



STANDARDS COMMITTEE

23 March 2006

**AGENDA
ITEM:**

Schedule 12A Local Government Act 1972

Summary of Report: To inform members of the changes to Schedule 12A Local Government Act 1972.

Background Papers:

All published

Recommendations

1. That the committee note the changes to schedule 12A.

Signed:.....

**Assistant Director
Legal and Constitutional Services
and Monitoring Officer**

Date: 14 March 2006

Financial Implications

There are no financial implications arising from this report.

Equality Opportunity Implications

There are no Equal Opportunity implications arising from this report.

Environment Impact

None.

Legal Implications

Legal implications arising from this report are set out in the body of the report.

Other Policy Implications

The Local Government Act 2000 in introducing new styles of arrangement of local government decision making attempted to increase transparency and accountability of decision makers. By ensuring that the exempt information provisions are easier to understand and are linked to the Freedom of Information Act it will assist the publics understanding as to why some reports are considered in confidential session. This will help to enhance and build public confidence in local government and the democratic process.

Contact Officer:

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Background

1. Provisions under the Local Government Act 1972 (the 1972 Act) permit access rights to members of the public to meetings of the authority and documents considered at those meetings, i.e. Council, its committees and sub committees. These provisions increased transparency in local government decision making.
2. Schedule 12A lists categories of information that need not be disclosed or made available to members of the public and elected members unless they are members on that committee or sub committee. These provision allow committees to consider reports without that meeting having to be open to the public. They allow local authorities to strike a balance between open and transparent decision making, the rights of members of the public to attend meetings and the right to protect confidential information relating to individuals or corporate bodies.
3. The Office of the Deputy Prime Minister carried out consultation on the need to revise the schedule prior to the coming into force of the Freedom of Information Act 2000 (the FOI). A working group was established to consider the provisions. They recommended that the then existing provisions should be simplified and reworded. Additionally that a feature of the FOI Act, the public interest test was recommended to replace the existing qualification under the 1972 Act for the release of information. Those recommendations have now been enacted and became effective from 1 March 2006. A copy of the regulations is attached as appendix 1.

Implications for the Standards Committee

4. Meetings of the Standards Committee are encompassed by the aforesaid provisions. The committee has two discrete areas of work, firstly where it considers reports on developing policy, procedure and advising on improving standards and secondly when it sits as a tribunal to hear and determine allegations of breaches of the code of conduct by elected members. In the consideration of the first of these matters the regulations cause no difficulties.
5. In relation to the second, a balance needs to be struck between the rights of the individual (the councillor facing the allegations) and the need to maintain public confidence in the democratic process and local government. It is an established legal principle that where possible courts and tribunals will consider matters before them in public session.

6. The Standard Board for England (SBE) has issued a letter, 2 March 2006 (appendix 2) providing advice to Monitoring Officers on the application of the new regulations to standards committees.

7. It is the view of the SBE that that whilst the provisions allowing proceeding to be held in private session where

a. Information relating to the personal circumstances of any person

has been removed this is now covered by the new provisions contained with paragraphs 1 and 2 (information relating to any individual, information which is likely to reveal the identity of an individual)

8. However, as stated in paragraph 5 above where a body is sitting as tribunal to determine civil rights then those proceeding should whenever possible take place in public. The SBE has confirmed its guidance, previously issued that

“ it is in the public interest that hearings should generally be held in public and recommend that they are held in public where ever possible to ensure fairness and openness of the procedure”.



the
Standards Board
for England

2 March 2006

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Dear Mr Gill

Re: The Local Government (Access to Information) (Variation) Order 2006

The Standards Board for England is contacting all monitoring officers in relation to changes to legislation, which come into force on 1 March 2006, so far as they relate to hearings of standards committees. The changes are contained in the Local Government (Access to Information) (Variation) Order 2006 and the Relevant Authorities (Standards Committee) (Amendment) Regulations 2006; Parts 1 to 3 of the Schedule to the Order replace the existing Schedule 12A. It is intended that the descriptions of information listed in Part 1 of Schedule 12A are clearer and simpler, and some of the qualifications in Part 2 of the Schedule are replaced by a public interest test.

The additional categories of exempt information introduced by the Local Authorities (Code of Conduct) (Local Determination) Regulations 2003 are largely unaffected, although regard will have to be had to the renumbering contained in the amendments. The relevant paragraphs from the 2003 regulations are set out below, with the updated paragraph numbering shown in bold:

"[Removed by the 2006 regulations see paragraphs 1 and 2 in particular of the amended Part 1 to Schedule 12A 16. Information relating to the personal circumstances of any person]

7A. Information which is subject to any obligation of confidentiality

7B. Information which relates in any way to matters concerning national security.

