



Association of
Democratic Services
Officers



LLG & ADSO Obtain Legal Opinion on Virtual Meeting Provisions

ADSO and LLG recently obtained counsels opinion from James Strachan QC of 39 Essex Chambers in relation to the expiry of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations (No.392) and the ability to continue to hold council meetings remotely past the 6th May 2021.

LLG and ADSO have consistently called for the ability of English councils to hold remote meetings to be made permanent. The Secretary of State ("SoS") (Robert Jenrick) has said that whilst accepting that the provision has been successful, he has no plans to extend the date as it requires primary legislation and there is no vehicle to do that in time for May. He added that whilst it is not possible at the moment, if there is an opportunity to make it more permanent, he will take it.

With the intention of seeking a way to assist the SoS, ADSO and LLG have asked the question whether a change in primary legislation is actually required? To that end, counsel's opinion was obtained on the current legislation together with the options available which do not require primary legislation or indeed, legislation of any kind. A summary of the advice is as follows: -

- (1) There are forceful arguments that can be made that the pre-existing legislation governing local authority meetings under Schedule 12 of the Local Government 1972 Act, and meetings of an executive or a committee of an executive under the Local Authorities (Executive Arrangements (Meetings and Access to Information) (England) Regulations 2012, enable local authorities to hold meetings remotely.



Association of
Democratic Services
Officers



- (2) For the present situation to continue after 7 May 2021 with the use of remote meetings, the optimum position would be for further legislation to be passed to make the position clear.
- (3) In the absence of such legislation, one resolution would be to obtain a declaration from the courts to obtain clarity as to the legal position under the pre-existing legislation.
- (4) The Secretary of State does have (a) power under section 16 of the 1999 Act to make an Order to modify or disapply those restrictions for best value authorities and (b) power under the 2000 Act to make regulations governing executive decision-making bodies to hold remote meetings.

ADSO and LLG will now prepare to seek a declaration from the courts that the pre-existing legislation governing local authority meetings under Schedule 12 of the 1972 Act, and meetings of an executive or a committee of an executive under the 2012 Regulations, can be held remotely in the way that has been specifically authorised by the Coronavirus Act 2020 and the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020.

Quentin Baker, LLG President said;

“Back in March 2020 Local Authorities quickly adapted their procedures to enable democratic decision making to continue through the remote attendance at meetings of councillors, officers and the public.

Over the past year the benefits of having the option to attend remotely have been clearly demonstrated through increased participation and reductions in travel time. The prospect of reverting in May to meetings without the option of remote attendance is concerning due to the likely ongoing heightened Covid risk and also because the option is valued by many Councillors and residents alike. Councils should have local choice and local flexibility. Through our proposed action with



Association of
Democratic Services
Officers



ADSO colleagues to seek a Declaration we hope to enable a straightforward solution to this problem.”

John Austin, ADSO Chair said;

“Through the hard work of Local Authorities, remote meetings have been a success. Apart from the important public health issues, they have brought many benefits, including reduced travel to meetings, cost savings, increased participation in the democratic process and equality of access to meetings. ADSO and LLG wish to work collaboratively with the Secretary of State to find a solution to give Councils the option of holding such meetings beyond 7th May.”

John Austin
Chair
ADSO

Quentin Baker
President
LLG

5th February 2021

For enquiries contact John.Austin@ADSO.co.uk and Helen@llg.org.uk