

Agenda Item No: 5



Report To: Selection & Constitutional Review Committee

Date of Meeting: 30 June 2022

Report Title: Amending the Constitution to Reflect Improved Procedures Implemented during the Coronavirus Pandemic 2020-22

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Portfolio Holder: Cllr. Gerry Clarkson

Portfolio Holder for: Legal & Democracy

Summary: This report seeks the permanent retention of some new or revised procedures that were introduced during the Coronavirus pandemic, in the interests of increased efficiency, continued public health, and improved public involvement in decision-making.

Recommendations: The Committee is recommended to:-

- I. Recommend to Council to adopt with immediate effect the changes to the Council's Constitution set out in paragraphs 8-11, 18-19, and 23-24.
- II. Recommend to Council to authorise the Monitoring Officer and the Deputy Monitoring Officer to make any necessary consequential changes to the wording of the Constitution (including all of its Parts, Articles, Appendices, Rules, Codes, Protocols, Schemes, etc.) to give full effect to the above.
- III. Note the intention of the Chairman of the Planning Committee and Officers to operate the procedures recommended in this report for the next meeting of the Planning Committee, on 13 July 2022, subject to any objections raised at this meeting.

Policy Overview: The Constitution sets out the procedures by which the Council's business is conducted, including Procedure Rules, the Scheme of Public Participation, and the Scheme of Delegations to Officers. One of the purposes of the Constitution 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.
Financial Implications:	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. There are no proposals for budget growth in this report.
Legal Implications: <i>Text agreed by the Solicitor to the Council and Monitoring Officer on 22 June 2022</i>	The power to amend the Constitution generally rests with the Full Council except in limited circumstances. The Council must comply with its duties under the Health & Safety at Work etc. Act 1974, and its duty of care to those on its premises. Current Government guidance ¹ correctly states that: "While there is no longer a requirement for all employers to explicitly consider COVID-19 in their statutory health and safety risk assessments, it is important that as a business, organisation or an employer you continue to comply with your legal obligations relating to health and safety, employment and equality duties."
Equalities Impact Assessment:	Not Required because the recommendations relate only to the procedures operated within the Council, contain appropriate safeguards, and do not recognisably detrimentally affect persons with protected characteristics.
Data Protection Impact Assessment:	No new material implications with regard to personal data.
Risk Assessment (Risk Appetite Statement):	The Council's Risk Framework sets the tolerance for "Compliance", which includes legal and governance risks, as 'VERY LOW'.
Sustainability Implications:	Retaining the ability for the public to make their views known at Committee meetings without attending in person, will continue to reduce travel to and from the Civic Centre. Reducing the use of paper contributes to sustainability, and to carbon- and energy-reduction goals.
Other Material Implications:	None.
Exempt from Publication:	NO
Background Papers:	[The Council's Constitution is available on its website.] 'Procedure Rules For Public Meetings After 6 May 2021' and 'Scheme Of Public Participation For Public Meetings After 6 May 2021', adopted by the Chief Executive on 11 May 2021.
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¹ Available at <https://www.gov.uk/guidance/reducing-the-spread-of-respiratory-infections-including-covid-19-in-the-workplace> (updated 10 June 2022)

Amending the Constitution to Reflect Improved Procedures Implemented during the Coronavirus Pandemic 2020-22

Introduction and Background

The Constitution

1. The Council's Constitution sets out the legal framework within which the Council operates. Its expressed purposes include enabling decisions to be taken efficiently and effectively, and supporting the active involvement of citizens in the process of decision-making. The latter is secured primarily through the Scheme of Public Participation, and related procedures for decision-making which are set out in Procedure Rules.
2. The Constitution also provides for the affixing of the Council's Common Seal to Deeds, and other relevant legal and official documents required to implement its decisions, with the Sealing to be attested by duly-authorised signatories.

