



Association of
Democratic Services
Officers

This press release has been prepared by Lawyers in Local Government (LLG) and the Association of Democratic Services Officers (ADSO) to address the question of local authority decision making and the democratic process in light of the Coronavirus Pandemic. It does not constitute legal advice and should not be relied upon in that capacity. Independent legal advice should always be sought.

LLG and ADSO have received several enquires as to the position with local authority decision making and the democratic process in light of the Coronavirus. This has included the suggestion that both associations should lobby for a change of legislation to allow remote meetings if the situation deteriorates to the point that all meetings must be cancelled.

Questions have been asked as to how local government should react to a requirement for curtailment of public gatherings, including meetings of councils. This may be the case in response to a Government direction or the decision of local authorities (or their members) based on local circumstance.

Local authorities are required to hold meetings to make decisions. The Local Government Act 1972 requires members to be physically present in order for a meeting to take place. The exception to that rule is in Wales, where remote attendance is allowed under the circumstances provided by section 4 of the Local Government (Wales) Measure 2011 provided there is a quorum of 30% physically present.

In terms of day to day executive authority, those with executive leaders or elected mayors can rely on single member decision making without the need for Cabinet meetings if their Constitutions allow. Even where those decisions must be made in the presence of an officer, (which is a sensible approach taken by many), this can be arranged in a different way or authorities can change their schemes of delegation now to alter those rules to accommodate remote presence in exceptional circumstances.

For other decisions or those with a committee system, almost all delegation schemes include a reserve power to their Head of Paid Services to undertake responsibility for delegated functions of the authority in exceptional circumstances, albeit that differing authorities can sometimes insert various additional conditions. Given that these times are indeed exceptional (and a declared pandemic should meet the test for this), meetings might be cancelled and replaced with the alternatives this provides.

The decision making might take a number of forms; the most inclusive is that a decision, that would otherwise have been on the agenda for a committee, is now



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made by an officer, but that the officer is advised in their decision-making by the views of members of the committee, which are then accessed remotely at an agreed time by way of Microsoft Teams, Skype, etc. The officer cannot in law fetter (constrain) their discretion entirely, but that does not mean that they cannot give almost overwhelming weight to a vote of committee members responding remotely to a report and officers' advice, or even after seeing videoed submissions in lieu of public access.

Local authorities are advised to review their schemes of delegation to ensure that provision is made for other officers to take urgent decisions in the event of the Chief Executive/Senior Management Team being indisposed due to the virus.

This then leaves those meetings which must be held. Here authorities can only rely on the quorum and discussion with the political groups. If they agree, then the meeting could go ahead on a quorum basis, made up proportionately from each political group. This would allow, for example, a full council meeting to quickly agree core business only and be made up of a quarter of their number, each sitting as spaced apart as the chamber allows.

LLG and ADSO have written to the Ministry to echo the LGA's recent request that the government looks again at the accessibility of council meetings by use of remote means. It is likely however that any change which might be made will take too long to implement for use in the current climate and is likely to be bottom of the list of the government's priorities in terms of the emergency legislation it wants to put through. Nevertheless, LLG and ADSO will continue to keep you updated on any developments.

Regards

Phillip Horsfield
LLG President

John Austin
ADSO Chair

For further information on local government legal and democratic impacts from Coronavirus please visit

<https://www.lawyersinlocalgovernment.org.uk/saas/coronavirus-legal-issues-and-responses> and/or <https://www.adso.co.uk/members-forum/>

See below for Relevant Legislation

With thanks to Philip McCourt, Wirral Council and Alison McKane, LB Lambeth



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Relevant Legislation

The relevant legislation regarding access to local government body meetings and information is contained within Section 40 of the Local Audit and Accountability Act 2014. The relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2014/2/section/40>

The detailed provisions on how any person can report on the meetings of a local government body are in The Openness of Local Government Bodies Regulations 2014 which can be found at:

<http://www.legislation.gov.uk/uksi/2014/2095/contents/made>

The legislation relating to access to information regarding decisions made by council executives, and their committees/sub-committees and joint committees is Part 1A of the Local Government Act 2000 – see sections 9G and 9GA. It was inserted as a result of amendments made by the Localism Act 2011 and the relevant provisions are available at the following link:

<http://www.legislation.gov.uk/ukpga/2011/20/schedule/2/part/1>

The detailed provisions on the rights to meeting and information of an executive are in the secondary legislation made under the 2000 Act, that is the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 which can be found at:

<http://www.legislation.gov.uk/uksi/2012/2089/contents/made>

The legislation relating to access to meetings and documents of a council and other local government bodies can be found in Part VA of the Local Government Act 1972, available at the following link: <http://www.legislation.gov.uk/ukpga/1972/70/part/VA>

The legislation relating to access to meetings of a parish or town council can be found at section 1 the Public Bodies (Admission to Meetings) Act 1960, available at the following link: <http://www.legislation.gov.uk/ukpga/Eliz2/8-9/67/section/3>

The legislation relation to remote attendance of meetings in Wales can be found at the following link: <http://www.legislation.gov.uk/mwa/2011/4/contents>