

REPORT REFERENCE NO.	DSFRA/14/13
MEETING	DEVON & SOMERSET FIRE & RESCUE AUTHORITY
DATE OF MEETING	30 JULY 2014
SUBJECT OF REPORT	OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014 – RECORDING OF DECISIONS
LEAD OFFICER	Joint report of the Clerk and the Treasurer to the Authority
RECOMMENDATIONS	<p>(a) <i>that, upon the Openness of Local Bodies Regulations 2014 being enforced the parameters for the written recording and publication of officer decisions, as set out section 3 of this report, be approved;</i></p> <p>(b) <i>that, subject to (a) above, the report be noted.</i></p>
EXECUTIVE SUMMARY	<p>It is anticipated that the Openness of Local Government Bodies Regulations 2014 will come into force on 6 August 2014.</p> <p>The Authority has previously received a report on the two main aspects of these Regulations and has already approved revisions to its practices and Standing Orders in relation to the public reporting of meetings as required by these Regulations (Minute DSFRA/4(a) of the Authority Annual Meeting held on 29 May 2014 refers).</p> <p>This report deals with the second aspect of the Regulations – the recording of certain decisions as delegated to Officers.</p>
RESOURCE IMPLICATIONS	Not applicable
EQUALITY RISKS AND BENEFITS ANALYSIS (ERBA)	The contents of this report are considered compatible with existing human rights and equalities legislation.
APPENDICES	Nil.
LIST OF BACKGROUND PAPERS	<p>The draft Openness of Local Government Bodies Regulations 2014.</p> <p>Draft Plain English Guide to the Openness of Local Government Bodies Regulations 2014</p>

1. INTRODUCTION

- 1.1 The Authority has previously received reports on the draft Openness of Local Government Bodies Regulations 2014 – initially, in approving a response to the consultation on the draft Regulations (Minute DSFRA/50 of the Authority’s budget meeting held on 24 February 2014 refers) and more latterly in approving modifications to its arrangements (and associated Standing Orders) concerning public access to meetings to secure compliance with the Regulations (Minute DSFRA/4(a) of the Annual Meeting held on 29 May 2014 refers).
- 1.2 The Regulations address two main issues:
- a requirement to allow members of the public attending Authority meetings (including Committee meetings) to report on those meetings (i.e. video and audio record) using social media etc. – subject to this process not being disruptive to the conduct meeting; and
 - the requirement for certain decisions as delegated to Officers to be recorded and a record of such decisions made available for public inspection.
- 1.3 As previously indicated, the Authority has already amended its arrangements (and associated Standing Orders) for public access at meetings to comply with the Regulations, once enforced. It should be noted that while these amendments secure full compliance with the public reporting of meetings aspect of the Regulations, the person presiding at the meeting still reserves the right to exclude persons in the event of disorderly conduct.
- 1.4 The Government has announced its intention that the Regulations should come into force on 6 August 2014. In light of this, this report now addresses the second requirement of recording certain decisions.

2. RECORDING OF DECISIONS

- 2.1 Articles 7 and 8 of Part 3 of the Regulations required officers of a public authority to make a written record of certain decisions and to ensure that a copy of this written record (including any associated background papers to the decision) is made available for public inspection at the offices of the authority, on its website and by any other means it considers appropriate. This record must be retained for a period of six years from the date at which the decision was made. Failure to comply with the Regulations relating the recording of certain decisions carries a sanction, on summary conviction, of a fine not exceeding Level 1 on the Standard Scale (£200).
- 2.2 Decisions which must be recorded are specified in Article 7(2) as any decision which:
- “...would otherwise have been taken by the relevant local government body, or a committee, sub-committee of that body or a joint committee in which that body participates, but it has been delegated to an officer of that body 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.”

