

Knowles on
Local Authority Meetings

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Local Authority Meetings

A Manual of Law and Practice

Fourth Edition

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Published by ICSA Publishing Ltd
16 Park Crescent
London W1B 1AH

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Typeset by Hands Fotoset, Woodthorpe, Nottingham

Printed in Great Britain by TJ International Ltd, Padstow, Cornwall

British Library Cataloguing in Publication Data

A catalogue record for this book is available from the British Library

ISBN 1-86072-211-3

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Preface

This fourth edition of Knowles' well-established work on local authority meetings now appears under different authorship for the first time. However the same title has been retained to acknowledge the invaluable contribution made by Raymond Knowles to this area of local authority work.

Local authority law and practice have, of course, undergone many changes since this work was first published and the pace of change continues unabated. Since the last edition, local government has undergone a process of modernisation, starting with the Local Government Act 2000 and the establishment of the new systems of local government decision-making. We have tried to encompass the changes as a result of modernisation, and cover such things as the new cabinet system and scrutiny, standards committees, the Standards Board for England and delegation to individual members. We also refer to the new provisions for access to information under the Freedom of Information Act 2000. At the time of writing, no new regulations have been brought out to consolidate and codify the rights of information under the Local Government Act 1972 and the Freedom of Information Act 2000, particularly with regard to exempt information, but these have been promised and are awaited.

We gratefully acknowledge help from colleagues in local government in general, and in our respective authorities in particular, with whom we have developed our views on how the new legislative requirements should be interpreted and implemented. We would also like to express our thanks to Isabel Gillies of ICSA Publishing for her forbearance with our constantly slipping dates! We also thank the previous authors of this work for providing us with such a good starting point for this revised edition. We alone, however, accept responsibility for the text and for any errors or omissions which may have escaped our notice.

The use of the words 'he' and 'she' have been used throughout the book and are, of course, interchangeable.

Stephen P. Taylor
Deborah Upton
June 2005



Part 1

General Principles



Chapter 1

Current framework

Local government structure

1.1 This work is concerned with the law and practice relating to meetings of local authorities and associated bodies in England and of their committees and sub-committees. Though the local government system is broadly similar in Wales as to the principles which apply, there is increasing divergence from that of England in the detail as a result of the changes introduced by the Local Government (Wales) Act 1994 and the devolution of powers to the National Assembly for Wales by the Government of Wales Act 1998. The situation is somewhat different again in Scotland and substantially so in Northern Ireland, although the meetings procedures that the local authorities there follow have much in common with the practice of local authorities in England. For example, the Local Government (Scotland) Act 1973 and the Local Government (Northern Ireland) Act 1972 contain many rules similar to those in the Local Government Act 1972 (LGA 1972), which – supplemented now by Part I of the Local Government and Housing Act 1989 (LG&HA 1989) – remains the principal Act prescribing the relevant statutory provisions governing the conduct of local authority business in England. Readers in the United Kingdom outside England should, therefore, have little difficulty in applying what is said in these pages to their own perception of local differences of statutory and common law.

Administrative areas

1.2 In England – exclusive of Greater London (see 1.3) and the Isles of Scilly where there is a special council constituted by the Secretary of State¹ – the country is divided into counties and districts. The counties are either metropolitan or shire counties and within the former there are metropolitan districts and elsewhere non-metropolitan districts. Some districts are known as boroughs or cities, mostly for historical reasons. Within the shire counties particularly there are rural parishes. Wales was previously divided into counties and districts, again under the LGA 1972, but local government in the principality was completely restructured by the Local Government (Wales) Act 1994, which created 11 new counties, and 11 county boroughs each of which comprises one or more communities.

1.3 Greater London comprises the areas of the London boroughs, the City of London, and (of no real significance for local government purposes) the Inner and Middle Temples. The 12 London boroughs whose areas, together with the City, formed the former administrative county of London, are known as inner London boroughs; the

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remaining area of Greater London comprises outer London boroughs. A strategic Greater London Authority, comprising a directly elected executive mayor and members of the London Assembly, was created by the Greater London Authority Act 1999, resulting in a two-tier structure for the capital.

