



**OFFICE OF THE
DEPUTY PRIME MINISTER**

Access to Information in Local Government

A policy paper on the current and future
framework governing access to information
for Local Authorities in England

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framework governing access to information
for Local Authorities in England

Following the reorganisation of the government in May 2002, the responsibilities of the former Department for Transport, Local Government and the Regions (DTLR) in this area were transferred to the Office of the Deputy Prime Minister (ODPM).

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EXECUTIVE SUMMARY

The context of this policy paper

1. Our councils should be open in the way they do business, in delivering local services to local people and in how they make decisions. They need to be ready to provide information about the council's services and the decisions they make.
2. Councils already make a great deal of information available to the public – both through the rules they work under and on their own initiative. Under existing rules, the public already have access to the minutes and reports from council meetings and the reasons why councils have made decisions, as well as a wealth of information in areas of key service provision, such as housing, education, health and planning.
3. Alongside the existing rules for access to information, people will have new rights to obtain information under the Freedom of Information Act 2000. This Act will bring about a step change in the range of information the public can request from their council and the way in which the council releases it to them.
4. The first milestone is that councils must produce, by February 2003, a guide for the public to the information they publish or intend to publish. This is known as a Publication Scheme. It will show everyone what information they can get, where they can get that information, and if there is a charge for information. The full set of rules will come into force from January 2005.
5. Under Freedom of Information, the essential approach is that any person will have a general right to see any information that is held by the council. Local authorities can decide to withhold certain types of information, for example if it relates to information provided in confidence or personal information about a third party. But, in most of these cases, the council will not be able automatically to withhold information – If they want to do so, they have to be able to prove that it is the public interest to do so. They will need to be able to justify such a decision to the independent Information Commissioner.

Issues for consideration

6. Because new rules are coming in, the Government is reviewing the current access to information rules which apply to local authorities to see how they can best be integrated with the new rules under Freedom of Information. This consultation document is an important part of the review process, and is intended to help deliver a culture of openness throughout local government.
7. We are asking individuals, user-groups and key stakeholders to tell us;
 - how they think councils can most effectively provide local people with information, both now and when the Freedom of Information Act 2000 comes into force,
 - what practical problems people who want access to information held by local authorities face, and how these can be addressed,

- how the new requirements will work alongside the responsibilities councils already have to release information, and whether the existing rules need amending to make them clearer and easier to operate, for both councils and for local people,
 - how councils release information to the public now including examples of best practice and examples of how they use electronic media, such as the internet.
8. More detailed questions to which we are seeking answers can be found at Annex C. We also welcome any general comments about the issues raised in this paper and comments from user groups about their practical experience of the implications of the legislation. We would be grateful for comments by 2 December 2002.

CHAPTER 1

Introduction

- 1.1 Accountability and transparency are at the heart of the Government's vision for modern and effective, local authorities. The public's right of access to information held by local authorities is central to the framework in which councils achieve high standards of accountability and transparency. Wide-ranging legislation covers the public's general rights of access, as well as numerous rights in service specific areas. The advent of the Freedom of Information Act 2000 will provide the public with a general right of access to any information held by a public authority. In its application to local authorities it is set to bring a step change in the way councils relate to people and individual citizens.
- 1.2 Local councils have been working hard for many years on making the current system work for local people, and more recently to put freedom of information principles into practice even in advance of the new legislation coming into force. The challenge which faces councils is to strike the right balance between providing information in an open manner allowing for accountability and transparency in decision making, and protecting information where there is a valid reason for its protection. Through developing new ways of working, in tandem with greater openness, councils can achieve greater efficiency.
- 1.3 This policy paper is the first stage in a review process looking at the operation of the current access to information regime in local government, and looking ahead to the new freedom of information requirements which will be coming into force. The objectives of this policy paper are:
 - To describe the current framework which governs the access to information regime in local authorities in England.
 - To stimulate thought as to how local authorities should implement the Freedom of Information Act 2000 in local government, and to set out how the Act will interplay with the current system.
- 1.4 In particular we would like;
 - To consider further how the circumstances, as set out in Schedule 12A to the Local Government Act 1972, where councils can choose to exempt certain information from release to the public, will work in parallel with the exemptions in the Freedom of Information Act 2000 and if there is demand for the schedule to be amended in the light of this development.
 - To seek views on the workings of the new requirements governing access to information for those authorities operating executive arrangements, as set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations and accompanying statutory guidance issued under section 38 of the Local Government Act 2000.

- For those authorities operating alternative arrangements, to seek views on how the current regime which applies to them relates to the requirements of the Freedom of Information Act 2000.
 - To begin the process of identifying and disseminating best practice with regard to how local authorities define those “key” decisions, which are subject to specific openness requirements and must appear on an authorities’ “forward plan” of future decisions.
- 1.5 The Government plans to establish a review group in Autumn 2002 consisting of key stakeholders who will consider responses to the policy paper and issues which have been raised. They will be in a position to suggest ways to take this work forward. We will establish terms of reference with the group based on the objectives listed above.

CHAPTER 2

Access to information review

- 2.1 Modernising local government is at the heart of the Government's agenda for the reform of public services. The White Paper, "Strong Local Leadership – Quality Public Services", published in December 2001, sets out a programme of reform to achieve strong, vibrant, innovative and responsive local government delivering the quality of local leadership and public services that communities need.
- 2.2 Responsive local government depends on councils understanding their local circumstances and changes in these circumstances. To achieve this they need to encourage communities to make a valuable input into decisions which affect them. The result is decision making which delivers services that meet local needs. Being responsive strengthens the democratic process and enhances democratic legitimacy.
- 2.3 The Government is committed to maintaining and developing an effective framework to facilitate the development of such a culture of responsive governance. Public access to information is a crucial element in this framework.
- 2.4 The over-arching principles which the Government wishes local authorities to have regard to when making decisions of any nature, are outlined in the statutory guidance issued under Part II of the Local Government Act 2000¹. They are:
- proportionality (i.e. the action should be proportionate to the desired outcome);
 - decisions should be taken on the basis of due consultation and professional advice from officers;
 - respect for human rights;
 - a presumption in favour of openness; and
 - clarity of aims and desired outcomes.
- 2.5 Successive legislative changes have allowed the development of openness in local authority decision making, creating a framework governed by the following statutes:
- Part VA of the Local Government Act 1972, inserted by the Local Government (Access to information) Act 1985.

These provisions which apply to all principal councils provide the public and press with access to meetings and connected papers of the full council its committees and sub-committees, unless "confidential" or "exempt"² information is likely to be disclosed.

¹ See paragraph 7.3 of New Council Constitutions: Local Government Act 2000 Guidance to English Local Authorities published 21 March 2002.

² See Paragraph 4.1 for a fuller explanation of the definitions of 'confidential' and 'exempt' information.

Parish Councils are covered by the Public Bodies (Admission to Meetings) Act 1960 and Part 2, section 228 of the Local Government Act 1972 relating to the inspection of documents. The 1960 Act provides the public with a right to be admitted to meetings unless confidential business is being discussed. The 1972 Act provides that the minutes of a meeting be open to inspection by the public.

- The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations.

These regulations, and the accompanying statutory guidance, issued under Part II of the Local Government Act 2000 support the introduction of new executive decision-making structures created under the Local Government Act 2000. This clear division between an executive and the rest of the council is designed to ensure that there is a greater understanding about who is responsible for decision making. The principal aims of executive arrangements are to make decision making more efficient, transparent and accountable so that local authorities can be more open and responsive to the needs and aspirations of the communities they serve.

2.6 The access to information regulations signified the following changes in the access to information regime:

- Applying the regime created by Part VA described above to the executive decision making process,
- Creating a general principle that the public should have access to meetings, documents and decisions where the decision to be taken is to be a “key” decision.
- Key decisions are defined as executive decisions which are likely;
 - (a) to result in the local authority incurring expenditure or making a saving which is significant when having regard to the local authority’s budget for the service or function to which the decision relates; or
 - (b) to be significant in terms of its effects on communities within two or more wards in the area of the local authority or electoral divisions in Counties.³
- Requiring local authorities to produce a Forward Plan laying out the key decisions to be taken in the following four months, and for this to be regularly updated

We consider the implications of operating under these regulations later in this paper. These Regulations were born out of a need to ensure – that, as councils moved to operate new executive arrangements, the decision making process in local authorities did indeed become more open.

³ Paragraph 7.20 of the Statutory Guidance states that local authorities should, unless it is impractical to do so, specify that they will treat as key any decisions which are likely to have a significant impact on communities in one ward or electoral division.

