

**Agenda Item No:** 16  
**Report To:** COUNCIL  
**Date of Meeting:** 4 May 2021



**Report Title:** **Short-Term Changes to the Constitution of the Council, to Assist Decision-Making during the Coronavirus Crisis**

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**Portfolio Holder for:** Legal and Democracy

**Summary:** **After 6 May 2021, the emergency Coronavirus Regulations allowing virtual meetings, and the Council's Procedure Rules and Scheme of Public Participation for Virtual Meetings, will expire. In-person meetings are expected to resume, but it is not possible for the full Council to meet in person on Council premises in a COVID-secure way. Therefore, this report recommends a short-term extension to the powers of the politically-balanced Selection and Constitutional Review Committee, to enable it to make appropriate decisions that would otherwise require a meeting of the full Council to be convened in a very large off-site hall.**

**Recommendation:** **To resolve that, until the Annual Meeting in the year 2022, or until it becomes possible to hold full Council meetings in the Council Chamber in a COVID-secure way (whichever is earlier):-**

- (i) the Constitution be amended to add to the terms of reference of the Selection and Constitutional Review Committee decisions on the matters highlighted in yellow in the Appendix;**
- (ii) the Monitoring Officer and the Deputy Monitoring Officer be authorised to make all necessary consequential amendments to the Constitution to give effect to the above;**
- (iii) the Chief Executive be authorised, in consultation with the Monitoring Officer, the Executive Leader of the Council and the Chairman of the Overview and Scrutiny Committee, to:-**
  - (a) extend (with or without modifications) the Procedure Rules for Virtual Meetings, and the Scheme of Public Participation for Virtual Meetings, to facilitate the continuation of Virtual Meetings (if permitted by law); and/or**
  - (b) adapt the Procedure Rules for Virtual**

## **Meetings, and the Scheme of Public Participation for Virtual Meetings, to suit in-person meetings held with COVID-secure arrangements from time to time.**

<b>Policy Overview:</b>	<p>The Constitution sets out the procedures by which the Council's business is conducted. One of its purposes is to "enable decisions to be taken efficiently and effectively" (Art. 1.02.5). The Monitoring Officer has a duty to review the Constitution and keep it up to date, and this includes ensuring that the Constitution provides an efficient and legally-sound framework for the conduct of Council business.</p>
<b>Financial Implications:</b>	<p>The ability to make decisions in an effective and efficient manner contributes to sound financial management and the minimisation of risks to the Council's financial position. Holding fewer meetings of the full Council will reduce the need to hire large halls/rooms, public address systems etc. from third-party providers, thus reducing the additional costs arising which have not been budgeted for.</p>
<b>Legal Implications:</b>	<p>The law requires certain very important decisions (such as the election of a Mayor; the setting of the annual Budget and Council Tax; the adoption of a local plan or a neighbourhood plan) to be taken by the full Council. These will not be changed by the proposals in this report, and the law will over-ride any conflicting provision. Councils have freedom to decide the level at which other decisions are taken. The Council's Constitution currently requires a significant number of such decisions to be taken by the full Council, when this is not a legal requirement. The Council has power to amend its Constitution, and the proposals in this report seek to reduce the need to call meetings of the full Council during the next 12 months.</p>
<b>Equalities Impact Assessment:</b>	<p>The recommendation relates only to procedures and levels of decision-making within the Council, and does not detrimentally affect persons with protected characteristics.</p>
<b>Data Protection Impact Assessment:</b>	<p>No new material implications with regard to personal data.</p>
<b>Risk Assessment:</b>	<p>The consequences of not extending the powers of the Selection and Constitutional Review Committee as recommended are explained in the report.</p>
<b>Sustainability Implications:</b>	<p>Holding fewer meetings of the full Council will reduce travel to and from third-party premises by Members, Officers and others such as public address system suppliers.</p>
<b>Other Material Implications:</b>	<p>None</p>

**Exempt from  
Publication:**

No

**Background  
Papers:**

Letter to Council Leaders of Principal Councils in England from Luke Hall MP, Minister of State for Regional Growth and Local Government, MHCLG, dated 25 March 2021.

