

Other information rights and access to meetings

Chapter summary

The public and journalists have rights to information under various laws, most notably as regards workings of local government. These rights can be used to get policy documents from public bodies and ensure journalists can report important meetings. For some types of material the laws are better than the Freedom of Information Act (see previous chapter), as they offer quicker rights to obtain copies of or inspect documents.

38.1 Introduction

Local government is a major source of stories and should be subjected to rigorous scrutiny by journalists, to report what policies are being pursued and what money is being spent, for example.

A journalist, or anyone, can during ‘reasonable hours’ visit a council’s offices to ask to see, for example, the agendas and minutes of meetings, reports written by council officers which led councillors to make decisions, and information about planning applications and decisions, though councils make many documents available online to the public. Journalists and all the public have a right to see some types of records dating back six years. As this chapter will also explain, there is also a right in law for a journalist or elector to inspect each year a large range of the financial records of local government bodies, which may not normally be published by them.

Local authorities fall into two main categories. Principal authorities include county and metropolitan councils, district councils, London boroughs, the London Assembly and fire authorities. The others – such as parish and community councils – are not principal authorities.

Devolution means that at present journalists’ and citizens’ rights to access to information from principal authorities differ to some extent in England and Wales.

For example, in a recent reform, section 46 of the Local Government and Elections (Wales) Act 2021 requires principal councils in Wales to broadcast online those meetings which are open to the public, including of committees and sub-committees, and to make the broadcasts available electronically for a specified period after the meeting. Section 46 requires other local government bodies in Wales to broadcast meetings, such as a fire and rescue authority and or national park authority.

Laws referred to in this chapter can be seen on www.legislation.gov.uk.

38.2 Principal authorities which are councils

In 2011 Parliament amended the Local Government Act 2000 to vary the way in which principal authority councils are run. The Act created new structural models with a ‘cabinet style’ mode of operation, formally referred to as ‘executive arrangements’ in Part 1A of the Act.

38.2.1 Councils with ‘executive arrangements’

In the most common of these cabinet-style models, the council has a cabinet of senior councillors – that is, an executive – led by the council leader (who is a councillor elected as leader by council members). In the other cabinet-style model being used by some principal councils, a cabinet/executive of senior councillors is led by a Mayor, who is elected to that post by the public. In both these models, decisions are made by the executive, including through its committees or sub-committees. Individual councillors on the executive and individual senior officers of the council may have delegated power to make some decisions on the executive’s behalf.

Councillors not on the executive (such as those in the minority political party, and ‘backbenchers’ in the controlling political party) are in what the 2000 Act describes as ‘overview and scrutiny’ committees. These review and scrutinise the executive’s policies and decisions, and can make recommendations.

However, because of other law, the cabinet-style councils do have some committees outside of the executive which have autonomous power to make decisions – such as the planning committee and the licensing committee.

38.2.2 Councils operating in a ‘committee system’

Almost all principal councils operate in a cabinet-style model, but a few have moved back to a more traditional structure – referred to in the 2000 Act as a ‘committee system’. In this system, a range of committees of councillors have powers to make decisions, so usually most or all councillors are involved in decision-making. Each committee has a particular area of responsibilities – for example, the finance committee or a committee for leisure facilities and parks – and the council leader is elected by the councillors.

38.2.3 Main law for councils on public access to information

As regards providing the public with access to information, all principal authorities have legal obligations under the Local Government Act 1972.

As will be explained, the Act requires generally of such councils that meetings of the full council, committees and sub-committees are held in public, other than in some exceptional circumstances. The Act specifies what information must be made available to the public (including journalists) about and from meetings.

However, the executive and its committees in the cabinet-style councils (that is, the ‘decision-making bodies’ within these councils), and any councillor or officer to which the executive has delegated decision-making power, do not fall within the scope of the 1972 Act as regards requirements to meet in public or provide information. Therefore, other law was needed to impose such requirements, which is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 (SI 2012/2089) (‘the 2012 Regulations’) and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001 (SI 2001/2290 (W. 178)) (‘the 2001 Regulations’)

Remember: the meetings of the full council, of overview and scrutiny committees and other committees outside of the executive fall within the scope of the 1972 Act, not these Regulations, as regards what information must be made available.

Legislation which in this regard applies for parish, town and community councils is explained later in this chapter. Laws which require Police and Crime Commissioners and NHS trusts to hold public meetings and provide information are also among those referred to.

Some details of the rights of journalists and the public to attend and report on meetings of local authorities and some other public bodies are set out in the guidance ‘Open and Accountable Local Government’ published by the Department for Communities and Local Government—see Useful Websites at the end of this chapter.

38.3 Reporting from meetings

Section 100A of the Local Government Act 1972 (in the version applying for English principal councils) and Regulation 4 of the 2012 Regulations (as regards ‘decision-making bodies’ in English principal councils of the cabinet-style models) say that when a meeting is open to the public

- any person attending is to be permitted to report the proceedings
- any person attending for the purpose of reporting the proceedings is, so far as practicable, to be afforded ‘reasonable facilities’ for taking their report (the Open and Accountable Local Government’ Government guidance says: ‘This should include space to view and hear the meeting, seats, and ideally a desk’).
- any person who attends to report the proceedings may use any communication methods, including the internet, to publish, post or otherwise share

the results of their reporting activities and that publication and dissemination may take place at the time of the meeting or occur after the meeting (which means, for example, that ‘tweeting’ and ‘live’ blogging should be allowed).

- In this law, ‘reporting on proceedings’ means filming, photographing or making an audio recording of the proceedings at the meeting, or using ‘any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later’.