2.7 During the passing of the regulations through Parliament the Government promised to review and consult on the operation of these Regulations twelve months after authorities had been operating new executive arrangements. For most authorities such a time period has not yet elapsed, with the vast majority of authorities starting their new constitutions between December 2001 and June 2002. Nevertheless the Government believes it is right to begin the review process now, and to have a continuing dialogue with councils and other stakeholders as it moves forward.

2.8 The review process will comprise:

- This policy paper, and the responses to it,
- Feedback gathered from local authorities and other interested stakeholders on all aspects of the access to information regime,
- A review group consisting of key stakeholders to consider the issues raised in responses to this paper,
- Longer term research commissioned by the Department into the effects of new council constitutions, which will look at the operation of access to information in the context of benefits created by the new policy.

2.9 During the debates in Parliament on the regulations and the production of the accompanying guidance various concerns came to light about certain specific aspects of the access to information regime. As a direct result of these concerns the Government produced in April 2001 a consultation paper on aspects of the access to information regime for local authorities in England. The consultation sought views on the following three questions:

- the framing of guidance on financial thresholds for key executive decisions;
- extending the requirement on local authorities to publish minutes, agendas, reports and background papers to be made available to the public prior to public meetings from three clear days to five clear days; and,
- proposals to revise the definition of exempt information given by Schedule 12A of the Local Government Act 1972.

Consultation closed in June 2001. As a result, it was decided that;

- Local authorities are best placed to define key decisions locally, within the broad definition as it stands⁴.
- The best way forward is to work with local authorities to develop and promote best practice on defining key decisions. This policy paper is the beginning of that process.

⁴ See Paragraph 2.29 of Strong Local Leadership – Quality Public Services, published December 2001, ISBN 0 10 153272 5.

- Local authorities, whether working within the framework of executive decision making or not, should provide papers and agendas for meetings five clear days before those meetings, rather than three days as previously. This allows greater opportunity for interested parties to identify problems and ensure that those are highlighted before the decision is taken.
- No changes would be made to the definition of exempt information in schedule 12A for the moment. The overwhelming response of consultees to the question of whether to revise the schedule was that there was little point in making any amendments without considering how it would work with the requirements of the Freedom of Information Act 2000. The Government has listened to these concerns and will further consider this question, in the light of responses to this consultation and further assessment with key stakeholders, of the issues.

2.10 In addition to the statutes discussed above which deal with openness in the decision making process, there are a range of many other rights of access which the public can exercise through statutes which target the delivery of specific services.

Examples

Local authorities must maintain a register of street works executed or proposed to be executed in the area.

They must maintain a register containing planning applications and their result.

Both of these registers must be available for the public to inspect as reasonable hours at the offices of the local authority.

2.11 In formulating their access to information policy it is essential that local authorities consider the advent of the Freedom of Information Act 2000 and the changes the requirements of this Act will have on the way they relate to citizens in their local communities. The Freedom of Information Act will provide an over-arching right of access to all information held by a local authority, over and above the existing statutes relating to specific service areas where authorities hold a large range of information. The next section considers this statute in more detail and the effect the new legislation will have on how local authorities manage information and deal with requests for information from individuals.

2.12 Responses to this policy paper

All responses to this policy paper should be sent, to arrive no later than 2 December 2002 to:

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If you have any questions or other views about this policy paper please contact the above address.

- 2.13 Researchers commissioned by the Department may wish to contact respondents to discuss issues raised.
- 2.14 Ministers may wish to publish responses to this policy paper in due course, or place copies of them in the libraries of the Houses of Parliament. Should respondents wish their comments to be treated in confidence, they should make this clear in any papers they submit. All comments may nevertheless be included in statistical summaries of the comments received and views expressed.

CHAPTER 3

Freedom of Information Act 2000

- 3.1 The Freedom of Information Act 2000 provides the public with a general right of access to information from all public authorities, including local authorities. Information held by local authorities is often of great interest to the public as it is in their local council where local policies are formulated and decisions are made on issues such as housing, health, education and planning which affect their everyday lives.
- 3.2 The Freedom of Information Act is set to fundamentally change the way in which the council provides information to the public, and the extent of the information that individuals can rightfully expect. Councils must treat every written request for information, whether it mentions the Freedom of Information Act or not, as a request made under the Act, and process these requests in accordance with the requirements of the legislation. Every local authority (including Parish Councils) must, from February 2003, produce and maintain a publication scheme. From this date they must fulfil the commitment to publish material covered in the publication scheme, and from this date this will be enforceable by the Information Commissioner.
- 3.3 Both officers and members will be the first point of contact for members of the public seeking information. There will therefore be an imperative need for both members and staff in local authorities involved with the provision of information to be aware of the Act, its scope and the processes which they need to follow.
- 3.4 The Lord Chancellor announced the timetable for implementation of the Act in November 2001. In April 2002 the Information Commissioner published a more detailed breakdown of the timetable. Local Authorities need to be concerned with the following dates;

| Sector | Information Commissioner accepts Publication Scheme submissions | Final deadline for submission of Publication Schemes | Publication Schemes Become active |
|--------------------|---|--|-----------------------------------|
| Local Government | 1st October 2002 | 31st December 2002 | February 2003 |
| Police Authorities | 1st February 2003 | 30th April 2003 | June 2003 |

The general right of access to information comes into force with regard to all public authorities, including local authorities, in January 2005.

The Information Commissioner is independent of Government and oversees both freedom of information and data protection legislation. The Information Commissioner issues guidance, approves publication schemes, reviews compliance by public authorities, has the power to enforce the Act, promotes good practice and gives advice.

3.5 A publication scheme is a 'guide' to the information a public authority routinely publishes or intends to publish routinely. It is a schedule of commitments to make information available in accordance with what the publication scheme says. Under the Act every local authority has a statutory duty to;

- adopt and maintain a scheme which relates to the publication of information by the authority and to have that scheme approved by the Commissioner;
- publish information in accordance with the scheme;
- from time to time, to review the scheme.

3.6 A publication scheme must also

- set out the classes of information which the authority publishes or intends to publish;
- the manner in which the public authority intends to publish the information;
- whether a charge will be made for the information.

In adopting or reviewing a publication scheme, a public authority shall have regard to the public interest; in allowing the public access to information held by the authority and in the publication of reasons for decisions made by the authority.

3.7 The provisions in the Freedom of Information Act specify that nothing in the Act limits the existing powers of public authorities to disclose information held by them. Therefore local authorities must continue to publish information that they are otherwise required by law to publish. This includes requirements under Part VA of the Local Government Act 1972, The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and the Amendment Regulations 2002 and other statutes which require local authorities to publish information, which are detailed in Annex A. Authorities will need to consider whether to include in their publication scheme all information they are already obliged to publish. Authorities should bear in mind that if they receive a request for information and they wish to claim that this information is exempt by virtue of it being accessible to the applicant by other means (section 21 of the Freedom of Information Act), then that information must be **reasonably accessible**.

The Freedom of Information Act is fully retrospective. This means that – from January 2005 the public will be able to legitimately make requests for information local authorities have created or are creating now.

Examples of legislation requiring openness in specific sectors

Local authorities must keep a register of street works executed or proposed to be executed in the area. (The New Roads and Street Works Act 1991)

Local authorities must keep a list of councillors' names and addresses, ward, and membership of committee and sub-committees. (The Local Government Act 1972)

3.8 Local Authorities operating Executive Arrangements under the Local Government Act 2000 are required under The Access to Information Regulations to produce a forward plan setting out key decisions to be taken in the following four months. Local authorities will want to think carefully about the relationship between their forward plan and their publication scheme, bearing in mind the different purposes and legal basis of each, and ensuring consistency between them.

- The forward plan is a living document which gives advance notice of key decisions to be taken by the local authority. It will make reference to documents relating to key decisions.
- The publication scheme is a guide for the public as to what information authorities publish or intend to publish, where documents can be found, and what relationship they have with other information the council makes available and makes reference to in the publication scheme. A good publication scheme will include information on key decisions.
- The relationship between the two documents will be dynamic as both documents are updated.

Forward plans and publication schemes

For the citizen wanting to find information about the workings of their local authority the forward plan and the publication scheme will be key documents.

It would be good practice for both documents to make clear that the other exists, and there should be a system of cross referencing to enable users to match key documents through both.

Another possibility would be to set up a link on the website between the two documents, to provide users with ease of access to the information they are seeking.

3.9 A publication scheme points the individual in the right direction to find the information they are seeking without having to approach the local authority and make a specific request. When formulating their schemes local authorities should consider that the requirement of the publication scheme provides them with an opportunity to publish information pro-actively and develop a greater culture of openness. It is likely that both users and scrutinisers of publication schemes will make comparisons between the approaches that different authorities take. There will be a growing expectation arising from user pressure that local authorities should be prepared to achieve equality of openness with other authorities.

