

**Agenda Item No:** 17  
**Report To:** COUNCIL  
**Date of Meeting:** 16 JULY 2020



**Report Title:** **DECISION-MAKING DURING THE CORONAVIRUS CRISIS**

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**Summary:** Two decisions to amend the Council's Constitution, taken by the Chief Executive in April 2020 under her delegated authority for urgent matters, are reported to the Council for noting and ratification. Some further changes to the Council's Constitution are also now recommended for approval. The aim of all of these is to enable the Council to continue its decision-making effectively, with public participation, notwithstanding the impacts of the coronavirus crisis.

**Recommendations:** **The Council is recommended to:-**

- I. Note and ratify the Chief Executive's Urgency decisions dated 8 April 2020 and 20 April 2020, described in paragraphs 13-19 and 20-29 respectively.**
- II. Adopt with immediate effect, and effective until the end of 6 May 2021, the Supplement to Procedure Rules for Virtual Meetings etc. at Annex 4, and the Supplement to Scheme of Public Participation for Virtual Meetings at Annex 5; and agree that their operation be reviewed as part of the review of the Procedure Rules for Virtual Meetings etc. and the Scheme of Public Participation for Virtual Meetings, as decided by the Chief Executive on 20 April 2020.**

**Policy Overview:** The Constitution sets out the procedures by which the Council's business is conducted, and includes the Scheme of Delegations to Officers (Part 3, Appendix 5) and the Scheme of Public Participation (Part 4, Access to Information Procedure Rules, Appendix 3). One of the purposes of the Constitution is to "enable decisions to be taken efficiently and effectively" (Art. 1.02.5).

<b>Financial Implications:</b>	None specifically identified. The provision of laptops to a few Members whose previous technology could not connect to VMs has been covered from existing resources. The ability to continue decision-making during the coronavirus crisis contributes to sound financial management and the minimisation of risks to the Council's financial position.
<b>Legal Implications:</b>	The Council must act in accordance with its Constitution, as well as the laws applicable to local authorities. On 1 April 2020, the Secretary of State made Regulations changing those laws, which resulted in the need to update the Constitution in order to operate the new legal procedures.
<b>Equalities Impact Assessment:</b>	See Annex 3.
<b>Data Protection Impact Assessment:</b>	No new material implications with regard to personal data.
<b>Risk Assessment (Risk Appetite Statement):</b>	The Corporate Plan sets an aim for the Council of demonstrating good compliance and high standards. Without adapting the Constitution to include the procedures allowed under the new Regulations, it would be either impossible or highly risky to continue the Council's business in the normal way.
<b>Sustainability Implications:</b>	Holding Virtual instead of physical meetings, making documents available online instead of at the Civic Centre, and delegating more decisions to Officers, are each likely to have small beneficial effects in terms of reducing carbon emissions and pollution, through reducing travel to the Civic Centre by both Members and the Press and public.
<b>Other Material Implications:</b>	Staff and Members need to work in somewhat different ways in order to hold Virtual Meetings, instead of physical ones.
<b>Exempt from Publication:</b>	No.
<b>Background Papers:</b>	Reports to Chief Executive Seeking Decisions on Urgent Matters, dated 8 and 20 April 2020.
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## **Report Title: Decision-Making during the Coronavirus Crisis**

### **Introduction and Background**

1. In March 2020, the growing risks to public health from the coronavirus known as Covid-19 made it no longer practicable or prudent for the Council to continue making decisions, and interacting with the public, in person at the Civic Centre in the normal way.
2. A final attempt was made to hold a “socially-distanced” Planning Committee meeting, with reduced and carefully-managed public attendance, on 18 March. This was unsuccessful, owing to the failure after 42 minutes of the “YouTube” streaming technology by which the meeting was being relayed to the public in their homes.
3. Following the Prime Minister’s address to the nation on 23 March, and the ensuing introduction of “lock-down” restrictions on travel, physical meetings of Members at the Civic Centre became impossible and all such meetings had to be cancelled forthwith.
4. Nevertheless, on the same day the Government’s then Chief Planner issued his final Planning Update Letter to local planning authorities. In it, he urged authorities to “prioritise decision-making to ensure the planning system continues to function ... using all options available to you to continue your service.” He specifically encouraged authorities to “explore every opportunity to use technology”, and to “consider delegating committee decisions where appropriate”.
5. Then, on 1 April, the Secretary of State for Housing, Communities and Local Government made 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”).
6. With effect from 4 April, the Regulations changed the long-standing legal requirements upon local authorities and their committees and sub-committees to hold physical meetings, and to permit the Press and public to attend those meetings.
7. The Regulations introduced, as an alternative, a new legal type of meeting, namely a meeting of persons not present in the same place, and/or held in “more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers”. This type of meeting has become known as a “Virtual Meeting” (“VM”).
8. Subject to compliance with detailed criteria and conditions, this type of Virtual Meeting is legally permitted and valid up to and including 6 May 2021. However, in common with most Councils, this Council’s Constitution did not allow a VM to make valid decisions.

9. The Regulations also lifted various long-standing legal requirements upon local authorities to hold physical copies of numerous types of documents and records at their offices, and to permit the Press and public to inspect or copy those documents, provided that those documents are made available on their websites instead.
10. However, in common with most Councils, this Council's Constitution did not allow the provision of access to papers, reports etc. to be solely online and not at the Civic Centre.
11. The Regulations empowered local authorities to make new standing orders and other rules about VMs, including provisions for voting, access to documents by Members and the public, and remote access to VMs by the public and Press. There was thus an urgent need for the Council's Constitution to be updated in order to reflect the Regulations and allow these new legal procedures to operate in Ashford Borough.

### **Urgency Decisions made by the Chief Executive**

12. In April in response to these circumstances, and after carrying out all necessary consultations under the Constitution, two decisions were taken by the Chief Executive under her delegated authority for Urgent Matters. In both cases, she determined that the decisions were urgent and in the absence of any scheduled meetings of the Council for a considerable period of time, and in the circumstances of the public health crisis, should be made by her as it was not expedient, practicable or necessary to convene a special meeting of the Council to consider these matters.

### **Urgency Decision No. 1: Three Additional Delegations of Planning Decisions**

13. On 8 April, the Chief Executive considered and approved my report recommending the grant of three additional delegations of Planning decisions.
14. These new delegations are:-
  - 14.1 Decisions on Reserved Matters Applications for approval of Appearance, Layout and Scale. These are delegated to the Strategic Development and Delivery Manager and the Development Management Manager. (Reserved Matters Applications for approval of Access and Landscaping were already delegated to those officers.)
  - 14.2 Decisions on Applications to remove or vary a Planning Condition on a previous Permission - known as Section 73 applications. These are delegated to the Strategic Development and Delivery Manager and the Development Management Manager. (Section 73 applications for development previously approved by the Committee were at one time delegated to those officers, but the delegation had been lost during a previous reorganisation of delegations.)
  - 14.3 Confirmation of Tree Preservation Orders (TPO) following objection(s) being received to them when first made by Officers. Confirmation is delegated to the Head of Planning and Development, after consultation with the Ward Member, provided that the Head of Planning and

Development had not had any involvement in the original consideration and making of the Orders by the Strategic Development and Delivery Manager or the Development Management Manager. (Otherwise, confirmation would continue to be a Committee decision.)

