



Openness Regulations: Recording Officer's Decisions

Part 1: Policy Part 2: Procedure

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Policy created	June 2017
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Policy review due	June 2019

PART 1: Policy

1. Introduction

The Openness of Local Government Bodies Regulations 2014 (“the Regulations”) came into force on 6 August 2014. The Regulations are designed to promote the transparency and accountability of local authorities to their local communities. Part 2 of the Regulations contains provisions on filming, recording and reporting of Council and committee meetings, whereas Part 3 governs how certain officer decisions should be recorded.

This policy deals with Part 3 of the Regulations.

2. Definitions

“**background papers**” means documents other than published works that relate to the subject matter of the decision or part of the decision (that falls under paragraph 7(2)) and in the opinion of the proper officer, disclose any facts or matters on which the decision or part of the decision is based and were relied on to a material extent in making the decision.

“**confidential information**” means information provided by another government department or body whereby disclosure to the public is prohibited; information whereby disclosure is prohibited by law (for example under legislation or a court order).

“**decision**” means a conclusion or resolution reached after consideration.

“**relevant decisions**” means a decision in accordance with Regulation 7 (2):
“A decision falls within this paragraph if it 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.”*

“**local authority**” means a county council in England, a district council or a London borough council which is operating executive arrangements. Unless specified otherwise, all references to a paragraph and regulation is a reference to the Regulations.

“**written record**” mean a record in accordance with Regulation 7 (3). This includes the date the decision was taken, record of decision along with reasons for the decision, details of alternative options, if any, considered and the names of members who declared a conflict of interest.

3. Scope

District Councils fall within the definition of Local Authority, therefore the Regulations will be applicable to Relevant Decisions made by officers at St Albans City & District Council.

Under the Regulations, there is a requirement to publish a Written Record and Background Papers of Relevant Decisions.

4. Key commitments

Some, or all, of the decisions under the following regimes will fall within the remit of the Regulations:

- Taxi Licensing
- Licensing Act 2003
- Gambling Act 2005
- Street Trading
- Pavement Licensing
- Charitable Collection regulation
- Planning Decisions under Town & County Planning Act.

Guidance on what each department needs to record is contained in “Part 2: Procedure”.

Under Regulation 8, the Council must ensure a Written Record and Background Papers of Relevant Decisions is made available for inspection to members of the public, as soon as reasonable practicable after the decision is made. The decision must be available for inspection:

- Within Council Offices at all reasonable hours;
- On the Council’s public website; and
- By other such means that the Council consider appropriate.

In accordance with Regulation 7(3), we will use this policy to ensure that the following information is provided within the Written Record:

- (a) Date of the decision
- (b) The decision including the reasons for the decision
- (c) Any alternatives considered and rejected
- (d) If it is an express specific delegation then interests of any members
- (e) “Background Papers”

Where a decision is already required to be published by other legislation, there is no requirement to record this information again, providing the existing publication satisfies the requirements of Regulation 7 (3).

Material will not be released if it contains Confidential Information or if it is likely to contain confidential information.

It is an offence to fail to provide material or intentionally obstruct a person exercising a right to inspect information under Part 3 of the Regulations.

5. Review

This policy and the associated procedure will be subject to review every three years or sooner if necessary.

PART 2: Procedure

1. Introduction

This policy and procedure applies to all employees, contractors and agents of the Council. It provides guidance about the decisions that will need to be recorded under the Openness Regulations.

The following procedure makes references to the Council's constitution, which can be found using the link below:

<http://www.stalbans.gov.uk/council-and-democracy/decisionmaking/constitution/>

2. Decisions under the Regulations

The Regulations require Council's to publish decisions that are delegated to Officers. Decisions made by the Council, cabinet, committees or sub-committees are outside the scope of the Regulations therefore do not need to comply. Furthermore, officer decisions that have been designated to officers under legislation do not fall within the remit of the Regulations.

Council contracts

Regulation 7 (2) (iii) provides an obligation to publish officer decisions that award a contract or incur expenditure, which materially affects the Council's financial position. The Council considers contracts above the value of £50,000 materially affect the Council's financial position.

