

BABERGH DISTRICT COUNCIL and MID SUFFOLK DISTRICT COUNCIL

From: Head of Corporate Organisation	Report Number: P56
To: Mid Suffolk District Council Babergh District Council	Date of meeting: 25 September 2014 26 September 2014

THE OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014

1. Purpose of Report

- 1.1 To advise Members as to the effect of the Openness of Local Government Bodies Regulations 2014 (which came into force on 5 August 2014).
- 1.2 To seek Member approval of Appendix A to this report on officer decision making and Appendix B – Filming Protocol which are required as a result of the Openness of Local Government Bodies Regulations 2014.

2. Recommendations

- 2.1 That the contents of Appendix A to this report be adopted with immediate effect.
- 2.2 That the Filming Protocol as contained in Appendix B to this reported be adopted with immediate effect.
- 2.3 That the Council's Monitoring Officer be authorised to make any amendments to the Council's Constitution necessary as a result of adopting the requirements within the Appendices to this report.

3. Financial Implications

- 3.1 Any additional work required by the 2014 Regulations should be covered within existing resources.

4. Risk Management

- 4.1 Key risks are set out below:

Risk Description	Likelihood	Impact	Mitigation Measures
Failure to comply with the 2014 Regulations may put the Council at unnecessary risk of a legal challenge.	Very high	Critical	Approve the contents of this report and ensure that necessary guidance is given to officers.

5. Consultations

- 5.1 The Council's Corporate Managers have been advised of the requirements of the 2014 Regulations. They have already received some advice and will receive further guidance in due course.

6. Equality Analysis

- 6.1 There are no equality analysis impacts arising directly from the matters contained within this report.

7. Shared Service / Partnership Implications

- 7.1 It is proposed that the suggested amendments to the Constitution will apply to both Babergh and Mid Suffolk District Councils.

8. Key Information

- 8.1 The Openness of Local Government Bodies Regulations 2014 are designed to "...enhance people's rights to report Council meetings in digital and social media."
- 8.2 This report concerns Part 3 of the 2014 Regulations entitled "Record of decisions and access to documents".
- 8.3 Part 3 of the 2014 Regulations state as follows:

Certain decisions made by Officers to be recording in writing

Regulation 7(2) of the 2014 Regulations requires a decision to be recorded if it would otherwise have been taken by a Council, Committee, Sub-Committee or a Joint Committee but has been delegated to an Officer either -

- (a) Under a specific express authorisation; or
- (b) Under a general authorisation to Officers to take decisions and the effect of the decision is to -
- (i) Grant a permission or licence (e.g. a permission to use a playing field for a school fete);
- (ii) Affect the rights of an individual (e.g. the termination of an allotment garden tenancy);
or
- (iii) Award a contract or incur expenditure which, in either case, materially affects the Council's financial position (e.g. the award of a ground maintenance contract or the payment of a grant).

The Government suggests that the "material threshold" is a judgment to be made by individual Councils. Your Officers feel that a suitable figure is £50,000 although this figure can be revised from time to time to suit changing circumstances.

Any Officer making decisions such as those above must produce a written record of their decision as soon as reasonably practicable after the decision has been made. This written record must include:

- The date the decision was taken
- A record of the decision taken with reasons for the decision
- Details of alternative options, if any, considered and rejected and
- If the decision was delegated to an Officer under a specific express authorisation, the names of any Councillor(s) who had declared a conflict of interest in relation to the decision.

Records of such decisions and any background papers to be made available for public inspection

Any papers prepared as shown above together with any background papers must be available for public inspection as soon as reasonably practicable after the record is made. They must be available for inspection at all reasonable hours at the Council's offices, on the Council's website and by such other means that the Council considers appropriate. If requested and upon receipt of payment of postage, copying or other necessary charges for the transmission of the information requested, a Council must provide a copy of the written record and any background papers.

Such papers to be retained by the Council for prescribed periods

The written record of an Officer decision must be available for public inspection and retained by the Council for a six year period from the date the decision was made. In the case of background papers relating to the decision these must be made available for public inspection and retained by the Council for a period of four years from the date the decision was made.

A Council is not authorised or required to disclose or make available for inspection document(s) or part of documents that contain or may contain confidential information. Confidential information is defined as-

- (i) Information provided to Council by a Government department where public disclosure is forbidden.
- (ii) Information which cannot be disclosed to the public because disclosure is prohibited by a Court Order or legislation. For example the FOI Act 2000 does not require a Council to disclose personal data about an individual or communications between the Council and its professional Legal advisors.

A person with custody of a document which is required to be available for public inspection commits an offence if they, without reasonable excuse:

- (i) Intentionally obstruct a person exercising a right to inspect written records and background papers or
- (ii) Refuse a request to provide written records or background papers.

A person convicted of one of these offences is liable to a fine not exceeding Level 1 on the standard scale (which is currently £200 per offence).

