

From: Gary Cooke, Cabinet Member for Corporate and Democratic Services

Geoff Wild, Director of Governance & Law

To: Selection and Member Services Committee – 22 May 2015

Subject: Proposed changes to the Constitution.

Classification: Unrestricted

Summary: This report recommends changes to the Council's Constitution to comply with the Openness of Local Government Bodies Regulations 2014 in relation to filming and recording of formal meetings and the recording and publishing of officer decisions. It also recommends a minor change to the Council Procedure Rules (Appendix 4 Part 1 of the Constitution) relating to County Council questions.

Part A: Filming and Recording of Meetings

1. Members will be aware that on 5 August 2014 Government made the Openness of Local Government Bodies Regulations 2014 ("the Openness Regulations"), which dealt with the admission to and reporting of meetings of relevant local government bodies, as well as the recording and reporting of decisions and access to documents. The Openness Regulations came into effect on 6 August 2014.

2. In relation to the reporting of meetings, the Openness Regulations require local authorities to allow any person attending a public meeting to report from that meeting. "Reporting" is defined as:

- (a) *filming, photography or audio recording of proceedings;*
- (b) *using any other means for enabling persons not present to see or hear proceedings of a meeting as it takes place or later; and*
- (c) *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 to persons not present.*

3. The Openness Regulations also state that:

"any persons who attend meetings...with the aim of reporting...may use any communication methods, including the internet, to publish, post or otherwise share the results of their reporting activities. Publication and dissemination can take place at the time of the meeting or occur after the meeting".

The rules do not require the Council to permit oral commentary during a meeting, as this could be disruptive to the good order of the meeting.

4. The Openness Regulations also require that while meetings are open to the public, any persons, including duly accredited representatives of newspapers attending the meeting for the purpose of reporting the proceedings for those newspapers shall, so far as practicable, be afforded “reasonable facilities” (including space to view and hear the meeting, seats and, ideally, a desk) for taking their report.
5. The rules apply to any formal, public meeting of KCC, including County Council, Cabinet, Cabinet Committees, committee and sub-committee meetings.
6. The Department for Communities and Local Government (DCLG) has issued a guide for the press and public on attending and reporting local government meetings (which replaces the guide entitled “Your Council’s Cabinet – going to its meetings, seeing how it works”, issued in June 2013). The new guide states that the use of digital communication methods, such as filming, tweeting and blogging, should be embraced for enhancing the openness and transparency of local government bodies.
7. The guide states that no prior permission is required for filming, photography or audio-reporting from local authority meetings that are open to the public. However, members of the public and press are advised to inform local authority staff so that all necessary arrangements can be made for them to do so. The guide discourages any system which “vets” journalists or restricts reporting to “approved” journalists.
8. The rules on reporting do not apply to Local Enterprise Partnerships, but the guide encourages them to allow the same level of public reporting as applies to local government bodies, particularly if they are in receipt of public funds.
9. The guide states the Openness Regulations do not prevent Members from tweeting and blogging from meetings, provided it is not disruptive and does not detract from the proper conduct of the meeting.
10. Local authorities are advised to consider adopting a policy on the filming and reporting of meetings by members of the public, such as allowing those who actively object to being filmed not to be filmed, without undermining the broader transparency of the meeting. It is also reasonable for the policy on filming to include provisions for dealing with disruptive behaviour from any individual and the DCLG guide warns members of the press and public that such behaviour could result in expulsion from the meeting. The guide makes it clear that nothing in the Openness Regulations will impact on the Chairman’s power to exclude members of the public in cases of genuine disruption, while explaining the clear legal position that the act of filming and using social media in itself cannot be considered as disruptive

11. As can be seen from the above, whilst the Openness Regulations give any person a right to film, blog, tweet or take photographs during a public meeting, either for live or subsequent reporting, it remains appropriate for the County Council to have a policy on filming and reporting of meetings and the following amendments are, therefore, proposed to Procedure Rule 2.2 in Appendix 4 Part 2 of the Constitution, shown in bold and underlined text:

(1) *While a meeting is open to the public, any person attending the meeting for the purpose of reporting the proceedings in any publicly available medium, including the **taking of photographs and the** making of audio or visual proceedings, will be afforded reasonable facilities for so doing, subject to:*

(a) prior notification to the Democratic Services Officer;

(b) recordings not being made covertly;

