


June 9th, 2021

Notice Of Meeting

You are requested to attend the meeting to be held on **Monday, 14th June 2021 at 7:00 pm** in **Town Hall, Bangor.**

Agenda

Agenda

 *Sp C.14.6.21 Agenda.pdf*

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1. Prayer

2. Apologies

3. Declarations of Interest

4. Delegated Authority

 *Appendix 1 - Letter to Council Chief Executives - Intention to extend remote meetings..pdf.pdf*

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 *Special Council report - Chief Executive Delegated Authority v2.pdf*

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Invitees

Robert Adair
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Stephen Addy
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Naomi Armstrong-Cotter
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Graeme Bannister
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Craig Blaney
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Joe Boyle
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Mark Brooks
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Peter Caldwell
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Angus Carson
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Alistair Cathcart
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David Chambers
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Simon Christie
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Stephen Cooper
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Trevor Cummings
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Alison Curtis
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Andrew Dadley
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Brian Dorrian
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Karen Douglas
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Stephen Dunlop
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Stephen Dunne
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Nigel Edmund
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Connie Egan
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Paulene Foster
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Robert Gibson
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Jennifer Gilmour
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Deborah Girvan
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Jennifer Glasgow
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Paula Gowdy
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Gillian Greer
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Stephen Grieve
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Wesley Irvine
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Claire Jackson
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Bill Keery
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Colin Kennedy
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Richard King
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David Lindsay
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Heather Loebnau
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Janice MacArthur
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Patricia Mackey
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Sharon Mahaffy
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Nigel Martin
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Nick Mathison
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Lorna McAlpine
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Carl McClean
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Rosemary McCullough
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Ann McCullough
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Susie McCullough
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Alan McDowell
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Michelle McElveen
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Clare McGill
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Stephen McIlveen
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Barry McKee
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Ray McKimm
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Kathryn McNickle
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Martin McRandal
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Moiria McVeigh
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James Menagh
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Wendy Monson
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Jan Nixey
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Ian O'Neill
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Marcus Potts
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Shirley Poxon
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Stephen Reid
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Rosemary Richardson
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Gillian Robinson
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Richard Smart
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Marion Smith
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Tom Smith
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Philip Smith
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Eddie Thompson
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Gavin Walker
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Colin White
.....
Jeanette Wilson
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Scott Wilson
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ARDS AND NORTH DOWN BOROUGH COUNCIL

7 June 2021

Dear Sir/Madam

You are hereby invited to attend a Special Council Meeting which will be held in the Council Chamber, Town Hall, Bangor on **Monday, 14 June 2021** commencing at **7.00 pm**.

Yours faithfully

Stephen Reid
Chief Executive
Ards and North Down Borough Council

AGENDA

1. Prayer
2. Apologies
3. Declarations of Interest
4. Delegated Authority

MEMBERSHIP OF ARDS AND NORTH DOWN BOROUGH COUNCIL

Alderman Carson	Councillor S Dunlop
Alderman Gibson	Councillor Dunne
Alderman Girvan	Councillor Edmund
Alderman Irvine	Councillor Egan
Alderman Keery	Councillor Gilmour
Alderman McDowell	Councillor Greer
Alderman McIlveen	Councillor Kennedy
Alderman Menagh	Councillor MacArthur
Alderman Smith	Councillor Mathison
Alderman Wilson	Councillor McAlpine
Councillor Adair (DEPUTY MAYOR)	Councillor McClean
Councillor Armstrong-Cotter	Councillor McKee
Councillor Blaney	Councillor McKimm
Councillor Boyle	Councillor McNickle
Councillor Brooks (MAYOR)	Councillor McRandal
Councillor Cathcart	Councillor Smart
Councillor Chambers	Councillor P Smith
Councillor Cooper	Councillor T Smith
Councillor Cummings	Councillor Thompson
Councillor Douglas	Councillor Walker

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Commonities

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All Chief Executives

Director
Local Government & Housing Regulation Division
Causeway Exchange
1-7 Bedford Street
Belfast
BT2 7EG

Phone: 028 90 823456

Email: Anthony.carleton@communities-ni.gov.uk

Dear Chief Executive

8 June 2021

LEGISLATION PERTAINING TO VIRTUAL COUNCIL MEETINGS AND PERFORMANCE IMPROVEMENT

As you will be aware the Local Government (Coronavirus) (Flexibility of District Council Meetings) Regulations (NI) 2020 ended on the 6 May 2021.