7C. The deliberations of a Standards Committee or a sub-committee of a Standards Committee established under the provisions of Part 3 of the Local Government Act 2000 in reaching any finding on a matter referred under the provisions of section 60(2) or (3), 64(2), 70(4) or (5) or 71(2) of that Act."

The main alteration is that the new regulations no longer contain a specific provision of "Information relating to the personal circumstances of any person" (paragraph 16 of the 2003 regulations refer). It is considered that this provision is essentially covered by the provisions contained in paragraphs 1 and 2 of Part 1 of the updated provisions. For ease of reference, paragraph 1 refers to "Information relating to any individual", whilst paragraph 2 refers to "Information which is likely to reveal the identity of an individual".

The current Standards Board for England guidance for standards committee determinations was written prior to the 2006 Order/Regulations coming into force. We have reviewed the guidance in light of the changes and consider that the substance does not need to be altered. However the wording of Schedule 12A currently set out in the Appendix 3 of the guidance should be read in accordance with the amendments. We remain of the view that it is in the public interest that hearings should generally be held in public and recommend that they are held in public where possible to ensure fairness and openness of the procedure. Standards Committees will have a continuing obligation to consider the requirements of Articles 6 and 8 of the European Convention on Human Rights when holding local determination hearings.

Please ensure that you read this in conjunction with our guidance. The Standards Board for England will revise its guidance for standards committees when it produces guidance on the revised code of conduct.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Paul Hoey', written in a cursive style.

Paul Hoey
Head of Policy & Guidance

Statutory Instrument 2006 No. 88

The Local Government (Access to Information) (Variation) Order 2006

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STATUTORY INSTRUMENTS

2006 No. 88

LOCAL GOVERNMENT, ENGLAND AND WALES

The Local Government (Access to Information) (Variation) Order
2006

<i>Made</i>	<i>18th January 2006</i>
<i>Laid before Parliament</i>	<i>26th January 2006</i>
<i>Coming into force</i>	<i>1st March 2006</i>

The Secretary of State, in exercise of the powers conferred upon him by sections 100F(3), 100I(2) and 254 of the Local Government Act 1972[1], hereby makes the following Order:

Citation, commencement and interpretation

1. —(1) This Order may be cited as the Local Government (Access to Information) (Variation) Order 2006 and shall come into force on 1st March 2006.

(2) In this Order, "the 1972 Act" means the Local Government Act 1972.

Additional rights of access to documents for members of principal council

2. —(1) Section 100F of the 1972 Act (additional rights of access to documents for members of principal councils) is amended as follows.

(2) In subsection (1), for "subsection (2)" substitute "subsections (2) to (2C)".

(3) For subsection (2) substitute—

" (2) In relation to a principal council in England, subsection (1) above does not require the document to be open to inspection if it appears to the proper officer that it discloses exempt information."

(4) After subsection (2) insert—

" (2A) But subsection (1) above does require (despite subsection (2) above) the document to be open to inspection if the information is information of a description for the time being falling within—

(a) paragraph 3 of Schedule 12A to this Act (except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract), or

(b) paragraph 6 of Schedule 12A to this Act.

(2B) In subsection (2A) above, "the authority" has the meaning given in paragraph 11(2) of Schedule 12A to this Act.

(2C) In relation to a principal council in Wales, subsection (1) above does not require the document to be open to inspection if it appears to the proper officer that it discloses exempt information of a description falling within any of paragraphs 12 to 18, 21, 23, 24 and 26 of Schedule 12A to this Act."

(5) In subsection (3)—

- (a) for "The Secretary of State" substitute "The appropriate person";
- (b) for "subsection (2)" substitute "subsections (2) to (2C)";
- (c) for "that subsection refers" substitute "those subsections refer"; and
- (d) for "it refers" substitute "those subsections refer".

(6) After subsection (3) insert—

" (3A) In subsection (3) above "the appropriate person" means—

- (a) in relation to England, the Secretary of State;
- (b) in relation to Wales, the National Assembly for Wales."

(7) In subsection (4), after "subsection (3) above" insert "made by the Secretary of State".

Exempt information and power to vary Schedule 12A

3. —(1) Section 100I of the 1972 Act (exempt information and power to vary Schedule 12A) is amended as follows.

(2) In subsection (1)—

- (a) at the beginning insert "In relation to principal councils in England,"; and
- (b) for "interpretation of that Schedule" substitute "interpretation of Parts 1 to 3 of that Schedule".

