

Council

22 April 2021

Report of Director of Corporate & Customer Services and Monitoring Officer

REMOTE MEETINGS AND DECISION MAKING AFTER 7 MAY 2021

PURPOSE OF REPORT

To advise that the regulations permitting remote meetings of the Council and its committees cease to be effective from 7 May 2021, provide an update in respect of action seeking a declaratory judgement to give local authorities the freedom to hold virtual or hybrid remote meetings in future and to make arrangements for the continuation of decision making after 7 May 2021 until such a time as it is safe for meetings of the Council and its committees to resume in Matlock Town Hall.

RECOMMENDATION

1. That the cessation of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 on 7 May 2021 be noted.
2. That authority be delegated to the Director of Corporate and Customer Services, in consultation with the four political group leaders, to respond to the Government's consultation and call for evidence in respect of remote local authority meetings setting out the way in which virtual meetings have enabled the continuation of democratic governance at the Council since April 2020.
3. That the update in respect of the legal proceedings at the High Court brought by the Association of Democratic Services Officers, Lawyers in Local Government and Hertfordshire County Council seeking a declaratory judgement to confirm that local authorities may hold virtual or hybrid meetings after 7 May 2021 be noted.
4. That, subject to the outcome of the legal proceedings at the High Court not permitting virtual meetings, authority be delegated to the Chief Executive and Directors to take decisions reserved to the Council and committees, in consultation with Chairs and Vice-Chairs, Political Group leaders and (if appropriate) Ward Members, as set out in the schedule found at paragraph 2.6 of the report, until such a time as in person committee meetings can safely resume at Matlock Town Hall, which will be subject to the Government's roadmap out of lockdown.
5. That, subject to decision making authority being delegated to officers in the event that remote meetings cannot continue, the Monitoring Officer be authorised to amend Part 3 of the Constitution (Responsibility for Functions) to reflect the revised decision making arrangements at the Council.

6. That the membership of committees currently in operation remain as previously agreed on 22 July 2020 until such a time as the Council can meet to determine the new political balance and seat entitlement after the by-elections for Masson and Wirksworth wards on 6 May 2021.

WARDS AFFECTED

District-wide

STRATEGIC LINK

The good governance of the Council contributes to all of the authority's corporate priorities. This report sets out proposals to ensure that the Council can continue to make decisions in a lawful way until such a time as Council and committee meetings can safely resume with full democratic participation from councillors, as well as attendance by officers and the public.

1 BACKGROUND

- 1.1 In response to the Covid-19 pandemic, the Secretary of State made provision through *The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020* for remote attendance at, and remote access to, Council meetings. The regulations contained a sunset clause which ceases their effect from 7 May 2021.
- 1.2 Beyond making provision for remote meetings to take place using virtual meeting software, the regulations also suspended the requirement to hold an Annual Meeting of the Council which meant that committee and outside body appointments could continue beyond the end of the 2019/20 municipal year, public access and procedures were also able to be facilitated through virtual means in a move away from the paper based statutory requirements of the Local Government Act 1972 and subsequent legislation which had not taken account of widespread digital access since the turn of the century.
- 1.3 With these provisions ceasing to be effective from 7 May 2021, the Council now needs to consider what arrangements it should make to ensure that functions can continue to be discharged whilst the Government's restrictions remain in place which effectively prevent the Council and its committees meeting in person from 7 May until at least 21 June 2021.

2 REPORT

- 2.1 Whilst the legal action above may have resolved the question of whether local authorities can meet remotely before 7 May 2021, this Council is not scheduled to meet again until after the sunset clause on the regulations. This report is therefore concerned with recommending arrangements for the continued discharge of functions reserved to the Council and its committees, whilst ensuring that democratic oversight of decision making is maintained and that the public are able to continue to make representations in respect of any decisions to be considered after 7 May until such a time as meetings can be held in Matlock Town Hall with the full membership of the Council and its committees.

- 2.2 The Minister of State for Local Government, Nick Hall MP, wrote to local authority leaders on 25 March 2021 to indicate that the Government did not intend to make legislative provision for the continuation of remote meetings. Whilst the letter did indicate that the Government had made a call for evidence in respect of the impact of remote meetings for local authorities, the accompanying guidance for local authorities on the approaches that could be followed to maintain decision making after 7 May 2021 did not offer any solutions that would be considered to be workable for authorities operating a committee system of governance, as suggested approaches referred to the use of single Member decision making which would be feasible for authorities operating executive arrangements.
- 2.3 In the same correspondence, the Minister announced a consultation call for evidence on the use of the current arrangements which have provided express provision for local authorities to hold meetings remotely or in a hybrid format during the coronavirus pandemic. The Government indicated that it would like to hear from interested parties about the pros and cons of making such arrangements permanent in England and the use of the arrangements to date. The deadline to respond with evidence is 17 June 2021. On this basis, it is recommended that authority is delegated to the Director of Corporate and Customer Services to respond to this call for evidence following consultation with the four political group leaders.
- 2.4 Whilst the Government has not sought to extend or place new regulations permitting the continuation of remote meetings, the Association of Democratic Services Officers (ADSO), Lawyers in Local Government (LLG) and Hertfordshire County Council have sought a declaratory judgement from the High Court to permit local authorities and parish councils to meet remotely or in hybrid arrangements beyond 7 May 2021. At the time of writing this report, the Secretary of State for Communities, Housing and Local Government has publicly stated that the Government is supportive of the case made by ADSO, LLG and Hertfordshire County Council. The case is due to heard by the Administrative Court at the High Court on 21 April 2021.
- 2.5 Having consulted with the four political group leaders, it is proposed that authority is delegated to the Chief Executive or relevant Director to discharge the functions of the Council and its committees until such a time as those bodies are able to meet either virtually, physically or under hybrid arrangements. Assuming that the Government's tests for the easing of Covid related restrictions are met, it is anticipated that meetings of the Council and its committees will be able to recommence at some point after Monday 21 June 2021, albeit subject to a Covid risk assessment being in place that accords with guidance on the safe use of buildings.
- 2.6 In delegating the discharge of functions reserved to Council and its committees to the Chief Executive, it is recommended that the following provisions apply:

