

COUNCIL:

21 MAY 2020

REPORT OF THE DIRECTOR OF GOVERNANCE & LEGAL SERVICES

GOVERNANCE ARRANGEMENTS DURING COVID 19 RESPONSE PERIOD

Reason for this Report

1. To allow the Council to agree changes to its governance arrangements during the period when normal business operations are disrupted due to government restrictions and additional service pressures arising from the current COVID-19 pandemic.

Background

2. The UK government has introduced a range of personal isolation and social distancing measures in response to the COVID-19 pandemic. The application of these measures means that Members are unlikely to be able to physically attend meetings of the Council, the Cabinet and Committees for several months until the restrictions are lifted.
3. There are significant additional service pressures arising from the pandemic, at a time when fewer staff may be available to carry out their duties. It is therefore important that while being open and accountable, the Council's decision making process is also proportionate and manageable at this time.
4. Under statutory powers granted in the Coronavirus Act 2020, the Welsh Ministers have issued Regulations (The Local Authorities (Coronavirus) (Meetings) (Wales) Regulations 2020). The Welsh Minister's written statement presenting the Regulations says 'Local authority meetings are unlikely to return to normal for some months and therefore Councils need flexibility to provide for urgent business relating to COVID-19.' The Regulations make temporary changes to the rules governing local authority meetings during the COVID-19 response period.

Issues

5. During the COVID-19 response period, it is important that the Council is able to safely make essential and time critical decisions. Changes to be made to the Council's governance arrangements to facilitate this, in line with the

provisions of the new Regulations, include:

Deferral of Council's Annual Meeting

6. In cases of urgency, the Council Meeting Procedure Rules (Rule 5b) permit the Proper Officer to vary the date, time and place of meetings. The Monitoring Officer is the Council's Proper Officer for these purposes. In order to retain the focus of Council time and resources on COVID-19 related priorities and any other urgent business, the Monitoring Officer, in consultation with the Lord Mayor, the Leader of the Council, and all political Group Leaders, has decided to defer the 2020 Annual Meeting (in accordance with Council Meeting Procedure Rule 5(b)).
7. The Regulations remove the requirement for the 2020 annual meeting of a principal council to be held in March, April or May 2020, and allow the Annual Meeting to be held on any date in 2020 decided by the Proper Officer. The date for the 2020 Annual Meeting will be kept under review and set, in consultation with the Lord Mayor and party group leaders, in due course.

Chair and Vice-Chair of Council, Committee Chairs and Deputies, and Other Council Appointees - Terms of Office Continue

8. The Chair and Vice-Chair of Council must be elected / appointed at the Annual Council meeting (under sections 23 and 24 of the Local Government Act 1972). Committee Chairs and Deputies and appointments to outside bodies are also all to be appointed at Annual Council under the Council Meeting Procedure Rules, Rule 2. The Regulations allow all such elections and appointments to be delayed until any time before 1st May 2021. As long as the current incumbents are content to remain in office, their terms of office are automatically extended until their successors are elected or appointed. The Chair and Vice-Chair of Council have both confirmed they are content to remain in office. The election of new office holders is therefore to be deferred until the rescheduled Annual Meeting (unless it becomes necessary to fill any vacancy before then.)

Remote Meetings for Essential and Urgent Business

9. The Regulations relax the existing rules for remote attendance (which require 30% to be physically present in the same room, under the Local Government (Wales) Measure 2011) and replace them with new rules. The new rules allow meetings of a local authority to be held remotely using any equipment or facility which allows Members to speak to, and be heard by, each other (whether or not Members can also see each other). The new rules on remote attendance apply to any meetings of the Council, Cabinet, Committees or Joint Committees (or Community Councils) held before 1st May 2021.
10. Whilst the legislative framework for remote meetings is in place, there are a number of issues which need further consideration and development to

support arrangements for remote meetings. The issues, which are under consideration, include:

- a) Technology – various IT solutions are currently available and are being further developed, with different functionalities, security issues, equipment and software requirements etc. Careful analysis is being carried out by officers to identify the best solution for the Council's requirements. This is being kept under review as technical solutions are continually developing.
- b) Public access – the rules on public access to meetings have been temporarily relaxed by the Regulations, but the Welsh Government's accompanying Explanatory Memorandum says that Councils 'may, if practicable, enable members of the public and the press to attend certain meetings remotely.' Officers are investigating different options for making meetings accessible to the public. The preferred option is to live stream remote meetings via the Council's webcast, but not all Council Members presently have IT equipment which supports this. As an interim solution, arrangements have been made to record this Council meeting and then upload the recording to the Council's website. At some meetings, for example, Public Questions at Council meetings and planning committee meetings, the public also have the right to address the meeting. Consideration is being given to the IT required to facilitate this (whilst live streaming the meeting), as well as protocols / rules to manage public participation in a remote meeting.
- c) Welsh language – the Welsh Language Standards for public meetings remain unchanged, which means the Council should make available simultaneous translation from Welsh to English if anyone attending a meeting wishes to use the Welsh language. However, there is no IT system currently available which has been verified to meet the Council's security requirements and offers simultaneous translation functionality. The Welsh Language Commissioner has acknowledged the exceptional challenges presented during the COVID crisis and indicated that, whilst he is keen to see opportunities to use the Welsh language maintained, he will deal with complaints 'on a case-by-case basis and give careful attention to the exceptional and particular circumstances'. Discussions are ongoing with IT solution providers and Bilingual Cardiff to seek suitable IT functionality for future meetings.
- d) Procedure for remote meetings - Officers have drafted an Elected Members Protocol for Remote Meetings, covering pre-meeting preparation and checks, instructions on joining a remote meeting and how Members can participate in the meeting. This Protocol may be amended and further developed, as required. In time, and based on experience from holding meetings remotely during this pandemic, the Council may decide to adopt new standing orders on remote meetings, if it wishes to do so. However, it should be noted that the new Regulations take precedence over any constitutional rules, which means the new provisions apply regardless of anything to the contrary in the

Council's Constitution.

11. For meetings where the Council is acting in a quasi-judicial role, such as Planning Committee, Licensing Committee and Public Protection Committee, it is particularly important for the Council to ensure that the remote meeting arrangements are robust enough to withstand a legal challenge to the decision.

Scrutiny

12. The Council needs to ensure that effective scrutiny is maintained for decisions relating to the COVID response and other essential / time critical decisions being taken during this period. The Centre for Public Scrutiny (CfPS) has issued guidance which confirms that 'scrutiny must continue to provide councillors and local people with the critical assurance that huge decisions are being made in a way that is transparent and accountable.'

13. However, CfPS acknowledges that Councils will not have the capacity to resume the full programme of ordinary scrutiny meetings because:

'Councils will lack the member capacity to engage in a full-spectrum work programme across in some cases multiple committees. Their focus is likely to lie on supporting their residents;

Councils will lack the officer capacity to service and support a range of committees and task & finish groups. We know that scrutiny and democratic services officers have already been redeployed to work on the operational community response;

The situation is too fast-moving to allow for the effective prioritisation of scrutiny work in the usual manner.'

14. CfPS encourages 'a proportionate, challenging but supportive approach to scrutiny' and suggests one option would be a single scrutiny committee, meeting fortnightly or every three weeks to scrutinise a regular package of information identifying pressure points on council services relating to COVID-19, along with other business critical matters. The CfPS Guidance says 'The framing and focus for scrutiny which we have suggested will limit scrutiny's input into all but "life and limb" issues, for local people, the area, and the authority. This is based on the assumption that much policy development work that does not relate to COVID-19 will be put on hold as the crisis continues, and that planned changes to other services (including big projects) may largely go on hiatus too.'