(3) After subsection (1) insert—

" (1A) In relation to principal councils in Wales, the descriptions of information which are, for the purposes of this Part, exempt information are those for the time being specified in Part 4 of Schedule 12A to this Act, but subject to any qualifications contained in Part 5 of that Schedule; and Part 6 has effect for the interpretation of Parts 4 to 6 of that Schedule."

(4) In subsections (2) and (3), for "The Secretary of State" substitute "The appropriate person".

(5) After subsection (3) insert—

" (3A) In this section "the appropriate person" means—

(a) in relation to England, the Secretary of State;

(b) in relation to Wales, the National Assembly for Wales."

(6) In subsection (4), after "order under this section" insert "made by the Secretary of State".

Access to information: exempt information

4. For Schedule 12A to the 1972 Act (exempt information)[2] substitute the Schedule set out in the Schedule to this Order.

Signed by authority of the First Secretary of State

Phil Woolas
Minister of State Office of the Deputy Prime Minister

18th January 2006

SCHEDULE

Article 4

" SCHEDULE 12A

ACCESS TO INFORMATION: EXEMPT INFORMATION

PART 1

DESCRIPTIONS OF EXEMPT INFORMATION:
ENGLAND

1. Information relating to any individual.
2. Information which is likely to reveal the identity of an individual.
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

6. Information which reveals that the authority proposes—

(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or

(b) to make an order or direction under any enactment.

7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

PART 2

QUALIFICATIONS: ENGLAND

8. Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under—

(a) the Companies Act 1985[3];

(b) the Friendly Societies Act 1974[4];

(c) the Friendly Societies Act 1992[5];

(d) the Industrial and Provident Societies Acts 1965 to 1978[6];

(e) the Building Societies Act 1986[7]; or

(f) the Charities Act 1993[8].

9. Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992[9].

10. Information which—

(a) falls within any of paragraphs 1 to 7 above; and

(b) is not prevented from being exempt by virtue of paragraph 8 or 9 above,

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

PART 3

INTERPRETATION: ENGLAND

11. —(1) In Parts 1 and 2 and this Part of this Schedule—

"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 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992^[10] (matters which may be the subject of a trade dispute, within the meaning of that 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;

"registered" in relation to information required to be registered under the Building Societies Act 1986^[11], means recorded in the public file of any building society (within the meaning of that Act).

(2) Any reference in Parts 1 and 2 and this Part of 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 a 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.

PART 4

DESCRIPTIONS OF EXEMPT INFORMATION: WALES

12. 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 office-holder under, the authority.

13. 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;
- (b) a probation committee within the meaning of the Probation Service Act 1993^[12];
- (c) a local probation board within the meaning of the Criminal Justice and Court Services Act 2000^[13].

14. Information relating to a particular chief officer, former chief officer or applicant to become a chief officer of a local probation board within the meaning of the Criminal Justice and Court Services Act 2000.

15. Information relating to any particular occupier or former occupier of, or applicant for, accommodation provided by or at the expense of the authority.

16. Information relating to any particular applicant for, or recipient or former recipient of, any service provided by the authority.

17. Information relating to any particular applicant for, or recipient or former recipient of, any financial assistance provided by the authority.

18. Information relating to the adoption, care, fostering or education of any particular child.

19. Information relating to the financial or business affairs of any particular person (other than the authority).

20. The amount of any expenditure proposed to be incurred by the authority under any particular contract for the acquisition of property or the supply of goods or services.

21. 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.

22. The identity of the authority (as well as of any other person, by virtue of paragraph 19 above) as the person offering any particular tender for a contract for the supply of goods or services.

23. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office-holders under, the authority.

24. 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,

(whether, in either case, proceedings have been commenced or are in contemplation).

25. Information which, if disclosed 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.

26. Any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

27. The identity of a protected informant.

PART 5

QUALIFICATIONS: WALES

28. Information relating to a person of a description specified in any of paragraphs 12 to 17 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.

29. Information falling within paragraph 19 above is not exempt information by virtue of that paragraph if it is required to be registered under—

(a) the Companies Act 1985[14];

(b) the Friendly Societies Act 1974[15];

(c) the Industrial and Provident Societies Acts 1965 to 1978[16];

(d) the Building Societies Act 1986[17]; or

(e) the Charities Act 1960[18].

30. Information falling within paragraph 20 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 the property, goods or services, whether the advantage would arise as against the authority or as against other such persons.

31. Information falling within paragraph 21 above is exempt information 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.

32. Information falling within paragraph 23 above is exempt information 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.