A number of councils and local government bodies have raised concerns about these provisions ending. Please be assured that the Department is currently progressing this matter and the Minister intends to bring forward primary legislation as soon as possible to introduce the legislative changes needed to ensure that powers to operate remotely are extended.

The proposed legislation will also regularise the legislative position to ease council Performance Improvement duties, which includes setting aside the requirement for councils to publish a Performance Improvement Plan for 2020/21. Following on from that decision, the Department has determined that whilst councils will have to produce a Performance Improvement Plan for the current 2021/22 year, the requirement to publish the plan has been extended to 30 September 2021.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Anthony Carleton'.

Anthony Carleton

ITEM 4

Ards and North Down Borough Council

Report Classification	Unclassified
Council/Committee	Special Council Meeting
Date of Meeting	14 June 2021
Responsible Director	Chief Executive
Responsible Head of Service	
Date of Report	03 June 2021
File Reference	CX210
Legislation	Local Government Act (NI) 2014
Section 75 Compliant	Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable <input checked="" type="checkbox"/>
Subject	Delegated Authority
Attachments	None

Context

As Members are aware, the legislation which expressly empowered Council or Committees to meet remotely to take decisions through Zoom or any other online platform lapsed on 7 May 2021. The legislation was considered necessary on the premise that local government legislation did not permit remote meetings. However that decision was predicated upon local government legislation in England, which is different to the Northern Ireland legislation. The result however means that there is some uncertainty as to whether our legislation permits remote meetings to take place notwithstanding the express power to do so lapsing. The Department for Communities (DfC) is working to introduce new legislation to provide certainty on this issue. The latest indication from DfC is that it will be mid-July at the earliest before the legislation is in place (and not June as they previously indicated).

Until such time as the new legislation is in place, continuing with remote meetings alone makes any Committee or Council decisions susceptible to legal challenge on the basis that the meeting which purported to make the decision was not lawfully constituted. The Chief Executive holds no power of delegation, even in civil emergencies, under the Standing Orders upon which he can make decisions on behalf of the Council in scenarios such as this (the power of delegation was removed by

Council in August 2020). This means that the only basis on which to ensure the Council is not exposed to potential legal challenge would be to hold physical meetings.

As agreed by Council on 28 April 2021 and subsequently discussed with Party Leaders, Independent Members and Single Member Parties, full Council meetings will not be held until the new legislation is in place to enable the remote meetings to resume without the risk of legal challenge. The rationale for this, and for not having physical meetings, included the logistical difficulties with sourcing suitable accommodation for at least 50 Members and Officers, plus allowance for press and public to attend, the cost implications of venue hire and IT set up, and some Members not feeling comfortable or safe attending or who may be clinically vulnerable. This is in the context of Council meetings typically lasting for more than four hours. It was also agreed that Committees, with the exception of Planning, will operate as working groups, sitting remotely, that will make recommendations which will be referred to the next full Council meeting for consideration.

Implications of delay in legislation

It was originally anticipated that the delay in the new legislation being put in place would be a matter of weeks after 7th May, meaning that there would be a short delay to the holding of the May Council meeting. However, now that it seems it will be the middle of July at the earliest before the new legislation is in place, this means that there will be a gap of more than 2 months between the April Council meeting and the next Council meeting. Until the meeting is held, Minutes of May Committee meetings will not be ratified and recommendations from Committees operating as working groups during June cannot be agreed by Council and acted upon either.