15. In making her decision, the Chief Executive recognised that these three new delegations to Officers would ease the decision-making delays which would otherwise result from the enforced cancellation of Planning Committee meetings, and also allow future VMs of the Planning Committee to focus their time and resources on the most strategic and important applications. Further, it would reduce the burden upon Officers in producing full Committee reports in these cases, during the crisis when Officers are required to work at home in different circumstances.
16. These new delegations are subject to the existing powers for:-
  - (a) the Strategic Development and Delivery Manager or the Development Management Manager to report to Committee any application or TPO confirmation that they consider to be sensitive such that it should be decided by the Committee;
  - and
  - (b) the Portfolio-Holder for Planning and Development to refer any application or TPO confirmation to the Committee, if he/she considers that it should be considered by the Committee;
  - and
  - (c) a Ward Member for an application (acting with or without the relevant Parish Council) to refer any application (but not a TPO confirmation) to the Committee, if he/she considers that it raises issues of significant local importance.
17. All Full, Outline and Hybrid planning applications for major development, falling within the usual categories where Planning Committee decisions are required, continue to be reported to the Committee as before.
18. These new delegations were carefully considered, and designed to facilitate timely and effective decision-making on Planning matters during the coronavirus crisis. As it was difficult to know how long the crisis would last, the Chief Executive introduced them for a short-term period of six months only. They will accordingly expire after 7 October 2020.
19. During that six-month period, the Chief Executive determined that there will be a review of the operation of these delegations, in order for a decision to be made as to whether they should be extended, in either the same or a modified form, or not. It is not the purpose of this report to reflect upon their operation; the review, and recommendations arising therefrom, will be brought to Members in September.

## **Urgency Decision No. 2: Initial Introduction of Virtual Meetings (VMs)**

20. On 20 April, the Chief Executive considered and approved my further report recommending that a set of changes be made urgently to the Constitution, in order to allow the Council to hold VMs at the earliest opportunity as permitted by the newly-introduced Regulations. This was done by introducing the

Council's "Procedure Rules for Virtual Meetings etc.", and a copy of these is attached at Annex 1.

21. The Procedure Rules for VMs make provision for Members to meet without being physically present in the same room, and were specifically designed to allow VMs of the Planning Committee to be held as soon as possible, because a backlog of untaken Planning decisions had begun to build up. The first VM of the Planning Committee was duly held on 22 April 2020 under the new procedures, and since then a further four VMs of the Planning Committee have been successfully held during May and June. A wide range of decisions have been taken by these VMs, in an effort to catch up time lost due to the coronavirus crisis and "lock-down".
22. The new Procedure Rules also provided for online public access to papers and reports, given the closure of the Civic Centre to the public and very few officers being present there, and for those reasons they in fact apply to all public availability of such papers during the crisis.
23. The Chief Executive's Urgency decision also introduced a new "Scheme of Public Participation for Virtual Meetings", modelled on the existing Scheme of Public Participation but with adaptations to suit the VM format. A copy of this (as slightly amended to remove an ambiguity by a decision of the Monitoring Officer on 24 April 2020) is attached at Annex 2.
24. The principal aim of the Scheme of Public Participation for Virtual Meetings is to replicate, as far as practicable, the rights which the public and community representatives have to attend and/or speak at physical meetings of the Planning Committee. It was thus pleasing that public speaking at the five VMs of the Planning Committee held between April and June continued at a similarly high level to that which normally occurs at physical meetings in the Civic Centre.
25. A Summary of the Scheme of Public Participation for VMs has been included on all relevant Committee Agendas. Feedback from public and community representative speakers at Planning Committee VMs has been broadly positive regarding the Scheme.
26. The Council has recently expanded its offer to public speakers, by enabling them to choose to dial in and address the Committee in their own voices, rather than having only the single option set out in the Scheme, namely that of their speeches being read out by the Civic Engagement Officer. Some have chosen to dial in, but some have continued to choose to have their speeches read – an indication, perhaps, of public confidence in that procedure. In anticipation of this, the Scheme sets a minimum level of public participation rights, based on having submitted speeches read out by an Officer, and includes provision for additional methods to be added as technology permits, without the need to amend the Scheme.
27. When the Chief Executive was considering making this Urgency decision in mid-April, it was even more difficult to know how long the coronavirus crisis would last, as infection and death rates were rising fast. Since the Regulations had been made to last for 13 months, until the end of 6 May 2021, the decision was taken that the Procedure Rules for VMs and the

Scheme of Public Participation for VMs would last for the duration of the applicability of the Regulations, viz. until the end of 6 May 2021.

28. Should physical meetings be possible and desirable before that date, there is no restriction on holding a physical meeting in the usual way, as the provisions in the Constitution for such meetings have not been removed or suspended; they remain extant, in parallel with the new procedures for VMs.
29. It is possible that some or all of the Regulations may be extended and/or made permanent in due course, in view of the widespread availability of technology. Therefore, the Chief Executive determined that during the period to May 2021, there will be a review of the operation of the new procedures, in order for a decision to be made as to whether they should be extended and/or made permanent, in either the same or a modified form - if it becomes legally possible to do so.

### **Urgency Decisions: Conclusion**

30. Both of the Chief Executive's Urgency decisions explained above are now reported to the Council for noting by Members as required by the Constitution, Part 3, Appendix 5, para. 4.10(5)(ii). It is recommended that Members note and ratify them accordingly.

### **Further Recommended Changes to the Constitution**

#### **Procedure Rules**

31. The Procedure Rules for VMs, although designed in haste for the Planning Committee's meetings to become VMs, do also enable VMs of Full Council and the Cabinet to occur. Two successful VMs of the Cabinet have been held, in May and June, and this Annual Meeting of the Council has been called.
32. However, the Procedure Rules for VMs do not:-
  - (a) allow hearings of the Licensing Sub-Committee, or of the Standards Committee Hearings Panel, to take place as VMs;
  - (b) cover fully the procedures of the Overview and Scrutiny Committee and its Sub-Committees, which have their own Procedure Rules in the Constitution;
  - (c) address the procedures for Agendas which include items requested by Members to be assembled in the current circumstances;
  - (d) expressly allow a VM to note items, or approve Minutes or Notes of meetings, by consensus without a full vote by roll-call of all the Members present at the VM, which is a preferred option for many meeting Chairmen.
33. Therefore, a Supplement to Procedure Rules for Virtual Meetings etc. is now proposed, in order to cover the above issues.
34. This is attached at Annex 4, and as adopting it is not an Urgent Matter at present, it is brought to the Council with a recommendation for approval at this meeting.

## **Scheme of Public Participation**

35. The existing Scheme of Public Participation allows members of the public and Parish Council representatives, in certain circumstances, to speak at meetings of Committees and Sub-Committees besides the Planning Committee, by way of asking Questions or making Comments. Also, the Council's Petitions Scheme allows certain Petitions to be presented and spoken to at meetings.
36. However, these aspects of the Scheme of Public Participation were not covered by the Chief Executive's Urgency decision. The Scheme of Public Participation for VMs, being narrowly focussed upon VMs of the Planning Committee, does not provide for public speaking at VMs of other Committees, nor for Petitions.
37. To date, since VMs commenced, there have not been any public or Parish Council requests to speak at Cabinet, Council or other Committee meetings, nor to present Petitions, so this has not become an Urgent Matter requiring a request to the Chief Executive to take another Urgency decision to bring these into effect.
38. However, in order to allow public participation at all types of VMs for the future, a Supplement to Scheme of Public Participation for Virtual Meetings is now proposed. This is attached at Annex 5, with a recommendation for approval at this meeting.

