

Report of City Solicitor

Report to General Purposes Committee

Date: 29th August 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, were made on 5th August 2014 and came into force on 6th August 2014.
2. Whilst existing practice and procedure could accommodate the necessary recording of decisions taken by officers in relation to Council functions, the City Solicitor has made amendments to the Constitution, 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. The Committee are requested to note the now amended Article 13 of the Constitution as set out at Appendix A attached and the amended Access to Information Procedure Rules as set out at Appendix B attached.

1 Purpose of this report

- 1.1 This report sets out amendments to Article 13 of the Constitution, and to the Access to Information Procedure Rules, made by the City Solicitor to reflect new provisions for 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 30th 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 The Committee will recall that on 4th March 2014 the content of a protocol relating to the third party recording of council committee, board and panel meetings was agreed. In accordance with the resolution of Committee at that time the City Solicitor has conducted a review of the protocol (in consultation with group leaders) in the light of the content of regulations and guidance issued by the Secretary of State.
- 2.3 Article 15 of the Constitution permits the City Solicitor to make changes to any part of the Constitution which are required:
- As a result of legislative change or decisions of the Council or Executive to enable him/her to maintain it up to date;
 - Or for the purposes of clarification only.

3 Main issues

- 3.1 On the 5th August 2014 the Government made the Openness of Local Government Bodies Regulations 2014 ("the Regulations"). The Regulations came into force on 6th August 2014.
- 3.2 In addition the Secretary of State has released a Plain English Guide to the Regulations.
- 3.3 On 23rd July, in anticipation of and contingent upon the making of the Regulations, the City Solicitor approved a delegated decision making amendments to the Constitution with effect from 6th August 2014. These amendments, the details of which are set out below, ensure that the Constitution remains up to date and fit for purpose.

Admission to and reporting of meetings

- 3.4 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 City Solicitor 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 have therefore been no amendments to the Constitution made under the City Solicitor's authority under Article 15 in this regard.

- 3.5 Further to the committee's request that the Protocol be reviewed in consultation with Group leaders the City Solicitor has contacted each of the Group Leaders, expressing her view that no amendments are necessary. The Group Leaders have concurred with this view.

Records of Decisions and Access to Documents

- 3.6 Regulation 7 of the Openness of Local Government Bodies Regulations 2014 requires a written record to be made by officers of decisions they have taken in certain categories of Council functions. Decisions affected are those which are taken

- (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.

- 3.7 The City Solicitor has therefore approved amendments to Article 13 of the Constitution (As set out in Appendix A attached) to apply the definitions of Significant Operational and Administrative decisions to Council decisions to enable the recording of relevant decisions. Thus a Council decision, taken within established policy and in accordance with existing budgets may be an Administrative decision. On the other hand, Council Decisions which fall outside existing budgets or policy, create new policy, or which involve 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 Regulations) require a published record in order to ensure transparency and accountability.

- 3.8 Regulation 7 goes on to specify the information which must be included in the written record of the decision, namely;

- (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.

3.9 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.

3.10 The City Solicitor has amended The Access to Information Procedure Rules (as set out in Appendix B attached) to include the requirement to publish a written record of relevant Council decisions taken by officers.

4 Corporate Considerations

4.1 Consultation and Engagement

4.1.1 The Leaders of the Political Groups have been consulted in relation to the Recording Protocol: Third Party Recording of Committees, Boards and Panels and are content that no amendments need be made. Briefings on the new decision recording requirements have also been offered to all Leaders.

4.1.2 Directors have been advised of the new requirements for recording decisions and provided with advice and support to ensure that decisions are identified and recorded in accordance with the new legislative and constitutional provisions.

4.1.3 In addition a guidance note has been provided to all officers that have previously attended training on decision making (by way of update) and the decision making training module has been updated to take account of the new requirements.

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. Although previous arrangements were sufficient to meet these requirements the amendments 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 City Solicitor has minimised 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. Amendments have been made to the Constitution to provide greater clarity and to ensure compliance with legislation in relation to the recording of Council decisions.

6 Recommendations

- 6.1 The Committee are requested to note the now amended Article 13 of the Constitution as set out at Appendix A attached and the amended Access to Information Procedure Rules as set out at Appendix B attached.

7 Background documents¹

- 7.1 None

¹ 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.