

**Report of Head of Governance Services**

**Report to Monitoring Officer**

**Date: 23<sup>rd</sup> July 2014**

**Subject: The Openness of Local Government Bodies Regulations 2014 –  
Constitutional Amendments**

Are specific electoral Wards affected? If relevant, name(s) of Ward(s):	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Are there implications for equality and diversity and cohesion and integration?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Is the decision eligible for Call-In?	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No
Does the report contain confidential or exempt information? If relevant, Access to Information Procedure Rule number: Appendix number:	<input type="checkbox"/> Yes	<input checked="" type="checkbox"/> No

**Summary of main issues**

1. The Openness of Local Government Bodies Regulations 2014, which make provision in respect of admission to and reporting of meetings and in relation to records of decisions and access to documents, are to be made on 5<sup>th</sup> August 2014 and will come into force on 6<sup>th</sup> August 2014.
2. Whilst current practice and procedure can accommodate the necessary recording of decisions taken by officers in relation to Council functions, amendments to the Constitution are proposed, reflecting the requirements of the regulations and guidance to be issued by the Secretary of State, ensuring that the Constitution remains fully up to date and fit for purpose.

**Recommendations**

3. In anticipation of and contingent upon the making and implementation of the Openness of Local Government Bodies Regulations 2014, The Monitoring Officer is requested to amend the provisions of the Constitution at Article 13 and in the Access to Information Procedure Rules, as shown in appendices A and B attached with effect from 6<sup>th</sup> August 2014.

## **1 Purpose of this report**

- 1.1 This report sets out proposed amendments to Article 13 of the Constitution, and to the Access to Information Procedure Rules, recommended to reflect new provisions in relation to the recording of officer decisions in relation to Council Functions as set out in the Openness of Local Government Bodies Regulations 2014.

## **2 Background information**

- 2.1 Section 40 of the Local Audit and Accountability Act 2014, which came into force on 30<sup>th</sup> March 2014, permits the Secretary of State to make regulations in connection with the attendance at and recording and reporting of meetings of the Council and Executive, and in relation to the recording of officer decisions.
- 2.2 On 4<sup>th</sup> March 2014 General Purposes Committee agreed the content of a protocol relating to the third party recording of council committee, board and panel meetings. They further agreed that the City Solicitor should review that protocol (in consultation with group leaders) in the light of the content of regulations and guidance issued by the Secretary of State.
- 2.3 The Local Authorities (Executive Arrangements) (Meetings and Access to Information Regulations) 2012 provide a detailed set of requirements in relation to publicity preceding, recording in the fact, and review of Executive decisions. Regulation 13 requires that as soon as reasonably practicable after an individual Member or an officer has taken an executive decision, a written record of that decision must be made available for public inspection and published on the Council's website.
- 2.4 The Head of Governance Services has contacted DCLG in respect of these regulations, setting out the practice and procedure followed in Leeds and the way in which decisions are separated into the categories of Key, Significant Operational and Administrative Decisions, with no formal written record being made or published in relation to those decisions categorised as Administrative. DCLG were invited to respond if they felt these arrangements were unsatisfactory but no response has been received.

## **3 Main issues**

- 3.1 Parliament has approved draft Openness of Local Government Bodies Regulations 2014 ("the Regulations"), and the Government intends to make the Regulations on 5<sup>th</sup> August 2014. The Regulations will then come into force on 6<sup>th</sup> August 2014.
- 3.2 In addition the Secretary of State has released a draft plain English guide to the regulations, a final version of which will be published when the regulations come into force.

### Admission to and reporting of meetings

- 3.3 Having reviewed the Council Procedure Rules, Executive and Decision Making Procedure Rules, and the Access to Information Procedure Rules (incorporating the Recording Protocol: Third Party Recording of Committees, Boards and Panels), the Head of Governance Services is satisfied that the Council's Constitution meets the requirements of the Regulations in relation to the access to and recording of Council meetings. There are therefore no amendments proposed to the Constitution in this regard.

### Records of Decisions and Access to Documents

- 3.4 Regulation 7 of the Openness of Local Government Bodies Regulations 2014 provides that the 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 Leeds City Council), or a committee, sub-committee 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.
- 3.5 The Head of Governance Services has considered the definitions of the categories of Executive Decision set out in Article 13 of the Constitution and is of the view that these definitions could be helpfully applied to Council decisions to enable recording of relevant decisions. Whilst the definition of a Key decision would never apply to a Council decision (as there are no requirements in the regulations for publicity in advance of the decision being taken), the definitions of Significant Operational and Administrative decisions could apply. This would mean that a Council decision, taken within established policy and in accordance with existing budgets could be an Administrative decision. On the other hand, Council Decisions which fell outside existing budgets or policy, created new policy, or which involved savings or expenditure in excess of £100,000 will be Significant Operational decisions, as will those which in the opinion of the decision taker (having regard to the requirements of the regulations) require a published record in order to ensure transparency and accountability.
- 3.6 The Head of Governance Services proposes amendments to Article 13 of the Constitution to give effect to the proposal that the definition of Significant Operational and Administrative decisions should include relevant Council decisions. The amended Article 13 is set out at Appendix A to this report.