8.4 New rules have been introduced for members of the public attending meetings (including those of Parish and Town Councils) which allow them to use modern technology and communication tools to report on meetings which they attend. This means that meetings can be filmed, tweeted on and blogged. A draft Protocol has been developed which is attached as Appendix B.

9. Appendices

Title	Location
A Requirements for officers to follow to ensure compliance with Part 3 of the Openness of Local Government Bodies Regulations 2014.	Attached
B Filming Protocol	Attached

10. Background Documents

The Openness of Local Government Bodies Regulations 2014.

Open and accountable local government Guidance from the Department for Communities and Local Government

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Requirements for Officers to follow to ensure compliance with Part 3 of the Openness of Local Government Bodies Regulations 2014.

1. Where a decision has been delegated to an Officer:
 - 1.1. Under a specific express authorisation
 - 1.2. Under a general delegation and the effect of the decision is to:
 - (a). Grant a permission or a licence
 - (b) Affect the rights of an individual or
 - (c) Award a contract or incur expenditure which will materially affect the financial position of the Authority

this decision MUST be recorded in writing

NB. A contract or expenditure will have a material impact on the financial position of the Authority where it is in excess of £50,000

2. The record of these decisions as mentioned in 1. above **must** be produced as soon as possible and should include:
 - 2.1. The date of the decision
 - 2.2. The reasons for the decision
 - 2.3. Details of alternative options, if any, considered and rejected and
 - 2.4 If the decision was delegated to an Officer under a specific express authorisation, the names of any Councillor(s) who had declared a conflict of interest in relation to the decision.
3. The records of any such decisions together with any background papers **must** be retained for **6 years** after the date of the decision (in the case of the written decision) and **4 years** for the background papers. They must be available for public inspection. It is a **criminal offence** to fail to comply with these requirements. There are exceptions for confidential information.
4. Decisions must also be published on the Council's website.
5. If Officers have any concerns or queries in relation to these requirements they **must** seek urgent advice from the Council's Legal Section who will give the necessary guidance.

BABERGH DISTRICT COUNCIL AND MID SUFFOLK DISTRICT COUNCIL

FILMING, VIDEOING, PHOTOGRAPHY, AUDIO RECORDING AND USE OF SOCIAL MEDIA AT COUNCIL MEETINGS

The Council supports the principles of openness and transparency and encourages filming, recording and taking photographs at its meetings that are open to the public. It also welcomes the use of social networking websites (such as Twitter and Facebook) and blogging to communicate with people about what is happening, as it happens.

As a courtesy to the public, and to assist anyone planning to film etc., it would be helpful if anyone wishing to film etc, would contact the Council, preferably one week before the start of the meeting, if filming or photography is to take place. This would enable the Governance Team to discuss and assist with any specific requirements. The relevant Chairman will then be informed of what is to take place.

There is no requirement to notify the Council in advance, but it should be noted that the Chairman of the meeting will have absolute discretion to terminate or suspend any of these activities if, in their opinion, continuing to do so would prejudice proceedings at the meeting. The circumstances in which termination or suspension may occur include:

- 1 public disturbance, disruption or suspension of the meeting;
- 2 the meeting agreeing to exclude formally the press and public from the meeting due to the exempt/confidential nature of the business being discussed in accordance with statutory procedures;
- 3 where it is considered that continued recording/photography/filming/webcasting may infringe the rights or privacy of any individual, or intimidate them;
- 4 when the Chairman considers that a defamatory statement has been made.

The Council requests those recording proceedings not to edit the film/recordings/photographs in a way that could lead to misinterpretation of the proceedings, or infringe the core values of the Council. This includes refraining from editing an image or views expressed in a way that may ridicule, or show lack of respect towards those being photographed/filmed/recorded.

Those intending to bring large equipment, or wishing to discuss any special requirements are advised to contact the Council's Committee Services in advance of the meeting to seek advice and guidance. The use of flash photography or additional lighting will not be allowed unless this has been discussed in advance of the meeting and agreement has been reached on how it can be done without disrupting the proceedings. The use of recording/filming/ broadcasting equipment will be silent and will not distract those involved in the democratic process or impinging on the decision making or block viewing from the public seating area.

At the beginning of each meeting the Chairman will make an announcement that the meeting may be filmed, recorded or photographed. Notice of the filming/recording/broadcasting of meetings will be displayed in and outside the place of meeting and meeting agendas will include the following:

"The Council, members of the public and the press may record/film/photograph or broadcast this meeting when the public and the press are not lawfully excluded. Any member of the public who attends a meeting and objects to being filmed should advise the Committee Clerk who will instruct that they are not included in the filming."

Members of the public speaking at, or attending, the meeting must not be filmed if they indicated that they do not wish to be included. The Governance Team can be contacted via email at committee.services@babergh.gov.uk or by telephone on 01449 724684 or 01473 825876.