3.10 As well as the benefits that promoting pro-active disclosure of information through their publication scheme will bring to those seeking information, local authorities will also receive benefits themselves. Information which is referred to on the publication scheme will be exempt from the general access request requirement by virtue of it being accessible to the applicant by other means. This has the potential to reduce the number of individual requests coming to authorities, and for the cost of information management and provision to be reduced.

Example

A local authority receives a request for information about an inspection report of a school in the area. This information is already published by the authority and therefore referred to on their publication scheme. The enquirer is referred to the publication scheme which states where the information is available and the local authority does not have an obligation to process the request.

The publication scheme provides authorities with an opportunity to manage the load of individual access requests by pre-empting what these requests will be. A well devised publication scheme will be an invaluable tool to a member of the public in understanding what information a local authority publishes or plans to publish and how they can get hold of this information. It will also be an invaluable tool for the local authority to help them organise how they provide information to the public.

3.11 The Information Commissioner has published a number of guidance documents on publication schemes which can be found on their website;
<http://www.informationcommissioner.gov.uk>

- Preparing for Implementation – Publication Schemes, June 2001.
- Publication Schemes – Consultation by the Information Commissioner, December 2001.
- Preparing for Implementation – Publication Schemes Approval Documentation, April 2002.
- Preparing for Implementation – Publication Schemes a Practical Guide: Classes, April 2002.

The Local Government Association and The Constitution Unit at University College London have published;

Freedom of Information Act – practical guide to the Freedom of Information Act 2000 for local authorities.⁵

3.12 The Lord Chancellor's Department has produced a working draft code of practice for public authorities:

www.lcd.gov.uk/foi/codesprac.htm

In its final form this code will be formally issued under the Freedom of Information Act 2000 and observance of it will be monitored by the Information Commissioner. Conformance to the code will be deemed to meet the statutory duty to provide advice and assistance under Section 16 of the Act.

⁵ Available from EC Logistics at lga@eclogistics.co.uk, Tel: 020 8867 3287, Ref: LGA CA 147 (£20, £10 LGA members plus £2.95 p&p)

- 3.13 Seven volunteer local authorities have been working with the LGA and the Information Commissioner in the preparation of pilot publication schemes. The Information Commissioner and the LGA have produced a joint paper (July 2002) on the feedback and observations from the pilot authorities, on the basis of the pilots' experiences in preparing their schemes. This paper can be found on the websites of both organisations.⁶
- 3.14 The National Association of Local Councils (NALC) are currently working with the Information Commissioner to produce a model publication scheme for parish, community and town councils.
- 3.15 Local authorities will already be familiar with, and have processes in place for, dealing with requests for personal information under the Data Protection Act 1998. From January 2005 when authorities receive requests for information they will need to identify whether the request is to be dealt with under the Data Protection Act or the Freedom of Information Act. If an individual makes a request for personal information about himself or herself the request is still to be dealt with under the Data Protection Act.

When the Freedom of Information Act is fully implemented the right of subject access, under the Data Protection Act, will be extended to apply to all paper records. This means that when the public make a request for information local authorities must check all paper records for the information, as well as structured files and electronic records. This will bring the provisions in the two acts in line with each other as the Freedom of Information Act provides a right of access to all information held by a local authority, irrespective of how it is stored.

The Data Protection Act covers requests for information made by the individual to whom that information relates. If the request made is for personal information about a third party then the authority would deal with it under the Freedom of Information Act, subject to the exemptions of the Act. Nevertheless councils would need to follow the principles established by the Data Protection Act, that is to say they would need to take account of whether the third party has consented for information to be released and whether it would be fair and lawful to release the information.

- 3.16 Local authorities will also need to consider the interaction between the Freedom of Information Act and the Environmental Information Regulations (EIRs). These Regulations provide the public with a right of access to a wide range of environmental information held by public authorities including local authorities. They advocate a strong presumption in favour of disclosure, with fewer exemptions than the Freedom of Information Act and all but two of these exemptions being subject to a public interest test.
- 3.17 Information which must be made available under the Environmental Information Regulations is exempt from being considered under the Freedom of Information Act. If a council receives a request for information covered by the Environmental Information Regulations it would continue to consider this request with regard to these regulations.

The Department of Environment Food and Rural Affairs (DEFRA), are currently consulting on proposals to replace the existing Environmental Information Regulations. The new draft Regulations are a step towards the implementation of the Freedom of Information Act 2000.⁷

⁶ LGA website link: www.lga.gov.uk/Documents/PDFLink/lgaproforma.pdf

⁷ www.defra.gov.uk/environment/consult/envinfo/index.htm

- 3.18 When considering their strategy for the implementation of the Freedom of Information Act 2000, local authorities will want to make the most of opportunities for linking with other initiatives and policy areas. The following section suggests a few examples.
- 3.19 The Freedom of Information Act is one of the key elements within the “Modernising Government” agenda, providing a structure for a more open and consumer oriented way of governance.

As we see the growing influence of the internet for the provision of information, local authorities need to think about fostering links between their implementation policy for FOI and various e-government initiatives. Information is exempt from the general access requirements, if it is ‘reasonably accessible.’ It is therefore imperative that published information is easy to find and access and this consideration should not be overlooked when local authorities are planning their websites and other electronic media. At the same time local authorities will recognise the current limitations to electronic media, and ensure that traditional methods of information provision for those without access to electronic media are not overlooked.

The Information Commissioner has said that it might not be enough for authorities to claim that information is “reasonably accessible” if it is available on their website. For those without internet access, councils should be prepared to produce hard copies.

Consideration

Public expectation about the ease of which they can acquire information will be heightened as more and more information is available electronically. Local authorities need to be prepared to meet these expectations under the rights provided by the Freedom of Information Act 2000.

Any local authority holds a great deal of information. When a request for information is made under the Act a local authority’s records management policy will be pivotal to their success at dealing with such access requests.

- 3.20 A successful records management strategy will be crucial for local authorities to deliver access rights and generally to be successful in the implementation of the Freedom of Information Act 2000. The Public Record Office have produced a working draft code of practice for the Lord Chancellor’s Department to advise authorities on records management⁸:

www.pro.gov.uk/recordsmanagement/foicode.rtf

The PRO have also produced a model action plan⁹ specific to local government for developing records management compliant with the Lord Chancellor’s Code of Practice under Section 46 of the Freedom of Information Act 2000. This is a step by step guide to what local authorities should be doing in order to ensure compliance:

www.pro.gov.uk/recordsmanagement/access/modellocalgovt.htm

⁸ Code of Practice on the management of records under section 46 of the Freedom of Information Act 2000.

⁹ Model Action Plan for Local Government for developing records management compliant with the Lord Chancellors Code of Practice under Section 46 of the Freedom of Information Act 2000.

This is a formal piece of guidance. The promotion and observance of it is provided for in the Act.

The advent of the Freedom of Information Act provides a valuable opportunity for local government to consider how information is organised and published electronically – important considerations in an e-government age. It also raises the question of how resources should be allocated to ensure this.

- 3.21 The question of where within a local authority responsibility for implementing the Freedom of Information Act 2000 should lie is one which arises frequently in discussions concerning how to implement the Act in local government. Finding the appropriate place for implementation in the agenda of a local authority is crucial and perhaps the key to formulating a successful implementation plan. Discussion above has highlighted some of the sectors which are set to be most affected by the new requirements of the Freedom of Information Act 2000, such as environmental policy and democratic services. A possible approach would be to have representatives from each of the key sectors within an authority on a implementation team, with overall responsibility for implementation of the Act lying in the corporate centre of an authority.

Accordingly the Government would like to hear about different implementation strategies local authorities are adopting to ensure they meet the requirements of the Freedom of Information Act 2000.

Q1: The Department seeks to identify and disseminate best practice in how local authorities are approaching the process of implementing the Freedom of Information Act 2000. What structures have local authorities established for managing the process of implementing the Freedom of Information Act 2000?¹⁰

¹⁰ Questions which the Government is asking in this paper are shown in green. They can also be found at Annex C – Question Summary Sheet.

CHAPTER 4

Schedule 12A and the Freedom of Information Act 2000

4.1 As described in section 2.5 above, Schedule 12A of the Local Government Act 1972 sets out the categories of exempt information where local authorities may consider restricting access to meetings and documents connected with those meetings.

