



Council

Report title: Proposed changes to the Council's Constitution.

Date: 15 July 2020.

Class: Part 1.

Ward(s) affected: All

Contributors: Director of Law

Outline and recommendations

This report asks the Council to adopt procedure rules about the holding of virtual meetings. The Council is recommended to amend the Constitution to include the proposed procedure rules at Appendix 1 to this report.

Timeline of engagement and decision-making

There have been many Council decisions amending the Constitution since its introduction in 2002. There has been no consultation about these proposals as they have been introduced as an emergency in the context of the coronavirus epidemic to enable authorities to continue to function despite the crisis.

1. Summary

- 1.1. The conduct of local authority meetings has had to change in the context of the current public health crisis. To enable Council meetings to be held remotely the Government introduced regulations which did away with the requirement for meetings to be held in person. The Council is already holding remote meetings. This report proposes amendments to the Council's Constitution to include procedure rules governing remote meetings.

2. Recommendation

- 2.1. Council is recommended to agree that the Constitution be amended to include the procedure rules at Appendix 1 in part C – Council Procedure Rules.

3. Policy Context

- 3.1. The Council's Corporate Strategy makes an explicit commitment to strong corporate governance. The introduction of the procedures at Appendix 1 would build on that commitment and enable open decision making in relation to all of the priorities set out in the Corporate Strategy.

4. Background

- 4.1. In response to the current public health emergency the Government introduced the Coronavirus Act 2020. It provides for regulations to be made which enable local authority meetings to be held remotely. On 4th April the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 were introduced. They apply to meetings held before 21 May 2021.
- 4.2. Key features of the Regulations include:
 - 4.2.1. Appointments which have to be made at a Council Annual General Meeting continue until the next Annual General Meeting or such other time as the Council decides.
 - 4.2.2. Attendance by a member at meetings does not have to be in person but can be remote by electronic means provided some conditions are met.

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4.2.3 Those conditions are:-

(a) that the member can hear and be heard (and where practicable see and be seen) by all the other members in attendance

(b) that the member can hear and be heard (and where practicable see and be seen) by all members of the public in attendance with a right to speak

(c) that the member can be heard (and where practicable be seen) by other members of the public

4.2.4 Notices for meetings and the record of decision can be given on the council's website

4.2.5 Councils may make standing orders/rules of procedure relating to such matters as remote voting

5. The need for amended rules of procedure

5.1. The Council moved quickly to start hearings remotely once lockdown was announced and has conducted a number of meetings using the new flexibilities. The proposals at Appendix 1 broadly reflect the practice used by the Council to date. It is a legal requirement under Section 9P Local Government Act 2000 that the Council have and keep up to date a Constitution which contains standing orders/rules of procedure. Amendments to the Constitution are for full Council to decide. This item is being considered at the first available Council meeting since lockdown

6. Financial implications

6.1. There are no new financial implications arising from the proposed amendment to the Constitution.

6.2. In terms of Members attendance at meetings by remote access rather than in person, holding meetings remotely does require some additional resources. For example, to ensure that the technology is robust throughout the meeting. These were reported to and agreed by Council at their meeting of the 30 April. They are being managed as part of the current facilities management and technology services budgets.

7. Legal implications

7.1. The legal implications pertaining to governance issues are set out in the body of the report.

7.2. Members are reminded of the Council's duties under the Equality Act 2010

7.3. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality gender reassignment, marriage and civil partnership, pregnancy and maternity, race, duty or the duty). It covers the following protected characteristics: age, disability, religion or belief, sex and sexual orientation

7.4. In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.

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- foster good relations between people who share a protected characteristic and those who do not.
- 7.5. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.
- 7.6. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances
- 7.7. The Equality and Human Rights Commission has issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

- 7.8. The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- [The essential guide to the public sector equality duty](#)
- [Meeting the equality duty in policy and decision-making](#)
- [Engagement and the equality duty: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

- 7.9. The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

8. Equalities implications

- 8.1. The holding of remote hearings which are accessible to the public is designed to ensure that the decision making processes of the Council are transparent to as many

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as possible and that the Council remains as open and transparent to all.

9. Climate change and environmental implications

- 9.1. There are none associated with the proposed change to the Constitution, though remote meetings have a number of environmental advantages, including a reduction in the need for paper based documentation and detrimental effects on the environment caused by travel to meetings.

10. Health and wellbeing implications

- 10.1. There are no specific implications

11. Background papers

12. Glossary

- 12.1. See **Section 7 – “Glossary” in the guidance** for more information.

