

2021 elections and remote meetings

Position paper

Contact information: Ed Hammond, Deputy Chief Executive

Ed.hammond@cfgs.org.uk

Date: 8 February 2021

About the Centre for Governance and Scrutiny

We are a social purpose consultancy with a particular focus on corporate governance, accountability, oversight and transparency. Much of our work focuses on the local government sector.

We passionately believe that better governance and scrutiny leads to more effective decision-making, reduced risk and ultimately improved outcomes. Our work spans corporate decisions impacting on the public, to how tax payers' money is spent. We focus on behaviours and culture, as well as design and delivery.

Introduction

CfGS supports local authorities in their democratic and governance functions. We aim to assist councils and councillors as they continue to grapple with the challenges around the pandemic.

Two significant challenges in the coming months are:

- The holding of the May 2021 local elections (which Government has confirmed, along with the issuing of guidance and Regulations);
- The coming to an end of powers to convene council meetings remotely.

CfGS believes that the local elections should be postponed until the autumn. We also believe that powers to convene formal meetings remotely should remain permanent. The two issues go to the heart of effective local democracy, and this paper explains our position on both in more detail.

May 2021 elections

- The local elections, and referendums, scheduled for May 2021 should be postponed until the autumn;
- This is because we think:
 - delivering a universally Covid-safe poll (and count) will be extremely challenging even if restrictions have been significantly relaxed by May;
 - the pandemic could continue to develop in an unpredictable way in the next three months;
 - notwithstanding difficulties with the administration of the election, the ban on in-person canvassing (which we understand will continue for another month at least) will make it extremely difficult for candidates to campaign effectively.
- A further postponement of elections – to autumn 2021 – would be a serious matter, but the risks are sufficient to justify it;
- Councils are working hard to deliver elections in a Covid-secure manner but doing so will be a significant challenge;
- The ability of candidates to campaign effectively will be negatively impacted by this, with some parties affected more than others because of their usual mode of campaigning;
- Even though Government has confirmed that elections will go ahead, uncertainty remains, because the uncertainty in the development of the pandemic risks a reversal of this decision, as we have seen elsewhere.

Postponing the local elections, particularly given that it has already happened once, is something that should not be entered into lightly.

We know that councils are putting in place significant mitigation action to ensure that elections can be carried out safely. Government has made available additional funding to make the polling process “Covid-secure”. The Association of Electoral Administrators have produced a summary of the Government’s delivery plan: <https://www.aea-elections.co.uk/wp-content/uploads/2021/02/May-2021-polls-delivery-plan-Member-Update.pdf>.

Speaking at the AEA’s annual conference on 8 February 2021, Paul Docker, the Cabinet Office Head of Electoral Administration, confirmed that the May poll will be “challenging to deliver”.

The presence of challenge is not in itself a reason to abandon efforts to go ahead. There are of course compelling reasons to proceed. A further postponement will involve a possible 18 month delay on some elections (in particular, the London Mayoral elections, which will if delayed until the autumn be hard-up on the 2022 borough elections). It will involve a range of local referendums (for example, the governance referendum in Sheffield) being subject to further delay – not to mention the continued delay of an increasing number of local by-elections. Furthermore, it will bring continued frustration to councils who may have expected to be able to stand down from their positions in May 2020.

Notwithstanding this CfGS still considers the risks to be sufficiently significant to justify postponing the election. Government's decision to proceed does not deliver certainty – the events of the last year have demonstrated how the development of the pandemic has compelled Government to reverse previous decisions it has made.

We consider that risks in two areas are particularly significant – the inability of parties to be able to effectively campaign, and the logistical challenges of running an election itself.

The campaign

Person to person campaigning is a central part of main parties' efforts on elections in the UK.

As we write, lockdown arrangements are still in effect in England. Chloe Smith MP, the Minister for the Constitution and Devolution, confirmed in a letter that while this continues, ordinary electoral door-to-door campaigning will be impossible. This poses significant barriers to effective campaigning. Doorknocking is a critical part of any effective election campaign – not necessarily to persuade voters to vote for a particular party but as a way of gaining data and ensuring that those planning to vote for the party in question will do so. It is usually supported by comprehensive volunteer leafleting activity, which presumably would also be caught by lockdown restrictions even though no direct person-to-person contact is involved.

Labour and the Liberal Democrats rely heavily on ground campaigns like this to secure success in elections – the Conservatives less so. Smaller parties and independent candidates often lack the resources to conduct comprehensive ground campaigns but will still try to make an impact through street leafleting and street stalls – both things which will also not be possible under lockdown.

Government guidance highlights the possibility of conducting more campaigning activity online, but this requires a shift in resources and approach which is likely to constitute a significant challenge in the context of an election campaign.

Even if lockdown restrictions are brought to an end before the end of the short campaign (starting from the close of nominations in late March) a lack of ability to conduct effective in-person data collection since, in all likelihood, early November 2020 will cause critical problems for parties.

