

DRAFT

Preparing for the possible return to face-to-face meetings

The regulations that currently allow local authorities to hold meetings remotely until 06 May 2021 will not be extended by the Government, and so from 7th May we will revert to provisions in the extant legislation, being the Public Bodies(Admissions to Meetings) Act 1960 and the Local Government Act 1972.

The legislation has already been extended in Wales, so Parish and Town Councils there can continue to meet and make decisions virtually.

The Association of Democratic Services Officers (ADSO), Lawyers in Local Government (LLG) and Hertfordshire County Council have lodged a legal challenge in the High Court that seeks a continuation of local authority remote meetings beyond the 06 May 2021. The date for this challenge to be heard in the courts is not known, and the outcome not guaranteed and so the Council needs to consider how it wishes to move forward.

There is also still much uncertainty around how legislation or COVID-19 risks and restrictions may change over the coming weeks and months.

NALC's position remains that all local councils should continue to meet remotely while the regulations are in force. The guidance in Annex 1 has been written to help local councils prepare for remote council meetings being unlawful from 07 May 2021.

The Council has several options available to it:

1. Continue to meet virtually.

Although, technically not permitted, this route is being suggested by some other Councils. Although the risk of legal challenge is low, decisions could be challenged in the courts as ultra-vires.

The 1960 Admission to Meetings Act and the Local Government Act 1972 are understandably silent on the matter of online meetings. In the most recent correspondence from Government they have advised that public attendance at Council meetings should continue to happen online for the time being where possible. In other words, online openness to the public is neither prohibited nor enabled by the 1960 or 1972 Acts.

There is existing case law that says that "a valid meeting normally consist of people who can both see and hear each other" (Byng v London Life Association (1989) 1 All ER 560) and back in March 2012 the government acknowledged this in their advice to charities about attendance at meetings.

<https://www.gov.uk/government/publications/charities-and-meetings-cc48/charities-and-meetings#the-definition-and-forms-of-a-meeting>

2. Temporary Scheme of Delegation to the Clerk.

This would be backed up by the meetings planned as usual. This would mean that Council meetings could go ahead virtually and instead of making decisions, would recommend decisions to the Parish Clerk, who would then enact those recommendations under the temporary delegation (draft Scheme of Delegation in Annex 2.) The scheme would remain in place until Councillors decided that a return to face-to-face meetings was safe, or that the delegation should cease for any other reason.

However there are two items for the meeting planned for 17 May 2021 that cannot be delegated to the Clerk – the election of Chair and the election of Vice-Chair.

Apart from setting of Budgets, the only other item that cannot be delegated to the Clerk is the signing off of the Annual Governance and Audit statements.

3. Hold face-to-face meetings

This would be in line with the advice from NALC, as detailed in Annex 1.

The Health Protection (Coronavirus, Restrictions) (Steps) (England) Regulations 2021 includes an exception (exception 3) that a gathering is allowed where it is necessary for certain purposes which include "for work purposes or the provision of voluntary or charitable services." Members/officers attending a meeting would fall under this. Additionally, in the letter dated 25 March 2021, from Luke Hall MP recommendations are given on how to hold safe Council meetings, which infers that it would be legal to hold them.

However, provision should be made to enable the public to view the meeting on Facebook and currently the Council does not have the technology in place to allow this to happen.

The holding of face-to-face meetings could pose a reputational risk to the Council if public perception is that these should not be held until restrictions are lifted.

The Council will also need to take into account the fears and concerns of both Councillors and Officers over returning to face-to-face meetings whilst restrictions are still in place. Particularly those who are unvaccinated, have been shielding, or have other health concerns.

4. Another option that Councillors may suggest.

Recommendation

That Full Council discusses the options and agrees a way forward.

12 April 2021

Annex 1 – NALC advice

To help local councils prepare for this possibility some advice and suggestions are below:

- Consider what council business can be conducted before May so that the council can dedicate time to those issues in remote meetings. The more discussion and decisions you can conduct in remote meetings means the council can aim to hold fewer and shorter face to face meetings after May.
- This may require more meeting time than is currently planned, so the council should look at the meeting schedule in the run-up to May and see if more time or more meetings are required. Where possible, consider holding the annual council meeting and the parish meeting while the current Regulations permit for them to be held remotely.
- Consider when the council does need to meet face to face, and whether meetings can be delayed to later in the year when the potential COVID-19 risk may be further reduced.
- The council might consider holding a remote meeting as late as possible in April so that councillors who are unable to attend face-to-face meetings will have as much time as possible before disqualification by virtue of s.85 of the Local Government Act 1972 becomes an issue.
- It may help the council's business continuity to implement (or review) a scheme of delegation. This would allow the clerk to make certain decisions for the council, which would be especially important if the council were unable to hold meetings due to COVID-19 risks. In reviewing/adopting a scheme of delegation the council should ensure there is clarity around which decisions are delegated and which are not, for how long the scheme of delegation is in place, and when the scheme of the delegation will end or be reviewed.

