

Key Decision Required:	NO	In the Forward Plan:	NO
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A.4 APPENDIX F

CABINET

29 MAY 2020

REPORT OF THE CORPORATE FINANCE & GOVERNANCE PORTFOLIO HOLDER

A.1 “REMOTE MEETINGS” AND CHANGES TO THE COUNCIL’S CONSTITUTION

(Report prepared by Lisa Hastings, Monitoring Officer and Ian Ford, Committee Services Manager)

PART 1 – KEY INFORMATION

PURPOSE OF THE REPORT

This report asks Cabinet to endorse the changes required to the Council's Constitution in consequence of The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 No.392 ('the Regulations').

Though these Constitution changes automatically came into immediate effect following the new legislation and can be made under the Monitoring Officer's delegation these amendments will also be referred onto Full Council following a light touch review undertaken by the Portfolio Holder for Corporate Finance and Governance through a Working Party constituted for this purpose.

EXECUTIVE SUMMARY

The Regulations, made under section 78 of the Coronavirus Act 2020, apply notwithstanding any other legislation or current or pre-existing standing orders or any other Council rules governing meetings and remain valid until 7th May 2021. This means that, wherever there is a conflict, within the Constitution, or with any procedures or rules implemented under Business Continuity Arrangements, these remote meetings regulations take precedence.

The effect of the Regulations on the Authority's Constitution is to insert what are, in effect, mandatory standing orders for those authorities that wish to hold meetings remotely, either wholly or partially.

A Remote Meetings Protocol and Procedure Rules document was produced on 17th April by Lawyers in Local Government (LLG) and the Association of Democratic Services (ADSO) for the purpose of assisting authorities to highlight the changes required to Council's Constitutions in consequence of the Regulations. Rather than adopting the Protocol without amendment, the Monitoring Officer and Democratic Services, have worked through this national guidance and best practice in order to highlight the changes required for Tendring District Council.

The changes cover a number of miscellaneous amendments to the Council Procedure Rules and the Access to Information Procedure Rules, and Articles 3 and 7 which are all

required in order to comply with the new legislation and to ensure the Constitution is effective, efficient and consistent at an operational level.

The key changes to each of these documents are highlighted within the body of this Report. The Monitoring Officer can make these changes to the Constitution in accordance with the delegated authority provided to her within Article 15. However, it is still considered prudent for the Portfolio Holder's Constitution Review Working Party to undertake a light touch review prior to submitting the changes to Full Council for ratification, in order to enable the working practices and the guidance issued for remote meetings to be considered in a little more depth.

RECOMMENDATION

That Cabinet:

- 1. notes that changes to the Council's Constitution are required as a direct consequence of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020;**
- 2. endorses the changes as identified by the Monitoring Officer and as set out in this report and Appendices A-E attached hereto;**
- 3. endorses that all changes took immediate effect to comply with the Regulations;**
- 4. endorses that all Councillors conduct all Council business through their Tendring District Council online accounts using the corporate IT kit supplied to them for the smooth facilitating and running of remote meetings;**
- 5. adopts the Remote Meeting Guidance for Members and Officers attached as Appendix F and grants a delegated authority to the Head of Democratic Services and Elections to make minor changes to such Guidance, in consultation with the Portfolio Holder for Corporate Finance and Governance;**
- 6. requests that the Portfolio Holder's Constitution Review Working Party undertake a light-touch review of any changes to be made to the Constitution and the application of the Remote Meeting Guidance and reflects upon working practices for remote meetings and then submits its recommendations direct to Full Council for ratification; and**
- 7. recommends that Appendix G, as attached to this report, be submitted to Full Council as a replacement to Appendix E to the March 2020 Constitution review report, which was then subsequently approved by the Leader of the Council (on behalf of the Cabinet) for submission to Full Council.**

PART 2 – IMPLICATIONS OF THE DECISION

DELIVERING PRIORITIES

Agreeing the proposed changes will ensure that the Council demonstrates good governance and operates efficiently in pursuit of its priorities.

FINANCE, OTHER RESOURCES AND RISK

Risk

Providing clarity through clearer and consistent procedure rules contained within the Constitution prevents confusion and different interpretation and enhances the Council's overall governance arrangements.

LEGAL

In accordance with Section 37 of the Local Government Act 2000, as amended, a local authority operating executive arrangements must prepare and keep up to date a document which contains a copy of the authority's standing orders for the time being and such other information as the authority considers appropriate.

Schedule 1 to the Local Authorities (Functions and Responsibilities) Regulations 2000, as amended, sets out functions which must not be the responsibility of the Executive and therefore rests with Council or its committees. The power to make amendments to the standing orders and the Constitution rests with full Council.