- The Schedule applies to local authorities when they are considering releasing information under both Part VA of the Local Government Act 1972 and, in the case of authorities operating executive arrangements, the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000. The ability of councils to restrict information is set against the general rights of access that these two pieces of legislation provide;
- Part VA of the Local Government Act 1972, inserted by the Local Government (Access to Information) Act 1985, provides the public and press with access to meetings and documents connected with those meetings.
- The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations provide the public and press with access to executive decisions, the papers connected with them and the meetings where key executive decisions are made.
- Schedule 12A relates only to 'exempt' information, where local authorities have discretion to withhold information. Confidential information, which authorities cannot disclose is defined in Section 100A(3) of Part VA of the Local Government Act 1972 as:
 - (a) Information furnished to the council by a Government department upon terms which forbid the disclosure of the information to the public;
 - (b) Information the disclosure of which to the public is prohibited by or under any enactment or by the order of a court.

4.2 Section 100I of Part VA of the Local Government Act 1972 allows the Secretary of State by order to amend, delete or add to any part of Schedule 12A. In a consultation paper issued in April 2001¹¹, the Government consulted on a number of aspects of Schedule 12A, in order to assess the case for revising it, in particular:

- How the descriptions, interpretation and qualifications of exempt information in the schedule might be modified, refined and tightened.

¹¹ Access to Information in Local Government. A consultation paper on aspects of the access to information regime for local authorities in England.

- Proposals to update the schedule to bring it in line with current legislation.¹²
 - The inclusion of a general qualification that information required to have been made available to the public by virtue of any other law is not exempt information.
 - How the Schedule might be modified so as to provide as far as practicable incentives for good practice, including targeted replacements to Schedule 12A so as to avoid temptation of using a far wider interpretation of Schedule 12A than is within the spirit of the legislation.
 - How – within the powers available in section 100I of the 1972 Act – the Schedule could be revised to include more cross-referencing between the description and the corresponding qualification and interpretation.
- 4.3 Following consultation, the Government announced in March 2002¹³, that we had no current plans to change the definition of exempt information, but that we would consult further in the planned review of the access to information regime – this paper is a part of that process.
- 4.4 In responses to the consultation, many local authorities and those connected with local government said that, while they had no objection to updating the Schedule, there was little point in making any more significant changes without considering further how it would work alongside the exemptions of the Freedom of Information Act 2000.
- 4.5 In the consultation paper the Government proposed that a link could be achieved between local government legislation and the Freedom of Information Act 2000 by preventing local authorities from classifying as exempt any information which would have to be made available to the public by virtue of another law . Such a change would also provide links to many other statutes under which local government must release information (see Annex A). However, many respondents expressed the view that using such an indirect reference was not effective and that the connection needed to be made by way of a more direct provision.
- 4.6 The **Campaign for Freedom of Information** made a number of suggestions to amend Schedule 12A. These included that Parts I, II and III of schedule 12A should be merged, that exempt information should be subject to a public interest test (as under most of the exemptions in the Freedom of Information Act 2000) and that exemptions should also be time limited. This means that access would be provided to formerly exempt information if its disclosure at the time of the request would not be harmful.

The **Local Government Association** suggested that the wording and scope of the access to information exemptions be matched to the wording and scope of the Freedom of Information Act 2000. They argued that this would prevent the operation of two parallel schemes and would be a more effective method of aiding the understanding of the legal requirements on authorities than cross-referencing between the two legislative codes.

12 For example, the term “labour relations matter” used in Part III of the Schedule, is defined in the Labour Relations Act 1974, which has since been amended by the Trade Union and Labour Relations (Consolidation) Act 1992.

13 See www.press.dtlr.gov.uk/pns/DisplayPN.cgi?pn_id=2002_0123

A large proportion of **local authorities** agreed with the LGA's position that the operation of the two statutes should be considered in unison. There was a feeling that information law was becoming too complex – which in a manner defeated the purpose of it. Local authorities would welcome any move to simplify requirements.

- 4.7 The Government welcomes these comments on how the two practices can be aligned. These are all valuable suggestions which are being considered and will be considered further in tandem with the responses to this policy paper. The task is to achieve the correct balance between maintaining and reinforcing the openness regime and ensuring any changes are practically sound and local authorities can work with them.
- 4.8 Schedule 12A was established because Local Authorities are required by law to release information regarding decisions they are taking and decisions they have taken. Local authorities are required to do this so they are accountable to the public and will provide a more effective service where they are responsive to the needs of communities.

However, there are valid reasons for protecting some information and Schedule 12A was established so local authorities are not required to release such information to the public. Schedule 12A is unique to local authorities and the exemptions have been framed with local authorities in mind.

- 4.9 We believe there is a continued need to maintain a separate list of exemptions relevant to local government. Schedule 12A has been constructed to be specific to the needs and operation of local government and while there may be a case for amending it, we are minded to conclude that it should stay in place. The exemptions in the Freedom of Information Act are more numerous and broader because they cover a wider range of situations than local authorities are responsible for.

Q2: The Government is interested to hear suggestions from local authorities and other interested stakeholders as to how the exemptions in the Freedom of Information Act and Schedule 12A can be more closely aligned, including examples of best practice.

In order to guide suggestions, there are set out in the table below descriptions and characteristics of both regimes, which illustrate the nature of the interplay between the two and raise questions as to how to bring about a convergence in the way information is released under the two statutes.

| Table 1: Comparison between current regime and FOI Act 2000 | |
|--|--|
| CURRENT REGIME COVERED BY PART VA OF THE LOCAL GOVERNMENT ACT 1972 AND ACCESS TO INFORMATION REGULATIONS | FREEDOM OF INFORMATION ACT 2000 |
| <i>Right of access to information</i> | |
| <p>Public has right of access to meetings and documents connected with decisions a local authorities makes.</p> <ul style="list-style-type: none"> • Full council, its committees and sub-committees, background papers, agendas and reports for those meetings. (Part VA of LGA 1972) • Executive and their committees where a key decision is to be taken, documents relating to executive and key decisions. (Access to Information Regulations, SI 3272) | <p>General right of access to all recorded information held by public authorities.</p> <ul style="list-style-type: none"> • Information which is already required to be made available must continue to be made available. • Duty of a public authority to provide advice and assistance to those seeking information. • Right of access applies to any written request for information whether it mentions FOI or not. General right of access to all recorded information held by public authorities. |
| <i>How information is released</i> | |
| <p>Local Authorities are required to make information available to the public, even in the absence of specific requests.</p> <ul style="list-style-type: none"> • Papers must be made available 5 clear days before meetings take place. • Designated officers decide whether information is exempt and if it should be released. • Local Authorities take a proactive stance. | <p>The public make a request for information.</p> <ul style="list-style-type: none"> • Authorities have 20 days to respond to the request. • Authorities may charge a fee for dealing with requests. • Any officer/member who receives a request for information will have to decide whether to disclose. • Local authorities take a responsive stance. |
| <i>Forward plans and publication schemes</i> | |
| <p>Authorities operating executive arrangements must set out a Forward Plan showing what key decisions they plan to take over the next four months.</p> | <p>All authorities must produce a Publication Scheme – a guide to information the authority publishes or intends to publish.</p> |
| <i>Exemptions</i> | |
| <p>15 exemptions in Schedule 12 A of LGA 1972 tailored to local government including:</p> <ul style="list-style-type: none"> • Information relating to a employee • Details of contracts and proposed expenditure • Instructions to counsel • Information relating to the adoption, care, fostering or education of a child <p>A council may by resolution exclude the public from a meeting during an item of business, if in their view exempt information is likely to be disclosed.</p> <p>An officer may choose not to disclose exempt information contained in background papers/agendas/reports/minutes.</p> <p>If, after the exclusion of exempt information, minutes do not provide a fair and reasonable view of proceedings the proper officer must provide a summary of proceedings.</p> <p>Individual local authorities will have established their own procedure for dealing with complaints regarding the classification of exempt information. The Monitoring Officer often plays a key role.</p> | <p>23 Exemptions listed in FOI 2000 applying to all public bodies. 8 of these are absolute exemptions – meaning information in these categories is automatically exempt, including:</p> <ul style="list-style-type: none"> • Information dealing with national security matters • Personal Information (dealt with under Data Protection) • Court Records <p>Information accessible through the publication scheme is exempt, since it is already publicly available.</p> <p>A public interest test must be applied to the remainder of the exemptions – information must be released unless the public interest in not disclosing is greater than the public interest in disclosing. The exemptions this test applies to include:</p> <ul style="list-style-type: none"> • Commercial interests • Legal professional privilege • Health and safety <p>A dissatisfied applicant may appeal to the Information Commissioner about an authority's decision on where the public interest lies or if they think information has wrongly been withheld. The Commissioner may require disclosure.</p> |

4.10

How the Freedom of Information Act and the current openness regime can work in parallel

Under the Freedom of Information Act 2000 there will be a presumption in favour of openness.