In order to ensure that business may continue to be transacted during this period where there is a gap in legislation, other Councils are relying upon Chief Executive delegated authority to agree to recommendations from Committees operating as working groups or to take decisions arising from 'Council' meetings that will still be held remotely despite the legislation not being in place. In the case of the latter, the Chief Executive signing off decisions under a delegated power provides cover for the fact that the remote 'Council' meeting is not a formal meeting of the Council given the lack of certainty around the power to meet remotely at the present time.

Options for Delegated Power

Section 7 of the Local Government Act (NI) 2014 permits the Council to arrange for an Officer to discharge its functions (save for some exceptions which cannot be delegated, e.g. setting the district rate, borrowing money, and acquiring and disposing of land). While good governance would incorporate the power of delegation into the Standing Orders, this would require the Standing Orders to be stood down for a month before any such amendment was made. Given the time sensitivity of the current exceptional circumstances, the power could instead be granted to the Chief Executive as a stand-alone power conferred by Council and limited to such times as the new remote meeting legislation is enacted.

Council could thereafter hold virtual meetings of the Council Members at which the minutes of Committees from May and recommendations of Committee working groups

in June / July are considered, along with any other pressing Council business. A list of recommendations arising from and agreed by the meeting would thereafter be drawn up and those recommendations would be formally issued as decisions by the Chief Executive under the delegated authority power and following the expiration of the Call-In notice period. The first of these meetings could be held on Wednesday 23rd June via zoom to deal with May Council business, with the June meeting then held as already scheduled on 30th June via zoom. The meetings would be referred to on documentation as a 'meeting of the Members of the Council' rather than a 'Council Meeting'.

A review of Standing Orders is due to be reported to the next full Council meeting (i.e. the next official meeting once the remote meeting legislation is in place), so a longer term power of delegation could be considered in that review and Members would then have the opportunity at a full Council meeting to consider and debate such a power.

As regards the temporary power of delegation, it is recommended that it be drafted as follows:

Temporary Power of Delegated Authority

Council confers delegated authority upon the Chief Executive, or his nominated Director, to exercise all or any of the functions of the Council insofar as this relates to agreeing recommendations arising from a meeting of the Members of the Council held remotely from 15th June 2021 until such time as the new Local Government legislation, which clarifies the position in relation to remote meetings, is enacted. This power of delegation is subject to the following:

- 1. The meetings of the Members of the Council to which this power applies are remote meetings that operate the same as full Council meetings in line with the Standing Orders and in accordance with the Local Government Act (NI) 2014, during the time period where the aforementioned new legislation in relation to remote meetings has not been enacted.**
- 2. Following every meeting of the Members of the Council held in accordance with paragraph 1 above, a list of 'recommendations' agreed at the meeting will be provided to the Chief Executive and he may only do the following in respect of each recommendation:**
 - a. Agree to the recommendation in full without amendment; or**
 - b. Defer the recommendation to the next full meeting of Council (i.e. not a meeting of the Members of the Council) on the grounds that either:**
 - i. He has a conflict in respect of the recommendation; or**
 - ii. Legal advice indicates that the decision may be ultra vires.**
- 3. A decision log will be issued when the Chief Executive exercises the power of delegated authority. Members may still exercise their powers under the Standing Orders to Call-In a decision and no action shall be taken in respect of any decision by any Member or Officer until the Call-In period has passed.**

- 4. The delegated authority does not extend to those matters that are reserved to the Council pursuant to Section 7 of the Local Government Act (NI) 2014.**

RECOMMENDATION

It is recommended that Council:

1. Agrees to confer upon the Chief Executive the Temporary Power of Delegated Authority as set out in this report; and
2. Agrees that a meeting of the Members of the Council, as detailed in this report, will take place on the following dates:
 - Wednesday 23rd June at 7pm Council Meeting, via Zoom;
 - Wednesday 30th June at 7pm Council Meeting, via Zoom; and
 - Every month thereafter on the usual Wednesday evenings via zoom until such time as either the new remote meeting legislation is put in place, or Council convenes a physical, and therefore properly constituted meeting, to amend or revoke the arrangements agreed to through this report.