

Council Report

Ward(s) affected: All

Report of Managing Director

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Non-attendance at meetings: Proposed dispensation from the requirements of Section 85 Local Government Act 1972

Executive Summary

Under the provisions of Section 85(1) of the Local Government Act 1972, if a councillor fails throughout a period of six consecutive months from the date of their last attendance to attend any meeting of the authority, they 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.

Due to the coronavirus outbreak, the Council is requested to agree that any councillor unable to attend a meeting for a period greater than six months for Covid 19 related reasons, receives a dispensation from the requirements of section 85 until 9 December 2020 (the day after the date of the scheduled full Council meeting in December). The Council could, if necessary, review the position at its meeting on 8 December.

Recommendation to Council

That the Council waives the requirements of Section 85(1) of the Local Government Act 1972 and agrees that any councillor unable to attend a meeting for a period greater than six months for Covid 19 related reasons, receives a dispensation from the requirements of section 85 until 9 December 2020.

Reason for Recommendation:

To avoid triggering Councillor disqualifications due to non-attendance at meetings for Covid 19 related reasons.

Is the report (or part of it) exempt from publication?

No

1. Purpose of Report

- 1.1 To enable Council to waive the requirements of Section 85 of the Local Government Act 1972 by approving a reason for any councillor's failure to attend meetings for a consecutive period of six months if that reason was due to coronavirus outbreak, thus preventing the disqualification of councillors unable to attend meetings, including meetings held remotely, during the period of the current emergency.

2. Strategic Priorities

- 2.1 Consideration of this issue is being brought to Council at this time in the interest of good governance and transparency, in addition to supporting those who are vulnerable in terms of being susceptible to coronavirus.

3. Background

- 3.1 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/her last attendance to attend any meeting of the authority¹, he/she 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.
- 3.2 Given the coronavirus outbreak, it is requested that Council agrees that any councillor unable to attend a meeting for a period greater than six months for Covid 19 related reasons, receives a dispensation from the requirements of section 85 until 9 December 2020.

4. Key Risks

- 4.1 While "attendance" by a councillor for the purpose of satisfying the requirements of Section 85 is fulfilled through remote participation at a virtual meeting², waiving the requirements of Section 85 now and approving a comprehensive reason for any non-attendance if that reason is Covid 19 related, will avoid councillors feeling compelled to attend virtual meetings to avoid disqualification in circumstances where they, or close family members, are suffering from the effects of Covid 19.
- 4.2 If any Councillor loses office through failure to attend for the six-month period, the disqualification cannot be overcome by subsequently resuming attendance nor can retrospective approval of the Council be sought for an extension in time.
- 4.3 Furthermore, it is possible that the opportunity for Council to determine this matter may not arise again before individual Councillors are disqualified through the six-month attendance rule.

¹ This includes attendance at meetings of the Executive, a committee or a sub-committee, or any meeting at which the functions of the council are discharged, any meeting which advises the council on any matter relating to the discharge of those functions, or any meeting as a representative of the Council.

² now permitted by *The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020*

5. Financial Implications

- 5.1 No direct financial implications apply at this time. Normally, the Council would incur the cost of holding a by-election if a councillor becomes disqualified under the Local Government Act 1972, although recently introduced Regulations³ now provide that all local government by-elections are postponed to 6 May 2021.

6. Legal Implications

- 6.1 Remote participation at a virtual meeting will satisfy the attendance requirements of Section 85 of the Local Government Act 1972.

7. Human Resources Implications

- 7.1 No human resources implications apply.

8. Equality and Diversity Implications

- 8.1 The Council has a statutory duty under section 149 of the Equality Act 2010 which provides that a public authority must, in exercise of its functions, have due regard to the need to (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under the Act (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The relevant protected characteristics are: age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex, sexual orientation.
- 8.2 This duty has been considered in the context of this report and it has been concluded that there are no equality and diversity implications arising directly from this report.

9. Climate Change/Sustainability Implications

- 9.1 No climate change/sustainability implications arise from this report.

10. Consultation

- 10.1 Political group leaders were consulted regarding the proposal in this report, all of whom supported the principle.

11. Summary of Options

- 11.1 The recommendation and its rationale are presented above.
- 11.2 The alternative is for Council not to waive the requirements of the 1972 Local Government Act to approve an extension for all Councillors. In such

³ *The Local Government and Police and Crime Commissioner (Coronavirus) (Postponement of Elections and Referendums) (England and Wales) Regulations 2020*

circumstances if any Councillor failed to attend a meeting for a period of six consecutive months and the Council could not before the end of that period meet to approve a reason for that failure, a casual vacancy would arise.

12. Conclusion

- 12.1 This report requests Council waives the requirements of Section 85(1) of the Local Government Act 1972 and agrees that any councillor unable to attend a meeting for a period greater than six months for Covid 19 related reasons, receives a dispensation from the requirements of section 85 until 9 December 2020. If necessary, the Council can review this matter at its meeting scheduled for 8 December and, if necessary extend the dispensation for a further period.
- 12.2 As discussed above, whereas attendance through remote participation at a virtual meeting would satisfy the requirements of Section 85, waiving the requirement locally now and approving a comprehensive reason for any non-attendance if that reason is Covid 19 related is fair and sensible.

13. Background Papers

None

14. Appendices

None