If local authorities can operate on this presumption now, this would be helpful to prepare them for the future.

When the Freedom of Information Act is in operation, local authorities will need to carefully assess a request for information against the requirements of both Schedule 12A and FOI.

If an individual has been refused access to information under Schedule 12A, he may still be granted access under FOI, bearing in mind that many of the exemptions in FOI include a public interest test.

4.11 The advent of the interaction between the two statutes raises questions regarding specific exemptions. One such example is **commercially confident** information such as details of contracts. This could be classified as exempt information under Schedule 12A. Under FOI commercial interests are subject to a public interest test so information might have to be released.

Under FOI there is an exemption for information provided in confidence which does not require a public interest test. However the draft compliance code of practice, issued under the FOI Act, discourages authorities from accepting information with a duty of confidence attached.

The Freedom of Information requirements will be a **driver for greater openness**, as authorities anticipate categories of information they will no longer be able to classify as exempt.

4.12 **Aligning the practices regarding releasing information**

The Government believes that by aligning practices with regard to releasing information under the two statutes, local authorities will be best placed to implement the requirements of the Freedom of Information Act 2000. The convergence of such practices would mean that there would be a greater consistency between decisions to release information under the two statutes. Such consistency is valuable for those working in local authorities deciding whether to release information as well as for those requesting the information. We will seek to identify instances where local authorities have managed to achieve this effectively, and disseminate these examples as best practice to all authorities, for example:

4.13 **Separating out exempt information.** In the consultation last summer on access to information the Government made clear that decisions about exempt information should be made in accordance with the fundamental principle that there is a presumption in favour of openness. Under this approach wherever possible, this should involve separating out exempt parts of a report but nevertheless ensuring the report can be understood and discussed meaningfully in public without the exempt information. When interpreting Schedule 12A council officers and councillors should consider the potential outcome of disclosure of this information. Under the Freedom of Information Act 2000 authorities will have to effectively follow the same practice. The right of access is to information rather than documents. Any part of a document which contains exempt information would have to be separated out and the rest of the document disclosed.

- 4.14 **The public interest in disclosure.** When considering whether or not to release information, authorities must consider if it is in the public interest to do so. The Freedom of Information Act already qualifies the majority of exemptions by such a test. The Environmental Information Regulations also take a similar approach. One possibility would be to add a public interest test to those exemptions to which such a test applies under the Freedom of Information Act 2000. This would mean that local authorities would need to consider when classifying information as exempt, if the public interest in claiming the exemption outweighs the public interest in disclosure. The Government also believes that this could be achieved by local authorities taking the initiative to apply such a public interest test themselves – without being required to by statute. Ultimately, under the Freedom of Information Act any decision not to release information – to which the Act requires a public interest test to be applied, can be challenged by the Information Commissioner.
- 4.15 **Time limited exemptions.** When considering a request for information under the Freedom of Information Act authorities are required to apply the exemptions as they stand at that time. In response to the 2001 consultation on access to information the Campaign for Freedom of Information suggested that the schedule should be revised to provide access to formerly exempt information if its disclosure at the time of request would not be harmful. The Government believes that this could be achieved by local authorities taking the initiative to apply the schedule in this manner.

CHAPTER 5

Accountable decision making – Issues to consider

- 5.1 The Local Government Act 2000 has introduced new models of working for local authorities. Instead of the traditional full council and committee system, all councils are implementing during 2001 and 2002 new decision making structures;

Three of these involve an 'executive' with the responsibility for delivering the policy as agreed by the full council. The three types of executive are as follows:

- A cabinet executive, headed by a leader voted by all councillors;
- A cabinet executive headed by a directly elected mayor; and
- A council manager executive, headed by a directly elected mayor.

In the first two types the leader or mayor heads an executive of between three and ten councillors, who are responsible for delivering the council's programme. In the third type the council appoints a council manager who, with the directly elected mayor, form the executive.

A fourth option, available largely for smaller district councils in two tier areas, is a streamlined form of the committee system.

- 5.2 In all of these decision making structures the policy framework and the budget will be set by the full council meeting in public. The executive will make recommendations to the full council at that public meeting as will members of overview and scrutiny committees and other members of the local authority. Development and agreement of this policy framework should be an inclusive process involving the public and other local stakeholders as well as councillors.
- 5.3 These new executive arrangements aim to provide the public with greater access to decision making and decision makers. The regime provides the public with clarity as to who is the decision maker on key decisions, so;
- if someone is unhappy with a decision that has been made, or has an opinion about a decision which is to be made they should know who to go to so their voice will be heard,
 - decisions are subject to local challenge by new 'overview and scrutiny' committees,
 - decision makers are more readily accountable to the communities which they serve,
 - key decisions to be taken collectively are taken in public. All key decisions (including those taken by individuals) must be published.

- 5.4 For councils operating one of the three forms of executive arrangement, two sets of regulations, accompanied by statutory guidance, provide the framework for the openness regime;

The Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000, the Amendment Regulations 2002 and the accompanying statutory guidance (issued under Section 38 of the Local Government Act 2000).

- 5.5 These regulations cover the access of the public and the press to documents, decisions and meetings of the executive and its committees and to documents and decisions of individual members of the executive, officers and joint committees discharging delegated executive functions.

- 5.6 The Government wishes to consult on the early experiences of the operation of the access to information regulations for those local authorities operating executive arrangements. The Government would welcome feedback and comments on the regulations in any form. Below are some specific questions (in green type) which might help to structure feedback on the operation of the regulations. Key decisions, and questions surrounding their operation, are dealt with in section 6.

A complete summary of questions asked in this paper can be found in Annex C.

5.7 FORWARD PLAN

The forward plan underpins the Government's aim of greater accountability and transparency in local authority decision making, and is the primary means by which electors will know the decisions that local authority executives are planning to take. Councils operating executive arrangements are required to produce a forward plan setting out all key executive decisions that councils expect to take over the following four months, when they expect to take them, and who is responsible for taking them, whether an individual member, officer, or committee of the executive.

Local authority executives are required to update the plan each month and make it publicly available.

Where a local authority has a website the forward plan should be accessible on that website, together with relevant papers.

- 5.8 We expect that there will be a wide range of different ways in which local authorities present their forward plans and the practical use they make of it in conducting business, both internally within the council and in dealing with local people. We believe authorities should come up with local solutions which match local needs. Local authorities need to make a judgement about the nature of decisions they are taking. For example the decision to develop a strategy or a decision on that strategy. We set out below some examples of different approaches to the presentation of forward plans that we have come across in talking to local authorities.

Example

A local authority sends a copy of its forward plan to area committees, with a front page summary highlighting decision items which might be of interest to that particular committee. An officer would also be on hand at committee meetings to discuss any issues raised by the plan.

Example

A local authority provided a front page summary of key decisions. A user could see at a glance if they had an interest in any decisions. On the web based version of the plan they could click on the decision and follow a link through to a page with further details about the decision.

Example

A local authority developed a simple web based decision tracking system. A user could click on a key decision in the forward plan and would see updated information as to where that decision was in the decision making process.

Example

A local authority used a simple colour coding traffic light system to alert users as to the proximity of key decisions to be taken. Red indicated within the following month and so on.

Example

A user could click on the officer listed in the forward plan as the officer to be contacted with regards to a specific key decision, and the user would be taken straight through to an email page to allow them to email the officer.

Q3: Do you see any of the following as being additional uses of your forward plan?

- Internal management planning/communications document?
- Tool to encourage public participation?
- Work programme of the executive?
- Other (Please specify)

Q4: How do you publicise your forward plan to the electors?

Q5: What feedback do you get from local people and key stakeholders on your forward plan?

Q6: Do you think the forward plan achieves its purpose, of being the means by which electors know the decisions which an executive is to take?

If not, why not?

Q7: What impact has the advent of the forward plan had on the working practices of your local authority?

5.9 MEETINGS TO BE HELD IN PUBLIC

One of the main requirements of the regulations is that if a decision to be taken by a decision making body¹⁴ is a key decision, that decision must be taken in public. Key decisions can also be delegated to individual executive members or officers.

Q8: What proportion of key decisions are taken at public meetings?

5.10 ADVANCE NOTIFICATION OF DECISIONS

The Government is committed to ensuring that the decision making process is sufficiently clear for electors to know who is responsible for taking decisions and how they can be involved in the decision making process.

