

ISLE OF ANGLESEY COUNTY COUNCIL	
MEETING:	County Council
DATE:	8 September 2020
TITLE OF REPORT :	To provide an extension to the time limit under section 85 of the Local Government Act 1972
REPORT BY :	Lynn Ball – Director of Function (Council Business) / Monitoring Officer lbxcs@ynysmon.gov.uk
CONTACT OFFICER :	Lynn Ball – Director of Function (Council Business) / Monitoring Officer lbxcs@ynysmon.gov.uk 01248 752586
PURPOSE OF REPORT :	To obtain Council's prior approval to extending the time limit, within the legislative and constitutional requirements

Legislative / Constitutional background:

1. [Section 85\(1\) of the Local Government Act 1972](#) provides that if a member fails to attend a relevant council or committee meeting for a consecutive period of 6 months, the member automatically ceases to be an elected member and a by-election is triggered. This may be avoided if the absence is approved by council before the expiry of the 6 month period.
2. The statutory provision is also contained within [paragraph 4.1.23 of the Council's Constitution](#),
3. The said disqualification cannot be overcome by a member subsequently resuming attendance, nor by retrospective approval.

Factual background:

4. As a result of the current Coronavirus pandemic, the Council is prioritising the delivery of key services to the public and accepts that democratic "business as usual" may not be possible. The [Coronavirus Act 2020](#) and the subsequent [Local Authorities \(Coronavirus\) \(Meetings\) \(Wales\) Regulations 2020](#) reduce the legal obligations on councils in relation to the conduct of meetings, whilst also permitting remote attendance by members when meetings are required. Against this background, the Council has reviewed its regular committee timetable, identifying minimum requirements, while acknowledging that more meetings will (and indeed already are) being held. Nevertheless, the Council continues to focus on delivery of its key services and the development of its procedures under the Welsh Government's "Test, Track, Protect" project. The number of committee meetings possible will depend on how circumstances develop, including the capacity of staff and members. Even with "best endeavours",

meetings may be less frequent, and more intermittent than usual, so the opportunities for members to “attend relevant meetings” (including by remote attendance) will also be fewer. This could easily lead to inadvertent breaches of the six month rule.

5. [The Local Authorities \(Coronavirus\) \(Meetings\) \(Wales\) Regulations 2020](#) include reference to the “six month rule”. Regulation 10 states that, for the purposes of calculating the six months, the period between the day when the Regulations come into force (22 April 2020) and the date of a relevant meeting, which the member could attend, (including by remote attendance) is to be disregarded. What this means is that “the clock” is paused for the period between 22 April 2020 and the first relevant meeting at which a member could attend. For these purposes, a relevant meeting is a formal council meeting, or a formal committee meeting, at which the individual is a named member.
 - When a member attends their first relevant meeting, the clock starts again and that member has a ‘new’ 6 month period from the date of that meeting.
 - However, if a member does not attend that meeting, their clock still resumes from the point at which it stopped on 21 April 2020 (before the Regulations came into force).
6. [The Local Authorities \(Coronavirus\) \(Meetings\) \(Wales\) Regulations 2020](#) provide for remote attendance by members at meetings; members will therefore be able to attend meetings via audio/video teleconferencing but the issue of meetings being conducted less frequently, and intermittently, remains.

The proposal:

7. As the circumstances described above are beyond the control of members, it is unfair that members may face an “accidental” disqualification.
8. The approval under the LGA 1972 has to be granted by Council prior to the expiry of the 6 month period, as it would apply to any individual member and it is currently unknown when the full range and frequency of Council meetings will be reinstated. Council is therefore being asked to make this decision now to limit the risk of any prejudicial outcome for any member.
9. As members are being asked to consider and vote in relation to a matter in which they have a prejudicial interest, a block dispensation has been granted by the Standards Committee on 29 July 2020. The application and decision can be viewed here.
10. The Welsh Minister has confirmed in correspondence to Leaders of County Councils dated 3rd April 2020 that “*the current arrangements would allow authorities to approve matters relating to the Covid-19 pandemic as an acceptable reason under section 85 to prevent councillors from being disqualified if they fail to attend meetings throughout a period of six consecutive months*”.

Other options:

11. In the absence of any new legislation, the only other option is to do nothing. In those circumstances, it is possible for members to face disqualification by virtue of their non-attendance under the “6 month rule”. If disqualification occurred:

11.1 a by-election would arise. There is a resource implication to this, both in financial terms and officer and member time; and

11.2 as there would be a delay to any by-election it would restrict the public's representation on the County Council. In addition to their corporate role, members will be continuing with their local responsibilities and have a key part to play in supporting their electorates and acting as a link between the County Council and the communities they represent.

12. The purpose of section 85 of the Local Government Act 1972 was not to penalise members in these circumstances, (indeed, such circumstances were not envisaged when the legislation was drafted). It is a mechanism for ensuring members regularly attend and participate in council business in ordinary circumstances. It would not be reasonable to penalise members for failing to attend sufficient/timely meetings when such opportunities are, and may continue to be, restricted.

13. It is pragmatic and reasonable, on the facts and the relevant legislation, for members to be provided with additional time under Section 85.

RECOMMENDATIONS

14. The Council agrees, in accordance with the Welsh Minister's letter dated 3rd April 2020, to accept the current pandemic, and the circumstances as described in this report as satisfactory reasons for non-compliance by any member with the provision in Section 85 of the Local Government Act 1972.

15. Subject to agreeing the principle in paragraph 14 above, where necessary, the Council extends the provisions in Section 85 by an additional six months (thus resulting in each member named in **Appendix A** having a total of twelve months from the date of their last attendance at a relevant meeting to comply with statutory attendance requirements).

16. Any member who considers they are at risk of failing to attend a relevant meeting within the original six months and the additional six months (granted under paragraph 15 above) should contact the Monitoring Officer so that an application can be made to full Council for an additional extension. Such application must be considered by Council before the expiry of the additional six months; members are therefore encouraged to monitor their attendance to ensure compliance.

Appendix A:

1.	Councillor Lewis Davies
2.	Councillor Richard A Dew
3.	Councillor John Griffith
4.	Councillor Richard Griffiths
5.	Councillor Glyn Haynes
6.	Councillor Kenneth P Hughes
7.	Councillor Trefor Lloyd Hughes MBE
8.	Councillor Vaughan Hughes
9.	Councillor Llinos Medi Huws
10.	Councillor Aled Morris Jones
11.	Councillor Carwyn Jones
12.	Councillor Eric Wyn Jones
13.	Councillor Richard Owain Jones
14.	Councillor Gwilym O Jones
15.	Councillor Robert Llewelyn Jones
16.	Councillor R Meirion Jones
17.	Councillor Alun Mummery
18.	Councillor Bryan Owen
19.	Councillor Robert G Parry OBE FRAgS
20.	Councillor Dylan Rees
21.	Councillor Alun Roberts
22.	Councillor Dafydd Roberts
23.	Councillor J Arwel Roberts
24.	Councillor Margaret Murley Roberts
25.	Councillor Nicola Roberts
26.	Councillor Peter S Rogers
27.	Councillor Dafydd Rhys Thomas
28.	Councillor Ieuan Williams
29.	Councillor Robin Wyn Williams