**Report Title: Short-Term Changes to the Constitution of the Council, to Assist Decision-Making during the Coronavirus Crisis**

## **Introduction and Background**

1. The Council's Constitution is a fundamental part of the legal framework within which the Council operates. Its purposes include enabling decisions to be taken efficiently and effectively, and ensuring that those responsible for decision-making are clearly identifiable to local people. Therefore, the Constitution sets out the responsibilities for decision-making within the Council.
2. The law divides the functions of councils into "Council functions" and "Executive functions". Under the arrangements which this Council operates, Executive functions are vested in the Executive Leader, and he may exercise them himself or make arrangements as to how they are to be exercised. **This report does not deal with Executive functions**, but only with Council functions (including functions which councils may allocate to their Executive Leaders, which have not been so allocated in this Council's Constitution).
3. In line with legal requirements, the Constitution requires the most important decisions to be taken by the full Council. These include:-
  - electing the Mayor and Deputy Mayor
  - electing the Executive Leader of the Council
  - establishing committees and their sizes
  - setting the policy framework, the annual Budget and the Council Tax
  - adopting plans and strategies for borrowing, investment and capital expenditure
  - consulting on, submitting and adopting a Local Plan
  - making a Neighbourhood Plan (after a referendum result in favour).
4. Councils have freedom to decide the level at which all other decisions are taken – e.g. by committees, by sub-committees, by joint committees (such as the Joint Transportation Board) or by officers.
5. The Constitution currently requires a significant number of decisions to be taken by the full Council even though this is not a legal requirement. A full list of the decisions which either the law and/or the Constitution require the full Council to take is in the Appendix.

## **The Covid-19 Coronavirus Crisis: Lock-downs**

6. On 23 March 2020, the Prime Minister announced a countrywide "lockdown" with immediate effect. This, together with public health advice issued by the Government and Public Health England, made physical meetings of councillors, and the physical attendance of members of the public and Press, contrary to over-riding interests of public health and effectively impossible.
7. The Secretary of State for Housing, Communities and Local Government then 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”) on 1 April 2020.

8. With effect from 4 April 2020, the Regulations changed the long-standing legal requirements upon councils and their committees and sub-committees to hold physical meetings, and to permit the Press and public to attend those meetings.
9. As an alternative, the Regulations introduced 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 became known as a “Virtual Meeting”.
10. In preparation for holding Virtual Meetings, the Chief Executive, acting under her delegated authority for Urgent Matters, approved Procedure Rules for Virtual Meetings, and a Scheme of Public Participation for Virtual Meetings, on 20 April 2020.
11. The Council was the first in Kent, and one of the first in the country, to hold a Virtual Meeting, when the Planning Committee met on 22 April 2020 and resolved to grant planning permission for the Newtown Works Film Studios. Since then, dozens of successful Virtual Meetings have been held with very few problems, and many interested parties and members of the public have been able to watch the live-stream of such meetings at home, by courtesy of the internet.
12. Public participation in the Council’s Virtual Meetings has been secured by enabling public speakers to submit their written speeches in advance, followed usually by an officer reading the speech at the meeting, or less frequently by the speaker speaking by telephone.

## **The Covid-19 Coronavirus Crisis: The Roadmap**

13. The Regulations were introduced for a temporary period to address the Coronavirus crisis, and were subject to a “sunset clause” under which they will expire after 6 May 2021. Thereafter - in line with the long-standing general understanding of the law - physical meetings of councillors will need to be held once again.
14. On 21 April 2021, the High Court heard an expedited legal claim brought by Lawyers in Local Government and other sector representatives, seeking a judicial declaration that councils may hold meetings virtually even without the Regulations. The judgment is expected shortly, but it has not come in time to avoid the need to prepare prudently for a negative outcome of the case, by publishing this report to the Council.
15. The local government sector lobbied the Government to extend the Regulations, or create new legislation, to expressly allow Virtual Meetings to continue. However, on 25 March 2021 the Ministry of Housing, Communities and Local Government wrote to Council Leaders that the Government had “concluded that it is not possible to bring forward emergency legislation on this issue at this time.”