The current requirement that papers should be available three clear days before the meetings to which they relate will be extended to five clear days from October 2002. This will support the opportunity local people have for influencing decision-makers. Practical experience of councils gathered as part of the previous consultation exercise has led the Government to believe that local authorities should not have practical difficulties in meeting this new requirement.

Q9: How does your local authority make their scheme of executive delegations available to the public?

Q10: How does your local authority publicise key decisions taken by officers and executive members under delegated powers?

Q11: What proportion of executive decisions, that would be key decisions, has the authority had to take under urgency procedures?

Q12: How does your local authority make agendas and connected reports available to the public?

¹⁴ Decision making body, in relation to an executive decision, means – (a) the executive of a local authority; (b) a committee of a local authority executive; (c) a joint committee, where all the members of the joint committee are members of a local authority executive; or (d) a sub-committee of a joint committee where all members of the joint committee are members of a local authority executive, which is authorised to discharge the function to which the executive decision relates in accordance with the Local Authorities (Arrangement for the Discharge of Functions) (England) Regulations 2000.

5.11 RECORDING AND PUBLISHING OF EXECUTIVE DECISIONS

Once decisions have been taken it is important that electors know that decisions have been taken and why these decisions have been taken. This is why authorities are required to publish the decisions they have taken, any other options they considered and the reason why the final decision was arrived at.

Q13: How does the authority publish decisions?

Q14: Does it make use of electronic media to publish decisions?

Q15: How does it help with providing the public with access to records of these decisions?

Q16: How does your local authority ensure accurate records are kept of key decisions taken by individual members or officers?

5.12 PROVISIONS IN PLACE FOR MONITORING THE REGULATIONS

Local Authorities have been required, since the advent of Part VA of the Local Government Act 1972, to disclose a large amount of information regarding the decision making process to the public.

Q17: What processes have local authorities developed to deal with applications for the release of exempt information, including disputes over the classification?

Q18: What provisions are in place to monitor the authority's performance, including consistency of its decisions as to whether information is classified as 'exempt'?

CHAPTER 6

Key decisions

- 6.1 For local authorities operating executive forms of governance the executive is responsible for delivering the local authority's policy framework, which is set by full council, by:
- taking decisions individually or collectively in respect of functions which are the responsibility of the executive;
 - delegation of decisions to officers, particularly for day to day operational and management decisions and to area committees etc.
- 6.2 The concept of "key decisions" is central to the regime governing access to information held by local authorities operating executive arrangements. A key decision is defined in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 as one which is likely to:
- (a) result in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority's budget to the service or function for which the decision relates; or
 - (b) be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the local authority.¹⁵
- 6.3 Key decisions must be included in the executive's forward plan, which should be a document providing the public with straightforward access to the council's planned business, and form a basic tool for the management of information.
- 6.4 The general access requirements regarding key decisions taken by executives are as follows:
- The public have access to meetings and decisions, and prior access to papers, where the executive collectively, a committee of the executive or an individual is to take a key decision;
 - If the key decision is being taken collectively, or where there is substantive discussion, with officers present, of such a decision which is likely to be taken at a meeting in the next 28 days, that meeting must be held in public;
 - The public can be excluded from part or parts of a meeting only when it is likely that confidential information, exempt information (as defined in Schedule 12A to the Local Government Act 1972) or the advice of a political advisor or assistant will be disclosed.

¹⁵ Paragraph 7.20 of the Statutory Guidance states that local authorities should, unless it is impractical to do so, specify that they will treat as if they were key, any decisions which are likely to have a significant impact on communities in one ward or electoral division.

- For all decisions made by members of the executive, key or otherwise, a record of the decision (including the reasons for it) must be made publicly available together with reports and background papers – subject to usual rules on confidential and exempt information.
- The forward plan will include a list of documents submitted to the decision-maker in relation to the key decision being made.
- Where a key decision is being taken collectively agendas, reports and background papers must be made publicly available once they are available to the decision-maker.
- From October 2002 there must be at least five clear days between reports being made publicly available and a decision being taken. The Government believes that local people should have this increased advance warning of important decisions that local authorities take and of the meetings where these decisions take place.

There are special procedures if a key decision needs to be taken at short notice:

- If it is not feasible to include a decision in the forward plan then the person to whom the decision has been delegated may make that decision, provided that at least three clear days notice (five days from October 2002), is given to the relevant overview and scrutiny committee(s) and the public before the decision is taken.

If it is necessary to take a key decision with less than this notice period:

- The decision-maker must obtain agreement from the chair of the relevant overview and scrutiny committee that the decision is urgent. If the chair agrees the decision can be made.

6.5 The Government believes that local authorities are best placed to develop a workable definition of a key decision that suits local circumstances.¹⁶ Chapter 7 of the Statutory Guidance¹⁷ sets out the process for defining decisions as key and contains some points to which councils should have regard in developing their approach to providing the public with access to information they hold on key decisions. The points made in statutory guidance are:

- To assist potential decision makers to reach consistent and objective judgements as to whether a decision will involve significant expenditure, and to ensure that electors are clear about what is regarded as significant locally, each local authority will need to agree at full council meeting financial thresholds above which decisions are significant – and hence key decisions.
- Local authorities should publish the agreed thresholds.
- When setting such thresholds local authorities should bear in mind the underlying principles of open and accountable decision making.

¹⁶ Strong Local Leadership – Quality Public Services, Section 2.29, ISBN 0 10 153272 5.

¹⁷ New Council Constitutions, Guidance Pack Volume 1, Accountable Decision Making, published 21 March 2002.

- Local authorities should try and ensure that there is some consistency of approach between neighbouring authorities at the same tier and that any convergence of practice is in the direction of greater openness. However, such an approach should not prevent authorities from finding solutions, which are distinct and viable for them. The Government expects local authorities to make allowances for local circumstances when setting such thresholds.
- A local authority may also need to set different thresholds for different services or functions, bearing in mind the overall budget for those services and functions and the likely impact on communities of each service and function. The extent to which this approach is used is likely to vary from authority to authority.
- Local authorities should, unless it is impracticable to do so, specify that they will treat as if they were key any decisions which are likely to have a significant impact on communities in one ward or electoral division. The example given in the guidance is the decision to close a school or to carry out roadworks (such as introducing or altering traffic calming measures).
- Where a decision is only likely to have a significant impact on a very small number of people in one ward or electoral division the decision maker should nevertheless ensure that those people are informed of the decision in enough time to make representations to the decision maker if they wish. The member for the area can play a crucial role here in providing the link between the decision maker and the people the decision is likely to affect.
- When considering if a decision is likely to be significant a decision-maker will need to assess the impact of the outcome of the decision on local communities. Again the input of the member for the area can be crucial here in terms of assessing impact. In broad terms, a key decision for the purposes of this test should be regarded as a decision, which under traditional arrangements would have been referred to a committee or sub-committee of the council for decision, rather than being delegated to officers. However the Government recognises that there are large variations in the levels of delegation in decision making by authorities at present.
- Decisions made by an executive in the course of developing proposals to the full council to amend the policy framework would be a key decision. If full council has granted an executive the power to amend the policy framework, any decision to do so would also be a key decision.

6.6 The policy in the White Paper mentioned above to allow local authorities to establish their own definitions of key decisions, within the broad framework provided by the legislation, was developed in response to the April 2001 consultation exercise¹⁸. This paper sought views on the framing of guidance on financial thresholds for key decisions. The key messages to come out of the consultation were:

- Many respondents, including the LGA, argued that local authorities should be capable of determining their own thresholds and that issuing indicative thresholds in guidance would be unworkable.

¹⁸ Access to information – A Consultation Paper on Aspects of the Access to Information Regime for Local Authorities in England: April 2001.

- Many respondents also expressed the view that attempting to define a threshold for a key decision centrally would be an impossible task, given the different types of local authorities and the different function of these authorities for which budgets are required, and would detract from the real work of authorities.
- The Campaign for Freedom of Information expressed concern that if executives wanted to take decisions in private they would not define them as “key”.

6.7 After taking into account respondents views the Government decided:

- That the current two-stage test should remain.
- Not to issue statutory indicative guidance of what constitutes a key decision.
- That local authorities are best placed to decide what constitutes a key decision within the broad definition as it stands.

The Government has decided that the way forward is to work with local authorities in developing best practice as to what constitutes a key decision. The Government would therefore like to receive further examples of how local authorities are defining key decisions, and any suggestions of what could constitute best practice in this area. As a guide there follow some examples of definitions provided by local authorities.

