

Agenda Item No.8 (e)

DERBYSHIRE COUNTY COUNCIL

COUNCIL

3 December 2014

Report of Director of Legal Services

Amendments to the Council's Constitution – recording and reporting meetings

1. Purpose of the Report

To inform the Council that new regulations relating to the openness of Council business came into force in August 2014 and to seek approval for consequential amendments to the Constitution.

2. Information and Analysis

The Openness of Local Government Bodies Regulations 2014 came into force in August 2014. These regulations make provision to allow members of the public and members of the press to record and report on local authority meetings using any communication method, including the internet, and to publish, post or otherwise share the report.

Recording could include taking photographs, tweeting, filming or making an audio recording of the meeting.

Reporting could include relaying any recording made to enable others not present at the meeting to see or hear it either at the same time as the meeting is taking place or afterwards; or providing oral or written commentary on the meeting. However, authorities are given a discretion not to allow a person to make an oral report or commentary if that person is actually present at the meeting.

The regulations also place a duty on the authority to afford reasonable facilities for the recording and reporting of meetings.

Where members of the press and public are excluded from a meeting, or part of a meeting, for example because confidential or exempt

information is likely to be discussed, there is no right for members of the press or public to record or report the meeting whilst they are not present.

The regulations apply to all public meetings of the Council and Cabinet, as well as their committees and sub-committees.

The Department of Communities and Local Government (DCLG) has issued guidance entitled “*Open and accountable local government – a guide for the press and public on attending and reporting meetings of local government*” and a copy of the relevant extract is attached at Appendix 1.

Although the Council already adopts an open approach, the current Procedure Rules as detailed within the Constitution do not currently address the question of recording at public meetings.

Therefore, it is proposed to amend the Constitution as follows:

- 1) **Article 3 – Citizens and the Council** (page 14 and 15) be amended to read:

(b) **Information** - Citizens have the right to:

(i) attend, record and report on meetings of the Council and Committees except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;

(ii) attend, record and report on meetings of the executive except where confidential or exempt information is likely to be disclosed and the meeting is therefore held in private;

- 2) **Council Procedure Rules**

- a) Insert a new clause 2.1 to the Council Procedure Rules (at page 90) so that paragraph 2 reads as follows (additional wording underlined):

2. *General meetings of the Council will take place in accordance with the programme of meetings decided at the Council's Annual Meeting. All meetings will be held at County Hall, Matlock, commencing at 2pm.*

2.1 Members of the public may record and report on meetings which members of the public are allowed to attend. However, oral reporting or oral

commentary during meetings is not permitted as this would be disruptive to the good order of the meeting and such conduct would be considered to be disorderly in accordance with clause 15.

b) Paragraph 17.8 (at page 98) of the Council's Procedure Rules be amended to include reference to the new paragraph 2.1 so that meetings of committees and sub-committees of Council are also covered by the new provision.

3). **Executive Procedure Rules** (page 122)

Paragraph 1.7 – Public or private meetings of the executive (at page 122) be amended in similar fashion to paragraph 2 of the Council Procedure Rules so that meetings of the Cabinet and its committees comply with the new Regulations.

3. Legal Considerations

As contained in the report. Amendments to the Constitution require approval of the Council.

4. Other Considerations

In preparing this report, the relevance of the following considerations has also been considered; financial, prevention of crime and disorder, equality of opportunity, human resources, environmental, health, property and transport considerations.

5. Background papers

File held by the Director of Legal Services.

6. Officer Recommendations

That the Council:-

- (i) notes the new regulations and guidance produced by the DCLG and
- (ii) approves and adopts the proposed amendments to the Constitution

John McElvaney
Director of Legal Services

Part 1 Your rights to attend and report meetings

This part of the Guide applies to all the local government bodies listed at annex A.

Why are there new national rules?

We now live in a modern, digital world where the use of modern communication methods such as filming, tweeting and blogging should be embraced for enhancing the openness and transparency of local government bodies. This will ensure we have strong, 21st century, local democracy where local government bodies are genuinely accountable to the local people whom they serve and to the local taxpayers who help fund them.

Who do these rules help?

These rules help any members of the press and public who want to know about, view or report the work of local government bodies. The “press” is defined in the widest terms – including traditional print media, filming crews, hyper-local journalists and bloggers.

The new national rules^v have increased your rights to film, audio-record, take photographs, and use social media such as tweeting and blogging to report the proceedings of all such meetings that are open to the public.

Are all meetings of a local government body open to the public?

All meetings must be open to the public except in limited defined circumstances where the national rules require or allow the meeting to be closed to the public – see Part 2 for the rules for a council’s executive; Part 3 for the rules for other local government bodies, other than parish and town councils, and Part 4 for the rules for parish and town councils.

Can I film or audio-record the meeting?