However, local authorities covered by this law on reporting (which was created by amending legislation in 2014) have powers in it to stop disruption of meetings (for example, the law does not require them to permit ‘oral commentary’ being voiced in the meeting itself). Subject to this law, they can adopt policies about what reporting practices are permitted – for example, that members of the public attending the meeting can successfully object to being filmed.

In Wales there is an obligation to provide ‘reasonable facilities’ for journalists but there is not a requirement under the 1972 Act or 2001 Regulations to allow anyone to report a meeting by any communication methods or by filming, photographing or making an audio recording of the proceedings, or by using ‘any other means for enabling persons not present to see or hear proceedings at the meeting as it takes place or later’. Therefore, in Wales a principal council can decide what it permits as regards such activities.

38.4 What the 2012 Regulations say about meetings and access to information

References to Regulations which follow are to the 2012 Regulations. These apply in England to decision-makers within cabinet-style councils, and so apply to the executive, to the executive’s committees, and to joint committees authorised to discharge a function to which an executive decision relates. These are all ‘decision-making bodies’. Some of the Regulations apply to any person to whom the executive has delegated a decision-making power. There is some similar but not identical law in the 2001 Regulations, applying for Wales (these were amended during the pandemic to cover some obligations by means of online meetings and online publication).

Meetings of ‘decision-making bodies’ must be held in public (Regulation 3).

But (Regulation 4) the public may be excluded from a meeting if

- it is likely that confidential information would be disclosed to the public in breach of the obligation of confidence; or
- the decision-making body passes a resolution to exclude the public during an item in which disclosure of ‘exempt’ information (a term explained shortly) is likely – the resolution must describe the exempt information concerned; or
- it is necessary to maintain orderly conduct or prevent misbehaviour at a meeting.

The public may only be excluded under the first two of these grounds for the part or parts of the meeting when confidential or exempt information is likely to be disclosed.

Case study

In June 2017 the leader of the Royal Borough of Kensington and Chelsea announced that the public and press would be barred from a cabinet meeting to discuss the disastrous fire at the Grenfell Tower block of flats which that borough council owned. Seventy-one people had died in the fire. The reasons given for the exclusion decision were that there were fears the meeting would be disrupted, and concerns that reporting could prejudice the public inquiry set up to investigate the tragedy. A group of media organisations persuaded Mrs Justice O'Farrell in the High Court to order that the council must allow journalists to attend, on the grounds that there was no legal basis on which they could be excluded as they would not cause disruption. But when reporters entered the meeting, council leader Nicholas Paget-Brown, who was in the chair, decided immediately to abandon it, so it did not proceed. That decision attracted widespread criticism, including a rebuke from Downing Street, and Mr Paget-Brown stepped down as leader the following day (*Press Gazette*, 29 June 2017; *The Guardian*, 29 and 30 June 2017; *Media Lawyer*, 4 July 2017).

38.4.1 Confidential information

'Confidential information' is information provided to the council by a government department upon terms (however expressed) forbidding its disclosure to the public, or information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court.

38.4.2 Exempt information

The 2012 (and 2001) Regulations adopt the definition of exempt information which is set out in Schedule 12A of the 1972 Act, and which is, broadly speaking:

- information relating to any individual.
- information which is likely to reveal the identity of an individual.
- information relating to the financial or business affairs of any particular person/organisation (including the local authority holding that information).
- information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
- information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

- information which reveals that the authority proposes— a. to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or b. to make an order or direction under any enactment.
- information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

Schedule 12A makes clear that some information falling into a category on this list is not exempt – for example, if it has by law to be entered into a public register in other contexts, such as the identities of a company’s directors (which is information which a company must send to Companies House to be displayed in its public register).

Also, information is not exempt information if it relates to proposed development for which the council as a local planning authority may grant itself planning permission under regulation 3 of the Town and Country Planning General Regulations 1992.

Importantly, Schedule 12A says that information is exempt information ‘if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information’. Therefore, in some circumstances it can be argued, for example, that it is in the public interest for a person’s identity or other matters to be revealed from what had been categorised as exempt information.

Also, the fact that exempt information might be discussed does not place an absolute legal obligation on a ‘decision-making body’ (or councillors in any council-related meeting) to discuss the issue in private.

The categories of exempt information are wider than the categories of information which a council is not obliged to disclose under the Freedom of Information Act – so journalists should realise that the information in some exempt material might be obtained through an FoI request. The online ch. 37 of *McNae’s* explains the request process enabled by the FoI Act.

38.4.3 Notice of public meetings

A decision-making body must display at the council’s offices a notice giving the time and place of a meeting being held in public, and publish the notice on its website, at least five clear days before the meeting or, if the meeting is convened at shorter notice, at the time it is convened (Regulation 6). In the 2001 Regulations, for Wales, it is three clear days.

38.4.4 Access to agendas and reports

An item of business may only be considered at a public meeting when a copy of the agenda or part of the agenda including the item has been available for inspection by the public for at least five clear days beforehand* or, if the meeting is convened at shorter notice, from the time it was convened. This law in Regulation 6 should prevent the meeting dealing with a matter which was not on any version of the

agenda. For detail of what ‘available for inspection’ means, see later. (*Again, it is three clear days in the 2001 Regulations for Wales)

Every report to be considered at the meeting must also be available for inspection by the public although the ‘proper officer’ may exclude from the report any material which relates only to items not likely to be discussed in public. If all or part of a report for a public meeting is not available for public inspection, it must be marked ‘not for publication’, and say that it contains confidential information, or contains exempt information, which must be described.