Examples of definitions for key decisions

- *Lower of £100,000 or 5% of the budget of the unit concerned*
- *As proposed by external auditor £125,000 or 1.25% of the budget*
- *2.5% of expenditure on a service, as long as more than £30,000*
- *Lower of £50,000 or 20% or more of the relevant expenditure or income budget for a particular service*
- *Capital project with a value of more than £50,000*

- 6.8 However councils have defined their thresholds for key decisions, ensuring these are in the public domain (for example by including them as part of the forward plan) will allow electors to understand what decisions they can expect to have information on. Public confidence will be enhanced where local authorities are seen to be flexible in their interpretation of key decisions in a manner which promotes greater access to information.
- 6.9 Some councils rely on their auditors to propose a level of the financial threshold above which decisions are defined as key. This is an interesting approach, which introduces an independent view. This too could help increase public confidence in the process, where councils perceive this to be a problem.
- 6.10 We would be interested in views on the following questions (in green type) regarding defining key decisions, as well as on any other issues of concern as to how the approach is working in practical terms.

- 6.11 For the longer term, we intend to look at this issue as part of our evaluation of new council constitutions. The contract for such research has recently been let. The survey Evaluating Local Governance: New Constitutions and Ethics went out to local authorities on the 27 June. This survey asked the following questions in relation to key decisions:

How does your authority ensure that the decision which may be significant in terms of their effects on communities are defined as key?

Has a standard threshold been set for significant expenditure?

No

Yes Please state the figure.....

6.12 KEY DECISIONS

In describing how your local authority defines key decisions it is useful if you could tell us the size, type and location of the authority in order to make comparisons.

Q19: Describe how your authority defines key decisions?

Q20: How does your authority publicise the criteria it is using to define key decisions?
Does it receive and act on public feedback on this definition?

Q21: How does your authority define "significant" expenditure?

Q22: Has your authority set a standard financial threshold or a number of different thresholds? What is the reason for the approach taken?

Q23: How does the authority ensure that decisions, which are likely to be significant in terms of their effects on communities, are defined as key?

Q24: Have overview and scrutiny committees been challenging the executive with regard to the application of the definition of key decisions?

Q25: Has your definition of a key decision altered as your local authority gets used to working under new arrangements? Do you intend to review your definition, and if so, how do you plan to go about this review?

ANNEX A

The Local Government (Inspection of Documents) (Summary of Rights) Order 1986

This statutory instrument can be found on the following pages. It hasn't been updated since 1986.

This schedule was created for the purposes of section 100G (3) of the Local Government Act 1972, which states:

- (3) There shall be kept at the offices of every principal council a written summary of the rights –
- (a) to attend meetings of a principal council and of committees and sub-committees of a principal council, and
 - (b) to inspect and copy documents and to be furnished with documents, which for the time being conferred by this Part, Part XI below and such other enactments as the Secretary of State by order specifies.

In 1995 the Association of County Councils, the association of District Councils and the Association of Metropolitan Authorities published:

“Open Government: A good practice note on access to information.”

This is, in effect, a more up to date version of the order.

The Government would like to hear if Councils would find it useful for this order to be updated, and indeed if any Councils have in effect updated the order themselves.

STATUTORY INSTRUMENTS

2618C

1986 No 854

Local Government, England and Wales

The Local Government (Inspection of Documents)

(Summary of Rights) Order 1986

Made _ _ _ _ 9th May 1986

Coming in to operation 1st September 1986

The Secretary of State for the Environment and the Secretary of State for Wales, in exercise of the powers conferred on them by sections 100G(3) and 266 of the Local Government Act 1972(a) and of all other powers enabling them in that behalf, hereby make the following order

Title and Commencement

1. This order may be cited as the local Government (Inspection of Documents) (summary of Rights) Order 1986 and shall come in to operation on 1st September 1986
2. The enactment's listed in the Schedule to this order are specified for the purposes of section 100G(3) of the Local Government Act 1972 (power to specify enactment's which confer rights to attend meetings and to inspect, copy and be furnished with Documents)

(a) 1972 c 70: section 100G was inserted by the Local Government (Access to information) Act 1985 (c 43)

LOCAL GOVERNMENT. ENGLAND AND WALES

2618D

SCHEDULE

Enactment's specified which confer rights to attend meetings and to inspect copy and be furnished with documents

Public Health Act 1936(a):

Section 32(I)

Education Act 1944(b)

Paragraph 9 of Part II of Schedule 1

National Assistance Act 1948(C):

Section 37(8)

Nurseries and Childminders Regulation Act 1948(d):

Section 1(1)

Commons Registration Act 1965(e)

Section 3(2)

General Rate Act 1967(f)

Section 108(1) (a) and (d)

Children and Young Persons Act 1969(g)

Section 19(6)

Town and Country Planning Act (Tree Preservation Order) Regulations 1969(h):

Paragraph 4(2) of the schedule

Town and Country Planning Act 1972 (i)

Section 34(3) including that subsection insofar as it has been applied by section 60(2)(a) to tree preservation orders under section 60(1)

Section 54(8)

Section 61A(7)

Section 92A(4)

Local Government Act 1972(j)

Section 60(2) (C)

Section 60(4) (b)

Section 60(5) (b)

Local Government Act 1974(k):

Section 30(4)

(a) 1936 c 49

(b) 1944 c 31

(c) 1948 c 29

(d) 1948 c 53

(e) 1965 c 64

(f) 1967 c 9

(g) 1969c 54 Section 19 was substituted by section 21(1) of the Criminal Justice Act 1982 c 48

(h) S.I 1969/17

(i) 1971 c 78 Section 61A was inserted by section 8 of the Town and Country Planning Amenities Act 1974 (C 32) and section 92a was inserted by section 1 and paragraph 6 of the Schedule to the Local Government and Planning (Amendments) Act 1981 (C 41)

(j) 1972 c 70

(k) 1974 c 7

Control Of Pollution Act 1974(a)
Section 6(4)
Section 64(7)
Section 82(5)

Town and Country Planning (Inquiries Procedure) Rules 1974(b)
Rule 6(4) and (5)

Town and Country Planning Appeals (Determination by Appointed Persons)
(Inquiries Procedure) Rules 1974(c)
Rule 7(3) and (4)

Reservoirs Act 1975(d)
Section 2(2)

Local Land Charges Act 1975(e)
Section 8

Noise Insulation Regulations 1975(f)
Regulation 6(3)

Highways (inquiries Procedure) Rules 1976(g)
Rule 10(3) and (4)

Compulsory Purchase by public Authorities (inquiries procedure) Rules 1976(h)
Rule 4(6) and (7)

Local Government Planning and Land Act 1980(i)
Section 18(3)
Section 96(3) and (4)
Paragraph 3(5) of schedule 32

Highways Act 1980(j)
Section 36(7)
Section 37(5)

Wildlife and Countryside Act 1981(K)
Section 57(5)
Section 3(8)(a) of schedule 15

Education (school Information) Regulations 1981(1)
Regulation 5(4) and 6(4)

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- (a) 1974 c 40
 - (b) S.I 1974/419
 - (c) S.I 1974/420
 - (d) 1975 c 23
 - (e) 1975 c 76
 - (f) S.I 1975/1763
 - (g) S.I 1976/721
 - (h) S.I 1976/746
 - (i) 1980 c 65
 - (j) 1980 c 66
 - (k) 1981 c.69
 - (l) S.I 1981/630

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Town and Country Planning (Enforcement) (Inquiries Procedure) Rules 1981 (a):
Rule 6(2) to (4)

Electricity Generating Stations and Overhead Lines (Inquiries Procedure) Rules 1981 (b):
Rule 5(4)

Social Security and Housing Benefits Act 1982(c)
Section 31(1)(b) and (c)

Local Government Finance Act 1982(d)
Section 17(1)
Section 24(1) including that subsection as applied by section 25

Town and Country Planning (structure and Local Plans) Regulations 1982(e)
Regulations 4, 36, 37, 38 and 39(3)

Representation of People Act 1983(f)
Section 89(1) so as it applies to returns and declarations relating to local government elections

Local Government (Publication of Manpower Information) (England) Regulations 1983(g)
Regulation 2(1)

Local Government (Publication of Manpower Information) (Wales) Regulations 1983(h)
Regulation 2(1)

Town and Country Planning (Local Plans for Greater London) Regulations 1983(i)
Regulations 4, 22, 23, 24 and 25(4)

Registered Homes Act 1984(j)
Section 7

Town and Country Planning (Control of Advertisements) Regulations 1984(k)
Regulation 31(5)

