

9. Guidance

These Regulations are considered to be self explanatory and there is no intention to produce separate guidance.

10. Impact

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

The legislation does not apply to small business.

12. Monitoring & review

The Department does not intend to put in place any formal mechanism for monitoring and reviewing the Regulations. The Department maintains close dialogue with the Local Government Association, SOLACE, Centre for Public Scrutiny and other local government representative bodies. Any issues relating to these Regulations will be identified and addressed through these channels.

13. Contact

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