- 3.7 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.
- 3.8 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.
- 3.9 The Access to Information Procedure Rules make provision in respect of agendas and minutes in relation to decisions to be taken by Council Committees. The Head of Governance Services proposes an amendment to these rules to include the requirement to publish a written record of relevant Council decisions taken by officers. The proposed amendments are shown in the document set out at Appendix B to this report.

#### Practical Implications

- 3.10 The Monitoring Officer will be aware that many Council decisions are already published on the Council's web site in accordance with existing arrangements. It is not proposed that these arrangements will be altered given the provision referred to in paragraph 3.10 above.
- 3.11 Those Council decisions which need to now be recorded and published will use the existing arrangements for recording and publishing Significant Operational Decisions; using the corporate report template and delegated decision notification form. These decisions will be published on the Council's web site by the relevant directorate using the modern.gov application.

## **4 Corporate Considerations**

### **4.1 Consultation and Engagement**

- 4.1.1 The Head of Governance Services is conscious that General Purposes Committee requested that the Recording Protocol: Third Party Recording of Committees, Boards and Panels, should be reviewed in consultation with the Group Leaders. The timescales for implementation of the Regulations have not permitted this consultation to take place prior to seeking the Monitoring Officer's approval to the proposed amendment. However the head of Governance Services undertakes to consult with the Group Leaders to ascertain whether they feel any amendments are necessary to the Protocol in light of the Regulations, or in light of experience having implemented the protocol.
- 4.1.2 The limited timescale to implementation of the Regulations has meant that meaningful consultation with Directors has not been possible prior to proposing

the attached amendments. However the Head of Governance Services has had some informal consultation with those directorates potentially most affected, and has taken this into consideration in forming his recommendations.

- 4.1.3 Where requested it is the intention of the Head of Governance Services to continue to work closely with affected directorates in establishing how the definitions of Significant Operational and Administrative Decisions apply in relation to the Council Functions within their delegations.

## **4.2 Equality and Diversity / Cohesion and Integration**

- 4.2.1 There are no implications for this report.

## **4.3 Council policies and City Priorities**

- 4.3.1 The Council includes within its values “being open, honest and trusted”. This has been reflected in the existing requirement to publish a record of a Council decision in appropriate circumstances. The requirements set out in the Regulations simply provide further information in relation to which would be ‘appropriate circumstances’.

## **4.4 Resources and value for money**

- 4.4.1 The recording of council decisions can continue to happen in accordance with the procedures already established for recording executive decisions on the Council’s modern.gov software. The recording of potentially significant numbers of additional Council decisions will create a demand in relation to officer time. It is anticipated that this demand will be manageable given that each Directorate has a number of staff trained to use the software, and can train further staff who can be given access to the system with relative ease.

## **4.5 Legal Implications, Access to Information and Call In**

- 4.5.1 The regulations do impose additional requirements on the Council in relation to access to and recording of meetings, and in relation to the recording of officer decisions. Existing arrangements are sufficient to meet these requirements but the recommendations set out in this report provide for clarity in the Council’s Constitution, thus ensuring that it is up to date and fit for purpose.

## **4.6 Risk Management**

- 4.6.1 In amending the Constitution to accommodate the Regulations the Monitoring Officer minimises the risk of any failure to comply with the Regulations.

## **5 Conclusions**

- 5.1 The Openness of Local Government Bodies Regulations 2014 impose requirements in relation to access to and recording of meetings, and in relation to the recording of officer decisions. Whilst current practice and procedure is sufficient to accommodate these requirements amendments to the Constitution would provide greater clarity in relation to the recording of Council decisions.

## **6 Recommendations**

- 6.1 In anticipation of and contingent upon the making and implementation of the Openness of Local Government Bodies Regulations 2014, The Monitoring Officer is requested to amend the provisions of the Constitution at Article 13 and in the Access to Information Procedure Rules, as shown in appendices A and B attached with effect from 6<sup>th</sup> August 2014.

## **7 Background documents<sup>1</sup>**

- 7.1 None

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<sup>1</sup> The background documents listed in this section are available to download from the Council's website, unless they contain confidential or exempt information. The list of background documents does not include published works.