

**COUNCIL  
26 MAY 2021**

**PART 1 – PUBLIC DOCUMENT**

**TITLE OF REPORT: RESOLUTION TO EXTEND THE 6 MONTH RULE – SECTION 85  
LOCAL GOVERNMENT ACT 1972**

REPORT OF THE DEMOCRATIC SERVICES MANAGER

EXECUTIVE MEMBER: THE LEADER OF COUNCIL

COUNCIL PRIORITY: RESPOND TO CHALLENGES TO THE ENVIRONMENT

**1. EXECUTIVE SUMMARY**

- 1.1 To consider an extension of the six-month rule for Councillors unable to attend Committee meetings (for reasons related to the pandemic, including health reasons) following the cessation of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392 and the requirement for Local Authorities to hold meetings in person.

**2. RECOMMENDATIONS**

- 2.1. That Council approves an extension of the six-month rule for Councillors unable to attend Committee meetings owing to the Coronavirus, or health related reasons following the cessation of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392 and the requirement for Local Authorities to hold meetings in person. The six-month period will end on 26 November 2021.

**3. REASONS FOR RECOMMENDATIONS**

- 3.1. Section 85 of the Local Government Act 1972 states that *'if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority'*. Whilst the Local Government Association has been lobbying for this issue to be dealt with, this has so far not been addressed by central government.
- 3.2. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392 allowed Local Authorities to hold remote meetings until 7 May 2021. This has now expired and Local Authorities are required to hold meetings in person.

- 3.3. The recommendation at 2.1 is therefore required to enable Councillors to continue to serve as District Councillors whilst they feel too vulnerable to attend meetings in person and social distancing is required due to the pandemic.

#### 4. ALTERNATIVE OPTIONS CONSIDERED

- 4.1 None

#### 5. CONSULTATION WITH RELEVANT MEMBERS AND EXTERNAL ORGANISATIONS

- 5.1. This report has been brought forward following informal discussions with Group Leaders at the Response and Recovery Board and previously as an issue raised at the Political Liaison Board.

#### 6. FORWARD PLAN

- 6.1 This report does not contain a recommendation on a key Executive decision and has therefore not been referred to in the Forward Plan.

#### 7. BACKGROUND

- 7.1. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 allowed for the Council to hold Committee meetings remotely. However, the provisions in relation to remote / virtual meetings ceased on 7 May 2021. Therefore, the Council is now required to hold Council/ Committee meetings in person.
- 7.2. The Association for Democratic Services Officers (ADSO) along with Lawyers in Local Government (LLG) and Hertfordshire County Council, made an application to the High Court in relation to virtual meeting provision for local authorities. The question being asked was 'whether the 1972 Act would permit remote meetings in England when the Flexibility Regulations cease to have effect'.
- 7.3. The High Court hearing took place on 21 April 2021, with the outcome being given on 28 April 2021. The court concluded that *'the Secretary of State was correct in November 2016 and July 2019 to say that primary legislation would be required to allow local authority "meetings" under the 1972 Act to take place remotely. In our view, once the Flexibility Regulations cease to apply, **such meetings must take place at a single, specified geographical location; attending a meeting at such a location means physically going to it; and being "present" at such a meeting involves physical presence at that location.***' The Court also ruled that 'local authority meetings must be open to the public in a physical sense'.

#### 8. RELEVANT CONSIDERATIONS

- 8.1. The Council can determine whether to extend the 6 month rule. The Government has a current 'Roadmap out of lockdown' and vaccination programme in progress. The Council will be better able to reconsider this issue at its meeting on 11 November and whether potential health issues have been resolved.

- 8.2. In reaching this conclusion now and at the later date in November, it is relevant to note that informal meetings of the Council may count towards attendance as per the legal implications below.

## **9. LEGAL IMPLICATIONS**

- 9.1. Council is required to determine this matter as per Paragraph 1.2.1 of the Council's Constitution:

*'The Council is comprised of forty nine Councillors each elected for a four year period. Elections are held in three out of four years with a third of the seats contested in each year. Each Councillor is democratically accountable to the residents of their electoral ward as well as all of those who live in the District of North Hertfordshire. The overriding duty of Councillors is to the whole community, but they have a special duty to their constituents, including those that did not vote for them. Councillors who do not attend at least one Council or Committee meeting in a six-month period cease to be a Councillor, unless their absence is approved by Full Council within that period'.*

- 9.2. Section 85 (1) of the Local Government Act 1972 states that *'if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority'.*

- 9.3. Section 85 (2) of the Local Government Act 1972 provides guidance as to attendance at a meeting. *'Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body by whom for the time being any of the functions of the authority are being discharged, or who were appointed to advise the authority on any matter relating to the discharge of their functions, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed for the purposes of subsection (1) above to be attendance at a meeting of the authority'. For the purposes of clarification this will also include the Cabinet Panels.*

- 9.4. Section 85(2B) also provides –  
(a) the discharge by a member, acting alone, of any function which is the responsibility of the executive; and  
(b) in respect of a mayor and cabinet executive or leader and cabinet executive, attendance as a member at a meeting of a committee of the executive,

*shall each be deemed to be in attendance at a meeting of the executive.*

## **10. FINANCIAL IMPLICATIONS**

- 10.1. There are no financial implications arising from the report. However, should the agreement to the dispensation not be granted could result in a by-election/s and therefore the costs would be incurred by the Authority.

## **11. RISK IMPLICATIONS**

- 11.1. None contained within this report.

## **12. EQUALITIES IMPLICATIONS**

- 12.1. In line with the Public Sector Equality Duty, public bodies must, in the exercise of their functions, give due regard to the need to eliminate discrimination, harassment, victimisation, to advance equality of opportunity and foster good relations between those who share a protected characteristic and those who do not.
- 12.2. The six-month extension to a term of office provides an opportunity for those Councillors to continue in the role as District Councillor until such a time that they feel safe to attend in person meetings. By 20 November it is hoped that social distancing requirements will not be as stringent and that everyone will have been offered the vaccine. Whilst the advice to shield has ended at the time of writing, the clinically vulnerable people are urged continue to take extra steps to protect themselves. This currently includes take up of vaccination, the continuing of social distancing, minimising social and work interaction.

## **13. SOCIAL VALUE IMPLICATIONS**

- 13.1. The Social Value Act and “go local” requirements do not apply to this report.

## **14. ENVIRONMENTAL IMPLICATIONS**

- 14.1. There are no known Environmental impacts or requirements that apply to this report.

## **15. HUMAN RESOURCE IMPLICATIONS**

- 15.1 The Committee, Member and Scrutiny Services Manager monitors attendance and notifies Group Leaders when a Member has not attended a meeting for 4 consecutive months.

## **16. APPENDICES**

- 16.1 None.

## **17. CONTACT OFFICERS**

- 17.1 Melanie Stimpson, Democratic Services Officer,  
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## **18. BACKGROUND PAPERS**

- 18.1 None.