



East Riding and Northern Lincolnshire
Local Councils Association

BRIEFING NOTE

PUBLIC PARTICIPATION SESSIONS AT PARISH COUNCIL MEETINGS AND PARAGRAPH 12 (2) OF THE LOCAL AUTHORITIES (MODEL CODE OF CONDUCT) ORDER 2007)

1. NALC has issued a legal briefing on the implications of Paragraph 12(2) on public participation at parish council meetings. This briefing note summarises the main points.

Introduction

2. Under the former model code of conduct a councillor with a prejudicial interest in a matter being considered at a meeting of the council was required to withdraw from the council meeting room as soon as the interest became apparent. In effect, the former Model Code penalised councillors from making representations or statements in respect of business in which they had an interest purely because of their status as councillors.
3. Paragraph 12 (2) of the revised Model Code permits councillors to make representations, answer questions or give evidence at a council meeting even though they have a prejudicial interest. However, paragraph 12 (2) gives councillors with a prejudicial interest this right only if members of the public have the same rights to make representations, answer questions or give evidence at a council meeting.
4. As paragraph 12 (2) is not a mandatory provision for parish councils, they have a discretion to adopt it. Guidance on a suitable resolution was given in the May 2007 issue of the ERNLLCA newsletter.
5. To ensure full compliance with paragraph 12, it is important that a councillor with a prejudicial interest in an item of business who has made his/her representations, answered questions or given evidence in relation to the same at a council meeting, **immediately** withdraws from the room or chamber at which the matter is being considered and voted on by the council. Failure to leave the room may lead to an allegation that the councillor has sought to improperly influence a decision in which they had a prejudicial interest.

Standing Orders

6. Adoption of paragraph 12(2) has implications for a council's standing orders. Currently, all parish council meetings, including committees, must be open to the public unless they are excluded because of the confidential nature of the business to be transacted.

7. Although councillors present at a council meeting discuss/debate matters before making a decision on the matter, there is no statutory or common law right for the public to comment on, influence or participate in the council's decision making meeting **unless permitted by the Council**.
8. It is good practice for parish councils to allow the public to engage with members of the Council on matters of interest to them. There is varying practice within the sector regarding public participation sessions but some councils do not engage with the public present at their meetings at all.
9. The recording of public participation also varies as they are predominantly not seen as part of the business part of the council meeting.
10. The wording of Model Standing Order 70 indicates that the public may comment on items of business on the agenda for that council meeting, and councillors may make statements, answer questions etc. However, the Council makes no decisions at this time because the meeting is "adjourned".
11. NALC has reviewed its position in relation to model Standing Order 70 and is **now** of the view that:-
 - a public participation session, whenever it takes place in relation to the parish council meeting, would **not** occur unless a meeting of the council had been lawfully convened in the first place. Also, given that public participation can influence a council's decisions, public participation sessions form part of the council meeting in law.
 - public participation sessions should be ordered by the Chairman of the council as part of his/her role in presiding over the council meeting and in accordance with any standing orders adopted;
 - public participation sessions should be incorporated in the minutes of the council meeting and should, where appropriate, record the identities of those who make comments during this session;
 - if a councillor has an interest in the matter being discussed he or she would need to declare it and act in accordance with the Code of Conduct adopted by the council;
 - public participation sessions should form part of the agenda.
12. It is now NALC's view that Model Standing Order 70 does not reflect the legal status of public participation sessions of parish council meetings and is therefore now obsolete. Similarly Model Standing Order 58 is not consistent with paragraph 12(2) of the revised Code.
13. To formalise the new NALC position new model Standing Orders have been published to replace the previous Model Standing Orders 58 and 70:

70A: At all meetings of the council, the Chairman may at his/her discretion, and at a convenient time in the transaction of business, allow any members of the public to address the meeting in relation to the business to be transacted. Such sessions form part of the Council meeting in law and shall be duly minuted. The Code of Conduct which was adopted by the Council on (*insert date*) shall apply to members of the council in respect of the entire meeting. Where, however, members of the council exercise their rights pursuant to Standing Order 70B, below, members of the public **shall** be allowed to attend the meeting to (a) make representations, (b) answer questions or (c) give evidence relating to the business to be transacted.

