

## **COUNCIL**

**22 JANUARY 2015**

### **CONSTITUTIONAL MATTERS – OPENNESS OF LOCAL GOVERNMENT BODIES REGULATIONS 2014**

Portfolio Holder: Councillor Rodney Chambers, Leader  
Report from: Perry Holmes, Monitoring Officer  
Author: Julie Keith, Head of Democratic Services

#### **Summary**

This report seeks approval to changes to the Constitution to reflect the requirements of the Openness of Local Government Bodies Regulations 2014. These regulations introduce a right for any person attending a public meeting of the Council, the Cabinet and other Committees and Sub Committees of the Council (together with some other public sector meetings) to take photographs, film and audio-record the proceedings, and report on the meeting. The legislation also introduces a new requirement for local government officers to make a written record of certain non-executive decisions and for these to be made available for public inspection and published on the Council's website as soon as reasonably practicable after the decision is made.

#### **1. Budget and Policy Framework**

- 1.1 The Council's Constitution sets out the how the Council operates, how decisions are made and the procedures to ensure these are efficient, transparent and accountable to local people.
- 1.2 Changes to the Constitution are a matter for the Council except in those circumstances where the Monitoring Officer has delegated authority to make minor changes to the Constitution, including those changes to executive decision making agreed by the Leader, with a copy of such changes being supplied all Group Leaders and Whips within 14 days, as set out in Article 14 of the Constitution.

#### **2. Public rights to attend and report meetings**

- 2.1 With effect from 6 August 2014 any person may attend a meeting of the Council, Cabinet or Committees and Sub Committees held in public for the purpose of reporting the proceedings. "Reporting" is defined in the regulations as filming, photographing or audio recording, using any other means for enabling persons not present to see or hear the proceedings of a meeting, orally or in writing and reporting or providing commentary orally or in writing.

People may use any communication methods including the internet to publish, post or otherwise share the results of their reporting activities during or after the meeting; this allows tweeting and blogging and the posting of material on Facebook and YouTube. These rights do not apply to meetings where the press and public are excluded. For example, where exempt information would be disclosed or in the case of disorderly conduct.

- 2.2 The Council is required to provide reasonable facilities for people wishing to report on a meeting.
- 2.3 The Department for Communities and Local Government has issued guidance to the public on the provisions in the new regulations which states:
  - it is advisable (but not a requirement) for any person wishing to film or audio-record a public meeting to let their local authority know in advance so necessary arrangements can be made
  - people wishing to report on a meeting should ask the Council for details of the facilities they are providing for recording. This should include space to hear and view the meeting, seats and ideally a desk (already in place at all Medway meetings)
  - the rules do not prevent Councillors from tweeting and blogging at meetings as long as it is not disruptive and does not detract from proper conduct of the meeting.
  - local authorities should consider adopting a policy on filming of members of the public and ensure they protect children, the vulnerable and other members of the public who actively object to being filmed.
  - oral commentary is not permitted during a meeting as this would be disruptive
  - people may be excluded from meetings for disruptive behaviour associated with reporting activities
- 2.4 Medway has always made provision for the press and public at all formal meetings and, following a public question at the July 2014 Council meeting, audio recordings of Medway's Full Council meetings are now included on the website.
- 2.5 In response to this new legislation the following action has been taken:
  - 2.5.1 information is now published on every agenda to ensure those present in the public gallery are aware there may be people present photographing, filming or audio-recording and reporting the proceedings. Anyone exercising the right to report on the meeting is asked to sit in the front row and to do so in a way that does not disrupt the meeting and to ensure they do not film, photograph or record any other members of the public against their wishes.
  - 2.5.2 a notice to this effect is included on the Council's website, at the entrance to the meeting room and in an information sheet for members of the public.
  - 2.5.3 Medway's Council and Democracy web pages have also been amended to encourage any members of the press or public wishing to film meetings to contact the media team in advance of the meeting so necessary arrangements can be made.
- 2.6 The Council is asked to formally approve these arrangements as set out in Appendix A and the changes to the Constitution set out in Appendix B