- 2.3 The Regulations require that the written record of the decision must include:
- The decision taken and the date the decision was taken;
 - the reason/s for the decision;
 - any alternative options considered and rejected; and
 - any other background documents.
- 2.4 The Executive/Scrutiny governance arrangements introduced by Part 1 of the Local Government Act 2000 and operated by many public authorities, including appointing constituent authorities to this Authority, are not applied to this Authority. Under these arrangements, functions that fall to be discharged by the Executive may – in certain circumstances – be discharged by officers of the authority concerned.
- 2.5 This Authority operates more traditional arrangements as per the Local Government Act 1972. Under such arrangements, all functions are the responsibility of the full Authority to exercise but any function may – unless there is a statutory prescription - be delegated either to a Committee appointed by the Authority (which may in turn delegate a matter to an officer) or to one of its officers. Examples of functions that may not be delegated are the setting of a budget and approval of the Authority's Pay Policy Statement. This Authority does operate a Committee structure and a Scheme of Delegations to its officers. As it is a creature of statute (i.e. all of its activities are controlled by statute), without the ability for such delegation – particularly to officers of routine administrative or organisational decisions - the Authority would not be able to function.
- 2.6 A draft Plain English Guide to accompany the Regulations has been produced, with a final version to be published once the final Regulations are enforced. The draft Guide provides the following clarification in relation to the recording of decisions:

“Can I see all decisions made by my council or local government body’s officers?”

No. The requirement to record applies only to decisions to “grant a permission or licence”; that “affect the rights of an individual [as defined by law]”; or to “award a contract or incur expenditure which, in either case, materially affects that relevant local government body’s financial position”.

Officers take many administrative and operational decisions on how they go about their day to day work within the council’s or local body’s rules. These decisions will not need to be recorded.

You will not be able inspect some recorded decisions if the whole or part of the records contain confidential or exempt information.

Examples of decisions that should be recorded could include:

- Decisions about awarding contracts above specified individual/total values (the values will vary according to the relevant council or local government body)
- A decision to carry out major road works
- Decisions to issue tree preservation orders
- Building control decisions and notices
- Decisions to give listed building consents

Decisions that do not need to be recorded might include the following examples:

- Routine administrative and organisational decisions
- Decisions on operational matters such as changes to services and charges
- Decisions to give business relief to individual traders
- Decisions to review the benefit claims of an individual applicant

These are a few selected examples and not an exhaustive list. It is for the council or local government body to decide what information should be recorded on the basis of the national rules.”

3. **RECORDING OF DECISIONS TAKEN BY OFFICERS ON BEHALF OF THE AUTHORITY**

3.1 Applying the Regulations and draft Plain English guide to this Authority in terms of the recording and publication of decisions taken by officers on behalf of the Authority, it is proposed that:

- the granting of a permission or licence is self-defining. Consequently, it is proposed that, to comply with the regulations, all such decisions taken by officers should be recorded in writing and published on the Authority’s website;
- in relation to decisions affecting the rights affecting, the draft Plain English guide to the Regulations stipulates that these rights are only those as defined by law. These would include, for example, those rights enshrined in the Human Rights Act, the Equalities Act, the Data Protection Act and the right to vote. Other than these, it is difficult to give precise examples of where an Authority decision might impact on the rights of an individual. Consequently, it is proposed that determination of the necessity to record officer decisions that may affect the right of an individual is undertaken on a case-by-case basis with the officer concerned seeking legal advice as necessary to ascertain whether the decision would so affect those rights.

3.2 The position in relation to decisions to award a contract or incur expenditure which, in either case, materially affects that relevant local government body’s financial position is slightly more complex. The draft Plain English guide to the Regulations stipulates that, subject to compliance with the national rules, it is for individual authorities to decide which decisions should be recorded. The guide does not extend to how authorities should reach this decision but it is suggested that in doing so an appropriate balance needs to be drawn between transparency (given that it is expenditure of public funds at issue) and minimising needless bureaucracy.

3.3 With this in mind, and given:

- the existing thresholds in Financial Regulations on expenditure beyond which either Committee or full Authority approval is required; and
- that the Regulations only require written records of officer decisions that would **materially** affect the Authority’s financial position

it is proposed that a written record should be made and published of all contracts entered into, or of any previously “unplanned” expenditure (e.g. as might be incurred by the Chief Fire Officer using the urgency provisions of Standing Orders) of £500,000 and above.

4. CONCLUSION

- 4.1 The Openness of Local Bodies Regulations 2014 are due to come into force on 6 August 2014. The Authority has already amended its procedures (and associated Standing Orders) to address the requirements for public reporting at meetings, one of the two main changes contained in the Regulations. This report now addresses the second of the changes proposed by the Regulations and sets out proposed parameters to address the requirement for recording and publishing certain decisions delegated to officers. These are now commended to the Authority for approval.

MIKE PEARSON
Clerk

KEVIN WOODWARD
Treasurer