

HAMPSHIRE COUNTY COUNCIL

Report

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| Decision Maker: | Cabinet |
| Date: | 15 May 2020 |
| Title: | The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 - Amendment to Standing Orders and Executive Procedures |
| Report From: | Director of Transformation and Governance |

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1. Purpose of this Report

The purpose of this report is to outline to the Cabinet provisions made under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 ('the Regulations'), so far as they affect the County Council's governance arrangements and decision making processes, and for Cabinet to consider the options available going forward, including amendment to Standing Orders.

2. Recommendations

Cabinet are asked to:

- a) Note the provisions contained in the Regulations as outlined in this report, and how they might be applied to County Council business, in particular full Council, Committee and Cabinet Meetings.
- b) Recommend to full Council, in light of the Coronavirus epidemic and its consequential impact on the holding of Individual Executive Member Decision Days, that the Constitution should be amended in order to allow Individual Executive Member Decision Days ordinarily held in public, to be held remotely for the duration of the Regulations.
- c) Recommend to full Council, in the interests of business efficiency that the Constitution be amended to remove the requirement for Individual Executive Member Decision Days on matters not of significant policy to be held in public.

- d) Recommend to full Council in consequence of b) and c) above that amendments as indicated at Appendix One and Appendix Two to this report be made to Standing Orders and Executive Procedures and Role of the Executive, contained respectively within Part 3, Chapter 1, and Part 3, Chapter 2 of the Constitution.
- e) Recommend to full Council that delegated authority be given to the Monitoring Officer to determine if a decision is in on a matter of significant policy and to amend the Constitution accordingly.

3. Background

The Regulations are made under the Coronavirus Act 2020 ('the Act'), came into force on 4 April 2020, and apply to all Local Authorities. The definition of 'Local Authorities' includes County Councils, District Councils, Parish Councils, Combined Authorities, Fire and Rescue Authorities, and National Park Authorities. There are also separate provisions in relation to Police and Crime Panels. A 'sunset' provision is included in that the Regulations only apply to meetings held before 7 May 2021.

4. Provisions of the Regulations

Meetings of Local Authorities

- 4.1 The Regulations enable Local Authorities to hold meetings at any time of day and on any day, to alter the frequency of when meetings are held, and to move or cancel meetings without further notice. This provision also includes the AGM.
- 4.2 A Local Authority Meeting is defined as meeting of a Local Authority and an Executive of a Local Authority. The definition includes meetings of full Council, Committee/Sub-Committee meetings, and Cabinet/Cabinet Committee meetings. The definition does not however include Individual Executive Member Decision Days.

Provision for Remote Meetings

- 4.3 Under the Regulations the place of a Local Authority Meeting is not limited to County Council buildings, and can be entirely by remote means, including by (but not limited to) electronic, digital or virtual locations, such as internet locations, web addresses or conference call numbers.

5. Member and Public attendance at Remote Meetings

- 5.1 Members of a Local Authority are considered to be in attendance if all three conditions as set down in the Regulations are satisfied. These are that Members in remote attendance must be able to:

- a) hear, and where practicable see, and be so heard and, where practicable, be seen by other the Members in attendance; and
- b) 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
- c) to be so heard and, where practicable be seen, by any other members of the public attending the meeting.

5.2 In the Regulations a member of the public attending a meeting includes that person attending by remote access. As indicated above, so far as members of the public go, a distinction is made between instances where members of the public have a right to speak at a meeting, and where members of the public have simply the right to attend. It is considered that so far as the County Council is concerned the former applies to deputations, and this is discussed further below.

Standing Orders

5.3 The Regulations contain provision for Local Authorities to make Standing Orders regarding remote attendance at meetings, which may include provision for:

- a) voting
- b) Member and public access to documents
- c) Remote access of the press and public to remote meetings

5.4 It is not necessary for any Standing Orders to be made in order for provisions in the Regulations outlined above to apply to full Council, Committee/Sub-Committee meetings, and Cabinet/Cabinet Committee meetings– as indicated above the provisions in the Regulations are already in force. It is considered that the provision in the Regulations regarding amendment or otherwise of Standing Orders is simply a way Local Authorities might wish to set out how operation of provisions in the Regulations might apply in practice, having regard to a particular Local Authority's circumstances. It is considered that should the County Council wish to avail itself of the ability to hold remote meetings for any length of time, it would be sensible for openness and clarity to set out how the Regulations would apply regarding Deputations and Executive Decision making.

5.5 In addition, should Cabinet support the recommendation to remove the requirement for Decision Days of Individual Executive Members on matters not of significant policy to be held in public, this will also require amendment of the Constitution in respect of Deputations and Executive Procedures. Any amendment of the Constitution requires the agreement of the full Council.

Documents for Remote Meetings

- 5.6 The Regulations modify or, as the case may be, disapply provisions in respect of publication and access to documents for meetings. In summary:
- a) Schedule 12 of the Local Government Act 1972 is amended to disapply the requirement to hold an AGM (as indicated above)
 - b) Part V of the Local Government Act 1972 (which Part deals with the publication of documents for Council/Committee Meetings) is amended so that documents can be published only on an Authorities' web-site and still meet publication requirements. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 are also amended so as to include similar provision in respect of Executive business.
- 5.7 It should be noted that the requirement for five clear working days notice still applies, however under existing legislation (both for Council/Committee and Executive business}, where a meeting or item for a meeting is urgent a meeting can be convened/report added to an Agenda at short notice.