70B: At all meetings of the Council, the Chairman may permit members of the council (including co-opted members as defined by s.49 (7) Local Government Act 2000) who have a prejudicial interest in relation to any item of business to be transacted at that meeting to (a) make representations, (b) answer questions or (c) give evidence relating to the business to be transacted. Such sessions form part of the Council meeting in law and shall be duly minuted. The Code of Conduct which was adopted by the Council on (*insert date*) shall apply to members of the council in respect of the entire meeting.

How will the new Standing Orders work in practice?

14. The new model standing orders shall not affect a parish council's right to exclude the public from a meeting of the council under NALC's Model Standing Order 68.
15. Irrespective of a parish council adopting paragraph 12(2) of the revised Model Code of Conduct, a parish councillor with a prejudicial interest in business being transacted in **closed** session, must leave the meeting as soon as the interest becomes apparent; neither they nor a member of the public would be entitled to make representations, answer questions or give evidence.
16. When applying the new model standing orders a parish council may want to allocate a fixed period of time for both the public and councillors to address them.
17. To avoid public participation sessions, whether under new model Standing Order 70A or 70B, becoming protracted a parish council may also want to limit the period that any one person may address them.
18. In respect of new Model Standing Order 70A or 70B, NALC recommends the order of business in a council meeting as follows:-
 1. Record of members present
 2. Apologies and reasons for absence
 3. Declarations of interests (existence and nature) with regard to items on the agenda
 4. Public participation session with respect to items on the agenda (*with the Council hearing first from councillors with prejudicial interests who must leave the room immediately after they have made their representations, answered questions or given evidence i.e. they cannot remain in the room to hear the representations of others. After the close of the public participation session, when a parish council reaches any item of business which councillors have a prejudicial interest in, those councillors would need to leave the meeting room whenever **it becomes apparent that the business is being considered at that meeting** whether or not they had made representations etc in respect of it within the public participation session. This accords with paragraph 12 (1)(a)(ii) of the revised Model Code. (Italics apply to adoption of new Model Standing Order 70B.)*
 5. Items of business

19. Some parish councils operating public participation sessions avoid identifying the names of members of the public who make representations. Often this is because the individual member of the public has objected to their identity forming part of the council minutes which are a public record. As the oral representations made by members of the public and councillors with a prejudicial interest could influence the Council's final decision in a matter, their identity and contribution should be accurately minuted, if appropriate.
20. NALC is not suggesting that minutes should be a verbatim record of the Council meeting. Members of the public who object to their contribution (if appropriate), being minuted are free to express their views on any business to the Council in writing and, if necessary, in confidence. A record of their written representations "in confidence" may however still be disclosable under the Freedom of Information Act 2000.
21. If a parish council has not adopted paragraph 12(2), but councillors want to make representations to their parish council in respect of business being determined at a council meeting which they have a prejudicial interest in, they are free to submit written representations to the relevant officer of the parish council. To avoid any perceived or actual conduct which could constitute a failure to comply with the Code of Conduct, a councillor's written representations should make clear that they are being made in his/her **private capacity**. The letter should disclose the existence and nature of the interest arising from the councillor's official capacity.
22. If the parish council's fixed period (e.g. 15 minutes) does not provide sufficient time to allow all the members of the public and councillors with prejudicial interests with an opportunity to make representations, answer questions or give evidence, the council would have to decide who amongst the members of the public and councillors they hear from. NALC recommends that a parish council should not favour councillors over members of the public or *vice versa*. Although the council may not be able to hear all the representations that are being offered pursuant to paragraph 12 (2), NALC suggests, as a matter of good practice, that the council hear within the designated period, equally from both the public and councillors with a prejudicial interest.

NALC Model Standing Orders

23. NALC anticipates reviewing the model standing orders issued in July 2003 but does not anticipate starting the exercise until later in the year. In the meantime copies of the current edition are still available from the ERNLLCA office, price £6.50 plus postage

Revising your Standing Orders

24. It is the responsibility of all councils to regularly review its standing orders, indeed some councils have only recently completed a review.
25. Given the change of stance by NALC on public participation and subsequent changes to model standing orders, councils may wish to include the following item on a future agenda:

"To consider public participation in light of provisions contained in the Local Authorities (Model Code of Conduct) Order 2007 (SI 2007/1159)"