

TITLE OF REPORT: AMENDMENTS TO THE COUNCIL CONSTITUTION

REPORT OF THE ACTING CORPORATE LEGAL MANAGER AND MONITORING OFFICER
PORTFOLIO HOLDER: MRS L.A. NEEDHAM, LEADER OF THE COUNCIL

1. SUMMARY

1.1 This report recommends amendments to the Council's Constitution following the adoption by Cabinet of a protocol regarding the recording of committee meetings. The report also notifies Members of two amendments made under the Monitoring Officer's delegated authority.

2. RECOMMENDATIONS

2.1 That the Council approves the following amendments to the Council's Constitution:-

i. Paragraph 3.2.1 (c)(ii) be amended to read

"The Council operates openly and transparently and recognises that citizens may wish to utilise social media during meetings (including recording meetings). This engagement is welcomed provided that Council business is not disrupted or disturbed. Examples of disruptive behaviour can include:-

- moving to areas outside the areas designated for the public 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."

ii. Paragraph 4.8.5 be titled "Time and Place of Meetings, setting the Agenda and Recording of Meetings by the Council" and new sub-clause added

"(d) The Council takes an audio recording of all parts of its committee meetings which the public are entitled to attend. The recording is retained in accordance with the Council's data retention policies."

iii. Paragraph 4.8.20 (Members' Conduct) be amended to add

"(f) Recording Meetings

Members taking their own recording of a committee meeting must comply with the Council's Protocol for Recording of Council Meetings and ensure that Council business is not disrupted or disturbed. Examples of such behaviour are set out at 3.2.1(c)(ii)."

iv. Paragraph 4.8.21 (Disturbance by Public) be amended to add

“(c) Recording Meetings

Members of the Public taking recordings of a committee meeting must comply with the Council’s Protocol for Recording of Council Meetings and ensure that Council business is not disrupted or disturbed. Examples of such behaviour are set out at 3.2.1(c)(ii).”

2.2 That Council notes the amendments made under the Monitoring Officer’s delegated authority.

3. REASONS FOR RECOMMENDATIONS

3.1 To ensure the Council meets its statutory obligations and continues to improve its working practices.

4. ALTERNATIVE OPTIONS CONSIDERED

4.1 None.

5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

5.1 Cabinet on 28 July 2015 considered a report on Recording of Council Meetings. It adopted a Protocol for use by the authority and requested that the Monitoring Officer “report to Full Council with any necessary consequential amendments to the Council Procedure Rules following the adoption of this Protocol”.

5.2 The Leader of the Council, as portfolio holder, has been consulted.

6. FORWARD PLAN

6.1 This report does not contain a recommendation on a key decision and has not been referred to in the Forward Plan.

7. BACKGROUND

7.1 The Council’s Constitution was last updated following the annual review reported to Full Council on 16 July 2015. As the Constitution is a “live” document it is subject to ongoing review and changes are sometimes required prior to the next annual review.

7.2 Cabinet at its meeting on 28 July 2015 received a report from the Monitoring Officer on the Recording of Council Meetings and the adoption of a Protocol in order to provide consistency of approach and ensure compliance with the legislation allowing the recording of (non-confidential) committee meetings. The Protocol has been published on the Council’s website and reference to it will be made in Outlook magazine.

7.3 As part of the considerations on the Protocol Cabinet was also asked to decide on the service level required of the replacement equipment for the existing, outdated, microphone and recording equipment in the Council Chamber which needs replacing. Cabinet was also asked to consider its views on the Council recording its own meetings and the Monitoring Officer was requested to report to Full Council with proposed amendments to the Council’s Standing Orders to facilitate Cabinet’s preferred approach that an audio recording be taken of all committee meetings that the

public has access to. For the avoidance of doubt, this means that confidential “Part 2” items will not be recorded.

