

APRIL 2018

## **LTN 5 | PARISH AND COMMUNITY COUNCIL MEETINGS**

### **Introduction**

- 1 This Note deals with the law and procedure relating to meetings of local councils, their committees and sub-committees.
- 2 The main legislation concerning council, committee and sub-committee meetings is set out in Schedule 12 to the Local Government Act 1972, the Public Bodies (Admission to Meetings) Act 1960, s.13 of the Local Government and Housing Act 1989 and the Localism Act 2011. For ease, this note will refer to “the 1972 Act”, “the 1960 Act”, “the 1989 Act” and “the “2011 Act”. Where relevant, differences in legislation for councils in England and Wales are identified.
- 3 Some legislation applies equally to the meetings of a council, its committees and sub-committees. The meetings of a committee are subject to some but not all of the statutory requirements that apply to a meeting of the council. The meetings of a sub-committee are subject to fewer statutory requirements than those that apply to the meetings of the council and its committees. Where, for example, the number, quorum, notices, attendance by the public, public participation and other proceedings of a meeting are not subject to statutory requirements, it is recommended that a council adopts standing orders to regulate such matters (paragraph 42 of schedule 12 to the 1972 Act).
- 4 In respect of the meetings of the council, its committees and sub-committees, it is recommended that a council’s standing orders:
  - confirm the numerous mandatory statutory provisions that apply and
  - establish other rules to regulate their proceedings.
- 5 If a council has not adopted standing orders to confirm the quorum, venue and general proceedings of the meetings of its committees or sub-committees, the committees and sub-committees are free to determine their own standing orders (s.106 of the 1972 Act). It is recommended that the council determines the standing orders that apply to its committee or sub-committee meetings. However there are occasions when a committee (e.g. a staffing committee) or a sub-committee may need to adopt standing orders

which are helpful to the nature of their responsibilities or business. See paragraphs 44, 79 and 82 of this Note.

- 6 NALC's book 'Local Councils Explained' (2013) explains the statutory requirements that apply to meetings of local councils, their committees and sub-committees but also provides useful guidance on practical issues.

### **Council meetings**

- 7 A local council must hold an annual meeting in every year. In an ordinary election year, the annual meeting must take place on, or within fourteen days after, the day on which the councillors elected at that election take office. In other years, it may be held on any day in May (paragraph 7 of schedule 12 to the 1972 Act in respect of parish councils and paragraph 23 in respect of community councils).
- 8 A parish council must hold at least three other (also known as ordinary) meetings during the year and may hold as many as it thinks fit (paragraph 8 of schedule 12 to the 1972 Act). A community council may hold as many other meetings as it wishes (paragraph 24 of schedule 12 to the 1972 Act). The proper officer (usually the clerk) of a local council convenes the ordinary meetings of the council as scheduled by standing orders or, in accordance with s.88 of the 1972 Act, on the occasion of a vacancy of the post of Chairman.
- 9 An additional (also known as an extraordinary) meeting of full council may be convened at any time by the Chairman of the council. In addition, if two councillors sign a requisition for a council meeting to be convened, and the Chairman either refuses or neglects to do so for seven days, then any two councillors (not necessarily those who signed the requisition) may convene a meeting (paragraph 9 of schedule 12 to the 1972 Act in respect of parish councils and paragraph 25 in respect of community councils). Subject to any standing orders made by the council, the Vice-Chairman has the same powers as the Chairman and can exercise these in the Chairman's absence (s.15(9) in respect of parish councils and s.34(9) in respect of community councils of the 1972 Act).

### **Venue for council meetings**

- 10 A local council meeting may be held within or outside the parish or community area (paragraph 10 of schedule 12 to the 1972 Act in respect of parish councils and paragraph 26 in respect of community councils).

- 11 A council meeting cannot be held in premises which are used for the supply of alcohol unless no other room is available free or at a reasonable cost (paragraph 10(1) of schedule 12 to the 1972 Act in respect of parish councils and paragraph 26(1) in respect of community councils).
- 12 If a local council does not own suitable premises which it can use to hold its meetings, it may use premises maintained by a local education authority, or any room maintainable out of any rate, free of charge subject to it giving reasonable notice of any such need and any such premises being available for use. A council cannot hold a meeting in premises which are used as a dwelling-house, or use premises which would interfere with the hours in which the premises are used for educational purposes, the administration of justice or by the police. The local council must make good the cost of any damages done or expenditure (e.g. heating, caretaker's wages) incurred by the person in control of the room (s.134 of the 1972 Act).

#### **Day and time of council meetings**

- 13 A council may meet on any day of the week, including Saturday and Sunday. It may meet any time of day, except that where the council does not fix a time for the annual meeting, that meeting must be held at 6 p.m. (paragraphs 7 and 8 of schedule 12 to the 1972 Act in respect of parish councils and paragraphs 23 and 24 in respect of community councils).