15. Initial terms of reference for a COVID-19 Scrutiny Panel are proposed as follows:

- a) A COVID-19 Scrutiny Panel be established comprising of the five Scrutiny Chairpersons.
- b) The Panel will be responsible for scrutinising the Council's functions, as well as the work undertaken by the Cardiff Public Services Board and its impact on the local community.
- c) This Panel will initially be in place until 30th September 2020, with its duration and remit being kept under review. Any changes will need to be agreed by full Council.
- d) The Panel will:
 - i) Meet remotely when required with each meeting being recorded for subsequent upload or live streamed to the Council's website to make the meetings available to the public.
 - ii) Undertake pre-decision scrutiny of all Cabinet decisions with each Panel member informally liaising with their own committee members to ensure that their views are taken into account.
 - iii) Consider any scrutiny that has previously been undertaken and which is relevant to the Cabinet decision being made.
 - iv) Seek further information or clarification from the Cabinet Member Portfolio Holder and relevant Senior Officers during its remote meetings.
 - v) Inform Cabinet in writing of the pre-decision scrutiny recommendations of the Panel for each Cabinet Decision.
 - vi) Collate any COVID-19 "life and limb" concerns identified by ward members for escalation to the Cabinet.

e) Quorum

The quorum for the Panel is three members.

f) Substitute members

Substitute members may be appointed in accordance with the Appointment of Substitute Members Procedure Rule.

g) Chairperson

The Chair of the Panel is to be appointed by Council. In the absence of the Chair, the Panel shall elect one of its members to chair the meeting.

16. For the avoidance of doubt, Members may wish to note that the temporary convening of the COVID-19 Scrutiny Panel, as set out in the paragraph above, will not result in any changes to Senior Salary entitlements for Scrutiny Chairs under the Members' Remuneration Schedule.

Programme of Meetings

17. The Council needs to continue to focus on urgent business related to COVID-19, so it is unlikely that meetings will return to normal for some months.
18. The Regulations relax the timescale for any other local authority meetings which would ordinarily need to be held (under any other Act or instrument) by a certain date before 1st May 2021, and allow such meetings to be held on any day and time before 1st May 2021, as determined by the Council.
19. Meetings which may need to be convened over coming months include:
 - i. Council
 - ii. Cabinet – to take COVID-19 related and other urgent or time critical decisions, such as those relating to the Council's budget;
 - iii. Scrutiny – to provide effective and proportionate scrutiny of decisions being taken;
 - iv. Planning Committee – a meeting is likely to be scheduled for June to determine planning applications to allow time critical developments to proceed without undue delay, provided suitable arrangements can be made to ensure effective consultation has taken place and for public speaking; and
 - v. Licensing / Public Protection – to discharge the Council's statutory duties, again subject to effective consultation having taken place and appropriate arrangements being made for public speaking.
 - vi. Audit Committee – meetings required to consider the Council's Statement of Accounts, Pension Fund accounts and Treasury Performance and Management reports.
 - vii. Joint Committees – Project Gwyrdd and Glamorgan Archives joint committee meetings to be scheduled this month to approve the joint committees' accounts; and City Deal Joint Committee meetings are being scheduled for May and June to progress various ongoing projects and investments.

Legal Implications

20. Legal implications arising from the Local Authorities (Coronavirus)(Meetings)(Wales) Regulations 2020 are set out in the body of the report.
21. The Local Government Act 2000 requires authorities to set up overview and scrutiny committees. The legislative provisions for overview and scrutiny committees for Wales have been amended and supplemented by the Local Government (Wales) Measure 2011 and Regulations made thereunder. There are also specific legislative provisions relating to scrutiny of crime and disorder matters (the Police and Justice Act 2006); and Public Services Board functions (the Wellbeing of Future Generations (Wales) Act 2015). Subject to compliance with the relevant statutory provisions, the number of scrutiny committees and their size is a matter for each Council to determine.
22. Scrutiny committees are subject to the rules on political proportionality (under section 15 of the Local Government and Housing Act 1989). The Scrutiny Chairs have been allocated to political groups in accordance with the political proportionality rules for scrutiny chairs (under the Local Government (Wales) Measure 2011, which means that a scrutiny panel comprised of the 5 scrutiny chairs will be politically balanced. Members may wish to note that the political balance of a committee comprised of the 5 scrutiny chairs is more favourable to opposition groups than the balance which would apply if an allocation were required under the 1989 Act political balance rules.
23. As noted in the paragraph above, the appointment of scrutiny chairs is governed by statutory rules (under Part 6 of the Local Government (Wales) Measure 2011). Under these rules (section 74 of the Measure), the chair of the new temporary scrutiny panel must be an opposition group member appointed by Council, with cross-party support.
24. The scrutiny arrangements of the Council, including the establishment of scrutiny committees and their terms of reference, are matters which require the approval of full Council.
25. The Council has public sector equality duties under the Equality Act 2010 (including specific Welsh public sector duties). Pursuant to these legal duties, Councils must, in making decisions, have due regard to the need to (1) eliminate unlawful discrimination, (2) advance equality of opportunity and (3) foster good relations on the basis of protected characteristics. The protected characteristics are: age, gender reassignment, sex, race – including ethnic or national origin, colour or nationality, disability, pregnancy and maternity, marriage and civil partnership, sexual orientation, religion or belief – including lack of belief. An Equalities Impact Assessment (EIA) has been carried out in respect of remote meetings arrangements to identify any inadvertent discriminatory effects and potential mitigation measures. Members should have regard to the EIA, appended as **Appendix A**.