7.4 On 13 August 2015 the Monitoring Officer made amendments to the Constitution under delegated authority, namely:-

- (a) To make minor changes to the Constitution at 15.10.4 to remove 7A – C. This was notified to Members as no longer in force, however when finalising the Constitution post 16 July Council this section was not removed due to oversight.
- (b) To make minor amendments to the Contract and Procurement Rules to put into effect the decision of Cabinet on 28 July 2015 regarding Social Value, namely adding a new paragraph 2.7:-

“The principles of the Public Services (Social Value) Act 2012, will be applied to all relevant procurement and contract management required by the legislation and in any event will be applied to all procurement contracts above the EU threshold including capital works and goods supply. Additionally a “go local” policy applies to all contracts valued below £50,000, to first attempt to locate those goods, services or works from a supplier located within the North Herts District Council geographical area, having full regard for ‘best consideration’ – competitive pricing **and** demonstrable benefit to the community of North Hertfordshire. Advice on these policies and the toolkits available to assist you should be sought from the relevant officer”.

The existing paragraph 2.7 shall be renumbered 2.8.

7.5 In accordance with paragraph 2.6.4 of the Constitution, changes made under the delegated authority of the Monitoring Officer must be notified to all Members. The delegated decision was published in Members’ Information Service, but this report is also deemed to be notification.

8. ISSUES

8.1 On 5 August 2014 the Openness of Local Government Bodies Regulations 2014 (which amended relevant parts of the Local Government Act 1972) came in to force which allows any person attending a meeting of a Council to report on the meeting. Reporting includes filming, photographing or making an audio recording of proceedings. It should be noted that the legislation does not require Council’s to allow oral reporting or oral commentary from a meeting. The regulations do state that where the public are excluded from a meeting (ie part 2 items) the Council may prevent methods which record the meeting despite the public’s absence.

8.2 The 2014 regulations were accompanied by further DCLG guidance titled “Open and accountable local government – A guide for the press and public on attending and reporting on meetings of local government”. The guidance includes:-

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.

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.

- 8.3 Please note that whilst the Regulations and Guidance do not specifically cover the right of Councillors to record Council meetings (ie Full Council, Cabinet, Cabinet, Committees and all Sub-Committees), the national rules do not prevent Councillors from tweeting and blogging at meetings, provided it is not disruptive and does not detract from the proper conduct of the meeting. It is proposed that elected Members would have the same rights that a member of the public would have to record those meetings (and this has been the working practice of the Council in facilitating such requests from Members prior to the adoption of the Protocol).
- 8.4 During consultation on the proposed approach to the Protocol, officers were asked to investigate the cost of recording meetings so that the Council would have its own record in the event that someone attending a meeting took a recording and used the material selectively or out of context. It was suggested to Cabinet that if the Council decided to routinely record its meetings (irrespective of whether any party is taking their own recording) then this corporate approach should be reflected in the Standing Orders in the Constitution. There is advantage to maintaining such a record, as in the event there is a query on the minutes or a complaint as to conduct at a meeting, there would be a recording of proceedings to refer back to. The cost of storing such digital recordings is still being investigated, but is considered low. If the recordings were held on CD then the cost would be minimal, whereas if the recordings were held on servers there might be additional cost. The service level required (eg quality, retention time) will also be a factor as well as the cost.
- 8.5 Further to its decisions to adopt the Protocol, support the purchase of new equipment for the Council Chamber and purchase two portable recording devices, Cabinet requested that the Monitoring Officer report to Council with proposed amendments to the Constitution covering the following points:-
- Defining what would be considered disruptive behaviour when recording meetings – Cabinet agreed with the suggested approach of using the list in the DCLG guidance
 - Specifying which meetings the Council will record for its own purpose to retain a record – Cabinet agreed that it should be all meetings to which the public have access
 - Specifying whether the Council’s own recording will extend to Part 2 proceedings – Cabinet agreed that it should not
 - Specifying the type of recording that will be taken (ie audio or audio and visual) – Cabinet agreed that it should be audio recording only

Although Cabinet agreed that only audio recordings should be taken by the Council, it was decided to include the video equipment as this would allow broadcast of meetings to adjoining rooms in the event the Council Chamber was full, could be used for training and also recognised the direction of travel of the Government approach to transparency which was felt may require authorities to webcast meetings in the future. Cabinet was therefore ensuring that the Council was ‘future proofed’ and purchasing all the new equipment at one time would likely be cheaper than adding the video function at some point in the future.

