

# ARUN DISTRICT COUNCIL

## REPORT TO AND DECISION OF AN EXTRAORDINARY MEETING OF ARUN DISTRICT COUNCIL ON 12 MAY 2021

**SUBJECT:** Council Meetings – Proposals for Contingency Arrangements During the Covid-19 Pandemic Restrictions

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**DATE:** 30 April 2021

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### **EXECUTIVE SUMMARY:**

On 7 May 2020, Government Regulations came into force to enable Councils to hold virtual meetings for one year, providing certain conditions were met in relation to ensuring openness and public access. This was an exception to what was the accepted legal position that Council meetings are to take place by attendance in a physical space. There are no current plans by the Government to renew the Regulations from 7 May 2021. Venues to hold Council meetings in a COVID secure environment are very limited. This report provides options for the Council to consider for the period up to 21 June 2021, or such later date when the Government confirms social distancing requirements will be completely relaxed.

### **RECOMMENDATIONS:**

It is recommended to Full Council to:

- (1) In accordance with his Health and Safety responsibilities the Chief Executive recommends that the Council continues with virtual meetings (for all of the Council's meetings) from 7 May through to such date that the Government confirms social distancing will be completely relaxed (current indications are that this is 21 June 2021) to ensure the safety of Councillors, staff and the public, and
- (2) Section 5 Part 5 of the Constitution: The Virtual Meeting Procedure Rules are amended at Paragraph 2.1, to provide for those Rules to prevail until further notice.

## 1. BACKGROUND

### Background

- 1.1 The long-accepted interpretation of local government law in relation to meetings is that council meetings are to take place by attendance in a physical space by Councillors and provision of reasonable space for the public.
- 1.2 In May 2020, the Government introduced the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 pursuant to Section 78 of the Coronavirus Act 2020, enabling authorities to hold formal meetings virtually provided certain requirements were met to ensure openness and public access. The rules were aimed at suspending the legal requirements for local authority meetings to be arranged with the Councillors meeting together in a 'place' to which the public have access. The Regulations permitting virtual meetings are in force up to and including 6 May 2021. There is no current plan by Government for their renewal and so a contingency plan is required.
- 1.3 Throughout the lock down period, restrictions have been imposed on businesses, including local authorities, in relation to attendance at places of work when that work can be carried out remotely. Social distancing measures are applied to workplaces when attendance is unavoidable. Limits have been placed on the number of persons who may be present together indoors.
- 1.4 The Health and Safety at Work Act 1974 places duties on employers and those in control of business premises. Section 4 places a duty on the Council to ensure that reasonably practicable measures are taken to ensure that premises are safe and without risks to health. Section 2 places a duty on an employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees. As set out in the "Health & Safety Policy: Organisation & Responsibilities" adopted by Full Council on 13 March 2019 the Chief Executive has final and overall responsibility for health and safety matters within the Organisation. Government has issued guidance on the steps which it considers reasonable in order to reduce the risk of harm from transmission of the covid-19 virus. It is not considered reasonably practicable to comply with these measures within the period ending 21 June.
- 1.5 If the regulations permitting virtual meetings (introduced the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020) are not extended or replaced with similar provisions then the requirements of the Local Government Act 1972 will apply. This has previously been interpreted as requiring Council business by Elected Members to take place in physical space where the Members are together, and which press and public may attend. On 21 April 2021, the High Court was asked to make a court declaration that virtual meetings can proceed after 6 May 2021. The High Court concluded that primary legislation would be required to allow local authority "meetings" under the 1972 Act to take place remotely. The Court went on to say that *"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".*

- 1.6 The Council now has to resolve the conflict between the requirements Local Government Act 1972, for physical meetings, and the requirements of Health and Safety legislation and organisational policy, in relation to attendance at places of work when that work can be carried out remotely.
- 1.7 There are good grounds to believe that Licensing Committees, dealing with Licensing the Act 2003 and Gaming Act 2005 matters, are not covered by the requirements of the Local Government Act 1972 but this will be clarified at the Full Council meeting.