#### **Notice to be given for council meetings**

- 14 Three clear days before a council meeting, notice of its date, time and venue must be posted in a conspicuous place in the parish or community (paragraph 10(2)(a) of schedule 12 to the 1972 Act in respect of parish councils). In Wales notice of the time and place must be published electronically and, as far as reasonably practicable, any documents relating to the business to be transacted at the meeting unless they relate to business which is likely to be considered in private or if their disclosure would be contrary to any enactment (see model standing order 15bi for Wales. "Clear days" does not include the day on which notice was issued and the day of the meeting. Additionally, s.243 of the 1972 Act provides that the following days do not count when computing the three days:
  - Sundays;
  - a day of the Christmas break;
  - a day of the Easter break;

- Bank holidays; and
  - days appointed for public thanksgiving or mourning.
- 15 The three clear days' rule is difficult to remember. It is recommended that councils adopt a standing order to confirm this rule and are referred to model standing order 3b.
- 16 In the case of *R v Swansea City Council ex parte Elitestone Ltd (1993)*, the Court of Appeal ruled that Saturdays could not count towards one of the three clear days. This case concerned the statutory provisions that apply to a principal authority. The decision made no reference to s.243 of the 1972 Act which permits Saturdays to be counted in the clear days. It is therefore unlikely that the Elitestone decision is relevant to local councils and NALC's view is that, pursuant to s. 243 of the 1972 Act, local councils may include Saturday when counting the period of three clear days' notice for a council meeting.

### **Service of the summons and agenda**

- 17 Service of summonses and agendas by email has long been accepted practice for many councils in England and Wales. However, service by electronic methods (such as email) did not comply with legislation. Only service by postal delivery or delivery by hand complied with the 1972 Act. The Local Government (Electronic Communications) (England) Order 2015 ("the 2015 Order") changed the legal (if not the practical) position in England. It amended paragraph 10(2) (b) of schedule 12 to the 1972 Act to permit email service of the summons and agenda. Councils must obtain a councillor's consent to email service and to the email address that they will use. A councillor can withdraw consent to service by email at any time. The legal (and practical) position remains unchanged in Wales (see paragraph 26(2) (b) of schedule 12 to the 1972 Act).
- 18 Three clear days before a parish or community council meeting, a summons requiring all councillors to attend the meeting and specifying the business to be transacted must be sent to every councillor. The summons must be signed or otherwise authenticated in such manner as the proper officer thinks fit. Emailed summonses (England only, see paragraph 17 above) are potentially more difficult to authenticate as they are not physically signed by the appropriate officer. If the summons is to be sent by email, it should contain an electronic signature that shows that the proper officer intended to sign the summons and his job title.

- 19 There must be standing orders that confirm these arrangements. Councils are referred to model standing order 15bi.
- 20 Councils in England with a turnover not exceeding £25,000 should publish the summons and agenda for the meeting no later than three clear days before the meeting. They must be published on a free and publicly accessible website. Any council that does not have its own website should arrange for publication on the website of its principal authority (see the code of recommended practice for parish councils and other smaller authorities – Legal Briefing L05-14).
- 21 If a meeting is called by councillors (see paragraph 9 of this Note), the public notice must be signed by them and must specify the business of the meeting.
- 22 The summons must include the agenda for the business to be transacted at the meeting. The agenda should set out the order in which the items will be transacted. A council cannot lawfully transact any business which is not included on the agenda. As such, the item ‘any other business’ should not appear at all, or should simply be used as a peg on which to hang the exchange of urgent information. Additionally, the item could be used to allow genuinely urgent issues to be raised but no decisions should be taken in respect of issues so raised (other than to ensure that they are dealt with properly at a forthcoming meeting, with due notice having been given) and no expenditure should be approved as a result of issues raised under ‘any other business’.
- 23 The preparation of the agenda is usually the responsibility of the clerk to the council. Subject to any procedural requirements in standing orders, a councillor is entitled to submit a motion for the agenda which is relevant to the forthcoming meeting. If there is a dispute as to the items to be included in the agenda, the final decision should be made by the clerk, having first consulted the Chairman of the forthcoming meeting or, if relevant, by the councillors who have called the meeting. It is recommended that a council’s standing orders confirm this arrangement. Councils are referred to model standing order 9e-f.
- 24 Pages 157-164 of ‘Local Councils Explained’ provide practical advice on the councillors’ submission of the motions and the clerk or other appropriate officer’s role in receiving them and preparing the agenda to be sent out. Pages 161-162 provide an example agenda.