Quite apart from what may or may not be permitted in law, even if restrictions are lifted campaigning and canvassing will bring with it public health risks. Campaigners may not have been vaccinated; neither might those being canvassed.

Concerns have also been expressed about the necessity for prospective candidates to secure signatures for the purposes of nomination. The need for every candidate in elections to physically meet ten people so as to secure the required ten signatures brings with it a level of risk. We know that Government is considering reducing the requirement to 2 – but the signature requirement serves a specific purpose, and removing it at this stage risks confusion as well as risking the delegitimisation of some of the important safeguards around election preparation.

Running the election

The Association of Electoral Administrators (AEA) has already expressed its misgivings, which we share, on electoral preparedness. A number of related challenges exist:

- Difficulty in finding appropriate venues. Usual polling stations may be in constrained spaces with little circulation space or space for safe queuing. Some may be venues which remain closed (community and leisure centres) where access may be difficult and where it may be challenging for electoral staff to contact keyholders to make bookings. Finding new venues can be difficult at this stage in the electoral cycle.
- Capacity in managing increased demand for postal votes, including the ability of Royal Mail to handle this increase volume, and a significant challenge around proxy voting. Some parties, and the Government, have promoted postal voting for those who are concerned about safety, and proxy voting will be available at far shorter notice than has historically been the case. The processing of postal vote applications takes time; one of the reasons why all-postal voting is not possible is that the administration task of checking and reconciling signatures prior to the confirmation of the electoral register is logistically impossible. Councils facing substantial increases in postal voting applications are likely to encounter challenges. Proxy voting – particularly on the day, which may be unavoidable for those self-isolating – will place particular demands on elections staff;
- Uncertainty in staffing. Many poll staff may be unwilling or unable to participate. The ongoing requirement to self-isolate may mean that some may need to pull out at the last minute. At the same time, staffing needs are likely to increase, as staff may need to enforce social distancing at polling stations as well as administering the process. Additional funding from Government will make inroads here but in some areas the challenge may be particularly acute. Government could seek to ease the pressure here by prioritising poll workers for vaccination, although given the understandable pressure to keep to the existing priority list (and an unwillingness to make an exception for, for example, early years staff) it's unclear whether this would be feasible;
- Covid safety in polling stations and at the count. This may involve rethinking room layouts, and considering the appropriateness of existing election equipment (traditional wooden double or modern plastic quad polling booths, for example, none of which allow for effective social distancing). Poll staff are required to work in pairs, with oversight from a presiding officer; the necessities of the job will make social distancing a challenge during this period. The more serious issue comes at the count, where physical space is likely to be at a premium even in larger count venues, and where providing for electoral observers may prove difficult. This is to say nothing of the risks attached to hand-counting.

Government and others have pointed to other countries as having been able to conduct elections during this timeframe. Other jurisdictions, however, have different laws and arrangements. Some provide for early in-person voting. Many countries use fewer, but much larger, polling stations, where careful design for safety can be undertaken beforehand. Many include electronic voting and counting which minimises contact risks.

The risk of the election being a “superspreading” event is too significant not to postpone.

Postponement would be until September or October. It would allow for a reasonable length of time to campaign over the summer, as opposed to a postponement for a month or six weeks, by which time there is no guarantee that the pandemic would have

receded sufficiently to have overcome some of the risks outlined above. In any case, a shorter postponement would not deal effectively with the campaign restrictions we identify.

We look forward to playing a role in supporting electoral services professionals, and councillors, in considering what the best options are for 2021's elections. Whenever the elections happen, we look forward to offering support arrangements around member induction for a cohort of new councillors who will be entering the sector at a critical time.

Convening meetings remotely

- CfGS is working closely with a range of national bodies on steps to continue with remote meetings beyond the May 2021 elections;
- The powers for councils (and combined authorities) to convene meetings remotely should be placed on a permanent footing, because:
 - Councillors and council officers overwhelmingly report an increase in interest in local democracy, and attendance at meetings, arising from remote working;
 - In the future, the ability to convene meetings remotely will afford more flexibility to councils to tackle councillor attendance challenges for joint meetings, and for meetings of sparsely populated authorities – as well as making things easier for councillors, and other participants, with other personal or professional commitments;
 - Councils will be able to put in place proportionate and transparent procedures to determine where they will use remote meetings. We anticipate that physical meetings will, for most, be the default.
- Government has stated that it believes only a change to primary legislation will make this possible. But we believe that a number of other options exist to make this change. Councils may be able to take action themselves, without direct Government input.

In May, councils will have to require that all elected members come together, physically, in a poorly-ventilated council chamber with no opportunity for social distancing. These meetings will happen in less than four months – meetings, in some cases, involving well over a hundred people.

