

 Overview and Scrutiny Committee 17th April 2012		Agenda Item No. 8
Title	Prayers at Full Council Meetings	
For further information about this report please contact	Andrew Jones Andrew.jones@warwickdc.gov.uk (01926) 456830	
Wards of the District directly affected	None	
Is the report private and confidential and not for publication by virtue of a paragraph of schedule 12A of the Local Government Act 1972, following the Local Government (Access to Information) (Variation) Order 2006?	No	
Date and meeting when issue was last considered and relevant minute number	N/A	
Background Papers	None	

Contrary to the policy framework:	No
Contrary to the budgetary framework:	No
Key Decision?	No
Included within the Forward Plan? (If yes include reference number)	No
Equality & Sustainability Impact Assessment Undertaken	No (If No state why below)
N/A.	

Officer/Councillor Approval		
Officer Approval	Date	Name
Chief Executive/Deputy Chief Executive & Monitoring Officer	22 nd March 2012	Author
Civic and Committee Services Manager	22 nd March 2012	Graham Leach
Legal Services	22 nd March 2012	Jane Pollard
Group Leaders & Council Chairman		Councillors Barrott, Boad, Doody, Kirton Councillor Mrs Bunker
Consultation & Community Engagement		
N/A		
Final Decision?	Yes	
Suggested next steps (if not final decision please set out below)		

1. **SUMMARY**

- 1.1 This report advises Members as to the legal position with regard to Prayers at Full Council meetings.

2. **RECOMMENDATION**

- 2.1 Members note the legal position in respect of Warwick District Council's practice of holding prayers prior to Full Council meetings.

3. **REASONS FOR THE RECOMMENDATIONS**

- 3.1 Members will be aware that it is this Council's practice to hold prayers at the beginning of most Full Council meetings. Whilst prayers are not part of the meeting's Agenda, it has become custom and practice that before proceedings commence, all Councillors gather in (are summoned to) the Council Chamber and the Chairman of the Council invites her or his religious nominee to lead on prayers. It should be noted that prayers/reflection at Warwick District Council has not been exclusively to a Christian God, as Council Chairmen of other religions have introduced prayers/reflection from non-Christian belief systems.
- 3.2 On 10th February 2012, the High Court ruled that "The saying of prayers as part of the formal meeting of a council is not lawful under section 111 of the Local Government Act 1972, and there is no statutory power permitting the practice to continue." With regard to Warwick District Council, to any reasonable onlooker it would appear that prayers are part of the Council Agenda, despite there being no reference to Prayers on the Agenda.
- 3.3 The Monitoring Officer was asked to clarify the matter for all Councillors and devise a solution. The text reproduced below was therefore sent to all Group Leaders and the Council's Chairman:

Prayers at Council

The judgement of the High Court (10th February 2012) has determined that there is no statutory provision for prayers as part of the formal meeting of the Council. As a creature of statute, a Council can only do what it is empowered to do by Parliament, although the General Power of Competence provided for in the Localism Act will muddy the waters as we go forward.

The judgement went on to say that prayers in a local authority chamber before a formal meeting of such a body is lawful, provided Councillors are not formally summoned to attend. We do not include prayers as part of our agenda, however, it has become custom and practice that all Councillors should be in attendance whilst prayers are being said and so it could be argued that prayers do form part of the agenda.

Therefore to "square this circle", I would suggest that Councillors are made aware that prayers will be said prior to a meeting and that any Councillor or Officer who does not wish to partake of prayers, will wait outside the Chamber until prayers have concluded. At that point those Councillors and Officers who are not present for prayers will enter the Chamber for the meeting. The meeting can then commence and the attendance sheet will be circulated.

3.4 Having discussed the matter with Councillors, the Council's Chairman decided that for the remainder of the municipal year, Prayers would continue to be held prior to Council and those Councillors who did not wish to partake of prayers could wait outside the Chamber until prayers had been concluded.

3.5 This position has not been greeted with universal approval and following discussions at Overview and Scrutiny Committee on 13th March 2012, the Monitoring Officer was asked to draft a report to provide all Members with the up-to-date position.