### **Proposals**

- 1.8 It is proposed that Arun District Council considers the following options for Full Council meetings and any Committee meetings which must transact business, and which cannot be arranged as a Covid-safe physical meeting in compliance with the Local Government Act 1972 and the social distancing Regulations.
- 1.9 **OPTION 1:** To continue with remote/virtual meetings until 21 June 2021. Two professional organisations (namely Lawyers in Local Government and the Association of Democratic Services Officers) jointly commenced unsuccessful proceedings seeking a declaration that remote meetings are permitted under the terms of the 1972 Act itself, with or without the temporary COVID Regulations. In its pre-action response, MHCLG said that it agreed the 1972 Act can be so interpreted and did not oppose granting the declaration. Although the action was unsuccessful it is not clear if there is to be an appeal.
- 1.10 However, this stance by the MHCLG reduces some of the risk of challenge to Council who continue with virtual meetings.
- 1.11 The Council has responsibilities under health and safety legislation which are engaged by the pandemic. This is supported by government guidance.

[COVID-19: Guidance for the safe use of council buildings - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/covid-19-guidance-for-the-safe-use-of-council-buildings) It stresses at the outset:

*"In the event of any conflict between any applicable legislation (including the health and safety legislation) and this guidance, the applicable legislation shall prevail."*

The Council's duties towards employees under health and safety legislation plainly trump the guidance. The Council does not know which of its staff have been vaccinated – nor does it have that information about Councillors or members of the public who may attend a meeting if held face-to-face. While temperature checks on entry can be performed and masks could be worn except when speaking, these would not provide any guarantee that infected people would not be present and that they could not infect staff. There are reasonable steps that the Council can easily take to promote the health and safety of staff, by continuing with the remote meeting technology that it has successfully used since April 2020.

1.12 The guidance states that

*“Where elected members, officers and others attend physical meetings, you must maintain social distancing wherever possible.*

*“Where the social distancing guidelines cannot be followed in full in relation to a particular meeting, local authorities should consider whether that meeting can be redesigned to maintain a 2m distance or 1m with risk mitigations where 2m is not viable.”*

1.13 A Full Council meeting typically sees about 70 people present in the Chamber: 54 Councillors, plus usually at least 5 members of staff and a variable but unknown number of members of the public (typically 10-12). The Council has assessed the capacity of the Chamber with 2m social distancing as a maximum 15 persons. It is not possible to guarantee 1 metre distances for all participants.

1.14 The impractical mitigations suggested by the Government include:

“keeping the meeting time as short as possible”

“using back-to-back or side-to-side working (rather than face-to-face) whenever possible”

1.15 The guidance states that:

“Ultimately it is for local authorities to carry out their own risk assessments and follow the working safely guidance to ensure physical meetings take place safely, but the government will work with sector representative bodies to ensure that local authorities understand the guidance and are aware of the full range of options available to them.

“If deemed necessary, these options could include:

Use of your existing powers to delegate decision making to key individuals such as the Head of Paid Service to minimise the number of meetings you need to hold. Relying on single-member decision making where your constitution allows.

“When considering whether either of these options may be necessary, you should always consider the democratic implications of your decision to ensure that local residents are appropriately represented and that all local authority decisions have appropriate scrutiny. Additionally, you should note that certain decisions cannot be delegated and require a decision by full council or a statutory committee; for example, confirming the appointment of a Chief Executive and certain licensing decisions.”

1.16 The Chief Executive is responsible for health and safety in the Council and has carried out a risk assessment with which the Group Leaders are agreed.

1.17 The Chief Executive in consultation with Group leaders have also considered and ruled out the option of hiring a much larger venue, because they are simply not available with the required technology.

1.18 Finally, the guidance includes the following confused paragraph:

“Continuing to provide remote access to the public Local authorities have legal obligations to ensure that members of the public have access to most of their meetings. For physical meetings, the government would actively encourage local authorities to continue to provide remote access until at least 21 June, at which point it is anticipated that all restrictions on indoor gatherings will have been lifted in line with the Roadmap. However, it is for individual local authorities to satisfy themselves that they have met the requirements for public access.”