1.4 The structure of local government is often said to be predominantly two-tier because, in the greater part of the country, county and district councils operate over the same area. In the shire counties, however, it is really three-tier because of the existence of parishes and communities. In parts of England, the structure is unitary as in Wales, i.e. one local authority alone is responsible for all local government within its area. In England these are the metropolitan authorities (constituted by the LGA 1972) and the new unitary authorities (constituted under the LGA 1992) that, although district councils, are for some purposes classified as counties.

Local authorities

1.5 Local government legislation (in the LGA 1972 particularly) uses the term principal council for the local authorities in Greater London, the metropolitan areas, and the counties and boroughs and districts. Where, throughout this work, the term local authority is used it means, as in legislation, a principal council or a local council, i.e. of a parish or community, or one of the joint authorities established by the Local Government Act 1985 as a consequence of the abolition of the former Greater London Council and the former metropolitan county councils. For every parish there *must* be, and for every community there *may* be, a meeting of electors, i.e. a parish meeting or a community meeting, for purposes of discussing local affairs.² These meetings have power to exercise certain limited functions but are not regarded as local authorities.

1.6 The term relevant authority, introduced in the LG&HA 1989 and used in this work to identify authorities referred to in that Act, includes principal councils and some others, e.g. waste disposal authorities and a joint or special planning board constituted for a National Park.³

1.7 Local authorities are creatures of statute, i.e. statutory corporations (though many municipal boroughs were originally incorporated by Royal Charter), whose constitution, obligatory duties and discretionary powers are derived directly from Parliament. They are the only democratically elected bodies outside the House of Commons and exist in their own right, not as agents of central government, although, increasingly over recent years, the government has initiated and obtained statutory powers restricting the freedom of action that the authorities previously enjoyed. Local authorities are, therefore, subject to the doctrine of *ultra vires* (see 1.46): they can only do those things that they are compelled or permitted to do by law.⁴ Most of the services that local government provides are prescribed by particular Acts of Parliament. For example, county councils and metropolitan district councils and the London boroughs have responsibilities for major functions such as education, the personal social services and for regulatory tasks in, for example, planning and consumer protection, while the district councils discharge the major services of housing, environmental health and refuse collection, among a variety of others, and make bylaws for good rule and government. The new unitary authorities, as already

1. Current framework

indicated (see 1.4), have sole or joint responsibility for all functions within their area. Shire county councils and the unitaries have close links with the police and fire services. They also have responsibilities for passenger transport and waste regulation and disposal; in metropolitan areas these services are in general provided by joint authorities. Parish and community councils have responsibility for a wide range of minor but important local services. In Wales, the distribution of services is somewhat similar. The services provided by local government change from time to time. There is, as it were, no prescribed constitutional dividing line between the functions of central government and those of local authorities: for example, responsibility for further and higher education has been transferred to independent corporations and much of that for housing is being transferred to housing associations. All local authorities act as a focus for local community action and aspirations: in other words they have a leadership and co-ordination role that goes way beyond service delivery.

Local authority meetings

Definition of 'meeting'

1.8 The definition of a meeting as 'a gathering or assembly of two or more persons for a lawful common purpose' (see *Sharp v. Dawes* (1876)) needs no modification in its application to local government, for one person cannot in any sense constitute a meeting.⁵ A meeting implies literally the coming together of two or more people; and in the context of local government this is because there are certain legal formalities to be observed that require more than one person to be present in order that there shall be a valid and lawful decision. These legal formalities include the need for a meeting to be properly convened and constituted: see 1.33.

1.9 Not only must there be at least two people present to constitute a meeting, but there ought also to be someone presiding to regulate deliberations. These requirements (that there must be at least two persons and ordinarily someone in control) have been said to be 'axiomatic and universal'.⁶ In *R. v. Swansea Borough Council ex parte Elitestone Ltd* (1993) it was confirmed that for a local authority meeting two members are enough. If a meeting of two is to proceed without a chairman (see 11.14) then the wish of the meeting to continue in this way should be clearly recorded – as, of course, with a larger number of members also (see 11.14). However, difficulties could arise where two members alone constitute a meeting and neither is appointed or specifically acts as chairman, because a decision could never be reached on an issue where there was an irreconcilable difference of view. Thus it may be thought that, for local government purposes, no meeting should consist of fewer than three persons: because if there are two only, the one who is chairman – and there will ordinarily be a chairman – could decide every issue as he wished by exercise of his statutory power to give a casting vote (see 7.122) in the event of an equality of votes.