Any document (including the agenda and any report) which under the Regulations has to be available for inspection by the public must be available for at least five clear days* before the meeting, except when the meeting is convened at shorter notice, in which case it must be available for inspection when the meeting is convened (Regulation 7). (*three clear days in Wales)

However, no document has to be available for public inspection until a copy is available to members of the decision-making body concerned.

A reasonable number of copies of the agenda and reports must be available for the public attending the meeting.

Journalists and members of the public who ask must, on paying for postage, copying or other necessary charge for transmission, be supplied with:

- a copy of the agenda and each report for a public meeting;
- the further statements or details necessary to indicate the nature of the items in the agenda; and
- if the proper officer thinks fit, in the case of an item, a copy of any other document supplied to the executive’s members in connection with it (see too 38.4.9 on ‘background papers’)

38.4.5 What ‘available for inspection’ means

Any document which under the Regulations must before or (as will be explained) after a meeting be ‘available for inspection’ by the public (and therefore by journalists) must, under Regulation 21, be available ‘at all reasonable hours’ at the council’s offices and on its website.

Regulation 21 says that if a document is to be available for inspection, the person inspecting it may make a copy of all or part of it, or require such a copy to be supplied, on payment of any charge for it to be copied or sent.

There is a proviso, in that regulation 21 adds that the council is not required to permit copying or supply a copy if this infringes someone else’s copyright.

But the regulation makes clear that if the copyright in the document belongs to the council (which will be the case in most instances because, for example, the text will have been written by one or more of its employees in their duties), copying by or for a person who is inspecting it or was supplied by the council with a copy does not infringe that copyright. Regulation 21 says too that, subject to the proviso on third-party copyright, any member of the public may, in any available medium, reproduce or provide commentary in relation to, any document supplied to them,

or made available for inspection, under the Regulations. Ch. 29 in *McNae's* covers copyright generally.

Documents available for inspection must be retained for inspection for four or six years (see 38.4.10), which means journalists can inspect them to probe past decisions.

* Remember

A fair and accurate report of a document which by law is open to public inspection or which is issued for the information of the public by a council is, if published without malice, protected by qualified privilege under (respectively) Part 1 or Part 2 of Schedule 1 of the Defamation Act 1996 (see 22.7 and Appendix 2 in *McNae's*).

Under the Regulations, any part of an agenda, report or other document which contains confidential or exempt information or the advice of a 'political adviser or assistant' does not have to be made available for inspection (Regulation 20).

38.4.6 Notification of private meetings

A decision-making body intending to meet in private must give at least 28 clear days' notice of that intention, by making a notification, which explains the reasons, available at its offices and publishing it on its website (Regulation 5).

It must publish a further notice about the meeting at least five clear days before it takes place, and a statement of the reasons for holding it private; details of any representations it has received about why the meeting should be open to the public; and a statement of its response to those representations.

A decision-making body which wishes to hold a private meeting so quickly that it cannot comply with these time limits must obtain consent to do so from the chair or deputy chair of a relevant overview and scrutiny committee (see 38.2.1) or, in their absence, the authority's chair or deputy chair.

38.4.7 Information about key decisions

Special rules apply when a 'key decision' is to be made – this situation is covered by Regulations 8 and 9.

A key decision is one which is likely:

- to result in the local authority incurring spending or making savings which are significant having regard to its budget for the relevant service or function; or
- to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions.

At least 28 days before a key decision is made, the council must publish, at its office and on its website, if it has one, a document giving details about it. Regulation 9 says this must specify:

- that a key decision is to be made;
- the matter to be decided;
- if the decision is to be made by an individual, his/her name, and title, if any, and, if the decision-maker is to be a decision-making body, its name and a list of its members;
- the date on which or period within which the decision is to be made;
- a list of the documents submitted to the decision-maker for consideration in relation to the decision;
- the address from which copies of or extracts from any document listed is available;
- that other documents relevant to those matters may be submitted to the decision-maker; and
- the procedure for requesting details of those documents (if any) as they become available.

If the public may be excluded from the meeting at which the matter is to be discussed, or documents relating to the decision do not have to be disclosed to the public, the published notification must contain particulars of the matter but cannot contain any confidential or exempt information or details of advice from a political adviser or assistant.

If the required notification period for a meeting to make a key decision is impractical, the decision may only be made after various authority members have been notified in writing of the matter to be decided, and only after a copy of that notification has been 'made available for inspection' and published on the authority's website for five clear days (Regulation 10).

As soon as reasonably practicable after this, the officer concerned must set out the reasons why compliance with Regulation 9 is impracticable in a notice made available at the authority's offices and on its website.

Similar requirements apply in cases of special urgency – those when the date by which a key decision must be made makes compliance with Regulation 10 impracticable.

38.4.8 Documents that must be made available after a meeting

Regulation 12 requires a written statement to be produced 'as soon as reasonably practicable' after a public or private meeting at which an executive decision is made. The statement must include:

- (1) a record of the decision;
- (2) a record of the reasons for the decision;
- (3) details of any alternative options considered and rejected at the meeting;
- (4) a record of any conflict of interest declared by a councillor (see 38.9) and, in that case, a note of any dispensation granted by the council's standards committee.

An executive decision made by an individual councillor or by an officer must be recorded similarly (Regulation 13).

These records must be made available for public inspection as soon as ‘reasonably practicable’, with any report considered at the meeting or by the individual member or officer making the decision (Regulation 14).

Journalists and members of the public who ask must, on paying for postage, copying or other necessary charge for transmission, be supplied with copies of the records.