Article 15 of the Council's Constitution provides that changes to the Constitution are approved by Full Council after receiving a recommendation from Cabinet following consideration of a proposal from the Monitoring Officer and a recommendation via the Portfolio Holder with responsibility for corporate governance. Article 15 also provides authority to the Monitoring Officer to make minor changes to the Constitution arising from legislative changes.

Article 12 of the Constitution provides that the Council's Monitoring Officer will ensure the Constitution is up to date. This function takes into account legislative requirements and the relevant best practice and guidance.

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force from 4th April 2020 until 7th May 2021. The Regulations, and therefore the necessary standing orders, have an automatic amending effect on the Council's existing rules and can be applied immediately in order to run Council, Committee and Cabinet meetings remotely. Nonetheless it is good practice, even with express mandatory standing orders, to have these adopted formally by the full authority at the first opportunity to do so. In the interim Cabinet can endorse the changes prior to full adoption by Council at its next meeting.

The changes to the Council Procedure Rules (Section 1) shown attached as **Appendix A** are on the current Council Procedure Rules as set out in the Constitution and not those recommended by the Leader of the Council (on behalf of the Cabinet) to Council for approval, which are still due to be considered at its next meeting.

Remote Meeting Guidance has also been produced which provides practical guidance for the chairing of, attendance and participation as an elected member at, and officer procedures for remote meetings. It is suggested that the Guidance is kept under review as the Council's experience with remote meetings develops.

OTHER IMPLICATIONS

Consideration has been given to the implications of the proposed decision in respect of the following and any significant issues are set out below.

Crime and Disorder / Equality and Diversity / Health Inequalities / Area or Ward affected /

Consultation/Public Engagement.

There are no other implications identified as a consequence of the proposals at this stage. As with all decisions of the Council the requirements of the new legislation and implementation will be monitored overtime. The decision to use Microsoft Skype for Business, and working towards Microsoft Teams in the future, as the digital delivery solution for remote meetings, acknowledged that there is a requirement to avoid discrimination against a person with protected characteristics as a consequence of those characteristics. The Council will through its working practices and procedures look at specific reasonable measures to avoid that discrimination.

PART 3 – SUPPORTING INFORMATION

CURRENT POSITION

Part 2 of the Regulations makes provision for remote access to meetings of local authorities by members of a local authority and by the press and public. Regulation 4 enables local authorities to hold and alter the frequency and occurrence of meetings without requirement for further notice.

Regulation 5 makes provision for members of local authorities to attend meetings remotely. Consequently, a meeting of a local authority is no longer limited to a meeting of persons all of whom are present in the same place and any reference to a “place” where a meeting is held, or to be held, includes reference to more than one place including electronic, digital or virtual locations such as internet locations, web addresses or conference call telephone numbers. Any reference to a member, or a member of the public, attending a meeting includes that person attending by remote access.

A member is deemed to be in remote attendance at a meeting if the following conditions are satisfied:

- (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.

Part 3 of the Regulations modify existing legislative requirements for local authority meetings. Regulation 6 disapplies provisions requiring local authorities to hold annual meetings.

Regulations 13 to 17 modify legislation relating to public and press access to information relating to decisions made by local authorities to enable such access to be available through remote means.

A Council, Committee or Cabinet meeting “open to the public” now includes access to the meeting through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming. Where a meeting is accessible to the public through such remote means the meeting is open to the public whether or not members of the public are able to attend the meeting in person. Being “present” at a meeting includes

access through remote means.

Following the Regulations coming into force, various areas of the Constitution have been reviewed and the following changes are recommended:

COUNCIL PROCEDURE RULES – PART 4: SECTION 1 (FULL COUNCIL):

- **Annual Meeting - Council Procedure Rule 1A:**

Insert a new Council Procedure Rule 1A acknowledging that the Council is not required to hold an Annual Meeting during what would have been the normal 2020/21 municipal year and this is now a matter of choice.

Whether to continue to hold an Annual Meeting is a political decision and can either be called, delayed for several months or perhaps foregone entirely this year with a new date inserted within the programme of meetings for the next municipal year. Therefore, the prospect that Members may call for an earlier Annual Meeting should be recognised and catered for through the possibility of a vote at an Ordinary or Extraordinary meeting.

It should be noted that, where an Annual Meeting is delayed, all appointments from the 2019 Annual Meeting continue (Regulation 4(2)).