From May 2021, as face-to-face council meetings resume there will still be the risk to attendees of COVID-19 exposure. Councils should conduct a risk assessment in advance of a face to face meeting which should give consideration to what the council can do to reduce risk to councillors, staff and public including:

- Providing hand sanitiser to those entering the meeting room and making sure hand sanitiser is readily available in the room itself
- Staggering arrival and exit times for staff, councillors and members of the public
- Putting a one way system in place (additional security staff will be needed)
- Placing seating at least 2-metres apart
- Ensuring everyone wears face masks
- Holding paperless meetings
- The sharing of papers should be discouraged and people should be asked to take the papers etc with them at the end of the meeting to minimise how many people handle them
- Arranging seating so people are not facing each other directly
- Choosing a venue with good ventilation, including opening windows and doors where possible.
- Choosing a large enough venue to allow distancing – this may mean choosing a different venue to what the council used before e.g. Main hall of the Village Hall.
- The venue owner/operator will need to identify the venue's maximum capacity in their risk assessment, taking into account the need for social distancing. Consider how the council will ensure this capacity is not exceeded and how it will manage the situation if more people wish to attend than capacity allows. For example, could meetings be live-streamed or could members of the public submit questions via email?

- If the venue has an NHS QR code to support test and trace then all attendees should register using that app, for those without access to the app they should register attendance in line with the venue's test and trace procedure. NB all venues in hospitality, the tourism and leisure industry, close contact services, community centres and village halls must have a **test and trace procedure**
- Venues must conform with the government guidance for **multi-purpose community facilities** and for **council buildings**. If the venue is run by the council then the council must take responsibility for this, otherwise, the council can ask the venue to provide confirmation that they do conform to this guidance
- The council must understand and ensure it is acting in compliance with the latest government **safer workplaces guidance**

The Clerk to carry out a full risk assessment if and when needed, the above is to demonstrate the complexities of holding a face-to-face meeting to Councillors and is not intended to be discussed in detail at this point.

- It would be advisable to inform the clerk as soon as possible that the council will need to prepare to return to face to face meetings from May onwards. This will allow them to make the necessary preparations as described above, and also to allow time to alleviate any concerns they may have related to attending physical meetings again.
- Councils should consult with staff (ask for and consider their views to try and reach an agreement) about returning to work as part of their preparations for face to face meetings.
- The council must make the workplace (including council meetings) as safe as possible for staff, this includes undertaking a risk assessment, taking reasonable steps to reduce risks identified in the risk assessment, and ensure it is acting in compliance with the latest Government **safer workplaces guidance**
- ACAS have produced useful **guidance for employers and employees** related to COVID-19, including advice on how to support staff to **return to the workplace** and how to manage situations where staff may be worried or not wish to return.

Government advice is available here: <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-council-buildings>

Temporary Scheme of Delegation

1. Section 101 of the Local Government Act 1972 provides:
 - That a Council may delegate its powers (except those incapable of delegation) to a committee or an officer.
 - A Committee may delegate its powers to an officer.
2. Any delegation to a Committee or the Proper Officer shall be exercised in compliance with the Council's Standing Orders, any other policies or conditions imposed by the Council and within the law.
3. The Proper Officer may nominate another named Officer to carry out any powers and duties, which have been, delegated to that Officer.
5. In an emergency the Proper Officer is empowered to carry out any function of the Council
6. Where officers are contemplating any action under delegated powers, which is likely to have a significant impact in a particular area, they should also consult the Members, and must ensure that they obtain appropriate legal, financial and other specialist advice before action is taken.

Delegation to The Proper Officer

7. As a temporary measure, to allow for effective decision making whilst Covid-19 restrictions and considerations are in place, the Proper Officer may be empowered to take any and all decisions recommend to them by the relevant Committee or Full Council
8. This empowerment does not affect the delegations already in place via Standing Orders or Financial regulations.
9. The Proper Officer may not take additional decisions that would normally be taken by a Committee or Full Council unless that Committee or Full Council has met in a meeting suitably convened under the requirements of the Local Government Act 1972, and made available to the public to view (where not covered by confidentiality) and expressly agreed for that decision to be enacted via this temporary delegation.

Full Council matters

10. The following items are reserved for Full Council decision only and cannot be delegated to an Officer.
 - To appoint the Chairman and Vice-Chairman in May each year
 - To sign off the Governance Statement by 30 June each year
 - To set the Precept
 - To appoint the Parish Clerk
 - To make byelaws
 - To borrow money
 - To consider any matter required by law to be considered by full Council