## **Quorum and Attendance**

- 25 The quorum for a meeting of a local council is one-third of the total number of councillors or, where more than one-third of the councillors are disqualified from acting then one-third of the remainder. In any event, there must be no fewer than three members (paragraphs 12 and 45 of schedule 12 to the 1972 Act in respect of parish councils and paragraphs 28 and 45 in respect of community councils).
- 26 A councillor has a right to attend every council meeting but he can be excluded for disruptive behaviour. See also paragraphs 49 and 50 of this Note.
- 27 A councillor's right to speak and vote at a meeting is subject to whether he holds an interest in the matter being considered or if the public has a right to speak at the meeting. See also paragraphs 47 and 58 of this Note.
- 28 The names of those councillors present at a meeting of the council must be recorded and included in the minutes of the meeting (paragraph 40 of schedule 12 to the 1972 Act). For ease of reference, the minutes should also record the names of those councillors who are absent from a meeting.
- 29 If a councillor wants his absence from a meeting to be approved by the council, he should submit his written request together with the reason for absence before the meeting takes place. A councillor cannot continue in office if he fails to attend a meeting of the council, a committee, sub-committee (or joint committee, joint board or similar body by which any of the council's functions are being discharged or which are advising the council about the discharge of its functions) for a period of six consecutive months and the reason for his absence has not been formally approved before the expiry of the six month period (s.85 (1) of the 1972 Act). Approval cannot be retrospective. See also Legal Topic Note 8 (Elections).
- 30 The minutes of the meeting must record if it resolved to approve a councillor's absence from the meeting, and if possible, the councillor's reason for absence. The recording of such information must not conflict with a council's duty to handle personal data or sensitive personal data in accordance with its obligations under data protection legislation. For example if a councillor's absence at meetings was due to ill health, the minutes of the meeting may document this simple fact but not the detail of his ill health. A council cannot disclose the details of the councillor's physical or mental health without his permission. This is because the information

relating to a person's physical or mental health constitutes sensitive personal data. Further guidance on a council's data protection obligations is given in Legal Topic Note 38 (Data Protection).

### **Rights of Public and Press**

- 31 The meetings of the council (and its committees) must be open to the public (which includes the press) pursuant to the provisions of s.1 (1) of the 1960 Act. However, the public may, under s.1(2) of the 1960 Act, be excluded for the whole or part of a meeting if it resolves that publicity would be prejudicial to the public interest by reason of the confidential nature of the business to be transacted or for other special reasons stated in the resolution. It is not lawful to exclude some of the public or the press. The exclusion must apply to all. However, the council may invite individuals to speak at a meeting (e.g. the council's solicitor, or other professional advisor or particular staff members) when it is in private session.
- 32 Local councils will also need to consider the needs of disabled persons in relation to their access to and participation in meetings. Councils will need to make reasonable adjustments which may include making physical alterations to premises used for meetings or changing the premises used for meetings if it disadvantages disabled persons (e.g. a wheelchair user, or a person with a hearing impairment). Further guidance on a council's obligations under the Equality Act 2010 is contained in Legal Topic Note 78 (The Equality Act 2010).
- 33 The press are entitled, on payment, to copies of the agenda and necessary supporting papers for a meeting (s.1 (4) (b) of the 1960 Act). They must be given reasonable facilities for reporting at a meeting (e.g. sufficient space, a table and a chair) and (unless the meeting place does not belong to the council or has no telephone) for telephoning their report at their own expense.
- 34 In England only, the Openness of Local Government Bodies Regulations 2014 ("the 2014 Regulations"), amended s.1 of the 1960 Act. Subject to the exceptions explained in paragraphs 36 and 38 below or if the meeting has resolved to exclude the public, the 1960 Act permits any person (including the press) who attends a council (or committee) meeting to report on the proceedings of the meeting. The new provisions of the 1960 Act address the existence of different means of reporting which include the use of social media. "Reporting" is defined in s. 1(9) of the 1960 Act to include:

- filming, photographing or making an audio recording of proceedings at a meeting (e.g. using a mobile phone, tablet such as an iPad, filming for a TV broadcast, recording for a radio broadcast);
  - using any other means for enabling people not present at a meeting to see or hear proceedings as they take place or later (e.g. live streaming);
  - written reporting or commentary on the proceedings during or after a meeting or oral reporting or commentary after the meeting. Examples of written reporting or commentary include. blogging, posting comments on Facebook or tweeting.
- 35 The Government published a guide for the public (including the press) about the new provisions of the 1960 Act. This can be accessed via <https://www.gov.uk/government/publications/open-and-accountable-local-government-plain-english-guide>. Part 1 of the guide confirms that the new statutory powers of a person to report on the proceedings of a meeting are not without some boundaries. Some of the issues highlighted in the Government's guide are not directly related to the provisions of the 1960 Act. These are explained below.
- 36 S.1 (4A) of the 1960 Act confirms that a person present at the meeting does not have a right to give an oral report or commentary during a meeting e.g. a journalist present at and filming the meeting or a local resident blogger at the meeting could not provide a running verbal commentary. This is because such oral commentary could be disruptive to the meeting. Oral commentary or reporting of a council (or committee) meeting by a person present at the meeting can be provided after the meeting. A person will need to ensure that his oral or written reporting of a meeting does not give rise to a libel claim. For more information see Legal Topic Note 30 - Defamation.
- 37 As explained in paragraph 34 above, the right to 'report' on a meeting as defined in s.1(9) of the 1960 Act is limited to reporting on the proceedings of a meeting, which includes a reference to people who simply attend the meeting and those who participate in the meeting. Whilst the 1960 Act does not prohibit the filming, recording, photographing or other reporting of anyone in attendance of the meeting (unless it is in private session or the circumstances in paragraphs 36 or 38 apply), there is an expectation that any reporting will focus on the proceedings of a meeting and those who participate in it, rather than those who are simply attending. Those who participate in a meeting include councillors, members of the public who are



permitted to speak during the meeting, those invited by councillors to speak at a meeting and officers.