- **Time and Place of Meetings – Council Procedure Rule 5:**

Insert additional wording to reflect that the Regulations permit the time, place and manner of the meeting to be varied including holding the meeting or meetings by remote means.

- **Notice of and Summons to Meeting - Council Procedure Rule 6:**

Insert new additional Council Procedure Rules 6A and 6B to reflect that the Regulations permit the formal Notice of Meetings to be made remotely, specifying where and how the meeting will be held and how remote access to the Meeting will be provided.

The requisite notice to the public of the time of the meeting, and the agenda, together with details of how to join the meeting needs to be available on the Council's website. Members will be notified of a remote meeting by email and all agenda papers will be available on the Council's website and via the agenda software or other electronic means as appropriate. Paper agendas will be sent only to the members of the decision making body.

The 'place' at which the meeting is held may be at a Council building or may be where the organiser of the meeting is located or may be an electronic or a digital or virtual location, a web address or a conference call telephone number; or could be a number of these combined. The meeting may also be held in a meeting room or Council Chamber with a proportion of the membership and any participating public additionally attending remotely.

- **Quorum & Members in Remote Attendance - Council Procedure Rule 8:**

To insert new additional Council Procedure Rule 8A setting out:

- the conditions to fulfil when a member will be in remote attendance, is present and thereby attending the meeting including for the purposes of the meeting's quorum; and
- what options are available to the Chairman if a Member is deemed to have left the meeting if the conditions in the first part are not being met.

- Remote Attendance by Members of the Public – Council Procedure Rule 10:

To insert new additional Council Procedure Rule 10A setting out:

- the conditions to fulfil for a member of the public entitled to attend the meeting to be in remote attendance; and
- what options are available to the Chairman if a member of the public is deemed to have left the meeting following the conditions in the first part not being met.

These conditions and options will also apply to external participation in committees and sub-committees, such as Planning Committee, Planning Policy and Local Plan Committee and the Premises/Personal Licences Sub-Committee.

- Remote Voting – Council Procedure Rule 19:

To insert new additional Council Procedure Rule 19A which sets out how votes will be taken during a remote meeting, in the absence of a recorded named vote being requested.

- Members excluded from the meeting – Council Procedure Rule 23:

To insert a new Council Procedure Rule 23A to make provisions for severing the means of remote attendance and access.

- Application to Committees and Sub-Committees - Council Procedure Rule 32:

Extending the application of the Council Procedure Rules to Committees and Sub-Committees following the above changes.

*The changes to the Council Procedure Rules (Section 1) are shown attached as **Appendix A**. Please note that the changes are shown on the current Council Procedure Rules as set out in the Constitution and not those recommended by the Leader of the Council (on behalf of the Cabinet) to Council for approval, which are still due to be considered.*

COUNCIL PROCEDURE RULES – PART 4: SECTION 2 (COMMITTEES):

- Meetings of Committees - Council Procedure Rule 35:

Insert additional wording to reflect that the Regulations permit the time, place and manner of the meeting to be varied including holding the meeting or meetings by remote means.

*Changes to Section 2 of the Council Procedure Rules are shown attached as **Appendix B**.*

ACCESS TO INFORMATION PROCEDURE RULES – PART 5:

- Remote Access to Meetings – Rule 3A:

Insert a new Rule 3A to make provisions to enable remote access to meetings with reference to 'place' and 'open to the public'.

Remote access for members of the public and Members who are not attending to participate in the meeting together with press facilities, will need to be provided through webcasting, live audio streaming, or other means.

It is important to note that the public accessing the meeting by remote means, is different from the public attending to exercise a right to speak. A technological failure removing the ability for the public to access the meeting by remote means renders the whole meeting incapable of proceeding.

- Access to Information – Rule 5A:

Insert a new Rule 5A confirming that reference to certain documents which are statutorily required to be “*open to inspection*” includes for access to information purposes as being published in the Council’s website.

*Changes to the Access to Information Procedure Rules are shown attached as **Appendix C.***

ARTICLE 3 – CITIZENS & THE COUNCIL: PART 2

- Citizen’s rights:

To include reference to members of the public having the right to access a remote meeting, with details being provided within the formal public notice of the meeting available on the Council’s website.

In addition, where the member of the public has a right to participate in a meeting, confirming details on how to join the meeting for a specific agenda item will be provided.

*Changes to Article 3 – Citizen’s and the Council are shown attached as **Appendix D.***

THE CABINET (ALSO REFERRED TO AS THE EXECUTIVE)(ARTICLE 7)(PART 2):

- 7.08 Cabinet Procedure Rules – 1.1 Cabinet Meetings

To insert new wording stating that the location of a Cabinet meeting will include holding the meeting or meetings by remote means in order to comply with the provisions of the new Regulations. Any meeting of Cabinet will be held in accordance with the Access to Information Procedure Rules, which have been amended to include how remote access to meetings is given and that certain documents which are statutorily required to be “*open to inspection*” includes for access to information purposes as being published in the Council’s website.