## **Further Recommended Changes: Conclusion**

39. The aim of these two Supplements is to adapt and replicate, as far as practicable during the crisis, the methods of operation, decision-making and public participation which would normally apply. They also ensure that it would be lawful for public participation at all types of VMs to take place virtually. The adoption of these two Supplements will complete the suite of changes that are required to enable the Council to continue the full range of decision-making for as long as the coronavirus crisis may last (subject to the continued existence of the Regulations).
40. Therefore, it is recommended that the Council adopt with immediate effect, and effective until the end of 6 May 2021, the Supplement to Procedure Rules for Virtual Meetings etc. at Annex 4, and the Supplement to Scheme of Public Participation for Virtual Meetings at Annex 5; and that their operation be reviewed as part of the review of the Procedure Rules for VMs and the Scheme of Public Participation for VMs, as explained above.

## **Equalities Impact Assessment**

41. Urgency Decision No. 1 related only to the procedures for and levels of decision-making on certain Planning matters within the Council, and in any event contains appropriate safeguards as set out in paragraph 16 above. It does not materially impact upon persons with protected characteristics.
42. In respect of Urgency Decision No. 2, Members are referred to the Assessment attached at Annex 3.

43. The Assessment at Annex 3 is also pertinent to my recommendation to the Council to adopt the Supplement to Procedure Rules for Virtual Meetings etc. at Annex 4, and the Supplement to Scheme of Public Participation for Virtual Meetings at Annex 5.

## **Consultation Planned or Undertaken**

44. Prior to making her Urgency decisions, the Chief Executive had carried out all necessary consultations which are required under the Constitution for a valid exercise of her delegated authority for Urgent Matters.
45. All Planning Committee members were fully informed of the proposed procedures that would be introduced for VMs, through the Member Services Manager (Operational) arranging a number of “practice” VMs in April, in advance of the introduction of the Procedure Rules for VMs. This programme of training and practical support was backed up by my circulating Notes for Members prior to each VM, and significant help and support offered to Members by both Member Services officers and IT officers in preparing for and ‘attendance’ at VMs over the last 3 months. The Council has learned from issues arising.
46. The procedures operated for VMs of the Planning Committee were then effectively ‘rolled out’ to the Cabinet, and invitations to join VMs are now emailed to all Members so that all may join VMs as Members, rather than merely watching the live stream as members of the public do.
47. The procedure for public and community representative speakers to submit their speeches in advance, and have them read to the Committee by an Officer, was offered, and trialled, at the last physical Planning Committee meeting on 18 March. It was well received by those who chose this option.

## **Other Options Considered**

48. Additional types of Planning decisions were considered by the Chief Executive for possible delegation to Officers, but it was decided, after internal consultation and discussion, not to proceed with those at that time, and instead to monitor the three additional delegations that were created, with a view to a review report on their operation being presented to Members in the Autumn.
49. It would be theoretically possible to retain the Council’s existing procedures and Constitution. However, holding physical meetings of Members would not be practical or prudent (if indeed it were lawful during the crisis) so in practice, either decision-making would be stymied, or decisions would have to be made outside the terms and procedures of the Constitution, and/or without the public being able to exercise the rights of participation enshrined in the Constitution. This would not be in line with good governance, and would carry risks of legal challenge, unlawful decisions, complaints (including to the Local Government Ombudsman), costs and public embarrassment.
50. The adoption of the Supplement to Procedure Rules for Virtual Meetings etc. at Annex 4, and the Supplement to Scheme of Public Participation for Virtual Meetings at Annex 5, could theoretically be deferred. However, were they

not adopted now, there would remain a risk that they are suddenly required at short notice for a VM of one Committee or another (including the Cabinet). Therefore, as and when circumstances arise in which these supplementary procedures are required, there would be little option other than to request the Chief Executive to make another Urgency decision in order to bring into effect appropriate procedures for the issue of the moment. This might have to occur a matter of only a couple of days - or even hours - before the relevant VM, which would not be consistent with transparent, predictable governance arrangements for the Council's decision-making.

## **Reasons for Supporting Option Recommended**

51. It is a required procedure in the interests of transparency of Urgency decisions, that they be reported to the next scheduled meeting of the committee or body which would otherwise have dealt with the matter. In the case of the Constitution (which includes the Schemes of Public Participation and of Delegation), this is the Full Council. It is good practice that Urgency decisions be ratified by Members, and this is also recommended.
52. The adoption of the supplementary procedures at Annexes 4 and 5 will complete the suite of changes that are required in order to enable the Council to continue the full range of its decision-making during the crisis, in a fully-prepared manner.

## **Next Steps in Process**

53. The review of the three additional delegations to Planning Officers will be reported to Members in September, prior to their expiry after 7 October 2020.
54. The Procedure Rules for VMs, the Scheme of Public Participation for VMs, and the Supplements to each of them, will be reviewed in line with any changes and/or extensions to the Regulations which the Secretary of State may introduce before May 2021. If no such extension is brought into effect by him, the holding of VMs will become unlawful on 7 May 2021 and thus no extension of those procedures will be sought from the Council.

## **Conclusion**

55. The Council has acted with expedition and foresight to enable its decision-making to continue up to this point, despite the coronavirus crisis, and it is continuing to look ahead by completing the changes needed to operate all its decision-making processes in these circumstances and with all appropriate public participation.
56. The forthcoming reviews will give an opportunity to reflect on what has worked well, and not so well, with a view to keeping (so far as legally possible to do so) the best for the long term.

## **Contact and Email**

57. Jeremy Baker, Principal Solicitor – Strategic Development, and Deputy Monitoring Officer, can be contacted on (01233) 330574 or by email at [Jeremy.Baker@Ashford.gov.uk](mailto:Jeremy.Baker@Ashford.gov.uk) .

## ANNEX 1

### **PROCEDURE RULES FOR VIRTUAL MEETINGS ETC.**

(introduced by an Urgency Decision of the Chief Executive, 20 April 2020)

#### INTRODUCTION

As the Summary and Explanation of the Council's Constitution states, some of the processes and procedures followed by the Council in its operation and decision-making are required by law, while others were chosen by the Council.

Owing to the Coronavirus crisis, the legal requirements upon local authorities to hold physical meetings of Councillors, and to permit the Press and public to attend them, were changed with effect from 4<sup>th</sup> April 2020, by The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020<sup>1</sup> (referred to as "**the Regulations**").

Regulation 5(1) defines a "meeting", for the purposes of the relevant legal provisions, to include a meeting of persons not present in the same place, and allows a meeting to be held in "more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers", up to and including 6<sup>th</sup> May 2021.

Regulations 5(2) and 5(3) define a Councillor as being in attendance at such a meeting at any time if he/she "is able at that time:-

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

In order to enable the Council's operation and decision-making to continue during the crisis, it is necessary to enable the Council to hold meetings in accordance with the Regulations, and to amend the Council's processes and procedures to bring them in line with the Regulations, and the provision of online-only access to papers by the public.

To prepare the Council to do this, the Chief Executive and the Corporate Director (Law and Governance) established a project team of Officers who carried out research, investigation and experimentation into various commercially-available technology platforms for achieving the expectations of Regulations 5(2) and 5(3). The conclusion of this work was that, at this stage, it is not practicable to arrange for all the Councillors participating to see and be seen by all other Councillors participating, as well as being seen by all members of the public attending the meeting by remote access.