The Coronavirus Pandemic

3. The World Health Organisation's declaration of the spread of Coronavirus CoVID-19 as a Pandemic, on 11 March 2020, was very closely followed by the UK's prohibition of public meetings and gatherings, and the institution of compulsory working at home wherever possible. This forced the Council to radically and rapidly rethink how its decisions could continue to be made and implemented, and its services provided to the community, in the new circumstances occasioned by the pandemic.
4. Many of the Council's temporarily-introduced procedures, such as Virtual Meetings with members of the public addressing Members by telephone link, have subsequently ceased, as the measures taken to prevent and minimise the spread of Coronavirus have been reduced or changed, over the last 12 months in particular. However, some are still in place, and are likely to be required in the long term as part of H.M. Government's strategy of "living with CoVID".
5. Several of the new procedures introduced during the pandemic have been found to have lasting benefit, by enhancing the Council's operations, making them more transparent and open to the public, or increasing the efficiency and effectiveness with which necessary work is carried out.
6. The most recent of several rounds of pandemic-induced modifications to the Constitution were made on 11 May 2021 by the Chief Executive, under delegated authority given by the Council's Annual Meeting on 4 May 2021. Following the recent lapse of these, Officers have reflected on how to retain the best of the new procedures, whilst reverting to pre-pandemic procedures where appropriate or beneficial. The proposals set out in this report therefore represent what is felt to be an optimum mix of 'old' and 'new'.

Proposals

Procedure Rules for Meetings

7. While the risks associated with Coronavirus are widely agreed to have reduced, as a result of the CoVID-19 vaccination programme and growing immunity within the population, it remains important to properly manage those risks by taking appropriate measures to protect those present at meetings, in accordance with a risk assessment which is kept up to date. Such measures may include, for example, advising any persons feeling unwell, displaying symptoms, or having recently tested positive for Coronavirus, to leave the premises/meeting room immediately. It is also appropriate to minimise the need to create and transmit hard copy papers between individuals, both for public health reasons and to continue efforts to reduce the unnecessary use of paper more widely. Hard copy Agendas have not been routinely issued to Members for meetings for a number of years, with Members instead being provided with electronic devices/assistance as required.
8. Therefore, the requirement in General Procedure Rules 6 (Notice of and Summons to Meetings) and 8 (Quorum and Adjournment) for notices of meetings etc. to be sent to Members by post should be permanently removed in respect of all meetings and related papers. The words "by post" should be replaced by the words "by an appropriate method". In practice, electronic notifications of all meetings are issued, with hard copy papers being printed and dispatched only if specifically requested.
9. Also, General Procedure Rule 17 (Record of Attendance), requiring Members attending meetings to sign a paper list, should be permanently amended. The words "must sign their names on the attendance sheets" should be replaced by the words "must ensure that the Proper Officer or the Officer acting on his/her behalf records their names on the attendance record for the meeting".
10. For consistency and clarity, all references to the Proper Officer in the Constitution (apart from in the Scheme of Public Participation, see below) should be updated to refer to the Solicitor to the Council and Monitoring Officer, and/or such Officer(s) as he/she may authorise in writing to act on his/her behalf.
11. It is also important to retain the ability to prevent any inappropriate crowding which may occur in meeting rooms, in the light of current public health or Government guidance (which might equally exist for any future pandemic or other circumstances). The High Court recognised last year² the relevance of such guidance to how meetings are organised. Therefore, 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), and Appendix 5 (Procedure/Guidance Note – Filming, Photographing or making an Audio Recording of Proceedings at Meetings) should be permanently amended by the addition of the following limited caveat to references to the public having physical access to any meeting room:-
"subject to the maximum capacity of the meeting room established at that time in accordance with any applicable risk assessment, and subject also to any procedures established by the Council to manage identified risks".

