

**A REVIEW OF THE LEGAL POSITION IN RELATION TO SECTION 85 OF THE
LOCAL GOVERNMENT ACT 1972 AND THE SIX MONTH RULE**

To: **Constitution and Ethics Committee**

Date: **19 April 2016**

From: **The Monitoring Officer**

Electoral division(s): **All**

Forward Plan ref: **N/A** *Key decision:* **No**

Purpose: **To establish whether it is legally feasible to impose a restriction on the number of times that Cambridgeshire County Council could grant an extension to the six-month rule.**

Recommendation: **It is recommended that the Constitution and Ethics Committee note the contents of this report.**

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1. BACKGROUND AND UK LEGISLATION

Section 85 (1) of the Local Government Act 1972 states:

'Subject to subsections (2) and (3) below, if a member of a local authority fails throughout a period of six consecutive months from the date of his last attendance to attend any meeting of the authority, he shall, unless the failure was due to some reason approved by the authority before the expiry of that period, cease to be a member of the authority.'

For information, subsections (2) and (3) are in relation to what constitutes attendance and therefore are not relevant to the issue at hand.

The provision above gives rise to what is commonly known as the 'six month rule'. Section 85 (1) also provides that the authority i.e. Full Council have leave to approve an extension to the six month rule if a reason that is deemed valid is submitted before the expiry of the material six months.

2. IMPOSITION OF RESTRICTION IN CAMBRIDGESHIRE COUNTY COUNCIL CONSTITUTION

There is, in theory, no legal authority preventing an amendment to the constitution of Cambridgeshire County Council (CCC) to impose a restriction on the number of times that an extension of six months is granted.

However, as the right of Full Council to approve an extension is embedded in UK legislation, any restriction in the CCC constitution would be 'trumped' by the right of Full Council to approve an extension as this legislative discretion may not be overridden locally.

If there was to be any restriction to the six month rule extension, this would need to be provided for in the said legislation in order to have an effect. It could also be said that by amending its constitution in this way, the Council would be acting in direct conflict with Parliament and that if this was to give rise to challenge, the amendment is likely to be rendered unlawful.

In the light of the current legislation, any attempt to impose a restriction in the Constitution on the ability of the Council to approve an extension to the six month rule period would not have any legal effect. If a motion were brought to Full Council to extend a six month rule period for a Member, Full Council would still retain the statutory right to approve such an extension.

It is therefore not appropriate for the Committee to make any recommendation to Full Council to change the Constitution to restrict Council's discretion to approve extensions to the six month rule.

Source Documents	Location
Section 85 Local Government Act 1972	http://www.legislation.gov.uk/ukpga/1972/70/section/85