Therefore, the Council is adopting arrangements for all its meetings that enable all Councillors in attendance to hear and be heard by all other Councillors participating, as

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<sup>1</sup> S.I. 2020/392.

well as being heard by all members of the public attending the meeting by remote access as defined in the Regulations. This satisfies the Regulations' requirements for a VM.

Since the crisis has resulted in many offices being completely closed, and others being run by skeleton staff only, the Regulations also make provision for a number of local government procedures, required under current legislation to occur in physical form at local authorities' premises, to be carried out online or by remote means. It is important that the Council can use these new procedures in order to continue running its business as effectively as possible during the crisis, when it is not practicable for the Civic Centre reception to remain open to the public.

The Constitution (including all of its Parts, Articles, Appendices, Rules, Codes, Protocols, Schemes, etc.) is therefore amended as set out below. These changes have immediate effect and shall remain in force until the end of 6<sup>th</sup> May 2021, unless earlier terminated or suspended, or extended, by a further decision.

### AMENDMENTS TO THE CONSTITUTION

1. In the Constitution, the terms “**meeting**” and “**proceeding**” and all cognate expressions shall include any meeting which the Regulations include within the meaning of the term “meeting”, and such a meeting shall be referred to as a “**Virtual Meeting**” or “**VM**”.
2. All the procedures and processes in the Constitution shall apply to VMs as they apply to physical meetings, save as set out below.
3. Those changes to the Constitution so specified below apply generally, and not just in respect of VMs.
4. In the Constitution, the terms “**attend**” and “**be present**” and all cognate expressions shall be interpreted to include:-
  - (i) (in the case of Councillors) attending VMs by means of remote attendance as defined in the Regulations, or
  - (ii) (in the case of members of the Press and public) attending VMs by means of remote access as defined in the Regulations.
5. For the avoidance of doubt, if and for so long as a Member is not able to:-
  - (i) hear and be heard by the other Members in attendance at a VM, and
  - (ii) hear and be heard by any members of the public entitled to attend the VM in order to exercise a right to speak at the VM, and
  - (iii) be heard by other members of the public attending the VM by means of remote access as defined in the Regulations,that Member is not to be regarded as attending the VM, shall not be counted as present if the number of relevant Members present is counted in order to establish whether a quorum is present, and shall not cast a vote.
6. General Procedure Rules 6 (Notice of and Summons to Meetings) and 8 (Quorum and Adjournment) are amended in respect of all meetings and related papers by the replacement of the words “by post” with the words “by an appropriate method”.

7. General Procedure Rule 15.1 (Voting: Majority) is amended in respect of VMs by the deletion of the words “in the room”.
8. In respect of VMs, General Procedure Rule 15.3 (Method of Voting) is deleted.
9. In respect of VMs (including VMs of the Cabinet and all other Committees and Sub-Committees, notwithstanding General Procedure Rule 23: Application to Committees and Sub-Committees), all references to voting in General Procedure Rule 15 (Voting) or otherwise shall be interpreted as referring to the following procedure:-
  - (i) Any Member attending a VM shall cast his/her vote by responding, in a manner which is audible to other Members and members of the public attending the meeting, to a request by the Chairman of the VM, or by the Proper Officer or Officer acting on his behalf, to state that Member’s vote on the motion or matter being decided at that time.
  - (ii) If any Member, when so requested, does not wish to cast a vote, that Member shall respond, in a manner which is audible to other Members and members of the public attending the meeting, stating his/her wish to abstain.
  - (iii) If any Member, when so requested, does not respond stating a vote within a reasonable time and in a manner which is audible to other Members and members of the public attending the meeting, that Member will be regarded as having left the VM, and no vote shall be counted from that Member.
  - (iv) No Member may state his/her vote in advance of being so requested, and any such statement shall be disregarded.
  - (v) The response given by each Member when so requested shall be recorded by the Proper Officer or Officer acting on his behalf.
  - (vi) The Chairman of a VM may state his/her vote, or use his/her second or casting vote, by stating his/her vote in a manner which is audible to other Members and members of the public attending the meeting, without being asked to do so, and the Chairman’s votes so given shall be recorded by the Proper Officer or Officer acting on his behalf.
  - (vii) The Proper Officer or Officer acting on his behalf shall tally the votes so recorded, and either he or the Chairman shall inform the VM, in a manner which is audible to other Members and members of the public attending the meeting, of the result of the vote on the motion or matter being decided at that time.
10. The first sentence of General Procedure Rule 16.1 (Signing the Minutes) is amended such that, when the next suitable meeting is a VM, there is no requirement for the minutes to be signed at that meeting; instead, the Mayor may sign the minutes of the previous meeting at any time after a resolution at a VM that the minutes be signed as a correct record. Signing of any minutes may be carried out by the Mayor by any electronic, virtual or other remote procedure which the law allows and the Proper Officer or Officer acting on his behalf approves.
11. General Procedure Rule 17 (Record of Attendance) is amended in respect of VMs by the replacement of the words “must sign their names on the attendance sheets before the conclusion of every meeting” with the words “must, whenever asked to do so during a meeting, by the Chairman of the meeting or by the Proper Officer or an Officer acting on his behalf, speak in a manner which is audible to other Members and

members of the public attending the meeting, to identify themselves and confirm their presence at the meeting at that time”.

12. General Procedure Rules 19.4 (Member to Leave the Meeting), 20 (Disturbance by the Public) and 21 (Declarations of Interest) are amended in respect of VMs such that all references to persons leaving, withdrawing or being removed from, etc., a meeting room refer to disconnecting or otherwise preventing the persons concerned from being able to be heard or seen by any other person attending the VM. No person shall attempt to be heard or seen by any Member or member of the Press or public attending a VM at a time when any of those Rules apply to him/her. However, a Member to whom General Procedure Rule 21 (Declarations of Interest) applies may maintain contact with the Proper Officer or Officer acting on his behalf, by means other than by being heard or seen by any Member or member of the Press or public attending the VM, in order to be able to recommence attendance at the VM when/if the relevant business or matter has been disposed of and the Member is permitted by that Rule to attend the remainder of the VM, and that Member may thereupon do so if desired.
13. The Access to Information Procedure Rules, including their Appendices, are amended in respect of all meetings and related papers, by the deletion of all requirements to make available details of meetings and copies of agendas, reports, minutes, background papers, notices, registers and other documents at the offices of the Council or otherwise, and their replacement by requirements to make those things available on the Council’s website.
14. The Access to Information Procedure Rules, Appendix 2 (Summary of Rights of the Public to Attend Meetings and to Inspect and Copy Documents under Part V(A) and Part XI of the Local Government Act 1972 (As Amended)), paragraphs 1 and 2 (Access to Meetings) are amended in respect of VMs by the deletion of all requirements to make available to the public physical access to any meeting room, and their replacement by a right to hear by means of remote access Councillors attending the VM by remote attendance.
15. The Access to Information Procedure Rules, Appendix 5 (Procedure/Guidance Note – Filming, Photographing or making an Audio Recording of Proceedings at Meetings) is amended in respect of VMs to remove rights to physically film, photograph or make any audio recording in any physical place where all or part of a VM is taking place, and to transfer such rights instead to the audio (and/or, where provided, any video) broadcast of the VM as heard/seen by a member of the Press or public at a computer or other terminal. The guidance and expectations set out in that Appendix 5 apply to any film, photograph or recording made in respect of a VM or part thereof.
16. All references to the Proper Officer in the Constitution are updated to refer to the Corporate Director (Law and Governance) and Monitoring Officer, and the Member Services Manager (Operational) and/or such other Officer(s) as the Corporate Director may authorise in writing to act on his behalf.