- 38 The guidance prepared by the Government (see paragraph 35 above) suggests that councils may wish to have a policy in place in respect of the filming, recording, photographing or other reporting of (i) persons who object to the same and (ii) children and vulnerable adults. NALC's primary position is that those who attend public meetings should expect to be filmed, recorded, photographed or otherwise reported about. However, councils may wish to consider adopting a policy which allows the filming, recording, photographing or other reporting of children and the vulnerable only with the consent of a responsible adult, which in the case of a vulnerable adult is a medical professional, his carer or legal guardian and, in the case of a child, is his parent, legal guardian or teacher. At the start of a meeting, it is recommended that the chairman reminds those who wish to film, record, photograph or otherwise report on the proceedings of a meeting about the restrictions which apply in respect of a vulnerable adult or child.
- 39 At the start of a meeting, it is recommended that the chairman reminds everyone in attendance and who will be participating on the meeting that, subject to paragraphs 36 and 38 above, they may be filmed, recorded, photographed or otherwise reported about. A council should designate a separate area in the meeting venue to accommodate (i) members of the public who are present at the meeting and do not wish to participate in the meeting but who object to being filmed, recorded, photographed or otherwise reported about and (ii) children and vulnerable adults where the relevant responsible adult has not given consent for them to be filmed, recorded, photographed or otherwise reported about. The chairman of a meeting should remind those who wish to film, record, photograph or otherwise report on the proceedings to avoid those who are sitting in a separate area. Even where individuals sit in a designated area they should be reminded that those filming or taking photographs may wish to record the entirety of the public in a "panning" or panoramic shot which could, inevitably, include members of the public sitting in any designated area. Councils may take the view that such shots are unobjectionable as long as they do not zoom in or focus on those where consent has not been given. If a meeting includes a public participation session then, subject to paragraphs 36 and 38 above, a person is free to film, record, photograph or otherwise

report about individuals participating in such a session whether they are sitting in a designated section or not.

- 40 A council's standing orders can be relied on to control behaviour or activities arising from a person's filming, recording, photographing or other reporting of the proceedings of a meeting if this disrupts the meeting or obstructs the transaction of business. See paragraphs 48 to 50 below.
- 41 A person's filming, recording, photographing or other reporting of a meeting is likely to include the personal data of individuals. That person must take care to ensure that personal data is used in accordance with data protection legislation (see Legal Topic Note 38 – Data Protection).
- 42 In England, a Council cannot have standing orders which undermine or restrict a person's statutory rights to film, record, photograph or otherwise report on the proceedings of a meeting. Councils are referred to model standing orders 3l and m. Additional information about the impact of the 2014 Regulations on the standing orders of a council is available in a Legal Briefing issued in August 2014.
- 43 In Wales, the public do not have a statutory right to use any means which would allow persons not present at the meeting to see or hear the proceedings of a meeting. Councils are therefore entitled to permit or refuse the taking of photographs or the use of video cameras or audio recording devices (including, for example, a mobile phone) at meetings (s.1(7) of the 1960 Act). A council should have standing orders to confirm whether or not taking photographs at or recording a meeting is permitted. A council may wish to use NALC's model standing order 3l which confirms taking photographs and recordings of meetings is permitted only with the council's consent. Tweeting or blogging at a council meeting do not contravene the provisions of s.1 (7) of the 1960 Act and do not require the council's consent.

### **Public participation**

- 44 When the public attend meetings they have no right to participate in them, unless permission is given. It is good practice for councils to set aside time (e.g. 15 or 20 minutes) at meetings for the public to make statements and ask questions. It is advisable for a council to permit public participation at meetings of the full council (and the meetings of committees) that are likely to be of most interest to the public e.g. a planning committee. Councils are recommended to adopt standing orders to structure public participation sessions and may refer to NALC's model standing orders 3e-h. Standing

orders may confirm that public participation at a meeting is restricted to items of business on the agenda for the meeting. Members of the public who wish to communicate about business which is not included in the agenda for a meeting may communicate with the council in alternative ways e.g. by written correspondence or attending councillors' surgeries.

- 45 Where a council permits the public to participate at a meeting, this session:
- is included as an item in the agenda
  - forms part of the council meeting in law;
  - is managed by the Chairman of the meeting; •r is documented in the minutes of the meeting;
  - may permit a councillor to speak on a matter in which he has an interest that is not a disclosable pecuniary interest (DPI) which he is otherwise not permitted to speak about at the meeting;
- 46 In England, s.31 (4) of the 2011 Act provides that a councillor with a DPI in a matter being discussed during the public participation session of a meeting cannot speak on the matter unless he has obtained a dispensation.
- 47 In Wales, councillors are subject to obligations in the code of conduct adopted by their council based on the model code of conduct in the schedule to the Local Authorities (Model Code of Conduct) (Wales) Order 2008. Where a meeting permits the public to make representations, answer questions or give evidence relating to the business that the councillor has a prejudicial interest in, he may do the same. The councillor must leave the meeting room immediately after the period for making representations, answering questions or giving evidence relating to the business has ended and in any event before further consideration of the business begins, whether or not the public are allowed to remain in attendance for such consideration.
- 48 Pages 106 – 107 of 'Local Councils Explained' provide practical guidance in respect of public participation sessions.