*(c) recordings not being disruptive or distracting to the good conduct of the meeting, **including but not limited to:***

(i) not moving to areas outside those designated for the public;

(ii) no oral commentary during a meeting;

(iii) no excessive noise in recording or setting up/re-siting equipment;

(iv) no intrusive lighting or use of flash photography; or

(v) not asking people to repeat statements for the purposes of recording;

(vi) removing any recording equipment from the room during any part of the meeting where the press and public are excluded

(d) attendees being advised at the start of the meeting that it is being recorded;

(e) reasonable objections from those not wishing to be recorded; and

*(f) the Chairman's decision **in relation to the disruptive impact of the reporting on the conduct and order of the meeting,** which shall be final.*

(2) *Official recordings of Council proceedings will be made available by the Democratic Services Officer to any Member who requests them.*

12. The Committee will be aware that most of KCC's formal Council, Cabinet and committee meetings are webcast for live or subsequent transmission to the internet. In relation to those public committee meetings that are not currently webcast, the Committee is asked to note that these will be recorded as they take place using the webcasting equipment, so that the County Council has an

uninterrupted, official record of these meetings, but they will not be transmitted to the internet.

Part B: Recording Executive officer decisions

13. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (“the Executive Regulations”), which were aimed at introducing greater openness in Executive council meetings, came into force on 10 September 2012. The Executive Regulations were not the subject of any prior consultation with local authorities. Instead, the DCLG conducted what it described as a “short, focused informal soundings exercise with partners”. One such partner was the Local Government Association (LGA), which responded that the changes proposed by the Executive Regulations were “unnecessary”. Despite concern being expressed by KCC and others at the administrative burden that the Executive Regulations created, particularly in relation to the recording and publishing of officer decisions, no changes were made.
14. At its meeting on 19 September 2013, the County Council agreed with a number of recommendations from officers to implement key parts of the Executive Regulations, i.e. changes to the publication of forthcoming Executive decisions; notice of private meetings of the Executive; and Members’ rights to access documents relating to Executive decisions. However, in relation to the recording and publication of Executive officer decisions, the County Council decided to delay the implementation of this new requirement until such time as a viable and pragmatic solution could be found.

Executive officer decisions - Regulation 13(4)

15. The Executive Regulations extend the requirement to record all Executive decisions made by the Cabinet and Cabinet Members to those made by officers. According to the Executive Regulations, whenever an officer takes *any* Executive decision, they must produce a written statement including:
- (a) a record of the decision and the date it was made;
 - (b) the reasons for the decision;
 - (c) details of any alternative options considered and rejected;
 - (d) a record of any conflict of interest declared by any Executive Member consulted; and
 - (e) in respect of any declared conflict of interest, a note of dispensation granted by the Head of Paid Service

A record of all such decisions must be published on the Council’s website.

Proposal for the recording and publication of Executive officer decisions

16. Despite the wording of the Executive Regulations applying the new rules to *all* executive decisions taken by officers, DCLG issued a plain English guide

entitled “Open and Accountable Local Government”, which includes the following text:

“...many administrative and operational decisions officers take on how they go about their day to day work will be delegated within the Council’s rules and are not in this “executive decisions” category; as such they do not need to be recorded.

The decisions that should be not recorded might include the following examples:

- *decisions to allocate social carers to particular individuals, or for example, provide walking aids;*
- *decisions to allocate a social housing unit to an applicant or to send someone to carry out repairs;*
- *decisions to review the benefit claims of an individual applicant; and*
- *decisions to allocate market stalls to individual tenants”*

(Not all of the above examples are County Council functions)

17. The guide further states that “ultimately it is for local decision-makers to decide what information should be recorded on the basis of the national rules” and, therefore, KCC must decide upon a definition of what categories of Executive officer decisions should be recorded and published. Accordingly, the following proposal is made to amend and clarify paragraphs 6.34 and 6.35 of Appendix 4 Part 6 of the Constitution, shown in bold and underlined text:

6.34 *In certain circumstances a record must also be made of decisions taken under the Executive Scheme of Delegation to Officers. **Such officer decisions must relate to the discharge of a function that is the responsibility of the Executive and is sufficiently important and/or sensitive so that it is reasonable for a member of the public to expect it to be recorded and published.** These circumstances include:*

(a) a management decision regarding the day-to-day running of the Council, where the financial implications for the Council are £1m or more (officers should ensure that they act within the financial limits agreed by Council and included at Appendix 5 of the Constitution)

(b) a decision or action taken to implement a specific Cabinet or Cabinet Member decision where the financial implications for the Council are £1m or more.