Term	Definition
Constitution	The rules which govern how council business is done

13. Report author and contact

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Appendix 1

Meetings in the context of COVID 19

The Coronavirus Act 2020 made provisions to allow Council business to continue in the context of the COVID - 19 pandemic in which personal attendance at meetings risked the spread of the virus. The following provisions in this section apply where the Council is legally permitted to hold remote meetings. They override any other provisions in this Constitution which would in other circumstances have prevented remote meetings.

1. No Requirement to Hold an Annual Meeting

The requirement to hold an Annual Meeting is to be disregarded and, prior to 7th May 2021, an Annual Meeting of Council may only take place:

- (a) where called by the Speaker; or
- (b) following a resolution calling for an Annual Meeting being passed at an ordinary or extraordinary meeting of Council.

2. Access to Information

For all purposes of the Constitution, the terms “notice”, “summons”, “agenda”, “report”, “written record” and “background papers” when referred to as being a document that is:

- (a) “open to inspection” shall include for these and all other purposes as being published on the website of the Council; and
- (b) to be published, posted or made available at offices of the Council shall include publication on the Council’s website.

3. Remote Access to Meetings

- (a) For all purposes of the Constitution the term “meeting” is not limited in meaning to a meeting of persons all of whom, or any of whom, are present in the same place, for which purposes any reference to:
 - (i) “place” is to be interpreted as where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers: and
 - (ii) “open to the public” includes access to the meeting being through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming and where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person; and

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- (b) If the Chair is made aware that a meeting is not accessible to the public through remote means at any time when it is legally required to be accessible to the public, due to any technological or other failure of provision, then the Chair shall adjourn the meeting immediately. If the provision of access through remote means cannot be restored within a reasonable period, then the remaining business will be considered at a time and date fixed by the Chair. If he or she does not fix a date, the remaining business will be considered at the next ordinary meeting.

4. Members in Remote Attendance

- (a) A Member in remote attendance is present and attends the meeting, including for the purposes of the meeting's quorum, if at any time all three of the following conditions are satisfied, those conditions being that the Member in remote attendance is able at that time:
 - (i) to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other Members in attendance.
 - (ii) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and
 - (iii) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.
- (b) A Member in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in 4(a) above are not met. In such circumstance the Chair may, as they deem appropriate:
 - (i) adjourn the meeting for a short period to permit the conditions for remote attendance of a Member contained in 4(a) above to be re-established;
 - (ii) count the number of Members in attendance for the purposes of the quorum; or
 - (iii) continue to transact the remaining business of the meeting in the absence of the Member in remote attendance.

5 Remote Attendance by Members of the Public

- (a) A member of the public entitled to attend the meeting in order to exercise a right to speak at the meeting is in remote attendance at any time if all three of the following conditions are satisfied, those conditions being that the member of the public in remote attendance is able at that time:
 - (i) to hear, and where practicable see, and be so heard and, where practicable, be seen by, Members in attendance;

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- (ii) to hear, and where practicable see, and be so heard and, where practicable, be seen by, any other members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and
 - (iii) to be so heard and, where practicable, be seen by any other members of the public attending the meeting.
- (b) A member of the public in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in 5(a) above are not met. In such circumstance the Chair may, as he or she deems appropriate:
 - (i) adjourn the meeting for a short period to permit the conditions for remote attendance contained in 5(a) above to be re-established;
 - (ii) suspend consideration of the item of business in relation to the member of public's attendance until such time as a following item of business on the agenda has been transacted and the conditions for the member of the public's remote attendance have been re-established or, on confirmation that this cannot be done, before the end of the meeting, whichever is the earliest; or
 - (iii) continue to transact the remaining business of the meeting in the absence of the member of the public in remote attendance.

6 Remote Voting

Unless a recorded vote is demanded, which may be confirmed by the requisite number of Members confirming the demand verbally when requested by the Chair, the Chair will take the vote, where there are such facilities, by use of an electronic voting system for remote voting.

Where there is no electronic voting system available or it is not working correctly then the vote may be taken by the affirmation of the meeting if there is no dissent, by assent.

Alternatively the Chair may take the vote by roll-call and the number of votes for and against the motion or amendment and abstaining from voting will be recorded.

7. Members excluded from the meeting

Where a Member is required to leave the meeting, the means of remote attendance and access is to be severed whilst any discussion or vote takes place in respect of the item or items of business which the member or co-opted member may not participate.

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