33. Information falling within paragraph 25 above is exempt information if and so long as disclosure to the public might afford an 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.

34. Information falling within any paragraph of Part 4 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. 1992/1492).

PART 6

INTERPRETATION: WALES

35. —(1) In Parts 4 and 5 and this Part of 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[19];

"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[20] (matters which may be the subject of a trade dispute, within the meaning of that 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 [21], 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[22], 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[23] (estimated cost of carrying out functional work by direct labour).

(2) Any reference in Parts 4 and 5 and this Part of 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 a 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."

EXPLANATORY NOTE

(This note is not part of the Order)

This Order applies in relation to principal councils in England and Wales. It makes changes to Part 5A (access to meetings and documents of certain authorities, committees and sub-committees) of, and Schedule 12A (access to information: exempt information) to, the Local Government Act 1972 ("the 1972 Act") both of which are concerned with access to meetings and documents of principal councils and certain committees and sub-committees of those councils.

In Part 5A, section 100A(4) (admission to meetings of principal councils) of the 1972 Act permits a principal council to exclude the public from a meeting whenever it is likely that there would otherwise be a disclosure of exempt information to the public. Exempt information is defined in section 100I (exempt information and power to vary Schedule 12A) as the descriptions of information which are, for the purposes of Part 5A, for the time being specified in Schedule 12A to the 1972 Act.

The Order substitutes a new Schedule 12A for the previous Schedule 12A. Parts 1 to 3 of the new Schedule 12A apply in relation to principal councils in England. In Part 1 of the new Schedule 12A, some of the descriptions of information listed in Part 1 of the previous Schedule 12A are replaced by simpler and clearer descriptions. Similarly, in Part 2 of the new Schedule 12A, some of the previous qualifications are replaced by a public interest test. Consequential amendments are also made to sections 100F (additional rights of access to documents for members of principal councils) and 100I.

The powers under sections 100F and 100I have been devolved to the National Assembly for Wales, insofar as they are exercisable in relation to principal councils in Wales. In making the changes to Part 5A and Schedule 12A as they apply in relation to principal councils in England, it has been necessary to preserve the legal position under those provisions, as they applied before those amendments, in relation to principal councils in Wales. This is achieved by consequential amendments to sections 100F and 100I and by the replication of Parts 1 to 3 of the previous Schedule 12A in Parts 4 to 6 of the new Schedule 12A which apply in relation to principal councils in Wales.

The Order also amends sections 100F and 100I to make clear on the face of the 1972 Act the role of the National Assembly for Wales in the exercise of the powers contained in those provisions.

A full regulatory impact assessment has not been produced for this instrument as it has no impact on the costs of business, charities, voluntary bodies or the public sector.

Notes:

[1] 1972 c. 70. Sections 100F and 100I were inserted by the Local Government (Access to Information) Act 1985 (c. 43), section 1 (1). The functions of the Secretary of State under sections 100F(3), 100I(2) and 254 are, so far as exercisable in relation to Wales, transferred to the National Assembly for Wales; *see* the reference to the Local Government Act 1972 in Schedule 1 to the National Assembly for Wales (Transfer of Functions) Order 1999 (S.I. 1999/672), to which there are amendments not relevant to this Order.[back](#)

[2] Schedule 12A was inserted by the Local Government (Access to Information) Act 1985, section 1(2) and Schedule 1 Part 1.[back](#)

[3] 1985 c. 6.[back](#)

[4] 1974 c. 46.[back](#)

[5] 1992 c. 40.[back](#)

[6] 1965 c. 12, 1967 c. 48, 1975 c. 41 and 1978 c.34.[back](#)

[7] 1986 c. 53.[back](#)

[8] 1993 c. 10.[back](#)

[9] S.I. 1992/1492.[back](#)

[10] 1992 c. 52.[back](#)

[11] 1986 c. 53.[back](#)

[12] 1993 c. 47.[back](#)

[13] 2000 c. 43.[back](#)

[14] 1985 c. 6.[back](#)

[15] 1974 c. 46.[back](#)

[16] 1965 c. 12, 1967 c. 48, 1975 c. 41 and 1978 c. 34.[back](#)

[17] 1986 c. 53.[back](#)

[18] 8 & 9 Eliz 2 c. 58.[back](#)

[19] 1989 c. 41.[back](#)

[20] 1974 c. 46.[back](#)

[21] 1990 c. 8; section 171A was inserted by section 4 of the Planning and Compensation Act 1991 (c. 34).[back](#)

[22] 1986 c. 53.[back](#)

[23] 1980 c. 65.[back](#)

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