6.35 **Examples of Executive officer decisions that should be recorded and reported are as follows:**

- (a) a decision to enter into a contract or legal agreement;**
- (b) a decision to consult on changing a service;**
- (c) a decision to make changes to services following a consultation exercise;**
- (d) a decision to go out to tender for a particular service, product or set of works or to award a contract therefor or to terminate a contract therefor;**

6.36 Those decisions purely administrative in nature and only remotely connected with an Executive function need not normally be recorded, but officers should consider in all cases the level of public interest that might exist for the information and the context within which the decision is being taken. **Examples of Executive officer decisions that do not need to be recorded and reported are as follows:**

- (a) the ordering of stationery or office supplies;**
- (b) decisions to allocate social care services to particular individuals where services are selected from an existing contract or framework agreement (as the decision to let that contract will have already been taken formally);**
- (c) decisions to “call off” from a framework contract, already awarded;**
- (d) decisions to carry out routine maintenance on a KCC-maintained highway or Council-owned land or property, which is provided for in the Council’s agreed revenue or capital budget (subject to the financial limits referred to in 6.34 (a) or (b) above);**
- (e) decisions relating to the grant of a license of land where no proprietary interest in land is granted such as hall hires or short term occupational licenses, sub-station licenses and similar;**
- (f) decisions concerning the day-to-day management of property such as surrenders, break clauses, rent reviews, notices, etc;**
- (g) a decision to issue legal proceedings or decide a court settlement;**

Part C: Recording Non-Executive officer decisions

18. The Openness Regulations also deal with the recording of decisions made by officers supporting Non-Executive decision-making bodies of the Council. Regulation 7(2) requires officers to produce a written record of any decision that would otherwise have been taken by the County Council, or a committee, sub-committee or joint committee of the Council but has been delegated to an officer, either under a specific authorisation or a general delegation, 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 the County Council’s financial position

19. The Openness Regulations require that a written record must be produced as soon as reasonably practicable after an officer has made a decision of the kind referred to above and must contain the following information:

- (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 considered and rejected; and
- (d) where the decision falls under paragraph 2(a) of the Openness Regulations (decision made under a specific express authorisation), the names of any Member who has declared a conflict of interest in relation to the decision.

20. However, the Openness Regulations provide in Regulation 7(4) that the duty to record Non-Executive officer decisions is satisfied where a written record containing the information referred to in 19 (a) and (b) above is “already required to be produced in accordance with any other statutory requirement”. This is likely to include, for instance, decisions in relation to planning applications that are delegated to officers, where detailed records are already created and maintained.

21. Records of Non-Executive officer decisions must be made public at the offices of the Council, on the website and by any other means thought appropriate by the Council. A copy of the decision and supporting information must be provided on request, although local authorities are allowed to make a reasonable charge for postage, copying, etc. Decision records must be retained for inspection for at least 6 years. Background papers should also be available for inspection for at least 4 years.

22. In its guide to the Openness Regulations, DCLG states that many decisions taken by officers on how they go about their day-to-day work within the Council’s rules will not need to be recorded and that “it is for the Council to decide what information should be recorded on the basis of the national rules”. Accordingly, KCC must decide upon a definition of the categories of Non-Executive officer decisions that should be recorded and published and the following proposal is made for a new section of Appendix 4 Part 6 of the Constitution to follow the proposed new paragraph 6.36 (relating to Executive officer decisions) dealing with the recording of Non-Executive officer decisions:

6.37 A record must be made of decisions taken by an officer if it would otherwise have been taken by the County Council, or a committee, sub-committee or joint committee of the County Council but has been delegated to an officer either under a specific authorisation or a general delegation and the effect of the decision is to:

- (a) Grant a permission or licence;**
- (b) Affect the rights of an individual;**

(c) Award a contract or incur expenditure where the financial implications for the Council are £1m or more

6.38 Examples of Non-Executive officer decisions that should be recorded and reported are as follows:

- (a) a decision to enter into a contract or legal agreement;**
- (b) a decision to award planning permission or other permissions and licenses delegated to officers by the Planning Applications Committee or Regulation Committee;**
- (c) decisions relating to the County Council's Superannuation Fund delegated to officers by the Superannuation Fund Committee;**