1.19 The second sentence encourages that the public’s right to attend formal meetings of the Council should be **delivered through remote means until at least 21 June**. The provisions on council meetings in the Public Bodies (Admissions to Public Bodies) Act 1960 seem clear that this ordinarily means presence within a meeting alongside councillors. Section 1(4A), which was inserted by regulations in 2014, makes sense only if someone is physically present within the same place: “Subsection (4)(d) does not require a relevant local government body to permit oral reporting or oral commentary on a meeting as it takes place if the person reporting or providing the commentary is present at the meeting.” If the Government considers remote attendance by the public to be appropriate until at least 21 June, then there is every reason to believe that the same conclusion should also be reached in respect of attendance by councillors and staff.

**1.19 LEGAL VIEW;**

**The advice at present is that there will be a high risk of challenge to Council decisions if the Council chooses to hold remote meetings contrary to the Courts interpretation of the legislation. Controversial matters are more likely to be challenged on this basis and therefore consideration on how to proceed with those individual matters needs to be carefully considered on a case by case basis. For example, it may be that those types of matters are deferred, or where possible, the virtual Committee delegates the issue of the decision to an Officer.**

**Council Policy on health and safety is attached as Appendices 1 and 2. These place ultimate responsibility on the Chief Executive for Health and Safety. The Organisational Responsibilities section states “No Director, Manager, or employee of Arun District Council may undertake or authorise any activity which places employees, or others, in danger, or is in breach of legal requirements with respect to health and safety”. Thus, the Chief Executive has to take great care if he summons meetings which places “employees or others” in danger.**

1.20 **OPTION 2:** The proposal is that a quorum of Members be nominated to attend physical meetings in the Council Chamber and that space be made available for press and public attendance up to a reasonable limit, that the Members to attend be nominated by Political Group Leaders in accordance with the proportionality rules. Group Leaders will be asked to nominate Members from their Group to make up the quorum and additional nominees to allow for some substitutes and so as to ensure the quorum is met in the event of any Members being unable to attend.

This will include meetings which take decisions, or which require a vote by Members. For meetings which do not require a vote for a decision, or which can transact business in an advisory way, it will remain possible to use virtual means. Between 7 May 2021 and 21 June 2021 the following meetings are scheduled: Full Council (12 May), Cabinet (17 May), Special Development Control Committee (18 May), Annual Council (19 May), Planning Committee (26 May), Environment and Neighbourhood Services (27 May), Planning Policy (1 June) Residential and Wellbeing Services (3 June), Economic (8 June), Corporate Support (10 June), Corporate Policy and Performance (17 June) and Licensing Committee (18 June).

1.21 Those Officers essential for the transaction of business, including the giving of advice at any meetings, would be asked to attend the physical meeting, but there is a high possibility, especially as younger members of staff have not been vaccinated, that they will be unwilling to do so because the physical environment is not safe to do so, and the Government says they should work from home until 21 June 2021. A mixture of Members in person, and Officers virtually, is, of course possible, but very complicated and difficult to manage. The question also arises about whether the public should be invited to the physical meeting, in view of the health and safety concerns around the Coronavirus. Members may also be unwilling to attend the Chamber, particularly if, they too, have not been vaccinated. The Council could require attendees to complete lateral flow tests on the day of the meeting, with a negative result, before physical attendance.

1.21 It is possible that most meetings could be accommodated in the Council Chamber whilst observing physical distancing measures, but areas such as toilets, corridors, stairs and lifts will be much more difficult to manage with higher numbers of people in the Civic Offices.

**LEGAL VIEW:**

1.22 **In accordance with the Local Government Act 1972 all Members have to be invited to attend the relevant meetings at a physical place. The quorum for the Council meetings is one quarter, and for Committee meetings is one third of the membership of the relevant meeting. The allocation to each political group would be determined by the Interim Monitoring Officer by reference to the statutory provisions. It is understood that the Group Leaders would then nominate Members to attend the meetings.**

1.23 **The risk of challenge where a meeting is summoned to meet physically but numbers are restricted by reference to a quorum will vary according to the meeting and the business being conducted at that meeting, the more controversial the item the higher the risk of challenge.**

**1.24 On a practical level, all Members and the public would be invited to attend the meetings. When the quorum is reached at any meeting, further attendance could be prevented in accordance with Health and Safety legislation and Council policy. However, this may not mean the quorate was proportional. The risk of this option could therefore be high and open to challenge, if Members are prevented from attending. Health and safety would be an unsafe reason for preventing a Member from attending a meeting to which they have been invited and are entitled to attend. The argument would be that the meeting was not properly convened in the first place if it was being held in a venue where all Members could not be accommodated safely. The public have no absolute right to physical attendance in the actual Chamber where the meeting is taking place and can be accommodated in an overflow, where available.**