² In *Hertfordshire County Council & Others v Secretary of State for Housing, Communities & Local Government* [2021] EWHC 1145 (Admin)

The Scheme of Public Participation

12. Some public attendance and participation in person at decision-making meetings resumed just over a year ago, after being virtual-only for over a year. To facilitate this, the Council's adopted Scheme of Public Participation, set out in the Constitution, was subject to a number of modifications in the Chief Executive's decision of 11 May 2021.
13. In order to enable those who might feel unwell, display symptoms of Coronavirus, or test positive, shortly before meetings begin, or even during meetings, to continue to participate, the requirement was maintained that all speeches be submitted to the Proper Officer in advance of the meeting, and are read to the meeting by an Officer on behalf of any speaker who is not able to attend and/or speak at the relevant time.
14. This facility also had the valuable benefit of enabling members of the public to speak at meetings despite a disability, family, work or other commitments, inability to drive or other reasons, including not wishing to travel to the meeting room and assemble with others there. Feedback on this method of public participation, from public and community representative speakers at VMs, was broadly positive.
15. Therefore it would be a clear, positive step in retaining wider opportunities for public participation in the Council's decision-making to permanently retain the facility for speeches to be submitted and read out by an Officer at meetings in future.
16. However, there is now a desire on the part of some of those attending and speaking in person, not to be required both to submit their speeches in advance and to say only what has been submitted. The pre-pandemic procedure for public participation did not require details of the intended speech to be submitted (let alone a fully written-up copy), and speakers had discretion as to how to use their speaking slot (subject to a few rules to ensure propriety and relevance and avoid slander etc.). The use of such speaking slots was limited to a maximum period of 3 minutes, timed by the Member Services Officer, and with the Member chairing the meeting interrupting if necessary to wind speeches up.
17. It is therefore intended, for future meetings, to offer those who register to speak either the option to submit a speech and have it read by an Officer, or the option to attend and speak in person at the relevant time without having submitted a speech in advance. Fairness and equity of treatment between those who can, and those who cannot or do not wish to, travel to and attend meetings to speak will be achieved by continuing to limit submitted speeches to 400 words, and in-person speakers to a timed 3-minute speech; these are equivalent on an average basis.
18. To deliver the above, the Scheme of Public Participation should be amended as follows:-

Paragraph 2 (General Rules Applicable to all Schemes):

Paragraph 2(b) is replaced by the following:-

Written notice must be given to the Proper Officer, for any type of public participation, by 15:00 hours on the second working day before the meeting. Hence, for example, for meetings of the Planning Committee on Wednesdays:-

If there is no Bank Holiday on the Monday preceding the meeting, written notice must be given by 15:00 hours on the Monday.

If there is a Bank Holiday on the Monday preceding the meeting, written notice must be given by 15:00 hours on the Friday preceding the meeting.

If the meeting 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 is added at the end of paragraph 4:-

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

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

- (i) on a first-come, first-served basis as having the right to either submit a speech or speak in person in support of or against an item for decision, or
- (ii) as a duly-authorised representative of a Parish Council³ or Community Forum affected and having the right to either submit a speech or speak in person on an item for decision.

The Chairman of the Planning Committee (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 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 who intend to speak by submitting a speech shall submit to the Proper Officer by email, by 10:00 hours on the day of the meeting, a copy of their speech in written, legible English. It should be no longer than 400 words, in 12-point non-italic sans-serif font. No speech should contain material not relevant to the item for decision at the meeting, nor any personal data about individuals, other than the speaker’s own name and (if relevant) address/data.

If any speakers do not submit their speeches by the above deadline, they shall only be permitted to speak in person at the meeting (if present).

If speakers who have submitted speeches that comply with the above requirements, by the above deadline, do not attend and speak in person at the meeting, the Proper Officer will arrange for their speeches, received as above, to be read to the meeting by a competent Officer for and on behalf of the speakers, at the normal times and in the normal order during the meeting (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 any meeting by an Officer,

³ The term “Parish Council” includes Town Councils and Community Councils

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 Member Services Manager (Operational), Civic Centre, Tannery Lane, Ashford, and/or by such other Officer(s) as the Member Services Manager (Operational) may authorise in writing to do so. Email: memberservices@ashford.gov.uk or ...

19. As the above relate primarily to items of business at the Planning Committee, which is treated separately within the Scheme of Public Participation, parallel amendments should be made to the Scheme regarding the procedures for and public participation at meetings of the Full Council, the Cabinet and all of the other Committees and Sub-Committees to which the Scheme applies.