## ANNEX 2

### **SCHEME OF PUBLIC PARTICIPATION FOR VIRTUAL MEETINGS**

(introduced by an Urgency Decision of the Chief Executive, 20 April 2020, and slightly amended to remove an ambiguity by a decision of the Monitoring Officer, 24 April 2020)

#### INTRODUCTION

**Virtual Meetings:** The Scheme of Public Participation shall apply to Virtual Meetings (referred to as “VMs”) of the Council and its Committees and Sub-Committees as follows:-

1. The public cannot physically “attend” a VM to listen to the debate, and the legal right to so attend has been changed<sup>2</sup> into a right to hear (and where practicable, see) Councillors attending the VM by remote attendance.
2. The aim of the Scheme, viz. enhancing the public’s ability to contribute to the democratic process, is the same as for any normal, non-virtual meeting.
3. The Scheme should operate fairly and effectively and to that end, the normal rules (as set out in paragraphs 2 to 6 inclusive of the Scheme) will apply to VMs **save as modified below**.
4. All references to “meetings” in the Scheme shall apply to VMs as modified below.

*The above text shall be added at the end of paragraph 1 of the Scheme.*

#### Paragraph 2 (General Rules Applicable to all Schemes):

*The following text shall be added at the end of paragraph 2(b):-*

**Virtual Meetings:** Notwithstanding the above, owing to the need to make significant preparations for VMs in advance, **written notice must be given to the Proper Officer, for any type of public participation at a VM, by 15:00 hours on the second working day before the VM.**

Hence, for example, for VMs of the Planning Committee on Wednesdays:-

- (i) If there is no Bank Holiday on the Monday preceding the VM, written notice must be given by 15:00 hours on the Monday.
- (ii) If there is a Bank Holiday on the Monday preceding the VM, written notice must be given by 15:00 hours on the Friday preceding the VM.
- (iii) If the VM immediately follows the Easter Weekend, written notice must be given by 15:00 hours on Maundy Thursday.

#### Paragraph 4 (Procedure for Speaking at Meetings of the Planning Committee):

*The following text shall be added at the end of paragraph 4:-*

**Virtual Meetings:** All references above to “speaking” shall be interpreted in accordance with the procedure below.

“Speakers” means persons giving written notice to speak at a VM as set out in paragraph 2(b) and being recorded by the Proper Officer either:-

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<sup>2</sup> By The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020, S.I. 2020/392.

- (i) on a first-come, first-served basis as having the right to submit a speech in support of or against an item for decision, or
- (ii) as a duly-authorized representative of a Parish Council<sup>3</sup> or Community Forum affected and having the right to submit a speech on an item for decision.

The Chairman of the Planning Committee (or, in his absence, the Vice-Chairman) has discretion, for large or complex items or in exceptional circumstances, to permit more than one speaker in support of and against an item for decision, and/or to recognise more than one Parish Council or Community Forum as being affected. If he/she decides to do so, he/she shall immediately inform the Member Services Manager (Operational) or such other Officer(s) as the Proper Officer may have authorised under paragraph 6.

All speakers shall submit to the Proper Officer by email, **by 10:00 hours on the day of the VM**, a copy of their speech in written, legible English, able to be read within the maximum period of 3 minutes. This means it should be no longer than 400 words, on a single side of A4 paper, printed in 12-point non-italic sans-serif font.

Unless alternative arrangements for the speakers' participation are made, the Proper Officer will arrange for all speakers' speeches received as above to be read to the VM by a competent Officer for and on behalf of the speakers, at the normal times and in the normal order during the VM (subject to the Chairman's normal discretion).

An Officer reading any speech on behalf of any speaker shall have discretion to omit/edit out any inappropriate language, information or statements; nevertheless if any defamation, insult, personal or confidential information, etc. is contained in any speech received from any speaker and/or is read to the VM by an Officer, each speaker accepts by submitting their speech to be fully responsible for all consequences thereof and to indemnify the Officer and the Council accordingly.

#### Paragraph 5 (Summary of Rights):

*The following text shall be added after the section entitled "Comments":-*

For the avoidance of doubt, the above three sections (Petitions, Questions, Comments) do not apply to the Planning Committee.

#### Paragraph 6 (Administration of the Scheme):

*The first sentence shall be replaced by the following updated information:-*

The operation and administration of the Scheme is undertaken by the Proper Officer, the Corporate Director (Law and Governance) and Monitoring Officer, Civic Centre, Tannery Lane, Ashford. The Scheme is administered on his behalf by the Member Services Manager (Operational) and/or by such other Officer(s) as the Corporate Director may authorise in writing to do so. Email: [membersservices@ashford.gov.uk](mailto:membersservices@ashford.gov.uk) or ...

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<sup>3</sup> The term "Parish Council" includes Town Councils and Community Councils

## Equality Impact Assessment

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1. An Equality Impact Assessment (EIA) is a document that summarises how the council has had due regard to the public sector equality duty (Equality Act 2010) in its decision-making. Although there is no legal duty to produce an EIA, the Council must have **due regard** to the equality duty and an EIA is recognised as the best method of fulfilling that duty. It can assist the Council in making a judgment as to whether a policy or other decision will have unintended negative consequences for certain people and help maximise the positive impacts of policy change. An EIA can lead to one of four consequences:
  - (a) No major change – the policy or other decision is robust with no potential for discrimination or adverse impact. Opportunities to promote equality have been taken;
  - (b) Adjust the policy or decision to remove barriers or better promote equality as identified in the EIA;
  - (c) Continue the policy – if the EIA identifies potential for adverse impact, set out compelling justification for continuing;
  - (d) Stop and remove the policy where actual or potential unlawful discrimination is identified.

### **Public sector equality duty**

2. The Equality Act 2010 places a duty on the council, when exercising public functions, to have due regard to the need to:
  - (a) Eliminate discrimination, harassment and victimisation;
  - (b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
  - (c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it (ie tackling prejudice and promoting understanding between people from different groups).
3. These are known as the three aims of the general equality duty.

### **Protected characteristics**

4. The Equality Act 2010 sets out nine protected characteristics for the purpose of the equality duty:
  - Age
  - Disability

- Gender reassignment
- Marriage and civil partnership\*
- Pregnancy and maternity
- Race
- Religion or belief
- Sex
- Sexual orientation

\*For marriage and civil partnership, only the first aim of the duty applies in relation to employment.

### **Due regard**

5. Having 'due regard' is about using good equality information and analysis at the right time as part of decision-making procedures.
6. To 'have due regard' means that in making decisions and in its other day-to-day activities the council must consciously consider the need to do the things set out in the general equality duty: eliminate discrimination, advance equality of opportunity and foster good relations. This can involve:
  - removing or minimising disadvantages suffered by people due to their protected characteristics.
  - taking steps to meet the needs of people with certain protected characteristics when these are different from the needs of other people.
  - encouraging people with certain protected characteristics to participate in public life or in other activities where it is disproportionately low.
7. How much regard is 'due' will depend on the circumstances. The greater the potential impact, the higher the regard required by the duty. Examples of functions and decisions likely to engage the duty include: policy decisions, budget decisions, public appointments, service provision, statutory discretion, decisions on individuals, employing staff and procurement of goods and services.
8. In terms of timing:
  - Having 'due regard' should be considered at the inception of any decision or proposed policy or service development or change.
  - Due regard should be considered throughout development of a decision. Notes shall be taken and kept on file as to how due regard has been had to the equality duty in research, meetings, project teams, consultations etc.