**1.25 It would be expected that Full Council would approve this as a reason for a Member being unable to attend any meeting, under Section 85 of the Local Government Act 1972.**

**1.26 OPTION 3:** an alternative would be for meetings to be postponed until they become manageable under revised Covid restrictions or for all business to be carried out by officers using delegated powers or urgent action procedures. Those would be in full consultation with relevant Members, but no voting or decision making by Members other than individual Cabinet Members would be possible, and only up until 20 May, when the new Committee from of governance starts (the first meeting being the Planning Committee on 26 May 2021). Again, Group Leaders would be consulted in accordance with the Constitution.

**LEGAL VIEW:**

**1.27 The Full Council meeting on 12 May will be determining the new Constitution and on 19 May 2021, the Annual Council Meeting will be determining the Chairmanship and Vice-chairmanship of Committees for the new Committee system. Both of these need to be productive to ensure the Continuation of Council business. This is unlikely to be a viable option in view of the business that is being conducted at the Council meetings. The current delegations to officers are based on the current constitution and cannot be rolled over.**

**Recommendation**

1.28 In accordance with his Health and Safety responsibilities the Chief Executive recommends that the Council continues with virtual meetings (for all of the Council's meetings) from 7 May through to such date that the Government confirms social distancing will be completely relaxed (current indication is 21 June 2021) to ensure the safety of Councillors, staff and the public, and

1.29 Section 5 Part 5 of the Constitution: The Virtual Meeting Procedure Rules are amended at paragraph 2.1, to provide for those Rules to prevail until further notice.

**2. PROPOSAL(S):**

It is recommended to Full Council to:

Continue with virtual meetings (for all of the Council's meetings) from 7 May through to such date that the Government confirms social distancing will be completely relaxed (current indication is 21 June 2021) to ensure the safety of Councillors, staff and the public and provided the Virtual Meeting Procedure Rules prevail.

**3. OPTIONS:**

1. To continue with virtual meetings until it is safe to hold meetings in Council buildings.
2. To have politically balanced, reduced Member meetings, with Officers virtually connected.
3. To support the CEO and other senior Officers to make decisions, as delegated through the Constitution. .

**4. CONSULTATION:**

Has consultation been undertaken with:	YES	NO
Relevant Town/Parish Council		X
Relevant District Ward Councillors		X
Other groups/persons (please specify) Group Leaders	X	

<b>5. ARE THERE ANY IMPLICATIONS IN RELATION TO THE FOLLOWING COUNCIL POLICIES: (Explain in more detail at 6 below)</b>	YES	NO
Financial	X	
Legal	X	
Human Rights/Equality Impact Assessment	X	
Community Safety including Section 17 of Crime & Disorder Act	X	
Sustainability		X
Asset Management/Property/Land		X
Technology	X	
Safeguarding		X
Other (please explain)		

**6. IMPLICATIONS:**

The Council needs to hold public meetings in a safe environment. Holding these meetings IN public will not guarantee the safety of Members, Officers or the public, whilst continuing to hold virtual meetings, until the anticipated easing of restrictions (on 21 June 2021), will. This approach is consistent with the Council's Health and Safety Policy



**7. REASON FOR THE DECISION:**

To enable Council decisions to be made in a democratic and public way, but in a Covid safe environment.

**8. BACKGROUND PAPERS:**

Correspondence: <https://www.gov.uk/government/publications/covid-19-letter-to-council-leaders-on-the-future-of-remote-meetings>

Announcement:

<https://www.gov.uk/government/news/new-guidance-on-safe-use-of-council-offices>

Government Guidance

[COVID-19: Guidance for the safe use of council buildings - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/covid-19-guidance-for-the-safe-use-of-council-buildings)

[Offices and contact centres - Working safely during coronavirus \(COVID-19\) - Guidance - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/covid-19-guidance-for-working-safely-during-coronavirus)

[Coronavirus \(COVID-19\): guidance for local government - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/guidance/covid-19-guidance-for-local-government)