16. The Minister's letter reminded councils that their options to deal with this situation include delegating more decision-making (he suggested, to "key individuals such as the Head of Paid Service") in order to minimise the number of physical meetings needed. Of course, the Council already has a well-established delegation to the Chief Executive for use in case of Civil Emergencies and/or Urgent Matters.
17. The Minister's letter also stated that councils can "hold meetings in person ... during the pandemic with appropriate measures in place". This means applying "the COVID-19 guidance to ensure meetings take place safely", and the Government updated its "guidance on the safe use of council buildings" to highlight ways to minimise the risks from in-person meetings. He pointed out that from 17 May, the Government's Roadmap will allow a much greater range of indoor activity to resume.
18. Detailed consideration has been given to this by officers. Initial inspections indicate a maximum Council Chamber capacity of 22 persons. Holding Cabinet and Committee meetings in line with this parameter will be challenging, but feasible, and will require the specific persons in attendance for each agenda item to be closely controlled and managed during meetings.
19. Until social distancing requirements are relaxed somewhat, it is highly unlikely to be possible to accommodate all non-Committee members who might wish to attend Committee meetings, such as Cabinet meetings. Investigations are also continuing into the extent to which in-person public attendance will be possible at the larger Committee meetings. It will be necessary to retain the arrangements that have operated well for public speakers to submit their speeches in advance for an officer to read out at the meeting; the possibility of dialling-in to speak 'live' will be examined further.
20. These matters are being investigated further, in advance of the Planning Committee's scheduled meeting on 19 May and the Cabinet's scheduled meeting on 27 May, which seem likely to be the first in-person meetings for well over a year.
21. In parallel with the Regulations, the Council's Procedure Rules for Virtual Meetings, and Scheme of Public Participation for Virtual Meetings, will also expire after 6 May 2021. If the High Court case is successful, it will be necessary to extend these (possibly with modifications to reflect the Court's judgment and/or other factors), in order to continue holding effective and lawful Virtual Meetings after 6 May.
22. Alternatively, if the High Court case is unsuccessful, it will be necessary to convert the Procedure Rules for Virtual Meetings, and the Scheme of Public Participation for Virtual Meetings, into new versions to suit in-person meetings held with COVID-secure arrangements, and thereafter to review and modify these as COVID requirements change.
23. Therefore it is recommended that, depending on the outcome of the High Court case (or indeed any new legislation that might follow it), the Chief Executive be authorised to extend, introduce and modify Procedure Rules and public participation arrangements to suit whatever types of meetings are to be

held, in consultation with the Monitoring Officer, the Executive Leader of the Council and the Chairman of the Overview & Scrutiny Committee.

24. However, given the size of the Council Chamber, full Council Meetings in the Chamber will simply not be possible while numbers continue to be restricted due to social distancing requirements. There are no other places where the full Council can meet in person on Council premises in a COVID-secure way. The Budget meeting of the Council, for example, will thus have to be convened in some large off-site hall (at least three times the size of the Council Chamber) hired for the purpose and equipped with public address, visual display and broadcast/streaming technologies, as well as ancillary rooms for connected purposes such as robing.
25. Normally, in addition to the Budget Meeting, and the Annual Meeting of the Council (which has been brought forward to this meeting), there would be four other meetings of the full Council each year. In order to reduce this number and ensure that off-site full Council meetings only need to be convened for decisions that really require the full Council's attention, a short-term extension to the powers of the Selection and Constitutional Review Committee ("S&CR") is recommended.

### **Proposal: Additional Powers for the Selection and Constitutional Review Committee ("S&CR")**

26. The purpose of this proposal is to enable S&CR to make appropriate decisions that would otherwise require a meeting of the full Council to be convened. This would not apply to any of the decisions that the law requires the full Council itself to make, but it would allow other decisions to continue to be taken efficiently and effectively without full Council meetings.
27. The decisions that are proposed to be added to S&CR's terms of reference for a temporary period are those listed in the Appendix and shaded yellow. Those which are not shaded yellow would remain with the full Council.
28. S&CR has 12 members and is the obvious 'small version' of the full Council to choose for this role:-
  - (a) S&CR is small enough to be able to meet in the Council Chamber in a COVID-secure way, with a very limited number of members of the public and Press present. It is hoped that any relevant Ward Member(s) for particular items of business could also be accommodated, and this is being investigated as explained above.
  - (b) At the same time, S&CR is large enough to have representation from all political groups in a proportionate way, in line with the Political Balance calculations. Meetings of S&CR can therefore readily consider and debate views from across the spectrum of Members.
29. Some Members will no doubt recall that the former name of S&CR was "Selection and Recess Committee", because its role included meeting during recess periods between Committee cycles (e.g. in the summer holidays) to decide matters requiring decision when the ordinary Committees were not meeting. This proposal is similar to that previous role.

30. It is recognised that this state of affairs should not become a permanent or semi-permanent arrangement, with S&CR performing the full Council's powers in the medium term. Therefore, a "sunset clause" is proposed, under which S&CR's temporary additional terms of reference, outlined in this report, will **end at the Annual Meeting in the year 2022** – i.e. in 12 months' time. This will be a shorter period than the period for which the Regulations were introduced by the Government last year.
31. In the meantime, it is possible that Government guidance on indoor meetings and the use of Council buildings in a COVID-secure way may change sufficiently to make it possible to recommence meetings of the full Council in the Council Chamber in a COVID-secure way before May 2022. If so, then the temporary additional terms of reference of S&CR should end at that point in any event.