### **3. Access to meetings and documents – new duty to publish non-executive decisions taken by officers**

- 3.1 On 10 September 2012 a new legal requirement came into force for decisions taken by an individual Cabinet member or officer on matters which are the responsibility of the Leader and Cabinet to be recorded and made available for public inspection including publication on the Council's website. The record has to include the date of the decision, reasons for the decision, details of options considered and rejected and a note of any conflicts of interest/ dispensations granted in relation to Cabinet members.
- 3.2 At the time there was widespread concern about the potentially significant administrative and costly process associated with this new burden. Medway sought clarification from the DCLG and it was confirmed by the Department that day to day administrative and operational decisions are not caught by the regulations. On that basis, the Monitoring Officer took the view that executive decisions taken by officers under specific delegations arising from items considered at Cabinet meetings should be recorded and published, representing a proportionate response to the legislation. (In Medway there is no provision for individual Cabinet members to take decisions).
- 3.3 The Openness of Local Government Bodies Regulations 2014 extend the requirement for recording and publication of officer decisions to those made under a specific express authorisation or a general delegation from the Council, its Committees, Sub Committees or any Joint Committees in which Medway participates. In other words, decisions on matters which are not the responsibility of the Leader and Cabinet.
- 3.4 Non-executive decisions taken by officers under an express authorisation from one of the bodies listed above are caught by this new requirement together with the following three categories of decision under any general delegation, where the effect of the decision is to:
- grant a permission or licence
  - affect the rights of an individual
  - award a contract or incur expenditure which, in either case, materially affects the Council's position
- 3.5 The regulations (and associated guidance for the public published by the DCLG ) state that the following are excluded from these requirements:
- routine administrative and organisational decisions
  - decisions on operational matters such as day to day variations in services
  - decisions if the whole or part of the record contains confidential or exempt information
  - decisions that are already required to be published in accordance with any other statutory requirement, provided the record published includes the date the decision was taken and the reasons for the decision
- 3.6 The written record must be available for inspection by members of the public at the offices of the Council and on the Council's website as soon as reasonably practicable after a decision has been taken and must include the decision taken and the date it was taken, reasons, alternative options

considered and rejected together with any background papers. Where a decision is taken under an express authorisation the name of any member of the Council or local government body who has declared an interest must be recorded. The written record of officers decisions a must be retained for 6 years and any background papers for four years, both in electronic format.

- 3.7 Arrangements are in place to capture, record and publish non-executive officer decisions and associated background papers across the relevant service areas where these have been taken under an express authorisation from the Council, Committees and Sub Committees. Work is also underway to assess the scope of the new requirements insofar as they relate to other officer decisions as set out in paragraph 3.4 above and an appropriate response will be in place as soon as possible.
- 3.8 The Council is asked to agree consequential amendments to the Constitution as set out in Appendix B.

#### **4. Risk management**

- 4.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community.

<b>Risk</b>	<b>Description</b>	<b>Action to avoid or mitigate risk</b>
Implementation of regulations	The Council fails to implement the provisions in the 2014 regulations on publication of officer decisions on matters which are not the responsibility of the Cabinet	Report to Council on 22 January 2015 setting out the new requirements, the arrangements being made to comply and the changes required to Constitution

#### **5. Financial and legal implications**

- 5.1 This report arises from the Openness of Local Government Bodies Regulations 2014. The legal implications are set out in full in the body of the report.
- 5.2 At this stage it is not possible to evaluate the extent to which compliance with the new requirement to publish non-executive officer decisions will represent a material additional administrative burden. Any additional costs will have to be met within existing budgets, as no additional resources have been made available to local authorities through the new burdens regime.

## **6. Recommendations**

- 6.1 To approve the arrangements put in place to meet new legislative requirements to permit the public to take photographs, film and audio-record the proceedings at meetings and to report on meetings as set out in paragraph 2 above and Appendix A together with consequential additions to the Constitution as set out in Appendix B.
- 6.2 To authorise the Monitoring Officer to put in place arrangements for the publication of non-executive decisions taken by officers in compliance with the requirements of the Openness of Local Government Bodies Regulations 2014 and to approve additions to the Constitution as set out in Appendix B.

### **Lead officer contacts**

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### **Background papers**

Medway Council's Constitution:  
<http://www.medway.gov.uk/councilanddemocracy/council/constitution.aspx>



## Guidance for people who want to report on meetings

Members of the public are entitled to report on meetings of the Council, the Cabinet, Committees and Sub Committees, except in circumstances where the public have been excluded as permitted by law.

Reporting means:

- filming, photographing or making an audio recording of the proceedings of the meeting
- using any other means for enabling persons not present to see or hear proceedings at a meeting as it takes place or later; or
- reporting or providing commentary on proceedings at a meeting, orally or in writing, so that the report or commentary is available as the meeting takes place or later if the person is not present

Anyone present at a meeting as it takes place, is not permitted to carry out an oral commentary or report. This is to prevent the business of the meeting being disrupted.

