

Extraordinary Meeting of West Berkshire District Council

Wednesday, 29th April, 2020

Summons and Agenda

This meeting will be held in a virtual format in accordance with The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (“the Regulations”).



To: All Members of the Council

You are requested to attend a remote meeting of
WEST BERKSHIRE DISTRICT COUNCIL

This meeting can be viewed online

on

Wednesday, 29th April, 2020

at 4.00 pm

via the following link

<https://youtu.be/kBzDOAObiDk>



Sarah Clarke
Service Director: Strategy and Governance
West Berkshire District Council

Date of despatch of Agenda: Thursday, 23 April 2020

AGENDA

1. **APOLOGIES FOR ABSENCE**

To receive apologies for inability to attend the meeting (if any).

2. **DECLARATIONS OF INTEREST**

To remind Members of the need to record the existence and nature of any personal, disclosable pecuniary or other registrable interests in items on the agenda, in accordance with the Members' [Code of Conduct](#).

3. **REMOTE COUNCIL MEETINGS**

Purpose: This report proposes a number of changes to the Council's Constitution ("the Constitution") to enable the Council to hold and effectively manage meetings held under The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 which shall be referred to in this report as 'Remote Council Meetings'. (Pages 5 - 14)

<p>If you require this information in a different format or translation, please contact Moira Fraser on telephone (01635) 519045.</p>

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Remote Council Meetings

Committee considering report:	Council
Date of Committee:	29 April 2020
Portfolio Member:	Councillor Lynne Doherty
Report Author:	Sarah Clarke
Forward Plan Ref:	N/a

1 Purpose of the Report

- 1.1 This report proposes a number of changes to the Council's Constitution ("the Constitution") to enable the Council to hold and effectively manage meetings held under the Regulations, which shall be referred to in this report as 'Remote Council Meetings'.
- 1.2 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 ("the Regulations") came into force on the 4th April 2020. They will cease to have effect on the 21st May 2021
- 1.3 These regulations remove the legal obligation to hold local authority meetings at a specified physical location, by permitting members and others attending the meeting to do so by way of 'remote attendance'.

2 Recommendation

- 2.1 It is recommended that the Council approve the following changes to the Constitution insofar as they apply to Remote Council Meetings only:
 - (a) Any right given to a member of the public to speak at any Council meeting shall not apply to Remote Council Meetings. This right will be replaced with the ability to make written submissions.
 - (b) Written submissions that replace the right of a member of the public to speak for up to five minutes, shall be limited to a written submission of no more than 500 words. (This limit shall be applied pro rata to any different time limit detailed within the Constitution.) Written submissions must be submitted to the Council no later than midday, two days before the meeting.
 - (c) Where practicable, written submissions made as an alternative to a previous right to address a Committee will be read aloud at the Remote Council Meeting. Where multiple parties make written submissions, these will all be made available to the Members of the Committee, but it will not be appropriate to read all aloud. In such circumstances, an officer will provide a verbal summary for the Remote Council Meeting of the issues raised.

- (d) Where a member of the public has the right to ask a question at a meeting of the Council, they will continue to have the right to ask the question but that will be done in writing only. Members of the public will have no right to ask a supplementary question during a Remote Council Meeting.
 - (e) The Chairman of any meeting may determine to provide written answers only to questions submitted by members of the public. However, questions submitted to Remote Council Meetings and the responses provided will be published in full.
 - (f) Members of the public will have no right to present a Petition during a Remote Council Meeting.
- 2.2 Any statutory right for a person other than a Member or Officer of the Council to attend, and/or speak at, and/or raise verbal questions at, a Remote Council Meeting shall not be affected by this Resolution.
- 2.3 The Monitoring Officer is authorised to publish a statement setting out the effect of this Resolution in the Constitution and in any other place considered necessary to bring it to the attention of anyone affected as she deems fit.

3 Implications and Impact Assessment

Implication	Commentary
Financial:	There are no financial implications associated with this report.
Human Resource:	The level of officer support required for Remote Council meetings will be higher, as this needs technical support from IT and the Digital Services Team.
Legal:	This report proposes amendments to the Constitution to enable the Council to hold remote meetings in accordance with The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 ("the Regulations") which came into force on the 4 th April 2020.
Risk Management:	The Council needs to continue to operate and it is considered that the proposals in this report will support lawful decision making by the Council.
Property:	There are no implications associated with this report.