## **Conclusion and Recommendation**

32. Following the Government's decision not to extend the Regulations, or provide any other new relevant legislation, it is prudent to seek to manage the additional costs and workload that will fall on this Council by reconsidering whether all decisions currently taken by the full Council need to be taken in that way. For the reasons set out in the report, it is felt that those shaded yellow in the Appendix should be passed to S&CR for a temporary period.
33. These changes seek to facilitate decision-making in a timely and politically-inclusive manner in the new circumstances in which the Council finds itself.
34. The Council is recommended to agree to amend the Constitution to add the additional terms of reference for S&CR identified in this report, and to authorise the Monitoring Officer or his Deputy to make all necessary consequential amendments to the Constitution to give effect to this.
35. In addition, it will be necessary to make procedural provision and public participation arrangements for whatever types of meetings can be legally held, and this should be delegated to the Chief Executive.

## **Contact and Email**

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**APPENDIX**  
**EXTRACTS FROM THE CONSTITUTION, LISTING DECISIONS**  
**TAKEN BY FULL COUNCIL**

**The decisions recommended to be added to the terms of reference of the Selection & Constitutional Review Committee are shaded in yellow**

(Recommendation and paragraphs 5, 27 and 32 refer)

## **Article 4 – Full Council**

### **4.01 Meanings**

(a) **Policy Framework.** The policy framework means the following plans and strategies:-

- Sustainable Community Strategy;
- Crime and Disorder Reduction Strategy;
- Local Transport Plan;
- Plans and strategies which are **Local Development Documents** and alterations thereto.

**[NOTE: The full Council will retain Local Plans, in line with legal requirements – but other Local Development Documents, such as Statements of Community Involvement, Supplementary Planning Documents etc. will be passed to S&CR]**

The Council can adopt additional plans to form part of the policy framework.

(b) **Budget.** The budget includes:-

- (i) The allocation of financial resources to different services and projects;
- (ii) Provision of contingency funds, such as balances;
- (iii) Council Tax base;
- (iv) Setting the Council Tax;
- (v) Decisions relating to the control of the Council's borrowing requirement;
- (vi) Overall control of the Council's capital expenditure, and funding and
- (vii) Setting of virement limits.

(c) **Housing Land Transfer.** Housing Land Transfer means the approval or adoption of applications (whether in draft form or not) to the Secretary of State for approval of a programme of disposal of 500 or more properties to a person under Section 35 of the Leasehold Reform, Housing and Urban Development Act 1993 for the inclusion of a disposal in a disposals programme or for consent to that disposal under Section 32

(power to dispose of land held for the purposes of Part II) or Section 43 (consent required for certain disposals not within Section 32) of the Housing Act 1985.

## 4.02 Functions of the full Council

Only the Council will exercise the following functions. A more detailed list of functions is contained in Part 3, Appendix 1.

(a) Adopting and **changing the Constitution**;

(b) Approving or adopting the policy framework, the budget and any application to the Secretary of State in respect of any Housing Land Transfer;

(c) **Subject to the urgency procedure contained in the Access to Information Procedure Rules in Part 4 of this Constitution, making decisions about any matter in the discharge of an executive function which is covered by the policy framework or the budget where the decision maker is minded to make it in a manner which would be contrary to the policy framework or contrary to/or not wholly in accordance with the budget;**

(d) Electing the Leader;

(e) **Agreeing and/or amending the terms of reference for Committees, deciding on their composition and making appointments to them;**

(f) **Appointing representatives to outside bodies unless the appointment is a matter for determination by the Cabinet (Executive) or has been delegated by the Council;**

(g) Changing the name of the area, conferring the title of Honorary Alderman or the Freedom of the Borough;

(h) Adopting an Allowances Scheme under Article 2.05;

(i) Confirming the appointment or dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer;

(j) Making, amending, revoking, re-enacting, adopting or enforcing bylaws and the promotion of opposition to the making of local legislation or personal Bills;

(k) **The making of agreements with other local authorities for the placing of staff at the disposal of those other authorities in relation to the discharge of functions which are not the responsibility of the Cabinet (Executive);**

(l) **Power to resolve not to issue a Casino Premises Licence;**

(m) **Functions in relation to** the Council's Licensing Policy. This includes the adoption of statements of principles in relation to Family Entertainment Centre Gaming Machine Permits or Prize Gaming Permits.