26. The Council must also be mindful of its Welsh language duties, under the Welsh Language (Wales) Measure 2011 and the Welsh Language Standards and consider the impact of its decisions upon the Welsh language. This issue is addressed in paragraph 10(c) of the report.
27. The Wellbeing of Future Generations (Wales) Act 2015 requires the Council to consider how its proposed decisions will contribute towards meeting the wellbeing objectives set out in the Corporate Plan. Members must also be satisfied that the proposed decisions comply with the sustainable development principle, which requires that the needs of the present are met without compromising the ability of future generations to meet their own needs.

Financial Implications

28. The intended use of existing video conferencing software for remote attendance at Council meetings will not incur additional initial licence or software costs. Procurement costs of £9,948 have been required to ensure IT devices and associated hardware meet the required standard for those in remote attendance at the initial Full Council Meeting.
29. Further costs are to be identified and contained within the Democratic Services budget for wider Committee meeting requirements, and for any changes or enhancements to the initial approach, in the municipal year 2020/21. These include costs of further hardware to be identified through a review of the access to, and compatibility of, IT devices for those to be in remote attendance at wider Committees of the Council, and potential software costs for Welsh Language services, which are also to be determined.
30. The cost of webcasting is anticipated to offset the IT procurement costs incurred to date. The budget for webcasting in 2019/20 was £26,400 with £6,000 drawn down from reserves, and a new procurement is to be undertaken in which the number of hours of service required for 2020/21 are anticipated at 50 percent lower than the prior year.
31. The initial Council meeting papers have been offered in printed form to support Members as they familiarise themselves with the new technology, for which printing costs are anticipated at £225 and postage costs will also apply. Consideration would need to be given to the requirements and costs of providing printed papers for further Council and Committee meetings.

RECOMMENDATION

Council is recommended to:

1. Note the decision of the Monitoring Officer, taken in consultation with the Lord Mayor and political group leaders, to defer the Council's Annual Meeting 2020 to a future date in 2020, to be kept under review and advised in due course;
2. Note the continuation of the terms of the office of the Chair and Vice-Chair of Council, Committee Chairs and Deputies and other Council appointees, as set out in paragraph 8 of the report;
3. Note the arrangements being made in respect of remote meetings for essential time critical and/or Covid 19 related decisions, as set out in paragraph 10 of the report;
4. Approve the establishment of a Covid-19 Scrutiny Panel, comprised of the 5 current scrutiny committee chairs, with the terms of reference set out in paragraph 15 of the report; and
5. Approve the appointment of the Chair of the Covid-19 Scrutiny Panel set up under recommendation 4 above.

DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND
MONITORING OFFICER
14th May 2020

APPENDICES

Appendix A Equalities Impact Assessment – Remote meetings

Background papers

Remote Meetings: Information and Guidance, including Elected Members Protocol for Remote Meetings

Centre for Public Scrutiny, COVID-19 Guide 2: Approaches to Scrutiny During the Crisis

<https://www.cfps.org.uk/?publication=covid-19-guide-2-scrutiny>