1.10 The person entrusted with authority to regulate the conduct of a meeting is usually styled the chairman or chair (see 7.12) and in the case of council meetings the chairman is the chairman of the council (or the mayor in the case of those councils that have been permitted to retain their former status or assume that of one of their predecessors; or, in the case of the London boroughs, never lost that status). The

General principles

ancient title of mayor, enjoyed by the chairmen of borough councils, was preserved along with some other offices of dignity by the LGA 1972, ss. 245, 246. This includes the distinctive title of Lord Mayor conferred on holders of the mayoralty in certain boroughs. The 1972 Act has been amended to provide that in those local authorities where there is an elected mayor (see 1.62), the titles of Mayor and Deputy Mayor can only be used by the elected mayor and his or her chosen deputy mayor. The statutory Guidance issued following the 2000 Act makes clear, however, that in a very few cases such as where the title of Mayor derives from a Royal Charter, this title would continue whichever form of executive were chosen. In those instances, it is for the local authority to ensure that the two mayoral titles are distinguished from each other in some way. The chairman of the council in a borough where there is an elected mayor is styled according to local preference: sometimes simply called the Chair (Hartlepool) or Civic Mayor (Doncaster); or, less obviously, called the Speaker (London Borough of Hackney) or the Civic Ambassador (London Borough of Newham).

Local authority meetings are private meetings

1.11 Generally meetings may be either public or private. A public meeting has been defined⁷ as:

‘Any meeting bona fide and lawfully held for a lawful purpose and for the furtherance or discussion of any matter of public concern, whether admission thereto be general or restricted.’

This is a wide definition. It includes any meeting in a public place⁸ and any meeting on private premises⁹ that the public or a section of the public are permitted to attend, whether on payment or otherwise. It might seem that local authority meetings could thus be held to be public meetings, but the public’s right of admission is conferred by statute:¹⁰ it is not a common law right: see 3.1. The fact that local authorities permitted the public to attend council and sometimes committee meetings before the law conferred upon the public a right of access did not affect the position: *Tenby Corporation v. Mason* (1908), where the House of Lords held that the public had no right at common law to attend a council meeting: see 3.1.

Purpose of meeting

1.12 It is always important that the purposes of a meeting should be defined at the time it is convened. We are not concerned, of course, with assemblies for social intercourse or solely for civic ceremonial (although some council meetings may embrace both incidentally), but primarily with meetings for the transaction of local authority business. In the case of all formal meetings there will be an agenda or at least a clear understanding of the terms of reference of the committee or sub-committee, working party, panel or whatever it may be.

1. Current framework

1.13 There are other meetings, less formally structured, where the objective may be less well defined, e.g. where local authority representatives receive a deputation of electors or seek to negotiate with a trade union on some matter in dispute. In those cases the authority's representatives must understand precisely what is to be their role: they must know the parameters within which discussion is to range, and obviously the extent of their power, if any, to bind the council. Unless these things are understood beforehand (with perhaps also a plan of tactics to be adopted depending upon the trend in discussion), the meeting may well be regarded as unsatisfactory on one or other or both sides, or the local authority representatives may find they have unintentionally committed their council to an unwanted course of action.

1.14 Where one local authority joins with another or others and/or with other agencies for the discussion or co-ordination of some matter in which each is interested, the need for a clear definition of the purpose of the meeting (or, if of continuing concern, the joint committee or other body set up) is particularly important. Such a meeting or committee or body has invariably a diffuse set of objectives that are not necessarily related to one another and not immediately identifiable in terms of responsibility to one set of decision-makers.¹¹

1.15 Although in most cases the objective of a meeting will be to reach decisions, this need not always be so. For example, a number of councils are experimenting with holding occasional meetings for discussion only to give members of the council the opportunity of debating, without the pressure of the need for decision-taking, such issues as crime and disorder or the local Community Strategy.