### **Right to Remove Individuals Causing a Disturbance**

- 49 If a council anticipates the risk of a disturbance at a forthcoming meeting which the Chairman of the meeting or the meeting itself is unable to manage, it would be well advised to contact the police beforehand and request their assistance at the meeting.
- 50 The Chairman of a meeting is expected to be vigilant of and seek to control behaviour which obstructs the proceedings of a meeting. The Chairman is expected to ask people to modify any behaviour that disrupts a meeting. If disruptive behaviour continues, a councillor may move a motion requiring anyone disrupting the meeting to leave. Usually it is desirable for the Chairman to move the motion. A person can be excluded from a meeting if the meeting passes a resolution to this effect. If a person refuses to leave a meeting after there has been a resolution to this effect, and the meeting cannot proceed due to a person's continued disruptive behaviour, the Chairman may suspend or ultimately close the meeting.
- 51 A council's should have standing orders for the management of disorderly conduct at a meeting. Councils are referred to NALC's model standing order 2.

### **Chairman**

- 52 If present, the Chairman of the Council must preside at council meetings. If, following an ordinary election, the Chairman ceases to be a member of the council, he must, if present, preside at the first meeting after the election until his successor is elected. If the Chairman ceases to be a member of the council, he is not entitled to vote in the election of the new Chairman unless there is an equality of votes in which case he shall have the casting vote (ss.15 (2) and 15(3) of the 1972 Act in respect of parish councils and ss.34 (2) and 34(3) of the 1972 Act in respect of community councils). Further details are set out in Legal Topic Note 2 (The Chairman of Local Councils). The Chairman has the powers set out below (by virtue of s.15 (in respect of parish councils), s.34 (in respect of community councils) and schedule 12 to the 1972 Act);
- to have a second or casting vote if there is an equality of votes on any issue; and
  - to sign the minutes of the meeting.

- 53 Additionally, the Chairman's powers to regulate meetings are derived from the council's standing orders and common law.
- 54 If the council has a Vice-Chairman he must (if present) preside in the absence of the Chairman. If both the Chairman and the Vice-chairman are absent the council must appoint another councillor to preside. After the election of the Chairman at the annual meeting, the person elected to that office takes the chair of the meeting immediately after his election.
- 55 At the annual meeting of a council, the first business must be the election of its Chairman. If before the next such meeting the Chairman for whatever reason vacates office the council must at the next available meeting elect a successor. A council may have standing orders to regulate the other business to be transacted at an annual meeting. Councils may find model standing order 5j useful.

### **Decision Making and Resolutions**

- 56 Decisions made at meetings are formally known as resolutions. Voting at a meeting should take place only after councillors have had an opportunity to consider and debate the issue. Councillors should use the period of the meeting before voting to seek clarification of information or issues, to listen to the views of other councillors and to exchange views with them. If councillors find themselves unable to make informed decisions because they need more information or professional advice, they should defer making decisions until this is made available to them. All matters must be decided by a majority of councillors present and voting at a meeting subject to the meeting being quorate.
- 57 Resolutions made at a meeting risk being quashed by the courts if there is successful legal claim that one or more councillors had a closed mind or acted with apparent bias when they voted at a meeting. It is acceptable for councillors to be predisposed to voting on a matter in particular way if, until the matter is put to the vote, they are open to a fair consideration of the information and arguments that are presented at the meeting. Legal Topic Note 81 (Predetermination) considers the meaning and consequences of predetermining questions put to the vote at a meeting.
- 58 In England, a councillor, who has a DPI or another interest stipulated by his council's code of conduct in a matter being considered at a meeting cannot participate in any discussion or vote at the meeting without a dispensation from the parish council. Detailed guidance about councillors' statutory

obligations in respect of DPIs is given in Legal Topic Note 80 (Members' conduct and the registration and disclosure of their interests (England)). The statutory definitions of DPIs are confirmed in NALC's legal briefings from 2012.

- 59 In Wales, a councillor with a prejudicial interest (defined in the Local Authorities (Model Code of Conduct) (Wales) Order 2008) in a matter which is under consideration at a meeting cannot vote on it without a dispensation from the local standards committee.
- 60 In both England and Wales section 106 of the Local Government Finance Act 1992 prohibits a local councillor in council tax arrears for at least two months from voting on the setting of a precept or any recommendation, resolution or other decision which might affect the calculation of the precept. If a local councillor in such a position fails to notify the council of the fact or votes in a prohibited matter then on prosecution and conviction they can be subject to a fine of up to £1,000.
- 61 If councillors require legal advice for themselves with regard to their rights to participate and vote at a meeting, they may approach their Monitoring Officer for general guidance or obtain legal advice from a solicitor. NALC's solicitors are unable to provide legal advice to individual councillors.
- 62 If a vote is taken it must be by a show of hands or as prescribed by standing orders (paragraph 13(1) of schedule 12 to the 1972 Act in respect of parish councils and paragraph 29(1) in respect of community councils).
- 63 Each councillor has one vote and must vote in person; he cannot do so by post or proxy, teleconference or skype, or in advance of a meeting. In addition, the person presiding at the meeting may (but does not have to) exercise a second or a casting vote in the event of an equality of ordinary votes, except in the unique situation described in paragraph 52 above, where the Chairman has only a casting vote which he must exercise. Thus, in general, if the person presiding at the meeting casts his first vote, and there is then an equality of votes, he may cast a second vote; if he does not cast his first vote, and there is then an equality of votes, he may (but does not have to) exercise his casting vote.
- 64 If any councillor so requires, the way in which each councillor voted on any matter at a council meeting must be recorded in the minutes (paragraph 13(2) of schedule 12 to the 1972 Act in respect of parish councils and paragraph 29(2) in respect of community councils). A council can adopt