Decision Making Body	Authority delegated to	In consultation with
Council	Chief Executive	<ul style="list-style-type: none"> • Chairman of the Council • Political Group Leaders • Ward Members (where ward specific)

Decision Making Body	Authority delegated to	In consultation with
Governance and Resources Committee	Chief Executive Director of Resources Director of Corporate & Customer Services Director of Regulatory Services	<ul style="list-style-type: none"> • Chair and Vice-Chair of Governance and Resources Committee • Political Group Leaders • Ward Members (where ward specific)
Community and Environment Committee	Chief Executive Director of Community & Environmental Services Director of Regeneration & Policy Director of Regulatory Services	<ul style="list-style-type: none"> • Chair and Vice-Chair of Community and Environment Committee • Political Group Leaders • Ward Members (where ward specific)
Planning Committee	Director of Regulatory Services	<ul style="list-style-type: none"> • Chair and Vice-Chair of Planning Committee • Ward Members
Licensing and Appeals Committee	Director of Regulatory Services	<ul style="list-style-type: none"> • Chair and Vice-Chair of Licensing and Appeals Committee • Ward Members
<ul style="list-style-type: none"> • Decisions in respect of functions under the Local Government (Miscellaneous Provisions) Act 1976, such as taxi licensing and other miscellaneous licensing functions 		

2.7 The hearings regime under the Licensing Act 2003 and the Gambling Act 2005 are not subject to the same restrictions as committees established under the Local Government Act 1972 and it is considered possible for these to continue to meet virtually.

- 2.8 In order to discharge decision making in a manner that follows the same procedures that apply in respect of Access to Information for Council or committee meetings, it is proposed that a weekly list for reports to be considered by officers will be published five clear days in advance of decisions being taken. This will be published on the Council's website in order for Members and the public to make representations in respect of the matters to be determined.
- 2.9 When officers exercise delegated authority, it is not done through a formal meeting but rather through the publication of a delegated decision notice. Where decisions are taken, such decision notices will be published on the Council's website within two working days of the decision being taken. Decision notices will also reflect the representations received from Members and the public and how these were taken into account before the decision was taken. Where a decision is urgent and cannot be delayed, the existing rules in respect of urgent decisions will be followed, which will also require the publication of a decision notice setting out the nature of the decision and the reason for urgency.
- 2.10 It is recognised that there will be occasions where officers consider that it would not be appropriate to exercise delegated authority to determine matters which may have significant public interest or be considered to be politically contentious. Where an officer chooses not to exercise delegated authority to determine a report, consideration of the matter will be deferred until such a time as the Council and its committees can meet.
- 2.11 The Government's guidance did not address the issue of how Annual Meetings could be held, despite the Local Government Act 1972 explicitly requiring authorities to hold their annual meetings during March, April or May. As this authority has two contested by-elections on 6 May 2021, the Annual Meeting cannot be held before this date. In the event that the High Court makes a declaratory judgment that permits the continuation of remote meetings, then the Annual Council meeting will take place on 27 May 2021. However, as there is no guarantee that the Annual Meeting will be able to take place, it is recommended that the Council resolves to continue with the current committee memberships and joint committee and outside body appointments until such a time as the Council can meet in the new municipal year to determine the new seat entitlement which will need to be calculated following the by-elections on 6 May 2021. This is subject in all cases to the ability of a Member to resign his or her office at any time, as normal, and if that scenario arose the Council would have to agree a fresh appointment to fill the vacancy when it was able to meet.

3 RISK ASSESSMENT

Legal

- 3.1 Despite the Government's guidance and position on the cessation of remote meetings from 7 May 2021, the proposals comply with the requirements of local government legislation such as the Local Government Act 1972 and the Local Government Act

2000. The legal implications of the recommendations are detailed in the main body of this report and the legal risk is considered to be low.

Financial

- 3.2 There are no financial implications associated with the recommendations and the financial risk is assessed as low.

Corporate Risk

- 3.3 The risk of not adopting these changes is that the Council would not be able to make effective and timely decisions, to protect the financial and legal position of the Council and to act in the best interests of residents and businesses in the district.

4 OTHER CONSIDERATIONS

- 4.1 In preparing this report, the relevance of the following factors has also been considered: prevention of crime and disorder, equalities, environmental, climate change, health, human rights, personnel and property.
- 4.2 The equalities implications of the proposals do not present any significant impacts in respect on any protected group. As with the introduction of remote meetings when restrictions began in March 2020, members of the public who do not have internet access will not be able to see or hear what has happened at a meeting. Social distancing measures restrict the ability to hold meetings that the public may attend in person and therefore no reasonable adjustment can be made. Reports and minutes of meetings will continue to be publicly available on the Council's website: again this will continue to be the case until public access to and attendance at buildings can be restored and people will then be able to view paper copies of documents if they wish.

5 CONTACT INFORMATION

- 5.1 James McLaughlin, Director of Corporate & Customer Services and Monitoring Officer, 01629 761281 or james.mclaughlin@derbyshiredales.gov.uk

6 BACKGROUND PAPERS

- 6.1 Letter from the Minister of State for Regional Growth and Local Government to Local Authority Leaders – Local Authority Meetings – 25 March 2021
- 6.2 Covid-19: Guidance for the safe use of council buildings – 25 March 2021

7 ATTACHMENTS

- 7.1 None