However, in the interest of transparency the Council publishes a register of contracts that are above £5000. This includes officer decisions and contracts that were tendered. Details of Council spending for amounts over £250 are also published.

The link below to the Council's website Procurement Page publishes details of Council spending:

<http://www.stalbans.gov.uk/business/procurement/>

Taxi Licensing

As a Licensing Authority, the Council has a statutory duty to license vehicles and drivers who wish to become members of the Hackney Carriage and Private Hire trade within the district of St Albans. These powers are granted under two Acts: Town Police Clauses Act 1847 and Local Government (Miscellaneous Provisions) Act 1976.

Under paragraph 8.1 of Part 3 of the Constitution, the Scheme of Delegation provides that the decision to grant, renew and revoke Taxi licences has been delegated to officers, therefore Taxi licensing decisions fall within the scope of the Regulations.

Under Regulation 7 (2) (b) (i) if the effect of the decision is to grant a licence, then officers are obliged to produce a written record of the decision. If the decision affects the rights of an individual it must also be recorded, therefore refusal to grant a licence should also be recorded. As a consequence Taxi Licensing decisions are required to comply with the Regulations.

However, because the information relating to drivers contains personal data/confidential information, these do not need to be published under the Regulations.

Licensing Act 2003

The Council is a Licensing Authority within the definition of section 3 (1) (a) of the Licensing Act 2003 therefore has a duty to carry out licensing functions under the Act. Some of these functions have been delegated to officers under paragraph 8.1 of the Scheme of Delegation:

http://www.stalbans.gov.uk/Images/03%20Scheme%20of%20Delegation%20-%20January%202017%20v2_tcm15-51664.pdf

Under section 8 of the Licensing Act 2003 licensing authorities are obliged to keep a register containing a record of certain decisions made. This register is to be made available for public inspection during office hours and without payment. The M3 Licensing Online System publishes a register of licences in compliance with the 2003 Act¹.

As it is a statutory requirement to grant applications which receive no objections, there is no 'decision' taken by Officers. This means premises licences and club premises certificates granted under the 2003 Act do not fall within the remit of these Regulations.

Minor Variations

Minor variations fall into the remit of the Regulations as the Licensing Act 2003 does not delegate the decision to officers. This has been delegated to officers under Appendix 2 of the Scheme of Delegation. However, if there is an objection from the Police, the decision will be determined by the Licensing Sub-Committee.

Decisions made by the Licensing Sub-Committee are not within the remit of the Regulations.

The written decision of minor variations are published on the M3 system, which is available to the public on the Council's website. Background papers can be requested by emailing licensing@stalbans.gov.uk.

Temporary Event Notices ("TEN")

¹ Licensing Act 2003

Temporary Event Notices do not fall into the scope of the Regulations as there is no 'decision' taken by an officer. The process involves the applicant (known as the premises users) notifying the Licensing Authority of an anticipated event. The Police and Environmental Health Authority may make objections. The decision is then with the premises users to agree the modification and serve a modified notice.

If the premises user does not agree with the modification, then the applicant will be considered at a Licensing Sub-committee. There is no requirement for decisions that are made at a Sub-committee to comply with the Regulations.

Street Trading

As a Local Authority, we have the power to regulate Street Traders in the district under the Local Government (Miscellaneous Provisions) Act 1982 if we choose to adopt these functions. The Council chose to adopt this function in a Health and Environmental Services Committee on 13th March 1986, with effect from 21st April 1986. The power to issue street trading consents was delegated to officers. Therefore Street Trading consents granted by officers also need to comply with the Regulations.

The written decision of Street Trading consents are published on the M3 system, which is available to the public on the Council's website. Background papers can be requested by emailing licensing@stalbans.gov.uk.

Pavement Licensing

To regulate the number and location of pavement cafes, all premises must have a licence under section 115 of the Highways Act 1980 to place tables and chairs on the highway. St Albans City and District Council have taken over the responsibility of licensing tables and chairs on the highway under an agreement with County Council's Hertfordshire Highways.

Under paragraph 5.1.27 of the Scheme of Delegation, the granting of a Pavement Licence is a delegated officer decision therefore must comply with the Regulations

The written decision of Pavement Licences are published on the M3 system, which is available to the public on the Council's website. Background papers can be requested by emailing licensing@stalbans.gov.uk.