standing orders to extend this rule to apply to committee and sub-committee meetings. A “secret” ballot is permissible if standing orders so permit but the council would need to ensure that any such procedures could withstand scrutiny and challenge. It is difficult to envisage the circumstances which warrant a secret ballot, which would invariably attract scrutiny as to its purpose and validity. A secret ballot will not eliminate a risk of legal challenge to a resolution on the basis of predetermination or bias by councillor(s).

- 65 Practical guidance in respect of meeting procedures is contained in ‘Local Councils Explained’.
- 66 Resolutions made at a meeting have immediate effect and do not depend on:
- their inclusion in the draft minutes of the meeting;
  - approval of the draft minutes; or
  - a signature of the approved minutes by the Chairman at the next meeting.

### **Minutes**

- 67 The minutes must record the resolutions passed at the meeting. Resolutions to be recorded in the minutes include those made when the public were excluded. Model standing order 3t for England and 3s for Wales may assist councils. In addition, the minutes should record the names of the councillors present and absent, the declaration of councillors’ interests, if councillors left the meeting room because of their interests, and the public participation session.
- 68 The style and appearance of the minutes of a meeting are not subject to statutory requirements. In NALC’s view, the content of the minutes should be informative and relevant, yet concise. Councils should not include personal data in minutes unless this is necessary for the performance of its statutory powers, functions and contracts. See also paragraph 30 of this Note. A council should also avoid disclosing in minutes, resolutions or other information that are confidential or for some other special reasons not in the public interest. Pages 78 and 168 of ‘Local Councils Explained’ provide practical guidance.

- 69 Councils in England with a turnover not exceeding £25,000 should publish the draft minutes of a meeting on a website no later than one month after the meeting has taken place. They must be published on a free and publicly accessible website. Any council that does not have its own website should arrange for publication on the website of its principal authority. Councils are referred to model standing order 12e and the code of recommended practice for parish councils and other smaller authorities - Legal Briefing L05-14).
- 70 The draft minutes of a meeting are circulated with the agenda for a subsequent meeting tasked with approving the accuracy of them.
- 71 The draft minutes of a meeting must be formally approved by the next suitable meeting and duly signed by the Chairman of the meeting (paragraph 41(1) of schedule 12 to the 1972 Act). The signed minutes of the meeting serve as a legal record of what has taken place at the meeting to which they relate. Before a meeting approves the minutes of a preceding meeting by resolution, the meeting may, by resolution, correct any inaccuracies in the draft minutes. The attendance (or otherwise) of the Chairman or those voting in favour to amend or approve of the minutes is irrelevant. Minutes should not be altered once signed unless inaccuracy in the minutes is discovered after they have been signed. Inaccuracies in the signed minutes can be amended by resolution at a subsequent meeting.
- 72 Minutes of the proceedings of a meeting must be kept in a book provided for the purpose. If the minutes are kept in loose leaf form, each page must be consecutively numbered and initialled by the person presiding at the meeting at which the minutes are approved (paragraph 41(2) of schedule 12 to the 1972 Act).
- 73 Properly signed minutes can be received in court as evidence of what they record without further proof. Until the contrary is proved, a meeting of a local council whose proceedings are so minuted is deemed to have been duly convened and held and those members present are deemed to have been duly qualified.
- 74 Pursuant to s.228 of the 1972 Act, the signed minutes of the meetings of a local council (including the minutes of decisions in proceedings held whilst the public were excluded) must be available for inspection by local government electors for the parish or community at all reasonable hours. Electors are entitled to make their own copies of, or take extracts from, the minutes. The council is not obliged to provide copies of the minutes or



copying facilities; it may do so (preferably on payment) and should normally do so if it has the facilities. Refusal to permit or obstruction of, inspection or the making of copies, pursuant to s.228, is an offence. Strictly speaking, councils should ensure that those wishing to see (and/or take copies of) minutes are electors in the parish.