- The completion of the EIA is a way of effectively summarising this and it should inform final decision-making.

### **Armed Forces Community**

9. As part of the council's commitment to the Armed Forces Community made through the signing of the Armed Forces Covenant the council's Cabinet agreed in November 2017 that potential impacts on the Armed Forces Community should be considered as part of the Equality Impact Assessment process.
10. Accordingly, due regard should also be had throughout the decision making process to potential impacts on the groups covered by the Armed Forces Covenant:
  - Current serving members of the Armed Forces (both Regular and Reserve)
  - Former serving members of the Armed Forces (both Regular and Reserve)
  - The families of current and former Armed Forces personnel.

### **Case law principles**

11. A number of principles have been established by the courts in relation to the equality duty and due regard:
  - Decision-makers in public authorities must be aware of their duty to have 'due regard' to the equality duty and so EIA's must be attached to any relevant committee reports.
  - Due regard is fulfilled before and at the time a particular policy is under consideration as well as at the time a decision is taken. Due regard involves a conscious approach and state of mind.
  - A public authority cannot satisfy the duty by justifying a decision after it has been taken.
  - The duty must be exercised in substance, with rigour and with an open mind in such a way that it influences the final decision.
  - The duty is a non-delegable one. The duty will always remain the responsibility of the public authority.
  - The duty is a continuing one so that it needs to be considered not only when a policy, for example, is being developed and agreed but also when it is implemented.
  - It is good practice for those exercising public functions to keep an accurate record showing that they have actually considered the general duty and pondered

relevant questions. Proper record keeping encourages transparency and will discipline those carrying out the relevant function to undertake the duty conscientiously.

- A public authority will need to consider whether it has sufficient information to assess the effects of the policy, or the way a function is being carried out, on the aims set out in the general equality duty.
- A public authority cannot avoid complying with the duty by claiming that it does not have enough resources to do so.

The Equality and Human Rights Commission has produced helpful guidance on “Meeting the Equality Duty in Policy and Decision-Making” (October 2014). It is available on the following link and report authors should read and follow this when developing or reporting on proposals for policy or service development or change and other decisions likely to engage the equality duty. [Equality Duty in decision-making](#)

<b>Lead officer:</b>	Jeremy Baker – Principal Solicitor (Strategic Development)
<b>Decision maker:</b>	Tracey Kerly – Chief Executive
<b>Decision:</b> <ul style="list-style-type: none"> <li>• Policy, project, service, contract</li> <li>• Review, change, new, stop</li> </ul>	Changing the Council’s procedures to accommodate Member decision-making at Virtual Meetings (VMs), including in particular:- <ul style="list-style-type: none"> <li>(A) Replacing the right of public attendance at Member meetings with a right to hear such meetings by means of remote access technology;</li> <li>(B) Replacing the right to address Member meetings by a right to submit a written speech to be read to such meetings;</li> <li>(C) Replacing the right to inspect hard copies of papers at the Civic Centre with a right to inspect them online.</li> </ul>
<b>Date of decision:</b> The date when the final decision is made. The EIA must be complete before this point and inform the final decision.	Recommended for Decision 16 April 2020

<p><b>Summary of the proposed decision:</b></p> <ul style="list-style-type: none"> <li>• Aims and objectives</li> <li>• Key actions</li> <li>• Expected outcomes</li> <li>• Who will be affected and how?</li> <li>• How many people will be affected?</li> </ul>	<p>The overall aim is to preserve so far as possible equivalent rights for the public and Parish Councils to attend and participate in Member decision-making, in the new scenario of VMs. Considerable thought has been given to this.</p> <p>Members of the public (and Press), and Parish Councils, will not be able to attend meetings or inspect hard copy papers, but will be able to hear meetings and inspect papers remotely, and will be able to have speeches read out on their behalf. Although this will reduce the level of participation by those who would have attended (several hundred p.a.) and/or addressed meetings (several dozen p.a.) and/or inspected papers physically (very few), it will widen potential participation to include those who would not have done this.</p>
<p><b>Information and research:</b></p> <ul style="list-style-type: none"> <li>• Outline the information and research that has informed the decision.</li> <li>• Include sources and key findings.</li> </ul>	<p>The Coronavirus Act 2020 authorised the Government to introduce a VM regime into the law. In the Regulations doing so, and related publications, the Government made it clear that these are temporary measures to enable the fight against Coronavirus. Discussions have been held with Waltham Forest LBC, Kensington &amp; Chelsea RLBC and other Kent authorities regarding issues connected with VMs.</p>
<p><b>Consultation:</b></p> <ul style="list-style-type: none"> <li>• What specific consultation has occurred on this decision?</li> <li>• What were the results of the consultation?</li> <li>• Did the consultation analysis reveal any difference in views across the protected characteristics?</li> <li>• What conclusions can be drawn from the analysis on how the decision will affect people with different protected characteristics?</li> </ul>	<p>Similar measures to (A) and (B) were introduced, by necessity, during an earlier stage of the Coronavirus pandemic in March 2020. There was very little complaint or comment about these, and the number of people seeking to attend the meeting on 18 March was less than 10, when normally over 100 would have been expected. Most public speakers were willing to take up the offer of having their speech read to the meeting on their behalf, especially the elderly, and only a minority wished to speak in person, usually the younger. Such complaints as were received were more about the principle of seeking to hold a meeting during a pandemic than the specific processes operated; indeed one complainant at least would benefit from the right to have her speech read in view of her medical need to self-isolate.</p> <p>Councillors were briefed on the proposals during a teleconference on 15 March and were supportive of proceeding.</p>

**Assess the relevance of the decision to people with different protected characteristics and assess the impact of the decision on people with different protected characteristics.**

When assessing relevance and impact, make it clear who the assessment applies to within the protected characteristic category. For example, a decision may have high relevance for young people but low relevance for older people; it may have a positive impact on women but a neutral impact on men.

<b>Protected characteristic</b>	<b>Relevance to Decision</b> High/Medium/Low/None	<b>Impact of Decision</b> <b>Positive</b> (Major/Minor) <b>Negative</b> (Major/Minor) <b>Neutral</b>
<u>AGE</u> Elderly	High	Negative overall
Middle age	None	Neutral
Young adult	None	Neutral
Children	None	Neutral
<u>DISABILITY</u> Physical	High	Positive
Mental	Medium	Positive
Sensory	Medium	Positive overall
<u>GENDER RE-ASSIGNMENT</u>	None	Neutral
<u>MARRIAGE/CIVIL PARTNERSHIP</u>	None	Neutral
<u>PREGNANCY/MATERNITY</u>	Medium	Positive overall
<u>RACE</u>	None	Neutral
<u>RELIGION OR BELIEF</u>	None	Neutral
<u>SEX</u> Men	None	Neutral
Women	None	Neutral
<u>SEXUAL ORIENTATION</u>	None	Neutral
<u>ARMED FORCES COMMUNITY</u> Regular/Reserve personnel	None	Neutral

