

Meeting of:	Council
Date of Meeting:	Monday, 21 September 2020
Relevant Scrutiny Committee:	Corporate Performance and Resources
Report Title:	Reinstatement of the 6 Month Rule for Members: Section 85 of the Local Government Act 1972
Purpose of Report:	To recommence the 6 Month Rule for Members attendance at Meetings following its suspension as a result of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 ("the Regulations") and thereafter a decision of the Managing Director pursuant to his Emergency Powers.
Report Owner:	Report of the Leader
Responsible Officer:	Rob Thomas, Managing Director and Debbie Marles, Monitoring Officer/Head of Legal and Democratic Services
Elected Member and Officer Consultation:	This report does not require consultation
Policy Framework:	This is a matter for decision by Full Council
<p>Executive Summary:</p> <ul style="list-style-type: none"> • Section 85(1) of the Local Government Act 1972 ("the Act") provides, subject to exceptions, that if a Member fails to attend a Meeting of his/her Local Authority throughout the period of six consecutive months then the Member will be disqualified unless the reason for failure to attend is approved by the Local Authority prior to the 6 month period lapsing. This is commonly known as the "6 Month Rule". • An additional exception to the 6 Month Rule was introduced by the Regulations which applied in respect of the Vale of Glamorgan Council for the period 22 April 2020 to 3 July 2020 for all Members other than Cabinet Members (with a deadline of 13 July 2020 for Cabinet Members). • In line with the delegated authority granted by Council to the Managing Director to make emergency decisions on the Council's behalf (Council's Constitution, Section 25) the Managing Director approved on 4 July 2020 (reference no. EP COVID-19, 84) for Members' continued non-attendance at Meetings in line with Section 85(1) of the Act. • This report recommends the reinstatement with immediate effect of the 6 Month Rule given the ability for all Members to attend virtual meetings in line with the Regulations. 	

Recommendations

1. That Council agrees the cessation of the Managing Director's Emergency Power reference number EP COVID-19, 84 dated 4 July 2020 with immediate effect.
2. That Council notes that in line with the provisions of Regulation 10 of the Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 that the period 22 April 2020 to 3 July 2020 (and 13 July 2020 for Cabinet Members) is disregarded when calculating the 6 Month Rule for the purposes of Section 85(1) of the Local Government Act 1972 in respect of Vale of Glamorgan Councillors.
3. That Council notes that the period from 4 July 2020 to 20 September 2020 is disregarded when calculating the 6 Month Rule for the purposes of Section 85(1) of the Local Government Act 1972 in respect of Vale of Glamorgan Councillors.

Reasons for Recommendations

1. To reinstate the 6 Month Rule governing Members attendance at Meetings.
- 2 & 3** For Members information.

1. Background

- 1.1** Section 85(1) of the Act deals with the vacation of office by failing to attend meetings, subject to a number of exceptions, and provides that
"if a member of a Local Authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the Authority he shall, unless failure was due to some reason approved by the Authority before the expiry of that period, cease to be a member of the Authority."
- 1.2** An additional exception to Section 85 of the Act was introduced in Wales pursuant to the Regulations, with the effect of discounting from the period of the six consecutive months the period between 22 April 2020 (that being the date the Regulations came into force) and the date of a Local Authority's next meeting.
- 1.3** Julie James AM/MS clarified in her letter dated August 2020 attached at Appendix 1 that "as far as the 6 month non-attendance rule is concerned a virtual meeting counts towards attendance in the same way as physical attendance would" this being the case, whereas the 6 month clock stopped running on 22 April 2020, it would have recommenced on 3 July 2020 for all Members of the Vale of Glamorgan Council (other than Cabinet Members) as a Licensing Sub-Committee Meeting was held on 3 July 2020, with the 6 month clock recommencing for Cabinet Members on 13 July 2020 (that being the first Cabinet Meeting after 22 April 2020).

- 1.4** Given the ongoing Coronavirus pandemic, the purpose of the Regulations and the lack of initial interpretation in the Regulations of whether the 6 month clock would restart when the first virtual meeting was held or the first in person meeting was held, the Monitoring Officer requested the Managing Director to use his Emergency Powers to authorise the non-attendance of Members at meetings and this was to ensure that appropriate technical support and appropriate governance arrangements were in place to hold Council Meetings. This was approved and stopped the 6 month clock for Members on 4 July 2020 (the Managing Director's Emergency Power reference number EP COVID-19, 84 refers).