- 75 The Freedom of Information Act 2000 ('the 2000 Act') requires a local council (i) to routinely make certain information such as the minutes of meetings accessible to the public via its publication scheme and (ii) to respond to requests for information held by it. In respect of (i) most local councils have adopted the model publication scheme that the Information Commissioner produced for all local authorities. NALC has issued legal briefings which provide information about model publication schemes. A council's publication scheme must confirm how information such as the minutes of meetings can be accessed by the public. If a council has a website, it is reasonable for the minutes to be available online free of charge. If a council does not have a website or if a person wants to access the minutes by another means, the council must facilitate this.
- 76 Some councils include the draft minutes of meetings in their publication schemes, which are replaced by the approved minutes when these are available. Care should be taken to clearly mark draft minutes as "draft". Pages 166 - 167 of 'Local Councils Explained' provide further guidance. Councils in England with a turnover not exceeding £25,000 should put their draft minutes on a website no later than one month after the meeting. See also paragraph 69 of this Note.
- 77 A person's right of access to information held by a local council is subject to many statutory exemptions. Councils should read Legal Topic Note 37 (Freedom of Information Act 2000) for more information.
- 78 In Wales only and from 1 May 2015 onwards, s.55 of the Local Government (Democracy) (Wales) Act 2013 requires community councils to make certain information available in an electronic format. This includes the minutes of the proceedings of a council's meetings and (in so far as is reasonably practicable) any documents which are referred to in the minutes. S.55 does not authorise or require a community council to make available any information that it is prevented from disclosing under any enactment, for example, because it contains personal data which is exempt from disclosure. In carrying out the s.55 duties, a community council must have regard to any guidance issued by the Welsh Ministers. If a council does not have its own

website, the statutory guidance confirms that the information must be made available on the relevant principal authority's website or another body's website. The statutory guidance can be found here:

<http://gov.wales/docs/dsilg/publications/localgov/150430-access-to-information-en.pdf>

### **Committee Meetings**

79 The meetings of a committee appointed by a local council are subject to most but not all of statutory requirements that apply to meetings of the council. Below is a summary of the legislation and other requirements, which in NALC's view, apply to committee meetings.

- a) The membership of a committee is determined by the council and the chairman of a committee may be elected by the committee from among its members, or is elected directly by the council when the committee and members to it are first appointed. Some councils may want the Chairman or the Vice-Chairman of the council to be members of a committee, by virtue of their office (i.e. ex-officio) rather than because of their nomination and/or selection to a committee, as would be the case with other members of a committee. A council's standing orders may require ex-officio members to be full voting members of every committee appointed. Alternatively as suggested in paragraph 9.54 on page 223 of the book 'Knowles on Local Authority Meetings – A Manual of Law and Practice, 8th edition', a council's standing orders may permit ex-officio members to be members of one or more committees but with restricted rights in respect of such committees. Such standing orders could restrict the ex-officio members' rights to mere attendance of committee meetings. The wording of standing orders must confirm the rights of ex-officio members of a committee if these are different to other members of the committee. Further guidance is given on page 124 of 'Local Councils Explained'. Committees can include non-councillors apart from a finance committee which must consist wholly of councillors (s.102 (3) of the 1972 Act). Advisory committees may be comprised of only non-councillor members (s.102 (4) of the 1972 Act). Pursuant to s.13 of the 1989 Act, non-councillor committee members have limited voting rights. Legal Topic Note 7 (Non-Councillor Members of Committees) gives further guidance about non-councillor committee members.

- b) There is no statutory quorum for a committee meeting. In NALC's view, the number of persons on a committee should be no less than three and the quorum of a committee of three should also be three (see also Legal Topic Note 1 (Councils' powers to discharge their functions)). Councils are recommended to adopt NALC's model standing order 4dviii. Paragraphs 27 to 30 of this Note apply to committee meetings.
- c) Committee meetings are open to the public and press (s.100 (2) of the 1972 Act) who have a right to record proceedings. Paragraphs 31 to 43 of this Note apply to committee meetings. Paragraph 44 confirms a council's standing orders may permit public participation at meetings of those committees that are likely to be of most interest to the public e.g. a planning committee.
- d) The public must have at least three clear days' notice of the time and place of a committee meeting or if it is convened at shorter notice, then public notice must be given at the same time (s.1(4) of the 1960 Act). The meaning of "clear days" does not include the day on which notice was issued and the day of the meeting. NALC recommends that a council's standing orders require a minimum of three clear days' public notice to be given at all times. A council may use model standing order 3c.
- e) Although not required by legislation, it is recommended that a council's standing orders require the members of a committee to be formally summoned to attend a committee meeting at least three clear days (taking the meaning given in (d) above) before the meeting and that the summons is signed by the Proper Officer (usually the clerk) and includes an agenda. A council should confirm the method of service of the summons with agenda on members of the committee in its standing orders. For England only, the 2015 Order permits service by email (see paragraph 17 of this Note). A council may use model standing order 15bi.
- f) The number, time, date and venue for a committee meeting are determined by the council or by the committee itself. No statutory annual or similar meetings are required.
- g) Paragraph 12 of this Note may be applied to committee meetings. The venue for a committee meeting is not subject to statutory restrictions. NALC recommends that committee meetings are not held in such

premises licensed for the supply of alcohol unless no other premises is available free of charge or at a reasonable cost. Councils may use model standing order 3a.