Former service personnel	Medium	Negative overall
Service families	None	Neutral

<p><b>Mitigating negative impact:</b></p> <p>Where any negative impact has been identified, outline the measures taken to mitigate against it.</p>	<p>It is not possible, during the pandemic, to permit members of the public and Press to continue attending meetings physically – such is contrary to Government and NHS prescription.</p> <p>The promise of a competent Officer to read speeches on behalf of speakers should ensure that there will be no loss of impact of anyone’s speech as a result; indeed it may well be the case that the nominated officer is better able to present than the members of the public. There is no change to the principle and practice that equal opportunity and weight be given to speeches both for and against any application (assuming public interest in speaking on both sides).</p>
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<p><b>Is the decision relevant to the aims of the equality duty?</b></p> <p>Guidance on the aims can be found in the EHRC’s <i>Essential Guide</i>, alongside fuller <i>PSED Technical Guidance</i>.</p>	
<b>Aim</b>	<b>Yes / No / N/A</b>
1) Eliminate discrimination, harassment and victimisation	No
2) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it	Yes
3) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it	Yes

<p><b>Conclusion:</b></p> <ul style="list-style-type: none"> <li>• Consider how due regard has been had to the equality duty, from start to finish.</li> <li>• There should be no unlawful discrimination arising from the decision (see guidance above ).</li> <li>• Advise on whether the proposal meets the aims of the equality</li> </ul>	<p>There is no change to the principle and practice that equal opportunity and weight be given to speeches both for and against any application (assuming public interest in speaking on both sides).</p> <p>This in itself meant that a decision was taken to postpone consideration of allowing public speakers to address meetings remotely, since the ability to run certain technology platforms would be necessary to do this, and it would be far less likely that objecting members of the public would have this program and far more likely that developers and their planning agents would have it and be able to take advantage of the new rights.</p> <p>Safeguards are built into the new procedures, and the residual impacts are not expected to be great.</p>
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<p>duty or whether adjustments have been made or need to be made or whether any residual impacts are justified.</p> <ul style="list-style-type: none"> <li>• How will monitoring of the policy, procedure or decision and its implementation be undertaken and reported?</li> </ul>	<p>Any residual negative impacts are counterbalanced by various positive benefits for some members of the public (see above).</p> <p>It is recommended that there be monitoring and a review of the new procedures over the next 12 months, in order to inform future decisions about ending, continuing or modifying the new procedures for 7 May 2021 onwards.</p>
<p><b>EIA completion date:</b></p>	<p>15 April 2020</p>

## ANNEX 4

# SUPPLEMENT TO PROCEDURE RULES FOR VIRTUAL MEETINGS ETC.

## INTRODUCTION

On 20 April 2020, the Chief Executive made a decision, under her delegation to determine Urgent Matters, to introduce **Procedure Rules for Virtual Meetings etc.**

Those Procedure Rules enable the Council, under its own Constitution and procedures, to hold meetings in ways other than physically in a single location. This new type of meeting is permitted within national legislation by The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020<sup>4</sup> (“the Regulations”), and has become known as a “Virtual Meeting” (abbreviated to “VM”).

Those Procedure Rules have enabled the Council’s operation and decision-making to continue during the coronavirus crisis, in particular through its Planning Committee. However, to enable all of the Council’s Committees, Sub-Committees, Panels and Boards to hold VMs, some further changes to other parts of the Constitution are required, and these are set out below.

In addition, the coronavirus crisis has meant that it is not practicable for the Civic Centre reception to remain open to the public, nor for some procedures to take place in physical form or as quickly as normal. It is important that such procedures, set out in the Constitution, are amended to reflect what is practicable in the current circumstances and to enable the Council to continue running its business as effectively as possible during the crisis.

The further changes to the Constitution set out below shall be read and interpreted as an integral part of the Procedure Rules for Virtual Meetings etc., with immediate effect. They shall therefore remain in force until the end of 6<sup>th</sup> May 2021, unless earlier terminated or suspended, or extended, by a further decision.

## FURTHER AMENDMENTS TO THE CONSTITUTION

17. In the Constitution, the term “**hearing**” shall include any meeting which the Regulations include within the meaning of the term “meeting”, and such a hearing shall be referred to as a “**Virtual Meeting**” or “**VM**”.
18. In the Constitution, the term “**in public**”, in respect of the holding of a meeting or hearing, shall be interpreted to include a VM which members of the Press and public (and, where applicable, parties and their representatives, witnesses, and any other persons to whom notice of a hearing is given) may attend by means of remote access as defined in the Regulations.
19. Any provision in the Constitution which permits or requires the Press, public and/or any party or person (or all or any of these, in order for Members to deliberate in private) to be excluded from any meeting or hearing refers to disconnecting or otherwise preventing the person(s) concerned from being able to be heard or seen by any other person attending the VM.

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<sup>4</sup> S.I. 2020/392.

No person shall attempt to be heard or seen by any Member or member of the Press or public attending a VM at a time when he/she has been excluded under any such provision, and no person shall attempt to hear or see Members deliberating in private when all or any of the Press, public, parties and/or other persons have been excluded for that purpose.

20. All references in the Constitution (other than in the Overview and Scrutiny Procedure Rules and their Appendices) to the Independent Person, and/or any person who is not a Member of the Council, the Press or the public, "attending" or "being present at" (or any cognate expression) any meeting or hearing shall be interpreted in accordance with the procedure below.

A person is deemed to "attend" or "be present at" a VM if he/she is able at that VM:-

- (a) to hear and be heard by the Members in attendance at the VM,
- (b) to hear any speech of any public speaker (and, where applicable, parties and their representatives, witnesses, and any other persons to whom notice of a hearing is given) at the VM, and
- (c) to be heard by any member of the public (and, where applicable, parties and their representatives, witnesses, and any other persons to whom notice of a hearing is given) attending the VM.

21. All references in the Overview and Scrutiny Procedure Rules and their Appendices to a Member of the Cabinet (Executive) or any Officer or other person "appearing at" or "attending" any Overview and Scrutiny Committee or Sub-Committee shall be interpreted in accordance with the procedure below.

A person is deemed to "appear at" or "attend" a VM if he/she is able at that VM:-

- (a) to hear and be heard by the Members in attendance at the VM,
- (b) to hear any relevant speech of any public speaker at the VM, and
- (c) to be heard by any members of the public attending the VM.

22. The Procedural Decisions Relating to Committees etc. (Appendix 3 to the General Procedure Rules) are amended in section F.(4) (Inclusion of Items on Agenda by Members and Supply of Agenda) so as to require any Member, who wishes to request that an item contained within an Information Digest be considered by a meeting to which it is appropriate:-

- (i) Under paragraph (a), to give notice to the Proper Officer in writing by email (not by fax) not later than noon on the day ten working days before the date of the meeting in question;
- (ii) Under paragraph (d), to supply the Proper Officer with the written report suitable for circulation with the Agenda not later than noon on the day eight working days before the date of the meeting in question.

The Proper Officer shall not be required to despatch a supplementary agenda concerning the item.

23. Notwithstanding new Procedure Rule 9 for VMs, any VM may make a decision to note any document, action, fact or matter, and/or to approve any Minutes or Notes of any meeting, by means of a motion to do so, duly moved and seconded, being put clearly to the meeting by the Chairman, and the Chairman calling for any objections or dissent to be voiced, and pausing to hear any that may be voiced. If no objection or dissent is heard, the item shall be taken as noted, or the Minutes or Notes approved, by consensus of the VM if the Chairman expresses his satisfaction or thanks or otherwise declares that this is so.

## ANNEX 5

# **SUPPLEMENT TO SCHEME OF PUBLIC PARTICIPATION FOR VIRTUAL MEETINGS**

## INTRODUCTION

On 20 April 2020, the Chief Executive made a decision, under her delegation to determine Urgent Matters, to introduce a **Scheme of Public Participation for Virtual Meetings**.