2. Key Issues for Consideration

- 2.1** During recent months considerable work has been undertaken by the ICT and Democratic Services Teams to ensure that Members' devices are capable of accessing virtual meetings, coupled with training and support. It being noted that the minimum requirement of the Regulations is for Members to hear and be heard in order to be in attendance at a virtual meeting. Aligned to this virtual meeting procedures have been established to ensure appropriate governance arrangements.
- 2.2** As a result of work undertaken by ICT and Democratic Services, the Council's Annual Meeting was held on 14 September 2020. Therefore it is recommended that the Managing Director's Emergency Power referred to in paragraph 1.4 above ceases to apply with immediate effect. This will mean, that if agreed by Council, the 6 month clock will recommence with immediate effect today (21 September 2020). For the avoidance of doubt the period from 22 April 2020 to 20 September 2020 will be disregarded when calculating the period of non-attendance for the purposes of Section 85(1) of the Act.
- 2.3** Democratic Services will email Members separately to remind them of the last date that they attended a Council Meeting prior to 22 April 2020.

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** Given the exceptional circumstances arising as a result of the Covid-19 pandemic, the use of the Managing Director's Emergency Power as referred to in paragraph 1.4 above has supported the governance arrangements of the Council which has a long term impact on the administration of the Council.

4. Resources and Legal Considerations

Financial

4.1 There are no financial implications as a direct result of this report.

Employment

4.2 There are no employment implications as a direct result of this report.

Legal (Including Equalities)

4.3 The associated legal provisions are detailed in the body of this report.

5. Background Papers

- The Managing Director's (Emergency Power Covid-19, 84) granted on 4 July 2020.
- Julie James' AS/MS letter dated August 2020.



Eich cyf/Your ref
Ein cyf/Our ref

Leaders of County and County Borough Councils

August 2020

Dear colleagues

I have said on several occasions that I do not anticipate councils will be able to operate in the coming months and years in the way they did pre-COVID-19. As tragic as the pandemic has and continues to be, it has forced us to look at the way we deliver services and the way we communicate with each other.

At the beginning of this unprecedented situation it was necessary to put in place a set of emergency regulations to enable councils to continue to conduct business safely. Safe for members, safe for staff and safe for individual members of the public.

This remains the position, as the First Minister has made clear, Coronavirus has not gone away, it remains here and it is important that we use our experiences over the past four months to help shape arrangements for the future.

I do not underestimate the challenges that have had to be faced to enable meetings to continue. I know hurdles arose due to difficulties with equipment, individuals differing levels of familiarity with remote communication and in some cases pre-existing scepticism about what could and could not work.

The last few months have seen members and officers work incredibly hard to overcome many challenges, not least in respect of the amount of training and awareness sessions that have had to be held to ensure individuals felt well enough supported to enter, what for many of us, was a very different world.

Together we have overcome many issues but I am clear that to capitalise on the benefits of remote working there are still a number of hurdles to negotiate. Some of these are technical for example around translation for meetings held remotely that are also intended for live broadcast. Others are more procedural for example how to deal with situations where the technology fails during a voting session and what approach should be taken.

I appreciate some councils have been able to embrace remote working more quickly than others and that is understandable, however I would have expected that by now, the majority of routine meetings would be happening remotely.

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Rydym yn croesawu derbyn gohebiaeth yn Gymraeg. Byddwn yn ateb gohebiaeth a dderbynnir yn Gymraeg yn Gymraeg ac ni fydd gohebu yn Gymraeg yn arwain at oedi.

We welcome receiving correspondence in Welsh. Any correspondence received in Welsh will be answered in Welsh and corresponding in Welsh will not lead to a delay in responding.

Interestingly, my officials have started to receive questions about when councils will be able to meet in person again. Of course it is a matter for each council to determine how its meetings are arranged, taking into account not only the guidance issued by Welsh Ministers about social distancing, but also the benefits experienced over the past few months.

As you will be aware in light of representation I have already received I am actively considering whether further measures can be undertaken by virtue of the Local Government and Elections (Wales) Bill to ensure key elements of The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020 are reflected in future arrangements. Many councils have already expressed views on arrangements under the regulations and future arrangements, and I would welcome any further views.

In the interim I would like to take this opportunity to clarify a point upon which I think there may have been some confusion when some individuals have interpreted the emergency regulations.

Virtual and physical attendance at local authority meetings are treated the same and there is no legal distinction between decisions made during virtual meetings. All participants have equal status and are able to participate on an equal basis. Importantly so far as the 6 month non-attendance rule is concerned a virtual meeting counts towards attendance in the same way as physical attendance would. I understand regulation 10 of the emergency regulations has, in some cases, been interpreted as suspending the conditions around disqualification during the life of the regulations. This is not correct. Regulation 10 was requested by local government to avoid individual councillors being suspended during the period beginning with the day on which the emergency regulations came into force, and ending on the first day after the coming into force of the regulations on which a meeting is held, attendance at which would be attendance for the purposes of section 85(1) or (2A) of the Local Government Act 1972.

I hope this clarifies the situation.

I look forward to receiving any comments you have on future regulations / arrangements

Yours sincerely



Julie James AS/MS

Y Gweinidog Tai a Llywodraeth Leol
Minister for Housing and Local Government