38.4.9 ‘Background papers’

Under Regulation 15, when all or part of a report for a meeting is made available for inspection before or after a meeting (under regulation 7 or 14), it must include a copy of a list compiled by the proper officer of any background paper to the report, and a copy of each background paper must be available for inspection (though again, confidential and exempt material and advice from a political adviser or assistant need not be made available).

In the Regulations a ‘background paper’ is a document other than published works, that relates to the subject matter of the report or part of the report, and in the opinion of the proper officer discloses any facts or matters on which the report or an important part of it was based and was relied on to a material extent in preparing it. NB: In some circumstances, information in a document provided to councillors could be gained by an FOI request if not made available for inspection.

38.4.10 Documents ‘available for inspection’ must be retained

Regulation 21 says that document available for inspection by the public must be retained by the council and made available for inspection for a period of at least six years (unless it is a background paper), beginning on the date on which the decision, to which the report or record relates, was made.

Any background paper which is to be available for inspection must be retained for inspection for a period of at least four years beginning on the date on which the decision, to which the background paper relates, was made.

38.4.11 The obstruction offence in Regulation 22

Any person who has in their custody a document which under the Regulations must be available for inspection by the public, commits a criminal offence if, without reasonable excuse, she or he intentionally obstructs the inspection or copying of the document or refuses to supply a copy (Regulation 22). The maximum fine for the offence is £100. Most local authority officers are helpful and speedy in enabling inspection, etc., but any being obstructive can be reminded of this law.

38.5 What the 1972 Act says about meetings and access to information

As stated earlier, the Local Government Act 1972 applies to all principal authorities which are councils, and other local government bodies. As regards such councils, it governs what information about and from meetings of the full council, committees and sub-committees must be made available to the public (but, as has been explained, the 1972 Act does not cover the ‘decision-making’ process as regards the executive arrangements of any council of a cabinet-style model).

The 1972 Act was radically reformed by amendments made by the Local Government (Access to Information) Act 1985. The 1985 Act is still referred to as the source of this access law.

In this respect, relevant parts of the 1972 Act include Part VA, which begins with section 100A, and Schedule 12A. In the Act, England and Wales each has its own version of Part VA sections and of the Schedule. The versions are mainly identical in wording or essence. But the sections for Wales have, because of amendment in 2021, more requirements for principal councils to publish information electronically (e.g. online)..

In this chapter, for the reader’s convenience, some law in Part VA can be explained by reference back to legal definitions and legal requirements in the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012, because much of the wording in the Regulations was copied from Part VA as a template.

Under sections 100A and 100E of the Act, all meetings of the full council, committees and their sub-committees must be open to the public unless dealing with confidential or exempt information or there is a need to suppress or prevent disorderly conduct or other misbehaviour. As regards the requirement for meetings to normally be held in public, the position about working parties and advisory or study groups, which may in effect act as sub-committees without the name, and which are not specified in the Act, is unclear.

The full council, committees and sub-committees must exclude the public when confidential information is likely to be disclosed. For what ‘confidential’ means in this context, see earlier in this chapter, at 38.4.1.

When disclosure of exempt information is likely to occur at a meeting, the full council, committees and sub-committees *may* exclude the public by passing a resolution, which must state the part of the meeting to which the exclusion applies and describe the category of exempt information (see the summary of the categories, in this chapter at 38.4.2).

38.5.1 Documents that must be made available

Under section 100B, a news organisation must on request (and on payment of postage or other transmission charge) be supplied by the council with (a) agendas of meetings (including of committees and sub-committees) (b) further particulars

necessary to indicate the nature of the items on the agenda, and (c) if the ‘proper officer’ thinks fit, copies of any other document supplied to authority members, although he/she may exclude from what he/she sends out any report, or part of a report, relating to items not likely to be discussed in public.

Late items, reports and supplementary information can be admitted at the meeting only if the chair regards the matter as urgent and specifies the reason for the urgency.

Copies of agendas and of any report for a meeting must be open to public inspection at least five clear working days (England) before the meeting (except for items not likely to be discussed in public). In Wales the notice period is three clear days. When (in either nation) a meeting is called at shorter notice these documents must be open to inspection from the time the meeting is convened. If they are not open to inspection, an item of business may not be considered at the meeting unless the chair decides it should be considered as an urgent matter by reason of special circumstances, which shall be specified in the minutes of the meeting.

‘Open for inspection’ means the document can be inspected by the public ‘at all reasonable hours’ at the council’s offices (sections 100C and 100H as applying in England, while in Wales there is a requirement for councils to publish the document electronically). The rights for a person to copy it or be supplied with a copy are the same as under the 2012 Regulations, with the same proviso about material in which the copyright belongs to someone other than the council – see 38.4.5.

Under sections 100C and 100D, copies of the minutes of a meeting and of any reports (excluding information which was exempt) and of its agenda must be open to inspection for a period of six years, and background papers for a period of four years (England) or six years (Wales), beginning with the date of the meeting.

Section 100D defines background papers - a definition which is the same in the 2012 Regulations (see 38.4.9) and dependent on the opinion of the ‘proper officer’ of the council. The section says they shall be listed in the relevant report considered by the meeting. Again, in some circumstances information in any document provided to councillors by an officer could be gained by an FOI request if not defined as a background paper.

38.5.2 The obstruction offence in section 100H

As regards any documents which should under Part VA to open to inspection by the public, and in respect of associated copying or supply rights, section 100H makes it a criminal offence for a person (such as a council officer) intentionally to obstruct such inspection or the copying of the document or to refuse to supply it. For context, see 38.4.11 which gives detail of the identical offence in the 2012 Regulations.