*Changes to Article 7 – The Cabinet (also referred to as The Executive) are shown attached as **Appendix E.***

REMOTE MEETING GUIDANCE FOR MEMBERS AND OFFICERS:

Practical Guidance has been drafted to provide procedural assistance to Members and

Officers for conducting and participating in remote meetings, involving digital technology. The Guidance is not a restatement of law, however, it does emphasise, the following conditions for 'remote' meetings, as set out in the Regulations, that Members must be able:

- (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.*

The practical points set out in the Guidance are aimed at achieving those conditions and otherwise supporting the consideration of business of the Council at remote meetings and thereby contribute to good decision making.

The practical points are respectively aimed at:

- The Chairman – of the Meeting (and should also be read by the Vice-Chairman)
- The Other Committee Members
- The Committee Officer(s)
- Other Officers participating

There are also some associated ground rules for participants in remote meetings.

The Council has formally decided, through the decision of the Portfolio Holder for Corporate Finance and Governance, that it will use Microsoft Skype for Business as its platform for remote meetings and where possible elected members should use their Surface Pro issued to them by the IT department. It is important that this is adhered to in endeavouring to ensure the smooth facilitating and running of the remote meeting.

Cabinet is requested to adopt the Guidance for Members and Officers but acknowledging that it will be kept under review as the Council's experiences in remote meetings develops. Delegated authority is sought for the Head of Democratic Services and Elections to make minor changes to the Guidance in consultation with the Portfolio Holder for Corporate Finance and Governance.

HEALTH AND SAFETY CONSIDERATIONS

It is important to note that where the Council decides to hold any meetings physically within its Council buildings it has a duty of care to visitors and to its employees.

The Regulations allow Council, Committee or Cabinet meetings to be "open to the public" remotely through various means. Importantly, a meeting can still be accessible to the public whether or not members of the public are able to attend the meeting in person. During the current pandemic and following the Government's direction and guidance on social distancing, full Health and Safety risk assessments will be required for the various Council meetings to establish what the safest option is. These assessments will take into a range of factors and considerations and will be determined in accordance with the Council's Corporate Health and Safety Procedures. The relevant Council, Committees

and Cabinet chairmen will be consulted prior to the operational decision being made by the Chief Executive.

SCHEME OF DELEGATION (NON-EXECUTIVE FUNCTIONS) – COMMITTEES ETC. (PART 3):

- Planning Policy & Local Plan Committee (Part 3.12 – 3.14)

The previous Constitution Review Report that was published for the agenda of Cabinet for its meeting in March 2020 (which was cancelled in response to COVID-19 though the recommendations contained therein were subsequently approved by the Leader of the Council acting on behalf of the Cabinet) highlighted in Appendix E thereto the distinction between the functions of the Executive, which still has responsibility for strategic planning outside of the Local Plan process and other matters in accordance with the Functions and Responsibilities Regulations. Unfortunately, a minor correction is now required because express reference to Supplementary Planning Documents (SPDs) in paragraph 8, 15 and 16 was not amended. In accordance with the Functions and Responsibilities Regulations the Planning Policy and Local Plan Committee can only recommend SPDs onto Cabinet for approval. This has now been corrected and included within Appendix G.

*Proposed changes to the Planning Policy & Local Plan Committee’s terms of reference are shown attached as **Appendix G**.*

BACKGROUND PAPERS

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 available at <http://www.legislation.gov.uk/ukxi/2020/392/contents/made>.

Remote Meetings Protocol and Procedure Rules document produced by Lawyers in Local Government (LLG) and Association of Democratic Services Officers (ADSO).

Review of the Constitution Cabinet Report and Appendix E published for the March 2020 agenda shown on the Council's website.

APPENDICES

A.Z

APPENDIX A	Part 4	Council Procedure Rules – Section One
APPENDIX B	Part 4	Council Procedure Rules – Section Two
APPENDIX C	Part 5	Access to Information Procedure Rules
APPENDIX D	Part 2	Article 3 – Citizen’s and the Council
APPENDIX E	Part 3	Article 7 – the Executive (Cabinet)
APPENDIX F		Remote Meetings Guidance for Members and Officers
APPENDIX G	Part 3	Terms of Reference for the Planning Policy and Local Plan Committee