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- (a) S.I 1981/1743
 - (b) S.I. 1981/1841
 - (c) 1982 c 24
 - (d) 1982 c 32
 - (e) S.I 1982/555, as amended by the Town and Country Planning (Local Government Reorganisation) (Miscellaneous Amendments) Regulations 1986 (S.I 1986/443)
 - (f) 1983 c 2
 - (g) S.I 1983/8
 - (h) S.I 1983/615
 - (i) S.I 1983/1190 as amended by the Town and Country Planning (Local Government reorganisation) (Miscellaneous Amendments) Regulations 1986 (S.I 1986/443)
 - (j) 1984 c 23
 - (k) S.I 1984/421

Housing Act 1985(a)
Section 105(5) and (6)
Section 106(2) to (5)
Section 349(3)
Section 414(3)

7th May 1986

Kenneth Baker
Secretary of State for
the Environment

9th May 1986

Nicholas Edwards
Secretary of State
for Wales

(a) 1985 c 68

ANNEX B

Schedule 12A of the Local Government Act 1972

Access to Information

PART I

Description of Exempt Information

1. Information relating to a particular employee, former employee, or applicant to become an employee of, or a particular office-holder, former office-holder or applicant to become an officer holder under, the authority.
2. Information relating to a particular employee, former employee or applicant to become an employee of, or a particular officer, former officer or applicant to become an officer appointed by –
 - (a) a magistrates' court committee, within the meaning of [section 27 of the Justices of the Peace Act 1997]; or
 - (b) a probation committee [within the meaning of the probation Service Act 1993].
3. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.
4. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.
5. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.
6. Information relating to the adoption, care, fostering or education of any particular child.
7. Information relating to the financial or business affairs of any particular person (other than the authority).
8. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition or disposal of property or the supply of goods or services.
9. Any terms proposed or to be proposed by, or to the authority in the course of negotiations for a contract for the acquisition or disposal of property or the supply of goods or services.
10. The identity of the authority (as well as of any other person, by virtue of paragraph 7 above) as the person offering any particular tender for a contract for the supply of goods or services.

11. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.
12. Any instructions to counsel and any opinion of counsel (whether or not in connection with any proceedings) and any advice received, information obtained or action to be taken in connection with –
 - a) any legal proceedings by or against the authority; or
 - b) the determination of any matter, affecting the authority.
13. Information which, if disclose to the public, would reveal 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.
14. Any action taken or to be taken in connection with the prevention, investigation or prosecution of a crime.
15. The identity of a protected informant.

PART II

Qualifications

1. Information relating to a person of a description specified in any of paragraphs 1 to 5 of Part I above is not exempt information by virtue of that paragraph unless it relates to an individual of that description in the capacity indicated by the description.
2. Information falling within paragraph 7 of Part I above is not exempt information by virtue of that paragraph if it is required to be registered under –
 - a) the Companies Act 1985;
 - b) the Friendly Societies Act 1974;
 - c) the Industrial and Provident Societies Act 1965 to 1978;
 - d) the Building Societies Act 1962; or
 - e) the Charities Act 1960.
3. Information falling within paragraph 8 of Part I above is exempt information if and so long as disclosure to the public of the amount there referred to would be likely to give an advantage to a person entering into, or seeking to enter into a contract with the authority in respect of property, goods or services, whether the advantage would arise as against the authority or as against other persons.

4. Information falling within paragraph 9 of Part I above is exempt if and so long as disclosure to the public of the terms would prejudice the authority in those or any other negotiations concerning the property or goods or services.
5. Information falling within paragraph 11 of Part I above is exempt if and so long as disclosure to the public of the information would prejudice the authority in those or any other consultations or negotiations in connection with a labour relations matter arising as mentioned in that paragraph.
6. Information falling within paragraph 13 of Part I above is exempt if and so long as disclosure to the public might afford the opportunity to a person affected by the notice, order or direction to defeat the purpose or one of the purposes for which the notice, order or direction is to be given or made.
7. Information falling within any paragraph of Part I above is not exempt information by virtue of that paragraph if it relates to proposed development for which the local planning authority can grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992 (S.I. 1992 No. 1492).

PART III

Interpretation

1. (1) In this Schedule –

“child” means a person under the age of eighteen years and any person who has attained that age and –

 - a) is registered as a pupil at a school; or
 - b) is the subject of a care order, within the meaning of [section 31 of the Children Act 1989];

“disposal” in relation to property, includes the granting of an interest in or right over it;

“employee” means a person employed under a contract of service;

“financial or business affairs” includes contemplated, as well as past or current activities;

“labour relations matter” means –

 - a) any of the matters specified in paragraphs (a) to (g) of section 29(1) of the Trade Union and Labour Relations Act 1974 (matters which may be the subject of a trade dispute within the meaning of the Act); or
 - b) any dispute about a matter falling within paragraph a) above; and for the purposes of this definition the enactments mentioned in paragraph a) above, with the necessary modifications, shall apply in relation to office holders under the authority as they apply in relation to employees of the authority;

“office-holder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint board on which the authority is represented or by any person who holds any such office or is an employee of the authority;

“protected informant” means a person giving the authority information which tends to show that –

- a) a criminal offence,
- b) a breach of statutory duty,
- c) a breach of planning control, as defined in [section [171A] of the Town and Country planning Act 1990], or
- d) a nuisance,

has been, or is being or is about to be committed;

“registered”, in relation to information required to be registered under the Building Societies Act 1986, means recorded in the public file of any building society (within the meaning of that Act);

“tender for a contract” includes a written statement prepared by the authority in pursuance of section 9(2) of the Local Government, Planning and Land Act 1980 (estimated cost of carrying out functional work by direct labour)

2. Any reference to this schedule to “the authority” is a reference to the principal council or, as the case may be, the committee or sub-committee in relation to whose proceedings or documents the question whether information is exempt or not falls to be determined and includes a reference –
- a) in the case of a principal council, to any committee or sub-committee of the council; and
 - b) in the case of a committee, to –
 - (i) any constituent principal council;
 - (ii) any other principal council by which appointments are made to the committee or whose functions the committee discharges: and
 - (iii) any other committee or sub-committee of the principal council falling within sub-paragraph (i) or (ii) above; and
 - c) in the case of a sub-committee to –
 - (i) the committee, or any of the committees, of which it is a sub-committee; and
 - (ii) any principal council which falls within paragraph b) above in relation to that committee.

ANNEX C

Question Summary Sheet

- Q1: The Department seeks to identify and disseminate best practice in how local authorities are approaching the process of implementing the Freedom of Information Act 2000. What structures have local authorities established for managing the process of implementing the Freedom of Information Act 2000?
- Q2: The Government is interested to hear suggestions from local authorities and other interested stakeholders as to how the exemptions in the Freedom of Information Act and Schedule 12A can be more closely aligned, including examples of best practice.
- Q3: Do you see any of the following as being additional uses of your forward plan?
- Internal management planning/communications document?
 - Tool to encourage public participation?
 - Work programme of the executive?
 - Other (Please specify)
- Q4: How do you publicise your forward plan to the electors?
- Q5: What feedback do you get from local people and key stakeholders on your forward plan?
- Q6: Do you think the forward plan achieves its purpose, of being the means by which electors know the decisions, which an executive is to take?
- If not, why not?
- Q7: what impact has the advent of the forward plan had on the working practices of your local authority?
- Q8: What proportion of key decisions are taken at public meetings?
- Q9: How does your local authority make their scheme of executive delegations available to the public?
- Q10: How does your local authority publicise key decisions taken by officers and executive members under delegated powers?
- Q11: What proportion of executive decisions, that would be key decisions, has the authority had to take under urgency procedures?
- Q12: How does your local authority make agendas and connected reports available to the public?

- Q13: How does the authority publish decisions?
- Q14: Does it make use of electronic media to publish decisions?
- Q15: How does it help with providing the public with access to records of these decisions?
- Q16: How does your local authority ensure accurate records are kept of key decisions taken by individual members or officers?
- Q17: What processes have local authorities developed to deal with applications for the release of exempt information, including disputes over the classification?
- Q18: What provisions are in place to monitor the authority's performance, including consistency of its decisions?
- Q19: Describe how your authority defines key decisions?
- Q20: How does your authority publicise the criteria it is using to define key decisions? Does it receive and act on public feedback on this definition?
- Q21: How does your authority define "significant" expenditure?
- Q22: Has your authority set a standard financial threshold or a number of different thresholds? What is the reason for the approach taken?
- Q23: How does the authority ensure that decisions, which are likely to be significant in terms of their effects on communities, are defined as key?
- Q24: Have overview and scrutiny committees been challenging the executive with regard to the definition of key decisions?
- Q25: Has your definition of a key decision altered as your local authority gets used to working under new arrangements? Do you intend to review your definition, and if so, how do you plan to go about this review?