- 8.6 If the Council recorded Part 2 proceedings as part of its own record then it would need to be mindful of the potential for FOI requests for that recording, presumably considering the same grounds that made it Part 2 in order to decide whether to refuse disclosure. In accordance with the legislation, as set out in the protocol, individuals recording meetings will be required to stop recording in Part 2 in order to maintain the confidentiality of that part of the meeting. Cabinet's preferred approach of the Council not recording Part 2 items is consistent with the rights that the public have.
- 8.7 The proposed changes to the Council's Constitution to give effect to Cabinet's preferred approach are set out at paragraph 2.1 of this report. Please note that the equipment approved by Cabinet is in the process of being ordered and if Council approves the proposed changes to the Constitution, recording of meetings will be rolled out as the necessary equipment is available. It is currently anticipated that the portable recording devices will be available for use from October.

9. LEGAL IMPLICATIONS

- 9.1 Full Council's terms of reference include "Adopting and changing the Constitution", save for matters which are delegated to the Monitoring Officer.
- 9.2 Section 37 Local Government Act 2000 requires the Council to have in place a constitution and to keep that constitution under review. The Local Government Act 2000 section 9P sets out the requirements of a local authority's constitution, including the requirements to prepare it and keep it up to date and the requirement to make it available for public inspection.
- 9.3 The relevant legislation on recording meetings is set out within the report. Failure to comply with the legislation (or indeed the guidance) could be grounds for a complaint against the Council, including negative publicity.

10. FINANCIAL IMPLICATIONS

- 10.1 There are no financial implications arising directly from this report. The financial implications relating to recording of meetings were reported to Cabinet.

11. RISK IMPLICATIONS

- 11.1 Ensuring the Council has appropriate governance arrangements in place is an important risk mitigation measure. The Council's Constitution is a fundamental part of those governance arrangements. The risk implications relating to recording of meetings were reported to Cabinet.

12. EQUALITIES IMPLICATIONS

- 12.1 The Equality Act 2010 came into force on the 1st October 2010, a major piece of legislation. The Act also created a new Public Sector Equality Duty, which came into force on the 5th April 2011. There is a General duty, described in 12.2, that public bodies must meet, underpinned by more specific duties which are designed to help meet them.
- 12.2 In line with the Public Sector Equality Duty, public bodies must, in the exercise of its functions, give **due regard** to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.

- 12.3 The proposals made within this report for changes to the Constitution do not materially affect any groups with protected characteristics, but it is the aim, in revising the Constitution and its content regularly, to make it more 'user friendly', ensure transparency and also to encourage greater participation in the Council's decision making processes. The reminder to users of flash photography to be mindful of its use in meetings is also helpful, as it can potentially impact attendees to that meeting who may have photosensitive epilepsy or similar condition, since the use of the flash can trigger such attacks.

13. SOCIAL VALUE IMPLICATIONS

- 13.1 As the recommendations made in this report do not constitute a public service contract, the measurement of 'social value' as required by the Public Services (Social Value) Act 2012 need not be applied, although equalities implications and opportunities are identified in the relevant section at Paragraph 12.

14. HUMAN RESOURCE IMPLICATIONS

- 14.1 Ongoing training is offered and provided to relevant officers to ensure they remain familiar with the Constitution. This will be met from existing work plans. Relevant officers will be trained on the procedures adopted so that they are aware how to deal with requests to record meetings.

15. APPENDICES

- 15.1 None.

16. CONTACT OFFICERS

- 16.1 Anthony Roche, Acting Corporate Legal Manager and Monitoring Officer;
anthony.roche@north-herts.gov.uk ext 4588
- 16.2 Jeanette Thompson, Acting Senior Lawyer and Deputy Monitoring Officer
jeanette.thompson@north-herts.gov.uk ext 4370
- 16.3 Liz Green, Head of Policy and Community Services
liz.green@north-herts.gov.uk, ext 4230
- 16.4 Andy Cavanagh, Head of Finance, Performance & Asset Management
andrew.cavanagh@north-herts.gov.uk ext 4243
- 16.5 Fiona Timms, Performance and Risk Manager
fiona.timms@north-herts.gov.uk ext 4251
- 16.6 Kerry Shorrocks, Corporate Human Resources Manager
kerry.shorrocks@north-herts.gov.uk ext 4224

17. BACKGROUND PAPERS

- 17.1 Current NHDC Constitution.