**[NOTE: The full Council will retain the adoption of the Licensing Policy – but **amending it will be passed to S&CR****

# Part 3 Responsibility for Functions

## Appendix 1 Council Functions

### **Functions Exercised by the Council**

1. The Full Council takes the following decisions itself:-

#### **1.1 The Constitution**

Adopts and agrees changes to:-

(a) The Articles of **the Constitution**.

**[NOTE: The full Council will retain the Articles of the Constitution, in line with legal requirements – but the Scheme of Delegations will be passed to S&CR]**

**(b) The Procedure Rules as contained in Part 4 of this Constitution.**

**(c) The Codes and Protocols as contained in Part 5 of this Constitution.**

(d) Considers reports by the Monitoring Officer.

(e) Considers reports by the Chief Finance (Section 151) Officer.

#### **1.2 Appointments and Disciplinary Action**

(a) Elects the Mayor and Deputy Mayor.

(b) Elects the Leader of the Council.

**(c) Appoints the Chairmen and Vice-Chairmen of the Council's Committees and Sub-Committees annually.**

**(d) Confirms or rejects recommendations by the Independent Members Interview Panel (or any other Panel set up for the purpose) for the appointment of the Independent Person and to make such appointments.**

**(e) Where necessary, considers recommendations from the Hearing Panel of the Standards Committee regarding sanctions for Code of Conduct breaches.**

**(f) Approves the absence of a Member from meetings of the Council for more than six months.**

(g) Confirms or rejects the recommendation of the Appointments Committee on the appointment of the Chief Executive (Head of Paid Service), the Chief Finance (Section 151) Officer, the Monitoring Officer.

(h) Confirms or rejects the recommendations of the Investigation and Disciplinary Committee (having taken into account the views of the Panel established for the purpose of Schedule 3) in respect of the dismissal of the Head of Paid Service, Monitoring Officer and Chief Finance Officer (Section 151) confirmed by a vote in favour of at least two-thirds of the Membership of the Council.

### 1.3 Committees

Determines the number of Committees, their terms of reference, the total number of places on them and the allocation of those places to Political Groups in accordance with the political balance calculation.

### 1.4 Finance

(a) Agrees the Council's annual budget.

(b) Setting of the Council Tax base.

(c) Setting of the Council Tax.

(d) Sets the limits defining key financial decisions.

(e) Sets the limits for virement or other budget changes and the level below which the Council's balances must not fall.

(f) Determines any expenditure proposed by the Cabinet (Executive) which is outside the limits referred to in (d) and (e) above.

(g) Agrees the Members Allowance Scheme as set out in Part 6 of this Constitution.

(h) Agrees the Treasury Management Plan.

(i) Makes arrangements for the proper administration of financial affairs.

(j) Issues relating to local government pensions.

### 1.5 Policy

(a) Determines and approves the plans and strategies which comprise the policy framework as contained in Article 4 of this Constitution and any changes, proposed to them.

(b) Determines any proposed action by the Cabinet (Executive) which is at variance with any plan or strategy contained in the policy framework.

(c) Takes decisions in respect of functions which are not the responsibility of the Cabinet (Executive) and which have not been delegated by the Council to a Committee, Sub-Committee or Officer.

### 1.6 Elections

(a) Appoints the Electoral Registration Officer and Deputy Electoral Registration Officer.

(b) Appoints the Returning Officer and Deputy Returning Officer for Local Government Elections.

(c) Approves the provision of assistance at European Parliamentary Elections.

(d) Divides the Parliamentary Constituency into Polling Districts.

## 1.7 Name and Status of Areas and Individuals

(a) Approves any change of name of the Council.

(b) Approves any change of name of a Parish Council area.

(c) Confers the Title of Honorary Alderman or admits an individual to be an Honorary Freeman.

## 1.8 Employees

(a) Agrees the overall management structure proposed by the Chief Executive as contained in Part 7 of this Constitution.

(b) Determines the terms and conditions on which staff will be appointed, hold office and the procedures for their dismissal.

(c) Appointment of Officers for particular purposes ie "Proper Officers".

## 1.9 Other Functions

(a) Makes, amends, revokes, re-enacts or enforces by-laws.

(b) Promotes or opposes local or personal Bills in Parliament.

(c) Power to resolve not to issue a Casino Premises Licence.

(d) Functions in relation to the Council's Licensing Policy. This includes the adoption of statements of principles in relation to Family Entertainment Centre Gaming Machine Permits or Prize Gaming Permits.

**[NOTE: The full Council will retain the adoption of the Licensing Policy – but amending it will be passed to S&CR]**

(e) Deals with any other matter reserved to the Full Council by Statute.