Anyone attending with the intention of reporting the proceedings is asked to advise the Council's media team in advance on 01634 33 27 36 or email [pressoffice@medway.gov.uk](mailto:pressoffice@medway.gov.uk) that they wish to report on the meeting and how they wish to do so. This is to enable us to guide anyone choosing to report on proceedings to an appropriate place from which to be able to report effectively.

Members of the press and public exercising the right to report on the proceedings are asked to sit in the front row of the public seating area or other designated area and to remain seated throughout the meeting as standing up and walking around could cause disruption. The Council also asks anyone wishing to record and report on a meeting to ensure they respect the wishes of others in the public gallery who may not wish to be filmed or recorded. Under no circumstances should any young people or children present at the meeting be filmed or recorded. If you do not wish to be filmed, photographed or recorded please sit at the back of the public seating area.

The Chairman will invoke the rules in the Council's Constitution for dealing with a general disturbance should anyone recording and reporting at a meeting cause disruption or persist in filming or recording children, young people or any other members of the public against their wishes. This could mean being requested to leave.

For meetings held at the St George's Centre or at Gun Wharf in Dock Road, Chatham, members of the public are welcome to use the Council's wi-fi facilities which can be accessed by selecting the following from the list of available networks on your device:

Gun Wharf – **Gun Wharf Public wifi**  
St George's Centre - **Public**

You must ensure that you have enabled the wi-fi on your device. However Medway Council will not be liable to anyone reporting the proceedings for any inconvenience if loss of wi-fi connectivity is interrupted or if the service is not available.

Occasionally, meetings take place in venues not run by Medway Council and in such circumstances members of the public are advised to check with the venue whether wi-fi is available.

In order to avoid accidents, the Council regrets that it is unable to facilitate members of the public using electric plug sockets in meetings for their equipment.



## Appendix B

### The Openness of local Government Bodies Regulations 2014 – consequential changes to Medway Council's Constitution

<b>Current Constitutional provisions</b>	<b>Suggested change</b>
Chapter 1 - Summary and Explanation Paragraph 7.4	Add bullet point: <ul style="list-style-type: none"><li data-bbox="1131 568 2002 639">• to report on meetings subject to guidelines published on the Council's website and available at meetings.</li></ul>
Article 3 – Local People and the Council Paragraph 3.1	Add above last bullet point: <ul style="list-style-type: none"><li data-bbox="1131 831 2022 903">• to report on meetings subject to guidelines published on the Council's website and available at meetings; and...</li></ul>
Chapter 4 – Rules, Part 2 – Access to Information Rules Rule 3 Right to attend meetings	Add after existing text: <p data-bbox="1227 1129 2018 1273">Members of the press and public are also entitled to report on meetings of the Council, Committees and Cabinet, except in circumstances where the public have been excluded as permitted by law.</p>

Chapter 4 – Rules, Part 2 – Access to Information Rules  
Rule 24 – Record of executive decisions taken by officers

Amend title as follows:

Rule 24 – Record of executive and non-executive decisions  
taken by Officers – add after paragraph 24.3:

Add after Paragraph 24.3:

24.4 As soon as reasonably practicable after an officer has made a decision under an express delegation from the Council, its Committees, Sub Committees or any Joint Committee in which Medway is involved or under a general delegation from one of these bodies where the effect of the decision is to grant a permission or licence, affect the rights of an individual or award a contract or incur expenditure, which in either case materially affects the Council's position a written statement will be prepared including:

- (a) a record of the decision including the date it was made;
- (b) a record of the reasons for the decision;
- (c) details of any alternative options considered and rejected by the officer when making the decision
- (d) a record of the name of any member of the Council or local government body who has declared an interest (for decisions taken under an express delegation)

24.5 Any record prepared in accordance with rule 24.4 together with any background papers considered by the officer and

relevant to the decision will be available for public inspection at Chatham Community Hub and on the Council's website.

24.6\_ Rules 24.4 to 24.5 do not apply to

- (a) routine administrative and organisational decisions
- (b) decisions on operational matters such as day to day variations in services
- (c) decisions if the whole or part of the record contains confidential or exempt information
- (d) decisions that are already required to be published by other legislation, provided the record published includes the date the decision was taken and the reasons for the decision