38.5.3 Fire authorities, national park and other local authorities

Under section 100J, the law in Part VA of the Act about meetings and provision of information also applies to other types of principal authority, such as fire and rescue authorities, some joint boards, national park authorities, and Mayoral

development corporations. It also applies to ‘economic prosperity boards’ and ‘combined authorities’. Combined authorities may have, for example, responsibility for a region’s transport and other policies, and most have a directly-elected mayor (such as the Greater Manchester Combined Authority).

38.6 Other law on information concerning use of delegated powers

As set out earlier, the 2012 Regulations govern what information must be made public about ‘executive decisions’ taken by an individual (such as a councillor or officer) on behalf of the executive in principal councils with ‘executive arrangements’.

Part 3 of the Openness of Local Government Bodies Regulations 2014 (SI 2014/2095), which applies in England, covers other circumstances in which an officer of a local authority makes some types of decision. This law applies for district, councils, county councils, London borough councils, and (see the list in Part 3) other types of local authority, including fire and rescue authorities, some joint boards, national park authorities, economic prosperity boards, combined authorities, parish councils and the Council of the Isles of Scilly.

The decisions covered by this law are those an officer makes under a specific express authorisation; or under a general authorisation to take such decisions, and 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 relevant local government body’s financial position.

Under this law, a written record of the decision must be produced as soon as reasonably practical after the decision was made, including the reasons for the decision; details of any alternative options, if any, considered and rejected; and the name of any member of the relevant local government body who has declared a conflict of interest in relation to the decision (see 38.9 in this chapter about such declarations).

This legal duty in the 2014 Regulations does not apply if a record of the decision has to be produced in compliance with other statute.

The written record and background papers relating to the decision must be available for inspection by the public. The detailed provision for this in the 2014 Regulations, including about copying and retention for inspection, etc, is the same as such provision in the 2012 Regulations – see 38.4.5 and 38.4.11. As with the 2012 Regulations, is a criminal offence to obstruct inspection, etc.

✱ Remember

Media coverage of the public proceedings of local authorities, whether in full council, committees or subcommittees, and of minutes, agendas, reports or other documents officially made available to journalists or the public, is protected in defamation law by qualified privilege if that defence’s requirements are met. See 22.7 in *McNae’s* for explanation.

38.7 Planning registers

Sections 69 and 188 of The Town and Country Planning Act 1990 requires relevant councils to keep a register of planning applications, the council's decisions on them and any appeal decisions; a register of development orders; and a register of enforcement and stop notices (for breach of planning controls).

Much of this information may be available online on a council's website, but the registers must be available for inspection at a council building at 'all reasonable hours'. Regulations about the registers, including what they should show, are set out in The Town and Country Planning (Development Management Procedure) (England) Order 2015 (SI 2015/595) and the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 (SI 2012/801). These registers may be a route to discover who controls land and buildings if this is not clear from ownership records in the Land Registry.

38.8 Register of interests

The Localism Act 2011 places a duty on local authority members such as councillors to ensure that certain personal interests are disclosed, including on a publicly available register. It is a criminal offence for members to fail to disclose for registration some types of pecuniary (financial) interest – for example, their job or business or what land they own in the area, see below.

The requirement for each local authority to keep a register of members' pecuniary and non-pecuniary interests is set out in section 29 of the Act. It says that monitoring officers of relevant authorities must make the register available for inspection at all reasonable hours and publish it on their authority's website.

Sections 27 and 28 of the Act require each authority to have a code of conduct which sets out the range of members' pecuniary and non-pecuniary interests' which must be registered. This law says the code must be consistent with the seven 'Nolan' principles of standards in public life - selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The code can require, for example, councillors to ensure that the register shows any gift or provision of hospitality, given to them as councillors, above a value specified by the code.

Section 29 also says that the monitoring officer of a principal council must make the register of councillors' interests for any parish council in its area available for inspection and to publish it on the website of the principal council. Parish councils must also publish the register online, if they have a website.

Case study

In October 2018 councillor Robert Davis resigned as planning chair of Westminster Council after it investigated the scale of his acceptance of gifts and hospitality. That scale was described in an official report as 'extraordinary'. Gifts and hospitality he accepted included Christmas hampers, a seat at the

first night of a West End show and being a guest at its 'after' party, meals at expensive restaurants and a gift of six bottles of wine. Davis, who was also the council's deputy leader, accepted gifts or hospitality on 530 occasions in the period 5 January 2015 to 8 February 2018. He notified the council's monitoring officer of the vast majority of these in compliance with the council's code of conduct, so they could be included in the register of councillors' interests. The code says that any gift, benefit or hospitality with a value in excess of £25 - which a councillor has accepted as a councillor from any person or body other than the council - must within 28 days of its receipt be notified by the councillor to that officer, or arrangements be made for notification. There had not been notification in 85 of the 530 instances. The report accepted that was due to Councillor Davis's 'administrative oversight' but he said he was confident he had declared these 85 items and blamed 'administrative error' by the council. The official report and his resignation were consequences of investigations published by *The Guardian* newspaper, which pointed out that property developers paid for some of the 530 instances of gifts and hospitality, including developers who made planning applications to the council. After *The Guardian* began publishing its articles, Davis referred himself to the council's monitoring officer for investigation and stood aside from council roles while it took place. He said the gifts and hospitality had been accepted and disclosed honestly in his role as 'ambassador' for the council. The monitoring officer appointed a barrister to be an independent advisor for the investigation, and also consulted the designated 'Independent Person' for the council for such matters, who was Sir Stephen Lamport. This led to the official report being presented to the council's standards committee. The report found that Davis has been 'fastidious' in recording gifts and hospitality for registration, and had made other declarations, and so had not broken the council's code of conduct about what should be registered or the law. In fact, the code did not require him to declare at least 80 of the 530 instances which he did declare. But Sir Stephen, while acknowledging Councillor Davis's 'deep commitment' to the work of the council, said that the volume and frequency of hospitality and gifts was 'extraordinary'. In the report the investigating officer said:

“ Although the number of gifts and hospitality received is not unlawful I do find that Cllr Davis has prima facie breached the code of conduct ...and it is to do with the proximity and timing of Cllr Davis' acceptance of some of the gifts and hospitality from developers who were involved in the planning process at the time. In other words, a few of the gifts and hospitality received were too close to the planning application/ decision.... Therefore I find that Cllr Davis by accepting gifts and hospitality, close to the committee decision point, from developers or someone linked to the planning process whilst in itself is not evidence of any inappropriate conduct by Cllr Davis it also does not rule out a conclusion that he has placed himself in

a position where people might have sought to influence him in the performance of his duties. I am not suggesting that the donors of the gifts and or/hospitality have sought to influence Cllr Davis...I find that by accepting the large scale of gifts and hospitality Cllr Davis has not promoted and supported high standards of conduct through leadership and by example. His conduct has attracted media and public attention which has an impact of the council as a whole. ””

Council leader Nickie Aiken said: ‘Our residents rightly expect the highest standards of those in public office. It is clear from the report that Councillor Davis breached the code of conduct. The planning process must be, and be seen to be, impartial’.

Councillor Davis told the council that although he considered the report contained ‘significant factual and legal errors’, he had resigned and wished ‘to draw a line under this matter’ and so did not intend addressing these ‘errors’ in detail (*The Guardian*, 19 and 20 February, and 8 March 2018; *BBC News online*, 10 October 2018; *Leader’s statement*, 10 October 2018 – for this and the official report see Useful Websites, at the end of this chapter; *Evening Standard*, 11 October 2018).

38.9 Disclosure of pecuniary interests

The Relevant Authorities (Disclosable Pecuniary Interests) Regulations 2012 (SI 2012/1464) specify what pecuniary (financial) interests a member of a local authority in England, such as a councillor, must disclose to comply with chapter 7 of the 2011 Act. For example, a failure by a councillor to notify the council’s monitoring officer of a disclosable pecuniary interest within 28 days of election, or the provision of false or misleading information in this respect is a criminal offence punishable by a fine and possible disqualification from membership of the authority for up to five years. The monitoring officer should ensure the register of interests includes each such interest, so the public can be aware of it. A member also usually commits an offence if he or she has a disclosable pecuniary interest in a matter to be considered, or being considered, at an authority meeting – for example, a council committee - and participates in the relevant discussion or voting there when the interest is not on the register and he or she did not disclose it to the meeting.

Even when the interest is on the register or disclosed at the meeting, the member should not take part in the discussion or voting without ‘dispensation’ permitted by the Act in some circumstances.

Disclosable pecuniary interests include any employment, office, trade, profession or vocation carried on by the member for profit or gain, any beneficial interest the member has in land which is within the area of the relevant authority and any business contract the member has with the authority; and any such interest of the member’s husband or wife or civil partner or anyone the member lives with as if married or as if in a civil partnership.

* Remember

If a councillor discloses a pecuniary or other interest at a meeting, the record of the meeting or delegated decision should show this.

38.10 Personal expenses of councillors

Under Regulation 15 of the Local Authorities (Members' Allowances) (England) Regulations 2003 (SI 2003/1021), county, district and London borough councils must keep a register of expenses claims submitted by councillors open to inspection all year round. Note that restrictions on release of personal data do not apply to the register. The Regulations say these councils must send the local media information about amounts paid to councillors in the previous financial year and reports on recommendations about the levels of allowances.

The Independent Remuneration Panel for Wales, established by the Local Government (Wales) Measure 2011, decides the level of allowances which councillors in Wales can claim. It publishes annual reports. These set out regulations about what relevant authorities should annually publish concerning sums paid to each councillor.

38.11 Parish and community councils, Water Act and other bodies

The Public Bodies (Admission to Meetings) Act 1960 sets out information and access rights relating to parish, town and community councils, parish meetings and the Council of the Isles of Scilly; bodies set up under the Water Act 1989—regional and local flood defence and coastal erosion committees, regional rivers advisory committees, salmon and freshwater fisheries advisory committees, and customer service committees; the Care Quality Commission; local health boards, some other bodies in the health field (for context, see too 38.13) and some other bodies (see its Schedule for the full list).

The 1960 Act says such bodies must admit the public to their meetings and to meetings of committees consisting of all members of the body. It also allows for the public to be excluded for all or part of a meeting 'whenever publicity would be prejudicial to the public interest because of the confidential nature of the business to be transacted or for other special reasons stated in the resolution and arising from the nature of that business or of the proceedings'.

The 1960 Act says that public notice of the time and place of a meeting must be given by posting it at the body's offices at least three days before the meeting, or, if the meeting is convened at shorter notice, when it is convened.

On request and on payment of postage, if required, the body must supply to any media organisation a copy of the agenda as supplied to its members, but excluding, if thought fit, items to be discussed when the meeting is not likely to be open to the public.

