

High Court Decision on Virtual Meetings

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Virtual council meetings will be unable to continue after May 6th following a High Court ruling. Local authorities, including parish and town councils, have been holding their meetings online during the pandemic. However, the regulations allowing them to do so expire on 6 May 2021.

Following the introduction of lockdown measures last year, Local authorities were permitted to hold virtual meetings from 4 April 2020, when regulations came into force. These are the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (SI 2020/392), made under section 78 of the Coronavirus Act 2020.

These regulations apply to all local authorities in England and Wales, including parish, town, and community councils. They specify that a 'meeting' of a local authority can lawfully take place online, with members 'in remote attendance' who can hear and be heard by, and if possible, see and be seen by, other members.

As section 78 of the Coronavirus Act 2020 only permits regulations to apply to council meetings that take place before 7 May 2021, primary legislation would be needed to extend this. If a virtual meeting took place after that date but its legal status was uncertain, any decisions that it took could potentially be open to legal challenge.

On 25 March 2021, the Government wrote to all local authorities saying it was *"not possible to bring forward emergency legislation on this issue at this time"*. To address difficulties caused where local authorities are unable to hold meetings, the Government's letter suggests delegating powers to the head of paid service (the chief executive) and directed councils to an update of its guidance for the safe use of council buildings.

The letter also states that the coronavirus 'roadmap' permits indoor meetings from 17 May and suggests that annual meetings could therefore be held after this date.

On 25 March, the Government launched a call for

evidence on the experiences of remote council meetings. This consultation is due to end in mid-June.

A claim seeking a declaratory judgment from the High Court was lodged on 17 March by ADSO (Association of Democratic Services Officers), LLG (Lawyers in Local Government) and Hertfordshire County Council. The claimants are seeking a declaration from the court that uses of the word 'meeting' in local government legislation can be read as referring to virtual meetings as well as in-person meetings. The High Court has dismissed the claim that would have allowed for the continuation of local authority remote meetings beyond 7 May.

Concern has been raised across the industry that the inability to continue virtual meetings could impact on delays to decision making. The LGA has raised particular concern that meetings need to be held within a time frame following local elections and the adherence to social distancing could cause fundamental issues. The ability to conduct hybrid meetings has also increased public accessibility and participation and to withdraw that option could be a backward step.

The development industry has pointed out the government's intention to make use of e-communications and digital tools. Many bodies have invested heavily in digital technology and strides have been made in that regard. To remove the permitting of the virtual option in our view would be a regressive step.

Dame Victoria Sharp and Mr. Justice Chamberlain heard the case. Whilst their judgement concluded that: primary legislation would be required to allow local authority "meetings" under the 1972 Act to take place remotely, they remarked that,

"We recognise that there are powerful arguments in favour of permitting remote meetings."

It is anticipated that new primary legislation will be introduced by the Government in due course, however this judgement introduces a frustrating procedural hiatus before it comes into force.

Contact us:

4 Anby Court, Fraser Road, Priory Business Park, Bedford, MK44 3WH

T 01706 552213 F 01234 631266 e bedford@dlpconsultants.co.uk

www.dlpconsultants.co.uk