That Scheme of Public Participation for Virtual Meetings was slightly amended to remove an ambiguity by a decision of the Monitoring Officer on 24 April 2020 under Article 15.02(a) of the Constitution.

The Scheme of Public Participation for Virtual Meetings (as so amended) sought to apply the Council's Scheme of Public Participation generally to meetings of the Council and its Committees and Sub-Committees which take place as Virtual Meetings (referred to as "VMs"). This pursued in Ashford Borough the intent of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020<sup>5</sup>.

At the time of the above decisions, the Council's focus was on introducing VMs of the Planning Committee. Hence, detailed changes to the Scheme of Public Participation were made to paragraph 4 (Procedure for Speaking at Meetings of the Planning Committee), but not to paragraph 3 (Types of Public Participation (Excluding the Scheme as it applies to the Planning Committee)).

Therefore, it is now necessary to make corresponding changes, set out in this Supplement to Scheme of Public Participation for Virtual Meetings, to provide for public participation at VMs of other Committees and Sub-Committees, including the Cabinet, and also in respect of the Petitions Scheme.

### Paragraph 3 (Types of Public Participation (Excluding the Scheme as it applies to the Planning Committee)):

*The following text shall be added at the end of paragraph 3(a) (Petition Scheme for Ashford Borough Council):-*

#### **Virtual Meetings:**

1. All references to Petitions being submitted or presented in person (including in General Procedure Rule 9.1 and in Cabinet (Executive) Procedure Rule 2.6<sup>6</sup>) shall be interpreted in accordance with the procedure below.

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<sup>5</sup> S.I. 2020/392.

<sup>6</sup> Footnotes shall be added to General Procedure Rule 9.1 and Cabinet (Executive) Procedure Rule 2.6 to the same effect.

The Petition Organiser (or lead signatory)<sup>7</sup> or his/her nominee shall (a) give written notice to the Proper Officer to present a Petition, and (b) submit to the Proper Officer by email, in both cases **by 15:00 hours on the second working day before the VM**, a copy of the Petition in written, legible English.

The Proper Officer will notify the VM of the Petition being presented or submitted, but there will be no physical presentation or submission of Petitions.

2. All references to the Petition Organiser (or lead signatory) or his/her nominee “speaking” (and cognate expressions) shall be interpreted in accordance with the procedure below.

The speaker shall submit to the Proper Officer by email, **by 10:00 hours on the day of the VM**, a copy of his/her speech in written, legible English, able to be read within the maximum time allowed. In the case of the normal maximum time of 10 minutes, this means it should be no longer than 1,250 words, on three sides of A4 paper, printed in 12-point non-italic sans-serif font (pro rata in the event of a different maximum time applying).

Unless alternative arrangements for the speaker’s participation are made, the Proper Officer will arrange for the speaker’s speech received as above to be read to the VM by a competent Officer for and on behalf of the speaker, at the normal time during the VM (subject to the Chairman’s normal discretion).

An Officer reading any speech on behalf of any speaker shall have discretion to omit/edit out any inappropriate language, information or statements; nevertheless if any defamation, insult, personal or confidential information, etc. is contained in any speech received from any speaker and/or is read to the VM by an Officer, each speaker accepts by submitting their speech to be fully responsible for all consequences thereof and to indemnify the Officer and the Council accordingly.

3. All references above to an Officer “appearing” at a meeting (and cognate expressions) shall be interpreted in accordance with the procedure below.

An Officer shall be deemed to “appear” at a VM if he/she is able at that VM:-

- (a) to hear and be heard by the Members in attendance at the VM,
- (b) to hear any speech of any speaker at the VM, and
- (c) to be heard by any members of the public attending the VM.

*The following text shall be added at the end of paragraph 3(b) (Questions):-*

**Virtual Meetings:** All references above to “speaking” (and cognate expressions) shall be interpreted in accordance with the procedure below.

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<sup>7</sup> Including a duly-authorized representative of a Parish Council, Town Council or Community Council.

“Speaker” means a person<sup>8</sup> giving written notice to speak at a VM to ask a Question as set out in paragraph 2(b) and being recorded by the Proper Officer on a first-come, first-served basis as having the right to submit a speech asking a Question on an item on the agenda.

The Chairman of the VM (or, in his/her absence, the Vice-Chairman) has discretion, for large or complex items or in exceptional circumstances, to permit more than one speaker asking a Question on an item on the agenda. If he/she decides to do so, he/she shall immediately inform the Member Services Manager (Operational) or such other Officer(s) as the Proper Officer may have authorised under paragraph 6.

All speakers shall submit to the Proper Officer by email, **by 10:00 hours on the day of the VM**, a copy of their speech (including the Question to be asked) in written, legible English, able to be read within the maximum period of 3 minutes. This means it should be no longer than 400 words (including the Question to be asked), on a single side of A4 paper, printed in 12-point non-italic sans-serif font.

Unless alternative arrangements for the speakers’ participation are made, the Proper Officer will arrange for all speakers’ speeches received as above (including the Question to be asked) to be read to the VM by a competent Officer for and on behalf of the speakers, at the normal times and in the normal order during the VM (subject to the Chairman’s normal discretion).

An Officer reading any speech on behalf of any speaker shall have discretion to omit/edit out any inappropriate language, information or statements; nevertheless if any defamation, insult, personal or confidential information, etc. is contained in any speech received from any speaker and/or is read to the VM by an Officer, each speaker accepts by submitting their speech to be fully responsible for all consequences thereof and to indemnify the Officer and the Council accordingly.

*The following text shall be added at the end of paragraph 3(c) (General Comments):-*

**Virtual Meetings:** All references above to “speaking” (and cognate expressions) shall be interpreted in accordance with the procedure below.

“Speakers” means persons<sup>9</sup> giving written notice to speak at a VM to make Comments as set out in paragraph 2(b) and being recorded by the Proper Officer on a first-come, first-served basis as having the right to submit a speech making Comments on an agenda item.

The Chairman of the VM (or, in his absence, the Vice-Chairman) has discretion, for large or complex items or in exceptional circumstances, to permit more than two speakers making Comments per agenda item. If he/she decides to do so, he/she shall immediately inform the Member Services Manager (Operational) or such other Officer(s) as the Proper Officer may have authorised under paragraph 6.

All speakers shall submit to the Proper Officer by email, **by 10:00 hours on the day of the VM**, a copy of their speech in written, legible English, able to be read within the

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<sup>8</sup> Including a duly-authorised representative of a Parish Council, Town Council or Community Council.

<sup>9</sup> Including a duly-authorised representative of a Parish Council, Town Council or Community Council, or of a Community Forum.

maximum period of 3 minutes. This means it should be no longer than 400 words, on a single side of A4 paper, printed in 12-point non-italic sans-serif font.

Unless alternative arrangements for the speakers' participation are made, the Proper Officer will arrange for all speakers' speeches received as above to be read to the VM by a competent Officer for and on behalf of the speakers, at the normal times and in the normal order during the VM (subject to the Chairman's normal discretion).

An Officer reading any speech on behalf of any speaker shall have discretion to omit/edit out any inappropriate language, information or statements; nevertheless if any defamation, insult, personal or confidential information, etc. is contained in any speech received from any speaker and/or is read to the VM by an Officer, each speaker accepts by submitting their speech to be fully responsible for all consequences thereof and to indemnify the Officer and the Council accordingly.