The legal obligations in the 1960 Act as regards permitting the reporting of meetings of parish, town and community councils, parish meetings and the Council of the Isles of Scilly, and what reporting methods can be used, are the same as for principal councils in England under section 100A of the Local Government Act 1972 and for ‘decision-making bodies’ under the 2012 Regulations – see 38.3 in this chapter.

Other bodies covered by the 1960 Act must ‘so far as practicable’ provide ‘reasonable facilities’ for journalists to report meetings open to the public but do not have that further legal requirement to allow reporting to include photography or filming or audio-recording, etc. (but can choose to allow that).

Minutes of the proceedings of a parish or community council must, under section 228 of the Local Government Act 1972, be open to inspection by an elector (so a journalist who is not from that locality may need a local elector to do the inspection).

Part 3 of the Openness of Local Government Bodies Regulations 2014 (requiring public access to written records of some types of decisions taken by officers) applies to parish council, parish meetings and the Council of the Isles of Scilly – see 38.6.

38.12 Access to financial accounts

The authors wish to thank Richard Orange, a media consultant with Orchard News (www.orchardnews.com) for his help in compiling this section of the chapter.

Journalists have golden opportunities to dig out local government stories by taking advantage of legal rights in section 26 of the Local Audit and Accountability Act 2014 to scrutinise spending.

This legislation, together with the Local Audit (Access to Documents) Act 2017, revised arrangements in England which entitle local electors and journalists to examine and copy paperwork and electronic records of all transactions conducted by councils and some other local authorities during the preceding financial year. A journalist can exercise the same rights in Wales, if she or he is an elector in the relevant authority area - see below.

The local authorities covered include fire and civil defence authorities, police and crime commissioners, national parks bodies, community councils and certain transport related authorities (such as Transport for London). Health service bodies are excluded.

Section 25 of the 2014 Act says a relevant authority must ensure that a local government elector for its area may inspect and make copies of the statement of accounts prepared by the authority, the local auditor’s opinion on the statement and any public interest report made as part of the annual audit. These documents must be available for inspection free of charge, but a charge may be made for copies.

With the exception of a public interest report, these general documents are unlikely to provide material worthy of a major story. But the statement of accounts is a useful signpost for where a journalist should delve further into the detail and substance of the accounts under audit.

Section 26 of the 2014 Act says the authority must advertise on its website the arrangements under which any local government elector for its area may make

an appointment to visit in person, to inspect and make copies of any of the following categories of documents which record expenditure, investments and income listed in the annual statement of accounts:

- Bills and receipts (including original invoices and receipts held in paper or electronic form);
- Deeds (including records of property transactions, estate holdings and legal documents detailing grants and rights);
- Books (including financial records listing expenditure and income held by different departments, teams and authority-run bodies such as schools);
- Vouchers (including credit notes and expenses claims);
- Contracts (including commercial contracts and schedules/appendixes but excluding staff employment contracts);
- Other documents relating to the accounts (including paperwork and emails authorising an item of expenditure, a contract and payment of a bill or claim but excluding staff expenses claims and former staff pension payments).

The authority cannot charge for access to the documents listed above.

But Regulation 14 of the Accounts and Audit Regulations 2015 (SI 2015/234) allows only a 30 working-day period (typically during late June and July in England) for local electors and journalists to exercise their rights to inspect the documents. The equivalent Welsh regulations, for electors, allow a shorter period of 20 working days.

The 2017 Act enabled 'any journalist including a 'citizen journalist' to inspect and make copies of the documents listed above of any local authority in England, and so they do not need to be a local elector to exercise those rights. The authority can charge a reasonable fee for copies of any documents requested as part of the inspection. These general rights for journalists do not yet apply in Wales but a journalist who is an elector in the relevant area in Wales can exercise the inspection and copying rights, as an elector under the Accounts and Audits (Wales) Regulations 2014 (SI 2014/3362), which are rules made under the Public Audit (Wales) Act 2004. The explanations in this chapter relate to the audit regime in England.

If an elector for the area asks, the local auditor must give him/her an opportunity to ask questions about the accounting records. An elector may raise an objection to an item in the accounts, and request an investigation by the local auditor, who may issue a public interest report. A journalist who is not a local elector in the area does not have the same right to question the auditor or register an objection to the accounts.

A local elector or journalist's motive in seeking material is irrelevant – see *R (on the application of HTV) v Bristol City Council* ([2004] EWHC 1219 (Admin); [2004] 1 WLR 2717). But the 2014 Act does not give the right to inspect or copy any part of any record or document containing information which the authority considers to be protected on the grounds of commercial confidentiality, or the right to require the authority or the local auditor to release the information in response to any question.

In *Veolia v Nottinghamshire County Council* ([2010] EWCA Civ 1214), the Court of Appeal ruled that commercial confidentiality should be applied to protect legitimate trade secrets contained in contracts, but should not be engaged as a matter of course to any commercial contract with a local authority.

The 2014 Act enables an authority to redact personal information from inspection and copying within the scope of the Act.

Personal information is broadly defined as information which identifies a particular individual or enables a particular individual to be identified, or relates to an officer of the relevant authority by virtue of his/her employment by the authority, or because the authority has made payments to another body because of work done by it by that individual. However, it does not enable a local authority to redact personal data of an individual who has received a payment as a sole trader. It also should not apply to a document in which an officer or member of staff's identity is recorded in respect of their authorising a payment, contract or transaction as part of their duties. If a local authority does redact the identity of an officer authorising or approving a transaction, journalists should consider requesting the information in the document under the Freedom of Information Act. Again, the FoI Act is explained in the online ch. 37 of *McNae's*.