Charitable Collections

As a local Licensing Authority, the Council is responsible for regulating Street Collections and House to House Collections in the District.

Our duty to regulate charitable collections in the District comes from two laws and the Model Regulations they recommend:

- Police, Factories etc (Miscellaneous Provisions) Act 1916
- House-to-House Collections Act 1939.

The activities of direct debit mandate collectors on the street (so-called "chuggers") are not regulated by law, and are not therefore subject to any licensing provision. However, the Council has a policy for chugging therefore information when chuggers are in the District will be recorded on the Street Collection database.

Charitable Collection Licences have been delegated to officers under paragraph 5.3.5 of the Scheme of Delegation, therefore decisions fall within the remit of the Regulations. A database for House to House Collection decisions and Street Collections can be found using the link below:

<http://www.stalbans.gov.uk/business/BusinessLicences/OnStreet/charity-collection-licences/default.aspx>

For background papers, please contact CharitableCollections@stalbands.gov.uk

Parking permits

Parking permits are granted in accordance with Traffic Regulation Orders ("TRO"). TROs have a consultation period before being made. Parking consultations and sealed TROs can be found via the link below:

<http://www.stalbans.gov.uk/transport-and-streets/parking/trafficorders/default.aspx>

The issue of permits is not an officer decision and therefore falls out of the scope of the Regulations.

Planning Decisions under Town & Country Planning Act

Planning decisions taken by Officers under the Town and Country Planning Act are required to comply with the Regulations.

As a Local Planning Authority, there is a duty to publicise all planning applications under Article 15 of The Town and Country Planning (Development Management Procedure) (England) Order 2015.

Both the Council's website and the planning portal enables members of the public to track the progress of an application and view supporting documentation. Members of the public are able to view all information about the planning application, including the written record criteria in Regulation 7-(3).

The Council notes the decision of *R. (on the application of Shasha) v Westminster City Council*²; reasons are provided for all planning decisions.

There is no requirement to republish this information as the on-line Planning Register already meets the requirements of the Regulations. Therefore no further action is required

Building Control notices

Building Control notices fall within the remit of the Regulations, as this is delegated officer decision. The authority to issue Building Control notices has been delegated to Officers under paragraph 1.2.35 of the Scheme of Delegation.

As Building Control notices are within the remit of the Regulation, the written decision will be published however the background papers are considered confidential under Regulation 9.

A record of written decisions can be found following the link below:
<https://www.stalbans.gov.uk/buildingcontrol/>

Tree Preservation Orders (“TPOs”)

The District Council has duties and responsibilities under the Town and Country Planning Act, Government Regulations and Circulars to protect trees within its administrative area in the interest of amenity. These duties and responsibilities extend to making Tree Preservation Orders (which in general makes it an offence to cut down, top, lop, uproot, willfully damage or destroy a tree without the District Council’s written permission), and to special provisions for trees within Conservation Areas.

If tree protection has been requested, an Arboricultural Officer will carry out a tree survey and inspection. The Council will then decide whether an order should be made. Notices are served on the owner of the land and the adjoining landowners if tree canopies overhang across their boundary.

If an owner objects to the TPO, the proposed order and objection are referred to the relevant area planning committee for a decision.

All TPOs are published on the map system, under planning constraints, which can be found using the following link: <http://gis.stalbans.gov.uk/wmlcustomerservice/>. The order includes the date of decision. The reason for making the order will be due to the outcome of the survey and inspection. These background papers can be requested by contacting the Arboricultural team:
treesandwoodlands@stalbands.gov.uk.

² [2016] EWHC 3283

TPOs which are confirmed by Committee do not fall within the remit of the Regulations. However, information on decisions made in Committees can be accessed in published agendas and minutes.

Decisions made in respect to Tree Work Applications are within the remit of the Regulations and are published on the planning database. The decision notice is published which complies with the written decision requirements. The planning applications portal can be found at the link below:

<http://www.stalbans.gov.uk/planning/Searchforplanningapplications/default.aspx>

Houses in Multiple Occupation (“HMO”)

As a local Housing Authority, the Council has responsibility for regulating Mandatory HMO licences that are required under the Housing Act 2004. This has been delegated to officers under paragraph 4.1.2 of the scheme of delegation, therefore decisions must comply with the Regulations.