3.6 Since the judgement of 10th February, things have moved on, specifically following the Secretary of State's (Communities and Local Government) intervention. The Localism Act introduces a General Power of Competence (GPC) for local authorities that enable them to do "anything that individuals generally may do". On 18th February this part of the Act was made law. A fuller note on GPC is attached at the Appendix.

3.7 The enactment is important in the context of the Prayers issue because the Secretary of State, Mr Pickles, specifically brought the enactment forward so that Councils could continue to hold prayers as part of their meetings. He said:

"The High Court judgement has far wider significance than just the municipal agenda of Bideford Town Council. For too long, faith has been marginalised in public life, undermining the very foundations of the British nation.

"As a matter of urgency I have personally signed a Parliamentary order to bring into force an important part of the new Localism Act - the general power of competence - that gives councils the vital legal standing that should allow them to continue to hold formal prayers at meetings where they wish to do so.

"This should effectively overtake the ruling and it also shows that greater localism can give local councils the strength and freedom to act in their best interests. We will stand for freedom to worship, for Parliamentary sovereignty, and for long-standing British liberties."

3.8 However, the National Secular Society, which successfully brought the original case to the High Court, has stated that it is consulting its lawyers about the legal position. Its Chief Executive said:

"A number of senior lawyers have expressed doubt whether the Localism Act will, as Mr Pickles hopes, make prayers lawful, and the Act was clearly not passed with that express intention. His powers to pass legislation are not, as he implies, untrammelled. Council prayers increasingly look set to become a battle between the Government and the courts at ever higher levels."

3.9 Commenting on the matter an article in the respected public journal *Local Government Lawyer* said:

"But it can be seen above that the judge's reasoning is really about the use of powers - the judgment says that powers should not be used "even to mark out" those who do not have certain beliefs. There will be limits on the general competence power - this case is a good example of the debates yet to come about the extent of those limits. Just because you have the power to do something (in a formal sense) that does not mean you have a right to do it. It may be that replacing narrow statutory powers with broad statutory powers will

lead to a greater use of precedent to lay the boundary of legitimate local government action.”

- 3.10 For Warwick District Council, all this means that if it wishes to hold prayers it can do, although there is always the possibility of a legal challenge. However, to hold prayers there would need to be a Council decision as the Order of Business in the Council’s Constitution would need to be amended. This is not a matter upon which the Chairman of the Council can arbitrarily decide.

4. **ALTERNATIVE OPTION CONSIDERED**

- 4.1 No alternative options were considered as Overview and Scrutiny Committee has requested for details on the legal position with regard to prayers.

5. **BUDGETARY FRAMEWORK**

- 5.1 There are no budgetary implications as a consequence of this report.

6. **POLICY FRAMEWORK**

- 6.1 The Council’s Constitution will need to be amended should Members wish to include prayers on the full Council Agenda.

Appendix

"Local authorities' powers and responsibilities are defined by legislation. In simple terms, they can only do what the law says they can. Sometimes councils are wary of doing something new - even if they think it might be a good idea - because they are not sure whether they are allowed to in law, and are concerned about the possibility of being challenged in the courts.

"The Government has turned this assumption upside down. Instead of being able to act only where the law says they can, local authorities will be freed to do anything - provided they do not break other laws.

"The Localism Act includes a 'general power of competence'. It gives local authorities the legal capacity to do anything that an individual can do that is not specifically prohibited; they will not, for example, be able to impose new taxes, as an individual has no power to tax.

"The new, general power gives councils more freedom to work together with others in new ways to drive down costs. It gives them increased confidence to do creative, innovative things to meet local people's needs. Councils have asked for this power because it will help them get on with the job. The general power of competence does not remove any duties from local authorities - just like individuals they will continue to need to comply with duties placed on them. The Act does, however, give the Secretary of State the power to remove unnecessary restrictions and limitations where there is a good case to do so, subject to safeguards designed to protect vital services."