

Bath & North East Somerset Council

MEETING	Council	
MEETING DATE:	4 May 2021	
TITLE:	Contingency Options for Decision Making Post 7 May 2021	
WARD:	All	
AN OPEN PUBLIC ITEM		
List of attachments to this report: Appendix A Recommended contingency arrangements for holding Council meetings		

1 THE ISSUE

1.1 A report to consider arrangements for decision making post 7 May 2021.

2 RECOMMENDATION

The Council is asked to;

2.1 Subject to a High Court Declaration as to lawfulness, hold all meetings of the Council, Cabinet and its Committees virtually after 6 May 2021 until further review by Council.

2.2 Authorise the extension of use of the Councils Virtual Procedure Meetings Rules (VPMR) to all virtual meetings held after the 6 May 2021 until further review by Council.

2.3 Contingent upon any high court declaration that virtual meetings are not formal meetings of councillors determine to hold Council, Cabinet & all Committee meetings (including scrutiny) in accordance with Appendix A.

2.4 Authorise the Monitoring Officer to make all necessary amendments to the Constitution to effect the arrangements to hold all meetings either virtually or otherwise in accordance with any High Court declaration or Appendix A.

- 2.5 To agree that these measures will automatically terminate on the coming into force of any regulations which permit remote attendance at meetings of the Council.
- 2.6 To agree that all members unable to attend a council meeting for a period greater than six months receive a dispensation further to section 85(1) of the Local Government Act 1972 to 7 November 2021.

3 THE REPORT

- 3.1 On the 7 May 2021 the power for the Councils to hold meetings virtually in accordance with the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (the 'Regulations') will end. The Councils Virtual Procedure Meetings Rules cease to operate following the repeal of the Regulations unless extended by Council.
- 3.2 Whilst it is hoped that the ability of the Council to hold remote meetings will be clarified by the High Court before the 7 May 2021, this report details possible arrangements to enable Council decision making to continue as far as possible throughout any period when remote meetings may not constitute formal meetings of councillors.
- 3.3 The matter is due to be heard by the High Court on the 21 April 2021. It is hoped that judgement will be issued swiftly following the conclusion of proceedings, as the court will be fully aware of the importance of this decision to local government decision making. The LLG & ADSO are confident that there are strong legal arguments to enable the court to conclude that virtual meetings can constitute lawful meetings under existing local government legislation. Nevertheless, councils are advised to make contingency arrangements.
- 3.4 This report details in Appendix A the recommended options to enable Council Cabinet and Committees to operate as effectively as possible whilst minimising risk of transmission of the Covid Virus and in compliance with social distancing restrictions and the Council's Health & Safety duties to its councillors and staff acting upon the advice of the Director of Public Health.

4 STATUTORY CONSIDERATIONS

- 4.1 Following the repeal of the Regulations remote meetings may not constitute formal meetings of councillors unless the High Court declaration determines that they are. In the event the high court declaration does not determine that remote meetings are formal meetings of councillors it is necessary to make contingency arrangements to hold formal meetings of councillors in person in order to enable Council decision making to continue.
- 4.2 Section 85(1) of the Local Government Act 1972 states that all councillors must attend a committee meeting of the council within a six month period unless the failure was due to a reason approved by the local authority.
- 4.3 Council is asked to resolve that special dispensation is granted to all members for any non-attendance at meetings of the Council until 7 November 2021. The dispensation will be automatically removed on the coming into force of regulations which permit remote attendance at Council meetings.

5 RESOURCE IMPLICATIONS (FINANCE, PROPERTY, PEOPLE)

5.1 Arrangements to be implemented in accordance with the advice of the Director of Public Health and associated costs are to be funded from the government's Contain Outbreak Management Fund Grant.

6 RISK MANAGEMENT

6.1 A risk assessment related to the issue and recommendations has been undertaken, in compliance with the Council's decision making risk management guidance and Covid risk assessments.

7 EQUALITIES

7.1 None

8 CLIMATE CHANGE

8.1 None

9 OTHER OPTIONS CONSIDERED

9.1 Failure to implement contingency arrangements to ensure effective decision making will result in the Chief Executive exercising emergency decision making powers which is likely to be viewed as undermining democratic accountability.

10 CONSULTATION

10.1 Group Leaders, Chief executive, S.151 Officer & Monitoring Officer

Contact person	Michael Hewitt, Interim Monitoring Officer Michael_Hewitt@bathnes.gov.uk
Background papers	None
Please contact the report author if you need to access this report in an alternative format	

Executive (Cabinet) decision making

The Leader has authority to make any executive decision and may delegate to Cabinet, individual Cabinet Members or officers as the Leader considers necessary for the proper management of council business.

While the Leader is able to amend the delegations within the Leader's Scheme of Delegation, the Council's Financial Regulations and Procurement Standing Orders provide that some decisions need to be made collectively by Cabinet.

To provide for ongoing decision making it is proposed that Council agrees to amend the Financial Regulations and other rules so that any reference to Cabinet requires either a formal Cabinet meeting* or the Leader or nominated Cabinet Member individually making a decision.

Any individual decision will be made as a formal decision of a Cabinet Member with full public notice and the right to scrutinise. All key executive decisions (unless under General exception or Special urgency rules (Constitution Part 4B Rules 15 & 16 respectively)) will be subject to call in procedures.

Non-executive (Council & Committees, sub committees) decision making

Council has responsibility for non-executive decision making and has delegated some functions to committees and officers e.g. Planning and Licensing Committees

To the extent that delegations of functions do not exist the political groups on the council would come together, through Group Leaders, (virtually) to agree a "pairing off" system to distribute any decision-making requirements amongst members (leaving out the most vulnerable elderly with medical conditions), whilst maintaining political balance on Council/Committees and the minimum quorum level.

Those members who do agree to attend could then be spread out in the room to ensure the required social distancing level and to ensure the health and safety of Councillors and staff is maintained.

The Council /Committees* will hold informal meetings virtually on the day prior to the physical meeting taking place. The indicative meeting will be held in accordance with the VPMR to permit public participation in meetings. Following the informal meeting a physical meeting of that body held with the minimum number of members present to form a quorum while also maintaining political proportionality requirements.

Subject to technical feasibility the public will be able to remotely access both the indicative and physical meetings in order to minimise the need for attendance. However, members of the public have the right to attend local authority meetings unless the council or committee in question resolves that it will exclude members of the public. A local authority can only exclude members of the public for one of a number of specific reasons, set out in statute: there is no general power for councillors to choose to sit in private.

* Cabinet & smaller committees may be able to meet physically if all members agree, health & safety and room considerations permit.

Quorum & Proportionality Requirements

Council

15 plus 4 reserves (one from each group) in the event of no shows.

Proportionality:

9 LD

3 Con

2 Ind

1 Lab

Committees

3 plus 1 reserve in the event of no show

Room capacities** based on 2 metre social distances	
MEETING ROOM	CAPACITY
Council Chamber	14
Banqueting room	18
Brunswick room	10
Kaposvar room	7
Aix room	7 (without 2 metre perimeter)

Room capacities** based on 1 metre plus social distances	
MEETING ROOM	CAPACITY
Council Chamber	24
Banqueting room	21 (with screens, * cost £5-6k)
Brunswick room	16 as Boardroom, 13 as Horseshoe
Kaposvar room	12 as Boardroom, 7 as Horseshoe
Aix room	10 as Boardroom, 9 as Horseshoe

****Note room capacities are subject to any updated guidance on social distancing & Health & Safety advice at the time.**