Some councils will be better able to manage this situation than others. Councils operating under executive arrangements may be able to rely on individual member decision-making, for example. For others – including committee system councils – the challenge will be more significant. Councils may need to move to decision-making through emergency delegation.

A possibility is a fallback to some form of hybrid decision-making – the convening of informal meetings remotely which discuss matters and makes recommendations to a formal decision-maker who is able to take legal action separately.

This feels untenable for reasons of accountability and transparency but it is an inevitability if Government chooses not to extend, temporarily or permanently, provisions in legislation on remote working. Time is running out.

We are working closely with colleagues across local government, including the LGA, ADSO and LLG to jointly find a way through this problem, as part of the “Remote Meetings Partnership” convened by the LGA. We think we have collectively found a number of possible solutions. Some but not all require that Government takes action through secondary legislation.

ADSO and LLG have led on securing counsel’s advice on the options and have set out some next steps, which can be found at https://www.lawyersinlocalgovernment.org.uk/news_articles/llg-adso-obtain-legal-opinion-on-virtual-meeting-provisions-and-prepare-to-seek-a-court-declaration.

A change to secondary legislation to make a change permanent

A change in secondary legislation around the convening of meetings would make them permanently available to councils.

Paradoxically, a temporary change – to the Coronavirus Act, to extend the scope of the existing emergency Regulations – would require a change to primary legislation, which we understand is a more difficult prospect.

Given this, we think a permanent change is the right way to go – ensuring that councils can convene meetings in this way forever. We have confidence in arguing for this because of councils’ many positive experiences with remote meeting in the past year.

- Meeting this way makes local authority meetings available to a wider audience via the web in a way that has long been challenging for remote meetings. Evidence gathered by ADSO demonstrates that public attendance at, and input to, formal meetings has increased substantially since last year now that remote attendance is possible.
- It brings logistical benefits. It will help to remove attendance challenges – for example, where poor transport in rural areas makes it difficult for members to attend frequent meetings, or in areas where joint meetings are regularly convened. On the latter point, there is the risk that joint, formal bodies have hitherto met infrequently, and could be less responsive in carrying out their work – challenges that effectively disappear where remote working is an option. In combined authorities, meeting challenging quoracy requirements (for example, for scrutiny meetings) was often a difficulty. Again, that barrier has effectively been removed.
- Finally, it brings benefits to pluralism. This centres on the engagement of those with caring, professional or other responsibilities. The LGA Councillor Census 2018 highlights that 16% of councillors had a long term health problem or disability limiting their daily activities; 36% had caring responsibilities. A large proportion of councillors are retired, with proportionately fewer of working age than in the general population. Providing councils with additional flexibility on how meetings are convened will allow them to think of more inclusive ways to involve councillors who might otherwise face barriers to in-person involvement – in due

course, this might serve to encourage people to stand for election whose personal circumstances might otherwise have made it difficult for them to engage.

We are not suggesting that all councils will switch all meetings to “remote only”. Councils will take a proportionate approach – and an Order or Regulations could require that councils set out clearly in their constitutions the circumstances in which remote meeting may be thought appropriate, for specific committees, individual councillors and other circumstances. The key is in councils taking a proportionate approach by being able to be more flexible in how they hold meetings of this nature in the future.

How will these changes be made? Government has so far stated that in its view primary legislation is necessary, but we don’t agree. Possible alternative options include:

- An Order by the Secretary of State using his powers to ensure that Best Value authorities are able to comply with their duties. Under the Local Government Act 1999, BV authorities (which include combined authorities and principal councils but not community and parish councils) are obliged to “make arrangements” for continuous improvement – without going into the legal details there is confidence in thinking that the Secretary of State could be prevailed upon to provide for remote meetings in order to ensure that this precise duty can be transacted;
- An Order by the Secretary of State under the Cities and Local Government Devolution Act 2016. S15 of this Act permits the Secretary of State to make Regulations to make changes to councils’ governance arrangements – with their approval. It is a provision that applies only to principal councils, not combined authorities or community and parish councils;
- A modern interpretation of the meaning of the word “place” in s4(1) of Schedule 12 of the Local Government Act 1972. Nothing in legislation requires that a 1972 Act committee should be convened in a physical space – a “place” could include an online platform. It may be that councils could act on this without formal action being taken by Government. A declaratory judgment, made on the application of a local authority, could be sought from the Courts affirming the position. This is the approach that ADSO and LLG propose to take in the coming weeks, and which we support.

In the event that councils are able to continue to meeting remotely beyond May, we will be returning to some of the guidance we produced last spring – on behaviours, attitudes and mindsets around effective remote meetings – and expanding on it. If remote meetings are to become a permanent feature in local government councils will, in particular, want to review the circumstances in which these facilities are used, and how this additional flexibility can be designed to maximise the potential for accountability, transparency and good governance. We look forward to working with councils, and national partners, on these issues as 2021 progresses.