6. Implications/Considerations for the County Council

- 6.1. As Cabinet is aware the County Council is currently working to a Protocol endorsed by Cabinet and the Minority Group Leaders, under which business continues as far as possible by way of more extensive use of the existing Chief Officers' delegated authority in the Constitution. Notwithstanding the Regulations and the ability of the County Council to undertake its business remotely, decision making under the Protocol is likely to need to continue.

AGM

- 6.2 As indicated above, there is no longer a requirement for the County Council to hold an AGM. In the event of a Local Authority determining not to hold an AGM, the Regulations make specific provision for appointments which would ordinarily be made at the AGM to continue until such time as the Authority determines. In the County Council's case this would include the Chairman/Vice-Chairman of the County Council (which appointments the law would have ordinarily have required to be made at the AGM), plus appointments required under Standing Orders to be made at the AGM (Chairmen/Vice-Chairmen of Committees, appointments to HFRA, and Committee/Outside Body appointments done in conjunction with the review of the Proportionality Table. It is however proposed that the County Council holds its AGM remotely in

accordance with the Regulations with minimum business so as to enable appointments made at the AGM to be done.

Six-month rule

- 6.3 As Cabinet will be aware, by virtue of operation of Section 85 of the Local Government Act 1972 ('the 1972 Act'), should a Member of the County Council fail to attend a meeting of the County Council, its Committees or an Outside Body, starting from the date of his/her last attendance, they automatically vacate their office, unless during that time the reason for their absence is approved by the County Council. This function is also delegated to the Conduct Advisory Panel. It is proposed that a report be brought to the AGM Meeting of the County Council in order to grant permission for absence under the 1972 Act for all Members who would otherwise for no fault of their own fall foul of the 'six-month rule' through Coronavirus/self-isolation.

Executive Member Individual Decision Days – application of Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 ('Access to Information Regulations')

- 6.4 As indicated above the Regulations specifically refer to 'Meetings' of a Local Authority. As Cabinet will be aware, the County Council is unusual in the way it deals with Executive business, and a distinction is made between Meetings of the Executive (Cabinet) and its Committees, and Individual Executive Member Decision Days. Whilst not required under the Access to Information Regulations, the Constitution currently requires that all Individual Executive Member decisions whatever the nature of the subject matter are made in public (except when dealing with confidential or exempt matters), in the same way the Access to Information Regulations require Meetings of Cabinet and its Committees to be in public. In many ways this is helpful, for example in pre-scrutiny of individual Executive decisions particularly on matters of significant policy. It is however considered that in the interests of business efficiency, and to allow more agile decision making, the requirement that all Individual Executive Member Decision Days be held in public should be reviewed in the case of more 'business as usual' Executive decisions, while retaining the present operation of pre-scrutiny whatever the forum of the decision making. This would be in keeping with other Local Authorities.
- 6.5 Contained at Appendix One to this report is a proposed revised Part 3, Chapter 2, Paragraph 4 of the Constitution. The proposed revisions allow Individual Executive Member Decision Days which would ordinarily be held in public to be held remotely for the duration of the Regulations. This allows Individual Executive Member decision making to continue during the Coronavirus crisis, by applying the provision in the Regulations in respect of 'Meetings', to

include Individual Executive Member Decision Days, so that these might also be held remotely for the duration of the Regulations.

- 6.6 In addition to applying the provisions of the Regulations to individual Executive Member Decision Days so as to enable these to also be held remotely, revised Paragraph 4 removes the requirement for individual Executive Decision Days to be held in public on matters not of significant policy. It should be noted that notwithstanding an individual Executive Member decision might not relate to a matter of significant policy, the relevant Executive Member may still determine to make the decision in a Decision Day held in public. It should also be noted that this aligns Executive Decision making on matters not of significant policy with the delegations to Chief Officers in the Constitution, in that there is no requirement for decisions taken by Chief Officers pursuant to delegated authority to be made in public.
- 6.7 It is proposed that any question as to whether a decision relates to a significant policy should be determined by the Monitoring Officer.
- 6.8 It should also be noted that it is not proposed that there be any change in respect of advance notification of individual Executive Member decision reports. Whether or not the intention is to make an individual Executive Member decision at a decision day held in public, the same provisions in respect of publication of papers will apply. Similarly, the operation of scrutiny will be unaffected. It is anticipated that by the end of July 2020 meetings of all Select Committees will have taken place. It should be noted that however an Executive Decision is made, the same provisions in respect of call-in apply.

Deputations

- 6.9 Currently Standing Orders provide a right for Members of the public to make deputations to Meetings of the County Council, Committees, Cabinet and Individual Executive Member Decision Days. In consequence it is considered that proposed deputees would fall within the category referred to above of members of the public entitled to speak. Contained at Appendix Two is a revised Standing Order 12, allowing deputations to be made remotely in accordance with the Regulations at remote Meetings of the County Council, Committees, Cabinet and at Individual Executive Member Decision Days open to the public and held remotely.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

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| Hampshire maintains strong and sustainable economic growth and prosperity: | yes |
| People in Hampshire live safe, healthy and independent lives: | yes |
| People in Hampshire enjoy a rich and diverse environment: | yes |
| People in Hampshire enjoy being part of strong, inclusive communities: | yes |

Other Significant Links

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| Links to previous Member decisions: | |
| <u>Title</u> N/A | <u>Date</u> |
| Direct links to specific legislation or Government Directives | |
| <u>Title</u> http://www.legislation.gov.uk/ukxi/2020/392/contents/made | <u>Date</u> 1 April 2020 |

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

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| <u>Document</u> | <u>Location</u> |
| N/A | |

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

- 2.1. Potential impacts have been considered in the development of this report and no material adverse impact has been identified.