Regulation by law

1.16 The summoning, constitution and conduct of meetings (whether related to local government or not) is governed partly by statute and partly by common law. The principal statute as regards local authority meetings is the LGA 1972, complemented now by the LG&HA 1989, Part I, but there are other enactments that regulate the constitution of particular committees of local authorities. In total, however, the statutory provisions (although extremely detailed in certain respects) affect a comparatively small part of the relevant law. The standing orders (see Chapter 2) that local authorities are required or empowered to make seek to regulate matters that would otherwise fall to be dealt with in accordance with the practices and conventions recognised at common law.

Types of meeting

1.17 There are two broad categories of meetings within the sphere of local government. These can most easily, but not altogether satisfactorily, be termed formal and informal. A formal meeting is one convened in the manner prescribed by law to enable councillors (sometimes with co-opted members) to transact local authority business with the object of reaching decisions – or formulating recommendations as a basis for decisions – that are intended to commit the authority as a whole. An informal meeting is any other meeting for the consideration or trans-action of business, which may or may not comprise councillors or at least comprise

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them exclusively. It may be a meeting convened solely for purposes of exploratory discussions between councillors and officers or between councillors and representatives of other bodies, and either is not intended to be clothed with legal formality or by its nature cannot bind the local authority.

1.18 The main general principles governing formal meetings (of the full council particularly) are outlined in the paragraphs immediately following. Formal meetings of committees, and of gatherings akin to committees, are dealt with in Chapter 9 where there is a discussion of informal meetings of the kind increasingly common in recent years.

Formal meetings

1.19 Formal meetings are those of (a) principal councils, i.e. the councils of counties and districts in England and Wales and the London boroughs; (b) the authorities created under the LGA 1985 and the LGA 1992, i.e. the statutory joint authorities, and the residuary bodies; (c) parish councils and parish meetings in England and community councils and community meetings in Wales; and (d) their committees and subcommittees. Each must be convened and constituted in the manner prescribed by statute and/or standing orders.¹² There are other meetings, not of local authorities as such, of what might be termed constituent or associated bodies, which are formal in the sense that they are required to be held by statute, e.g. annual meetings of parents under the Education Act 2002: see Chapter 13.

Special meetings

1.20 There are, in effect, three types of special council meeting: the annual meeting; an extraordinary meeting; and a meeting convened for a specific purpose. Each is regulated by statute in varying respects, particularly as regards the convening of meetings (see Chapter 6).

1.21 The obligation on local authorities to hold an annual meeting in every year is referred to below: see 1.23. The law also requires that certain business shall be transacted at an annual meeting, i.e. the election of a chairman or mayor particularly and the election of sheriff in those cities and boroughs that have claimed that privilege.

1.22 An extraordinary meeting of the full council is one convened otherwise than by direction of the council as a whole, i.e. either by the chairman on his own initiative or upon the requisition of a prescribed number of council members:¹³ see 6.4. There is provision also for the calling of meetings of a parish or community council in similar circumstances but the term extraordinary meeting is not used. Although there was earlier provision in the LGA 1933 for such meetings the term 'extraordinary meeting' is used in the LGA 1972 for the first time to refer to meetings convened in these circumstances. An example of a council meeting convened for a specific purpose is one called to consider a proposal of a local authority to promote or oppose any local or personal Bill in Parliament.¹⁴ Meetings of this character are dealt with in Chapter 7 (7.144–7.151).

1.23 Principal and parish councils are required to hold in every year an annual

1. Current framework

meeting of the full council;¹⁵ and a parish meeting must assemble annually.¹⁶ But a community meeting is under no such obligation. The annual meeting of a principal and a parish council must be held within the period prescribed by statute, varying according to whether it is election year.

1.24 Except in the year of election of councillors, a principal council may hold its annual meeting on such day in March, April or May as it thinks fit¹⁷ and a parish council on such day in May as it may determine.¹⁸ In the election year, the annual meeting of a principal council must be held ‘on the eighth day after the retirement of councillors or such other day within 21 days immediately following the day of retirement as the council may fix’: in the case of parish councils, on or within 14 days after the day on which the councillors elected at that election take office. The parish meeting must assemble ‘on some day between March 1 and June 1 both inclusive’.