Procedures for the Official Sealing of Deeds and Documents

20. The Council's Procedure Rules and the Scheme of Delegations to Officers, in Parts 3 and 4 of the Constitution, require the affixing of the Common Seal of the Council to any Deed or document that is required to implement any Council decision to be attested by the signatures of one Member (usually the Mayor or Deputy Mayor) and one Officer (a solicitor employed by the Council, or the Chief Executive). To this end, Official Sealing meetings used to be called and take place between a duty solicitor and (usually) the Mayor, once each week. Not infrequently, additional Sealing meetings had to be arranged in order to Seal urgent documents in between the weekly Sealing meetings.
21. Of course, all Sealing meetings between the Mayor/Deputy and solicitors had to cease immediately when the pandemic took hold, and use was instead made of an urgency power which applies when no Member is not available for a Sealing meeting to be held. H.M. Land Registry accepted this procedure and registers Deeds executed without a Member's signature, provided that an explanatory sticker relating to the urgency is attached to all Deeds executed in this way; this procedure takes up additional clerical and administrative time and paper for each and every one of the hundreds of documents Sealed each year.
22. This procedure has now been used for over 27 months without adverse incident. Indeed, it is increasingly common among local authorities for an employed solicitor to attest the execution of documents without a Member present – for example, Kent County Council changed their Sealing procedure in this way a number of years ago.

23. Parts 3 and 4 of the Constitution in fact conflict, on this point, with Article 14.05 of the Constitution, which prescribes the signature of a solicitor only (and not a Member), and in principle an Article should take precedence over Parts 3 and 4. It is therefore appropriate that the Constitution be permanently amended to remove these anomalies and the need to call and hold Sealing meetings with Members. This would increase efficiency and the speed with which documents can be Sealed and transactions completed, and also save time in both Legal Services and the Mayor's Office. All relevant parts of the Constitution should be amended to require and authorise only the signature of a practising solicitor employed by the Council in that capacity.
24. In addition, the Constitution contains some wording that appears to require certain types of documents to be Sealed even where there is no statutory or other legal requirement for the use of a Seal (for example, Tree Preservation Orders). However, for these types of documents, little is gained from the affixing of the Common Seal, above and beyond the signature of the solicitor attesting it, but the need to affix and number the Seal creates additional work and potential delays. It is clear that improved efficiency and speed of action would be gained by not requiring the Seal to be affixed to such types of documents, and speed of action is of particular importance in cases such as protecting threatened trees or making other Orders. Therefore, where the signature of a practising solicitor employed by the Council in that capacity (either a 'wet' signature or an electronic signature, as appropriate) would suffice to make a document legally binding, this should be sufficient and any Constitutional requirement to affix the Common Seal be removed.

Consultation Planned or Undertaken

25. The Monitoring Officer and the Deputy Monitoring Officer have held discussions with the Chairman and the Vice-Chairman of the Planning Committee regarding the proposed changes to the Scheme of Public Participation, since this Committee is the Council's most public-facing Committee and where the greatest number of members of the public and community representatives come into contact with the Council at its work. The Leader of the Council, the Portfolio-Holder for Planning & Development and the Leader of the Ashford Independent Group have also been consulted on the proposed changes to the Scheme of Public Participation.

Other Options Considered

26. A full-scale reversion to pre-pandemic procedures would mean that none of the improvements in processes, and facilities for the public, would be retained for the long term, constituting a wasted opportunity to improve and save time and money.

Next Steps in Process

27. The Committee's recommendation will be considered by the Council at its next meeting, on 20 July 2022. If the Council approves the amendments, the Constitution will be updated and republished as soon as possible, and H.M. Land Registry will be informed so that the use of stickers explaining the absence of a Member's signature on executed Deeds and documents can cease.
28. The next meeting of the Planning Committee is on the evening of 13 July 2022, by which time the Minutes of this meeting of the Committee will have been published

for approval by the Council just one week later. Subject to any objections raised at this meeting, the Chairman of the Planning Committee and Officers intend to operate the new procedures at that meeting.

Conclusion

29. The proposals in this report will retain for the long term recent improvements in the efficiency of the Council's processes, and increased options for public participation in the Council's decision-making.

Portfolio Holder's Views

30. To be given at the meeting.

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