
NORTH AYRSHIRE COUNCIL

16 June 2020

Emergency Governance Decisions (Covid-19 Outbreak)

Title: Elected Member Attendance

Purpose: To advise of the provisions of section 35 of the Local Government (Scotland) Act 1973 and the Council's Standing Orders in terms of the non-attendance of Elected Member and to propose action in light of the current COVID-19 pandemic.

Recommendation: That the Chief Executive, following appropriate consultation, agrees on behalf of the Council to:

- (a) note (i) the exceptional circumstances of the current COVID-19 pandemic, which has led to the cancellation of meetings of the Council and its committees since March 2020 (ii) that a restricted number of committee meetings with appointed membership will be held between 22nd June and 30th June 2020 on a wholly remote basis; (iii) that the next full Council meeting is scheduled for September 2020; (iv) the possibility that some Members may not be in a position to attend the first available meeting of the Council (or a committee of which they are a member) within 6 months of the last meeting they attended; and (v) the terms of Section 35 of the Local Government (Scotland) Act 1973 and Standing Orders state that if a Councillor fails throughout a period of six consecutive months to attend any meeting of the authority, that member shall cease to be a member of the authority unless the failure to attend was due to a reason approved by the Council; and
 - (b) agree that, in terms of Standing Orders and section 35 of the Local Government (Scotland) Act 1973, a Member's failure to attend in the particular circumstances of the COVID-19 pandemic is a reason approved by the Council for non-attendance during the period from 5 March 2020 to 30 September 2020, and that non-attendance during this period does not count in calculation of the 6 month period.
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1. Executive Summary

- 1.1 In terms of the section 35 of the Local Government (Scotland) Act 1973, as incorporated into the Council's Standing Orders Relating to Meetings and Proceedings of the Council and Committees, an Elected Member who fails to attend any meetings of the Council, its committees, Joint Committees, Joint Boards or other body as a representative of the Council, throughout a six-month period ceases being a Member of North Ayrshire Council, unless their non-attendance is due to a reason approved by the Council.
- 1.2 Due to the current COVID-19 pandemic, the Council meeting scheduled for 25 March 2020 was cancelled and all meetings of the Council and its committees were suspended thereafter. A small number of wholly remote committee meetings have now been scheduled to take place prior to the summer recess, with a further phase planned for after summer recess. However, due to current circumstances, it may not be possible for a Member who has not attended any meeting in a period of six months to attend the first available meeting following that.

2. Background

- 2.1 Section 35 of the Local Government (Scotland) Act 1973 states that "...if a member of a local authority fails throughout a period of six months to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority, cease to be a member of the authority....Attendance as a member at a meeting of any committee or sub-committee of the authority, or at a meeting of any joint committee, joint board or other body to whom for the time being any of the functions of the authority are being discharged, and attendance as representative of the authority at a meeting of any body of persons, shall be deemed to be attendance at a meeting of the authority."
- 2.2 In turn, this is incorporated into Standing Order 7.3, which states that:

"Subject to the provisions of Section 35 of the 1973 Act and Section 19 of the 2000 Act, if a Member fails throughout a period of six consecutive months to attend any meetings of the Council, Committee, Joint Committee or Joint Board to which any function of the Council has been delegated, he/she shall, unless the failure to attend was due to some reason approved by Council cease to be a Member of North Ayrshire Council."
- 2.3 Case law provides that the six-month period mentioned above expires on the date of the next committee the Councillor could have attended after expiry of the six-month period.
- 2.4 Due to the current COVID-19 pandemic, the Council meeting scheduled for 25 March 2020 was cancelled and all meetings of the Council and its committees were suspended thereafter. Likewise, most outside bodies on which the Council is represented, will not have met in the last three months. Most Elected Members were able to attend the previous Council meeting held on 5 March 2020 and some will have been present at the subsequent Cabinet meeting on 17 March and/or the IJB meeting on 19 March 2020. For others, however, the last meeting attended may have been Council on 12 February 2020.

- 25 A small number of wholly remote Special Meetings of some committees has now been scheduled to take place prior to the summer recess, with a further phase planned for after recess. Thereafter, it is anticipated that it will be possible for a meeting of the full Council with remote access for Members, to take place prior to the end of September 2020.
- 26 The difficulty arises where a Member who has not been able to attend any meetings within a six-month period - largely due to the suspension of meetings - then finds they are unable to attend the first available meeting of a committee/joint board of which they are a member. In order to avoid any Member falling into this category, it is proposed that the particular circumstances of the current COVID-19 pandemic are deemed an approved reason for non-attendance.

3. Proposals

- 3.1 The Chief Executive, following appropriate consultation, is invited on behalf of the Council to:

(a) note

- (i) the exceptional circumstances of the current COVID-19 pandemic, which has led to the cancellation of meetings of the Council and its committees since March 2020;
 - (ii) that a restricted number of committee meetings with appointed membership will be held between 22nd June and 30th June 2020 on a wholly remote basis;
 - (iii) that the next full Council meeting is scheduled for September 2020;
 - (iv) the possibility that some Members may not be in a position to attend the first available meeting of the Council (or a committee of which they are a member) within 6 months of the last meeting they attended; and
 - (v) the terms of Section 35 of the Local Government (Scotland) Act 1973 and Standing Orders state that if a Councillor fails throughout a period of six consecutive months to attend any meeting of the authority, that member shall cease to be a member of the authority unless the failure to attend was due to a reason approved by the Council; and
- (b) agree that, in terms of Standing Orders and section 35 of the Local Government (Scotland) Act 1973, a Member's failure to attend in the particular circumstances of the COVID-19 pandemic is a reason approved by the Council for non-attendance during the period from 5 March 2020 to 30 September 2020, and that non-attendance during this period does not count in calculation of the 6 month period.

4. Implications/Socio-economic Duty

Financial

- 4.1 None arising from this report.

Human Resources

- 4.2 None arising from this report.

Legal

- 4.3 Failure to approve the reason for absence could potentially result in one or more Elected Members ceasing to be a Councillor, as provided for in section 35 of the Local Government (Scotland) Act 1973. This decision cannot be taken by Cabinet as Standing Orders reserve it to Council. However, as this is a non-statutory reservation to Council, the Chief Executive can still make the decision under his 'urgency' delegated powers

Equality/Socio-economic

- 4.4 None arising from this report.

Environmental and Sustainability

- 4.5 None arising from this report.

Key Priorities

- 4.6 This supports the key priorities of a Council for the Future.

Community Wealth Building

- 4.7 Not applicable.

5. Consultation

- 5.1 Group Leaders and the Independent Member representative will be consulted on the recommendations in this report.

Andrew Fraser
Head of Democratic Services

For further information please contact **Melanie Anderson, Senior Manager (Committee and Member Services)**, on melanieanderson@north-ayrshire.gov.uk.

Background Papers

N/A