

CONSTITUTION COMMITTEE:

5 MARCH 2018

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

**RECORDING OF COUNCIL MEETINGS (AUDIO, VISUAL OR
SOCIAL MEDIA)**

Reason for this Report

1. To inform the Committee about current arrangements for the recording of Council and Committee meetings, and seek approval of recommended changes to the Council's rules on this issue.

Background

2. The Council has been webcasting full Council meetings since 2008; Planning Committee meetings since October 2016; and Scrutiny Committee meetings (on an ad hoc basis) since November 2017. A webcast is a live or recorded transmission of a video on the internet, enabling the public to watch meetings from any location with internet access in real time. Viewers may click on a particular agenda item or a particular speaker to watch and listen to the part of the meeting which is relevant to them. Councils are encouraged to webcast their meetings in the interests of open and transparent governance and accountability; and to improve public engagement in, and understanding of, local democracy.
3. Currently, aside from the official webcast, any other recording of Council or Committee meetings is prohibited, unless the meeting gives express authorisation, under the Council's procedure rules. At the Committee's meeting in October 2017, the Monitoring Officer advised that this prohibition runs contrary to the openness and transparency now expected of local government and the increasing use of modern digital communication methods. The Committee agreed to receive a report to review the Council's rules in this regard. This is that report.

Issues

Webcasting

4. A Webcasting Protocol is recommended in order to clarify the arrangements for webcasting and ensure the Council is compliant with its legal obligations (in particular the Data Protection Act 1998 and the Human Rights Act 1998). The Council has an outdated Protocol (approved in July 2015), which has been reviewed and updated. The updated Webcasting Protocol is attached as **Appendix A**. It is recommended that the updated Protocol should be approved, subject to any agreed amendments, and recommended to full Council for inclusion within the Constitution.

Other Recording or Reporting of Council meetings

5. Meetings of the Council and its Committees are public meetings; and elected Members and Council officers in public service can reasonably be expected to be held to account for their comments and votes in such meetings.
6. The Welsh Government's statutory Publicity Code (August 2014) urges Councils to look favourably on public recording and broadcasting of Council meetings, provided those attending the meeting are aware of the recording and it creates no disturbance or distraction of the meeting.
7. In the context of modern mobile telephone technology, a prohibition on recording and social media use during Council and Committee meetings is extremely difficult, if not impossible, to enforce. Indeed it is questionable why the Council would wish to prohibit it when meetings are webcast.
8. Members may also wish to note that in England, members of the public have a statutory right to make recordings of public Council and Committee meetings and to report on them, including through social media (pursuant to the Openness of Local Government Bodies Regulations 2014).
9. The Model Constitution for Welsh Councils (2013) commissioned by the Association of Council Secretaries and Solicitors contains the following model rule:
'Filming and Use of Social Media During Meetings'

Filming and use of social media is permitted during meetings so long as there is no disturbance to the conduct of the meeting.'
10. The Committee is recommended to consider amending the Council's current rules to permit recording and use of social media during all public

meetings of the Council, Cabinet and Committees, subject to appropriate conditions. Proposed conditions include:

- i. The recording or transmission must create no disturbance, disruption or distraction to the good order and conduct of the meeting.
- ii. Notice must be given (on meeting agendas and signage outside meetings) so that everyone attending the meeting is made aware that they may be recorded and that by attending the meeting they are deemed to consent to this. (For webcast meetings, this may be included in the webcasting notices).
- iii. Recording must be overt, not covert.
- iv. There is to be no recording or transmission of proceedings dealing with any exempt or confidential information.
- v. The Chair shall have discretion, subject to proper consideration of any relevant representations and legal advice, to prohibit a recording or exclude anyone reasonably considered to be in breach of these rules.
- vi. The person making the recording or transmission shall be solely responsible for complying with all applicable legal obligations arising from their actions.