Yes, councils and other local government bodies are required to allow any member of the public to take photographs, film and audio-record the proceedings, and report on all public meetings. While no prior permission is required to carry out this activity, it is advisable that any person wishing to film or audio-record a public meeting let their local government staff know so that all necessary arrangements can be made for the public meeting. This is important because the rules require local government bodies only to provide reasonable facilities for any member of the public to report on meetings.

There is no legal requirement for councils to webcast their meetings, but where councils and other local government bodies webcast any of their public meetings, they should, as a matter of good practice, notify the public.

Do I need to have advance permission to report the meeting?

No. Whilst we would encourage people to contact staff in advance if they want to film or record, equally, we would discourage any system which “vetted” journalists or restricted reporting to “approved” journalists. Councils should support freedom of the press within the law and not seek to restrict those who may write critical comments.

Can I film or audio-record a private meeting^{vi}?

The rules on the use of communication methods, such as filming and audio-recording, only require local government bodies to allow the reporting of meetings open to the public. The relevant council or local government body may not allow you to film or audio-record its private meetings. You may also not be allowed to leave recording equipment in the room where a private meeting is held for the purpose of reporting on the meeting.

Can I tweet or blog a council or local government body meeting?

Yes, the new rules^{vii} allow for reporting of meetings via social media of any kind. Therefore bloggers, tweeters, and for example, Facebook, YouTube users and individuals with their own website, should be able to report meetings. You should ask your council for details of the facilities they are providing for reporting.

If I am a councillor, can I tweet or blog during council meetings?

The national rules do not prevent councillors from tweeting and blogging at meetings, so they should be able to do so provided it is not disruptive and does not detract from the proper conduct of the meeting. Whilst councillors are expected to comply with their body's code of conduct, this should not prevent councillors from tweeting or blogging when appropriate.

What sort of facilities will my council or local government body provide?

Councils or local government bodies are required to provide “reasonable facilities” to facilitate reporting. This should include space to view and hear the meeting, seats, and ideally a desk. Councils and local government bodies should use their common sense to determine the range of reasonable facilities they can actively provide to support the free press in all its forms.

To facilitate public scrutiny and public reporting, local authorities should not conduct their meetings in foreign languages.

Will I be allowed to film, tweet, blog or audio-record the meetings of other bodies not listed in annex A?

The Government message is that all public bodies should adopt maximum openness and transparency. This is also essential for bodies or groups making decisions for their local area because they are expected to be open and transparent in their decision-making. While the new national rules do not apply to some local groups such as neighbourhood forums and Local Enterprise Partnerships, such groups are encouraged, when having public meetings, to embrace the use of modern technology and should allow the same filming, audio-recording, taking of photographs, tweeting and blogging as applied to local government bodies, particularly if they are in receipt of public funds. This will give local people the opportunity to see how decisions are being made that affect their community.

Are there any limits to what I can say in a tweet or video I publish?

The law of the land applies – including the law of defamation and the law on public order offences (see the Crown Prosecution Service guidance on social media^{viii}).

Freedom of speech within the law should also be exercised with personal and social responsibility – showing respect and tolerance towards the views of others.

Are there other limits that I should be aware of?

The council or local-government body should consider adopting a policy on the filming of members of the public, and ensure that they protect children, the vulnerable and other members of the public who actively object to being filmed, without undermining the broader transparency of the meeting.

Will I be able to provide commentary during the meeting?

Any person can provide written commentary during a meeting, as well as oral commentary outside or after the meeting. The new rules do not permit oral commentary to be provided during a meeting as this would be disruptive to the good order of the meeting.

Can I be asked to leave a meeting because I'm taking photographs, filming or audio-recording the meeting or using social media?

Generally, people attending public meetings must be readily able to film, audio-record, take photographs or use social media. Councils and other local government bodies must take steps to ensure this is the case. However, those undertaking these activities must not act in a disruptive manner, which could result in being excluded from the meeting.

What is disruptive behaviour?

Essentially, this could be any action or activity which disrupts the conduct of meetings or impedes other members of the public being able to see, hear or film etc the proceedings. Examples can include:

- moving to areas outside the areas designated for the public^x without the consent of the Chairman,
- excessive noise in recording or setting up or re-siting equipment during the debate/discussion,
- intrusive lighting and use of flash photography; and
- asking for people to repeat statements for the purposes of recording.

You may be excluded from a meeting if you act in a disruptive manner.

Can I leave recording equipment in a public meeting room and record without being present?

There is no legal prohibition, however, under the national rules, the local government body may require any such recording to stop if at any stage the meeting becomes a private meeting.

But the local authority says reporting is a breach of its Standing Orders?

It is a legal duty for the local government body to follow the new provisions. If a local government body's existing Standing Orders are not fully in line with the new legislation, in the short-term, we recommend they simply waive the relevant provisions of those old Standing Orders which could be taken to inhibit the new reporting rules, and then take steps to update formally its Standing Orders.