The M3 system publishes written decisions of HMO licences. Background papers can be inspected at the Council Offices or by contacting privatesectorhousing@stalbans.gov.uk

3.

What information do we need to record?

There are two types of information that needs to be recorded for decisions falling within the scope of the Regulations:

1. the written record of the decision and
2. the background papers relating to the decision.

Exempt or confidential information is exempt under schedule 12A of the Local Government Act [see paragraph 5 for further details of the information this exemption includes].

Written record

All decisions within the scope of the Regulations are required to be recorded in writing.

This record should include the following information:

- (a) Date of the decision
- (b) The decision including the reasons for the decision
- (c) Any alternatives considered and rejected
- (d) If it is an express specific delegation then interests of any members
- (e) "background papers"

Written records should be made available to members of the public.

Background papers

Background papers are defined in the Regulations:

'documents other than published works that relate to the subject matter of the decision or part of the decision (that falls under paragraph 7(2)) and in the opinion of the proper officer, disclose any facts or matters on which the decision or part of the decision is based and were relied on to a material extent in making the decision.'

We consider that "Background Papers" includes documentation sent in to support the applications for licences and permissions such as photos, certificates etc. and significant correspondence. Background Papers of decisions that fall under the Regulations should also be made available for public inspection.

Members of the public are entitled to inspect background papers however personal data must be redacted. In accordance with Regulation 9 (2), these papers will not be put on the website. However, to promote transparency within the Council, background papers can be requested. In order to comply with the higher standard of data protection under General Data Protection Regulation (GDPR) background papers will be need to be redacted, therefore are available on request.

4. How do we need to publish the information?

Information should be available for public inspection during the Council Office opening hours. Information should be published on the Council website whenever possible.

Both the written record and background papers should be made available as soon as reasonably practicable after the decision is made. 'Reasonably practicable' is not defined by the Regulations, however departments should aim to make information available within a fortnight from the decision date.

5. Exempt or confidential information

Confidential information is defined in Part 1: Policy.

When a decision record or Background Papers contain confidential information, the decision must be recorded but does not need to be made available to the public.

6. Disposal

Written decisions under the Regulations should be retained for a period of 6 years from the date of decision.

Background Papers should be retained for a period of 4 years from the date of the relevant decision.

Officers should consider whether the information is being retained solely for the purposes of the Regulations. If the information is required for another purpose, it should be disposed of in accordance with the relevant departmental disposal schedule, as the information may be needed for a period longer than six years.

Departmental disposal schedules should be amended to include information that should be retained under the Regulations.

7. Implications for Access to Information Regimes - Freedom of Information Act, Environmental Information Regulations & Data Protection Act

Information must not be amended or disposed of when there is a possibility of litigation, or of an investigation or complaint that has not been concluded. If we have received a request for disclosure of information under the Freedom of Information Act or the Data Protection Act or the Environmental Information Regulations, it is a criminal offence to destroy information after a request has been received.

We have a duty to confirm the information we hold. If we regularly dispose of information we are no longer required to retain we will make it easier to answer requests.

The Data Protection Act requires us to store and dispose of personal data securely. To ensure we comply with this legal requirement you should consider the following when disposing of information:

- Use confidential waste bins for any personal data, sensitive personal data or other confidential information
- Electronically stored personal data should be destroyed by returning it to the IT department and asking them to remove and destroy the information.
- Any confidential waste not placed in bins immediately should be stored securely until it can be properly disposed of.
- Any confidential waste at home during home-working or when working off site should be shredded or stored securely and disposed of at the offices in confidential waste bins.

8. Further guidance

The link below contains the Department for Communities and Local Government's guide of all parts of the Regulation:

<https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide>

The M3 Licensing system can be accessed via the link below:

http://licensing.stalbans.gov.uk/Northgate/OnlineLicensing/Online/EGov/License_Registers/Registers_Criteria.aspx/