- h) In relation to the agenda for committee meetings, paragraphs 17 to 24 of this Note apply.
  - i) In relation to decision making at a committee meeting, paragraphs 56 to 60 of this Note apply. The Chairman of the meeting has the second or casting vote (paragraph 39(2) of schedule 12 to the 1972 Act).
  - j) In relation to the minutes of committee meetings, paragraphs 67 to 76 of this Note apply to committee meetings. The signed minutes of committee meetings must be kept in a minute book (paragraph 44(1) of schedule 12 of the 1972 Act). Councils in England with a turnover not exceeding £25,000 should publish the draft minutes on a website no later than one month after the meeting.
- 80 A member of the Council who is not appointed to a committee may attend a committee meeting as a member of the public. He would have no right to participate in the meeting unless a member of the public also has the same right and as explained in Legal Topic Note 1 (Councils' powers to discharge their functions).
- 81 Staffing committees may benefit from additional standing orders and are referred to in NALC's model standing order 19. Pages 63 – 69 of 'Local Councils Explained' and Legal Topic Note 22 (Disciplinary & Grievance Arrangements) explain the role of staffing committees (and sub-committees) in the handling of disciplinary and grievance matters.
- 82 Legal Topic Note 1 (Councils' powers to discharge their functions) and pages 126 – 127 of 'Local Councils Explained' provide additional guidance about committees and their meetings.
- 83 Legal Topic Note 7 (Non-Councillor Members of Committees) provides further guidance about advisory committees.

### **Sub-committee meetings**

- 84 The meetings of a sub-committee appointed by a committee are the same as for committee meeting as described above except :-

- a sub-committee meeting may be convened without any public notice being given;
- the public have no statutory right to attend a sub-committee meeting or report its proceedings.

85 NALC recommends that three clear days' public notice is given in respect of sub-committee meetings and that this is issued on the same date that the summons to attend such meetings is given to the members. A council may use model standing orders 3c and 15bi. For England only, email service of the summons is permitted (see paragraph 17 of this Note).

86 The standing orders of a council may permit the public to attend sub-committee meetings or, if appropriate, to participate at them.

87 If the main responsibilities for a sub-committee require the consideration of confidential matters or information about individuals, disclosure of which would breach the obligations of a council under data protection legislation (e.g. a complaints sub-committee) or information that is commercially sensitive, then standing orders can confirm that the public are not permitted to attend or participate.

### **Breach of Statutory Rules**

88 It will be noted that many of the requirements relating to the calling and holding of meetings are mandatory. However, in nearly every case, no specific sanction or penalty is provided by the legislation for breach of the statutory rules. There are sometimes statutory defences:

- a) Failure to send or deliver a summons to attend a meeting to a councillor does not automatically affect the validity of the meeting (paragraph 10(3) of schedule 12 to the 1972 Act in respect of parish councils and paragraph 26(3) in respect of community councils).
- b) A meeting of which the minutes are duly signed is deemed, until the contrary is proved, to have been properly held and the members present duly qualified. This defence also applies to committee and sub-committee meetings with the additional provision that the committee or sub-committee in question is deemed to have been duly constituted and to have had power to deal with the matters referred to in the minutes (Paragraphs 41(3) and 44(2) of schedule 12 of the 1972 Act)

89 In the absence of a statutory defence or excuse, the proceedings and decisions of an improperly constituted council or committee or sub-committee meeting are voidable. They can be challenged in the High Court by way of a judicial review claim. The court is unlikely to declare invalid decisions taken at a meeting of which only two clear days' notice had inadvertently been given (instead of the statutory minimum of three), provided that no prejudice was suffered by any member of the council or by any other person affected by those decisions. By contrast, deliberate and wilful breach of the rule could well lead to the court quashing decisions.

**Other Legal Topic Notes (LTNs) relevant to this subject:**

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
1	Councils' powers to discharge their functions	Explains how local councils can lawfully delegate functions to committees and officers. It explains that certain types of decisions made by officers of councils in England must be recorded in writing, made available for public inspection and retained for a prescribed period.
2	The Chairman of Local Councils	Sets out the relevant provisions in respect of the Chairman's right to vote.
6	Meetings of Parish Meetings	Sets out the relevant principles in respect of Parish Meetings.
7	Non-Councillor Members of Committees	Sets out the powers of non-members to sit on committees.
8	Elections	Sets out further guidance in respect of minuting reasons for absence.
9E	Handling Complaints (England)	Relates to procedures for complaints against local councils in England.
9W	Handling Complaints (Wales)	Relates to procedures for complaints against local councils in Wales.
15	Legal Proceedings	Explains judicial review actions.
22	Disciplinary and Grievance Arrangements	Explains the role of committees and sub-committees in handling disciplinary and grievance matters.

<b>LTN</b>	<b>Title</b>	<b>Relevance</b>
30	Defamation	Summarises the common law and legislation that governs defamation
37	Freedom of Information Act 2000	Explains local councils' obligations to provide publication schemes and other information
38	Data Protection	Explains local councils' data protection obligations.
78	Equality Act 2010	Explains the statutory duties imposed on councils which are aimed at preventing discrimination and promoting equality.
80	Members' conduct and the registration and disclosure of their interests (England)	Explains councillors' obligations under the Localism Act 2011.
81	Predetermination	Explains the difference between predisposition and predetermination when councillors vote at meetings.