6.39 Those decisions purely administrative or operational in nature need not normally be recorded but consideration should be given in all cases to the level of public interest that might exist for the information and the context within which the decision is being taken. Examples of Non-Executive officer decisions that do not normally need to be recorded and reported are as follows:

- (a) Decisions relating to employment matters, which are delegated to officers under the Personnel Management Rules, including staff management, recruitment and capability/disciplinary matters;**
- (b) Decisions taken in response to requests under the Data Protection Act 1998, the Freedom of Information Act 2000 or the Environmental Information Regulations 2004;**
- (c) Decisions taken to appoint Members to committees, joint committees and outside bodies, delegated to officers by the Selection and Member Services Committee;**
- (d) Decisions taken by officers to check and authorise expense claims submitted by Members in accordance with the Members' Allowances Scheme;**

6.40 The record of decision must contain:

- (a) the date the decision was taken;**
- (b) the reasons for the decision;**
- (c) details of alternative options, if any, considered and rejected;**
- (d) if the decision was made under a specific authorisation, the names of any Member who has declared a conflict of interest in relation to the decision;**
- (e) comments received from affected local Members, where applicable;**

6.41 The Record of Decision should be a public document, with any exempt information being contained within an exempt report to the decision-maker;

6.42 As soon as reasonably practicable after the decision has been made, the decision-maker must make the Record of Decision and any reports considered by the decision-maker available for inspection at County Hall and on the Council's website, except where information is considered to be exempt from publication or confidential;

6.43 The written record of the decision must be retained for inspection for a period of six years from the date of the decision, with any background papers available for a period of four years from the date of the decision.

Part D: County Council Questions

23. Paragraph 1.17(6) of Appendix 4 Part 1 of the Council's Constitution currently states that:

Answers to questions will be given by the Leader, the relevant Cabinet Member, Committee Chairman, the Member nominated by the Police or Fire Authorities or by another Member designated by the Chairman of the Council.

24. With the creation of Police and Crime Commissioners and Police and Crime Panels under the Police Reform and Social Responsibility Act 2011 and the subsequent demise of police authorities, the reference in paragraph 1.17(6) to "Police Authority" needs to be removed. In addition, it is also the case that the Kent and Medway Fire and Rescue Authority (K&MFRA) has its own procedures for dealing with formal business, including Members' questions and therefore, following consultation with the Chairman of the K&MFRA, it is proposed that the reference to "Fire Authority" also be removed from this part of the Constitution. Accordingly, the revised proposed wording of paragraph 1.17(6) is as follows:

"Answers to questions will be given by the Leader, the relevant Cabinet Member, Committee Chairman, or by another Member designated by the Chairman of the Council".

Conclusions:25. Through the Openness Regulations, the Government is committed to opening up local authority meetings to digital and social media. KCC already has a positive policy on filming at formal meetings, which only requires minor amendment to be fully compliant with the Regulations. The rules on the recording of both Executive and Non-Executive officer decisions will mean a new way of recording delegated decisions so that they comply fully with the Regulations and officers will be supported in so doing by staff in Democratic Services. The proposed changes to paragraph 1.17(6) of Appendix 4 Part 1 of the Constitution relate in the case of the former Police Authority to a change in the law, and in

relation to the Fire Authority, to an acceptance that alternative arrangements exist for Members' questions at Fire Authority meetings.

Recommendations:

26. The Committee is invited to:

- (a) Approve the amendments to paragraph 2.2 of Appendix 4 Part 2 of the Constitution in relation to filming at meetings, as set out in paragraph 11 of the report above;
- (b) Approve the proposed revisions to paragraphs 6.34 to 6.36 of Appendix 4 Part 6 of the Constitution in relation to the recording of Executive officer decisions, as set out in paragraph 17 of the report above;
- (c) Approve the proposed addition of paragraphs 6.37 to 6.43 of Appendix 4 Part 6 of the Constitution in relation to recording Non-Executive officer decisions, as set out in paragraph 22 of the report above; and
- (d) Approve the proposed change to paragraph 1.17(6) of Appendix 4 Part 1 of the Constitution in relation to County Council Questions as set out in paragraph

Contact details:

Peter Sass
Head of Democratic Services
peter.sass@kent.gov.uk
(03000) 416647

Background Papers:

Reports to the Selection and Member Services Committee – 4 September 2013
and County Council – 19 September 2013.