11. Any elected Members who may wish to record or use social media during Council, Cabinet or Committee meetings should be mindful of their ability to concentrate on the business of the meeting and the public perception likely to be created. Additionally, Members of Regulatory Committees (such as Planning, Licensing and Public Protection), should note that the Council's Guidance for Councillors on Social Media (2016), issued by the Standards and Ethics Committee advises that:

'Use of social media by members of planning, licensing or other regulatory committees is not permitted during the course of such meetings.'

This is because on these matters members are obliged by law to take all relevant considerations into account, and it is therefore important they listen to everything and take an informed view before reaching a decision. This is important because these matters are subject to statutory rights of appeal. These issues specifically relating to recording or social media use by Members should be incorporated into the amended rules.

12. The recommended amendments to the Council's procedure rules are shown in **Appendix B**.

Legal Implications

13. For Councils in Wales there is no statutory requirement to allow the recording of public Council and Committee meetings. However, it is recommended by statutory guidance (the Publicity Code issued by Welsh

Government in August 2014), as noted in the body of the report, in the interests of openness, transparency and accountability.

14. Any audio or visual recording which features identifiable individuals will constitute the personal data of these individuals, and must be handled in accordance with data protection laws. The person making the recording will be responsible for complying with their legal obligations in this regard. The Webcasting Protocol sets out arrangements for ensuring the Council's webcasting is compliant with data protection law, by seeking informed consent.
15. With regard to recording by members of the public, Members may wish to note that there is a general 'domestic purposes' exemption under the Data Protection Act 1998 which is available to individuals who process information for the purposes of their personal, family or household affairs. It is noted that the recommended new rules include a requirement that all persons attending a meeting should be given notice to make them aware that they may be recorded, and that by attending the meeting they are deemed to consent to this. Such notice will facilitate compliance with data protection laws by those making recordings, although ultimate responsibility will rest with the person making the recording.
16. The Council Meeting Procedure Rules (Rule 32), Committee Meeting Procedure Rules (Rule 18), Planning Committee Procedure Rules (Rule 18) and the Access to Information Procedure Rules (Rule 4), all contained within Part 4 of the Constitution, currently prohibit the recording of meetings (except for the official webcast), unless the meeting expressly authorises it. The Access to Information Procedure Rules apply to all public meetings of the Council, including Scrutiny Committees and Cabinet meetings. This report recommends the amendment of those procedure rules to permit recording and social media use during meetings, subject to the conditions set out in paragraph 10 of the report.
17. The Constitution Committee is authorised to review the Constitution and recommend any changes to full Council for approval. The recommended changes to the Council's procedure rules will require the approval of full Council.

Financial Implications

18. There are no financial implications arising from the report

RECOMMENDATIONS

The Committee is recommended to:

1. Note the current arrangements for recording of Council and Committee meetings as set out in the report;
2. Approve the updated Webcasting Protocol attached as **Appendix A**, subject to any agreed amendments, and recommend it to full Council for inclusion within the Constitution, Part 5;
3. Agree to amend the Council Meeting, Committee Meeting, Planning Committee Meeting and Access to Information Procedure Rules, as shown in **Appendix B**, subject to any agreed changes, to permit recording and use of social media during public meetings of the Council, Cabinet and Committees; and
4. Recommend the amended procedure rules (agreed under recommendation 3 above) to full Council for approval.

DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING OFFICER

27th February 2018

APPENDICES

Appendix A	Draft Webcasting Protocol (Updated)
Appendix B	Recommended amendments to Procedure Rules (Council Meeting, Committee Meeting, Planning Committee Meeting and Access to Information)

Background papers

Constitution Committee reports July 2015 'Webcasting of Council and Committee Meetings'; and October 2017 'Review of Constitution'; and minutes thereof

Statutory Publicity Code issued by the Welsh Government, August 2014

Model Constitution for Welsh Councils (2013) commissioned by ACSeS (Association of Council Secretaries and Solicitors)

Welsh Local Government Association 'Guidance for Members: Webcasting', August 2014