The fact that officials can see documents first and redact confidential and/or personal information not mean that journalists must engage in correspondence from afar in order to obtain financial data, or wait for the authority to respond with materials at a later date. The local elector or journalist retains the right to inspect the records in person, and to sift through items of expenditure and income listed under particular budget headings and codes, before asking for and obtaining copies of (redacted) documents. Authorities are permitted to redact bank account data.

The audit regime provides journalists with an opportunity to cross-check financial transactions between elected members and authorities, especially where politicians sit on multiple bodies. There can be cross-checking too with what councillors have declared on the council's register of their interests – see 38.8 and 38.9.

Some journalists ask a local authority (via the press office) to send them photocopies or electronic copies of 'spending on such and such an issue'. This takes them outside the regime of the Local Audit and Accountability Act and gives the authority the opportunity to delay responding or to treat the request as a freedom of information request and then deny access on grounds which would not apply had the same request been made under the 2014 Act and/or within the limited timescale of the public inspection period.

The public notice which the local authority must publish on its website about the inspection period should give contact details of the 'proper officer' responsible arranging for local electors and journalists to attend in person – usually its Chief Executive, or Solicitor or Director of Finance. This duty is not delegated to a press officer, and neither should a local authority respond to a request to inspect and copy accounts during the inspection period by directing a journalist to a public relations officer.

The People's Audit group, which encourages the public to use this inspection law, has published a guide to the 2014 Act inspection rights. The National Audit Office too has published a guide. In 2019 the Bureau of Investigative Journalism

published an article about difficulties encountered when its volunteers sought to exercise the inspection rights by submitting requests to nearly 50 local authorities to see documents - such as contracts and invoices - relating to the use of private consultants during multi million-pound property deals. The Bureau said that some local authorities withheld or heavily redacted the information sought. 'There was often little evidence that the public interest had been considered and no way of challenging the decision short of a costly court battle.' See Useful Websites, at the end of this chapter, for the article and the guides.

* Remember

A Government transparency code encourages a broad range of local authorities in England, including councils, to publish some types of data - including on spending - in addition to what current law requires to be proactively published. See Useful Websites at the end of this chapter.

38.13 NHS Trusts

Admission to meetings of NHS Trusts, and rights to their agendas, are subject to the Public Bodies (Admission to Meetings) Act 1960, see earlier.

38.14 Police and Crime Commissioners

Police and Crime Commissioners must, under provision in sections 5 and 12 of the Police Reform and Social Responsibility Act 2011, publish a Police and Crime Plan and annual reports. See Useful Websites at the end of this chapter for Government guidance on that law. Financial and other information, including a register of interests, must be published, as specified in the Elected Local Policing Bodies (Specified Information) Order 2011 (SI 2011/3050).

38.15 Police and crime panels

The law in Part VA of the Local Government Act 1972, see earlier, about meetings being held in public and provision of information to the public and journalists applies to the police and crime panels in each police area - see the Police and Crime Panels (Application of Local Authority Enactments) Regulations 2012 (SI 2012/2734).

38.16 Quangos

Many day-to-day services to the public which were administered by bodies on which representatives of the public served have become semi-independent agencies with managing bodies staffed by appointees rather than representatives.

The term quango (quasi-autonomous non-governmental organisation) describes non-elected public bodies operating outside the civil service and funded by the

taxpayer. Generally, there is no right of access to meetings of quangos, although there is a right to request information from most of them under the FoI Act, explained in the online ch. 37 of *McNae's*.

* Remember

Acts and regulations referred to in this chapter can be seen on www.legislation.gov.uk

➔ Recap of major points

- People have rights to information from local authorities, such as annual budget figures and agendas, as well as rights to attend meetings.
- There are rights to attend the meetings of and get information from a wide range of bodies, not just councils.
- Exercising rights to examine accounts can be a very good source of stories.

(•) Useful Websites

www.gov.uk/government/uploads/system/uploads/attachment_data/file/343182/140812_Openness_Guide.pdf

Department for Communities and Local Government guidance: Open and Accountable Local Government

<https://www.westminster.gov.uk/statement-from-leader>

https://www.westminster.gov.uk/sites/default/files/clair_davis_report_bundle.pdf

Leader's Statement and official report arising from Westminster Council's investigation into the scale of Robert Davis's acceptance of gifts and hospitality

<http://www.thepeoplesaudit.info/guide-to-audit-rights/>

The People's Audit guide to inspection rights under Local Audit and Accountability Act 2014

<https://www.nao.org.uk/code-audit-practice/wp-content/uploads/sites/29/2015/03/Council-accounts-a-guide-to-your-rights.pdf>

National Audit Office guide to inspection rights under Local Audit and Accountability Act 2014

<https://gov.wales/sites/default/files/publications/2019-06/accounts-and-audit-regulations-2014-guidance.pdf>

Welsh Government guide to accounts and audit regulations

<https://www.thebureauinvestigates.com/stories/2019-09-11/councils-ignoring-public-right-to-audit-accounts>

The Bureau of Investigative Journalism article on using inspection rights in audit law

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/143836/publishing-information.pdf

Government guidance to Police and Crime Commissioners on publishing information

<https://researchbriefings.files.parliament.uk/documents/SN06046/SN06046.pdf>

House of Commons Briefing Paper No 06046, 14 September 2020 on local government transparency in England

<https://www.gov.uk/government/publications/local-government-transparency-code-2015/local-government-transparency-code-2015>

UK Government transparency code for local authorities

<https://www.local.gov.uk/probity-planning-advice-councillors-and-officers-making-planning-decisions>

'Probity in planning' – Local Government Association guidance for councillors and officers