1.25 Each principal, parish and community council and parish meeting may hold in addition to the annual meeting (or any other meeting it is required to hold), such other, i.e. ordinary meetings of the full council, as it may determine.¹⁹ It is difficult to understand why it was thought necessary to provide legislative power to do something that local authorities could surely do in any case. However, in the case of a parish council there is an obligation to hold not fewer than three meetings in addition to the annual meeting,²⁰ with discretion to determine the hour and days;²¹ and in the case of a parish that does not have a separate parish council the parish meeting must (subject to any provision made by a grouping order) assemble at least: twice a year.²² Some authorities fix the dates by standing orders; others determine them each year at the annual meeting.

Time of meeting

1.26 The time of meeting is not specifically prescribed by statute. In the case of principal councils the ‘annual meeting . . . shall be held at such hour as the council may fix, or if no hour is so fixed at 12 noon’,²³ which presumably means that, in the unlikely event of a principal council convening an annual meeting without specifying the time of the meeting, it would necessarily be at 12 noon but the notice might surely still be held to ‘be void for uncertainty. A parish and a community council’s annual meeting may, somewhat similarly, be held “at such hour as the council may fix or, if no hour is so fixed, six o’clock in the evening”’.²⁴ The proceedings at a parish or community meeting must not commence earlier than 6.00 pm.²⁵

Meetings on Sunday

1.27 There appears to be no reason in law why a local authority should not meet on a Sunday, although there may be practical and other reasons why the practice should be regarded as undesirable.²⁶

Frequency of meeting

1.28 Provided a local authority holds its statutory annual meeting and observes the requirements about other meetings (see 1.25), it can decide as it wishes upon the

General principles

frequency of meetings,²⁷ i.e. it does not necessarily need to space out equally the ordinary meetings – though it may wish to do so in order to arrange a convenient and regular committee cycle: see 10.1. The frequency of meetings will obviously be determined by the volume and incidence of business. Nicholas Ridley, when Secretary of State for the Environment, a staunch proponent of the concept of the enabling authority, envisaged a situation where a local authority might meet once a year only to let contracts for service delivery. District councils in the main meet monthly while some county councils meet quarterly, but all authorities usually dispense with meetings of the full council for the holiday period in the summer when, the expression goes, the council is ‘in recess’. It is common practice for the dates of ordinary meetings to be fixed in advance at the annual meeting of a council.

Place of meeting

1.29 Meetings of a principal council must be held ‘at such place, either within or without their areas as they may direct’;²⁸ so, too, may meetings of a parish council and a community council except that the meetings must ‘not be held in premises licensed for the sale of intoxicating liquor unless no other suitable room is available either free of charge or at a reasonable cost’.²⁹ This discriminatory prohibition against the holding of a meeting on licensed premises applies also to parish meetings, although the statute is otherwise silent as to place.

1.30 Where a local authority decides to hold a meeting outside its administrative area, it must take account of the accessibility of the venue for those entitled to be present. Thus one authority, anxious to foster its ties with a twin city across the Channel by holding a meeting there, prudently arranged for the proceedings – which were mostly of a ceremonial nature anyhow – to be confirmed at the authority’s next ordinary meeting within its area in the UK.

1.31 These statutory provisions relating to place of meeting apply also to committee meetings.³⁰ Thus any local authority committee meeting may be held anywhere, either within or outside its area, as the council or committee may decide, except in the case of committees of a parish council or parish meeting or of a community council, which must not be held on licensed premises unless no other accommodation is available free or at reasonable cost.

1.32 Notwithstanding the above, there is an assumption throughout this work that local authority meetings will take place ordinarily at the authority’s offices. Sometimes, however, particularly in the case of committees or subcommittees, a meeting will be arranged at a defined location on the highway for purposes. For instance, there maybe an inspection of a site that is the subject of a planning application. The reasons for meetings of this character are numerous. In all such instances, care must be taken to avoid obstruction of the highway, because that would constitute an offence. Highways exist for purposes of passage and anyone using a highway for some other purpose is in theory a trespasser; but so long as the meeting is not likely to interfere with the right of passage or lead to a breach of the peace, then there is no reason why a local authority should feel inhibited from arranging such a meeting. It may be thought prudent, of course, depending on circumstances, to advise people living in the vicinity of the meeting, so as to avoid