Policy:	This report has been drafted in accordance with The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (“the Regulations”) which came into force on the 4 th April 2020.			
	Positive	Neutral	Negative	Commentary
Equalities Impact:				
A Are there any aspects of the proposed decision, including how it is delivered or accessed, that could impact on inequality?		X		This proposal supports the holding of Remote Council Meetings which have been introduced by emergency legislation in response to the social distancing measures required in response to Covid 19. The alternative to the proposal in this report would be to prevent all public participation in meetings where that is not required by statute. That is not in the public interest and the proposals are considered to be proportionate and justifiable in the circumstances in which we are operating. If the Council becomes aware of any individual experiencing particular difficulties arising from this proposal, reasonable adjustments will be considered.
B Will the proposed decision have an impact upon the lives of people with protected characteristics, including employees and service users?		X		

Environmental Impact:		X		It has not been possible to fully assess the environmental impact of this proposal. However, it is clear that the proposal to enable meetings to take place remotely will result in less travel to and from the Council offices, which may have a positive environmental impact.
Health Impact:		X		
ICT Impact:	X			This proposal relates to the Council holding public meetings remotely by the use of technology.
Digital Services Impact:	X			This proposal relates to the Council holding public meetings remotely by the use of technology.
Council Strategy Priorities:		X		
Core Business:		X		This proposal will support the business of Council by enabling Members to attend and participate in decision making at relevant Council meetings.
Data Impact:		X		
Consultation and Engagement:	Nick Carter, Joseph Holmes, John Ashworth, Andy Sharp, Kevin Griffin, Gary Lugg, Phil Rumens, Gary Rayner, Shiraz Sheikh, Moira Fraser, Leigh Hogan, Sharon Armour			

4 Executive Summary

- 4.1 As a result of social distancing measures that have been introduced by the Government in response to Covid 19, the Council closed its offices. The Council is playing a key role in supporting the community in response to Covid 19, and it is continuing to operate business as usual wherever possible.
- 4.2 The Council must operate in accordance with statutory requirements at all times. As a public body, the Council must ensure that decisions are taken in an open and transparent manner. To this extent, formal meetings of Council, Committees and the Executive are required by law to be open to the public.

- 4.3 In order to ensure that Council meetings could continue to operate whilst complying with social distancing requirements, the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 were introduced, which removed the legal obligation to hold local authority meetings at a specified physical location.
- 4.4 The Regulations have however been drafted in a manner that means the attendance of Members at a meeting can be impacted by 3rd parties and technology which is beyond the control of the Council. In summary, if a Member cannot hear or be heard by any member of the public entitled to speak at the meeting, the Member will be deemed not be in attendance at the meeting. Therefore, if a member of the public speaking to a meeting could not be heard by the Members of that Committee, then no valid decision could be made as the Members would be deemed to be absent from the meeting.
- 4.5 It is therefore proposed to amend the manner of public participation in Remote Council Meetings, where this is currently permitted under the Constitution. Specifically, where the public have a right to speak at any meeting, it is proposed to alter that so that the public will have the right to make a written submission.
- 4.6 This will mean that despite the existence of social distancing measures in place at this time, Members will be able to continue to take the decisions that are currently reserved to them under the Constitution.

5 Supporting Information

Introduction

- 5.2 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 came into force on the 4th April 2020.
- 5.3 These regulations removed the legal obligation to hold local authority meetings at a specified physical location, by permitting Members and others attending the meeting to do so by way of 'remote attendance'.

Background

- 5.4 The regulations specify a number of requirements that must be met when a meeting is proceeding in this way, including:

That in order for a member to qualify as being in 'remote attendance', they 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.

Remote Council Meetings

- 5.5 In summary, this means that a Member who is in remote attendance must be able to hear and be heard by other Members in attendance, by members of the public who are entitled to speak at the meeting, and that Members can be heard by other members of the public.
- 5.6 Being able to see or be seen by other parties is not a necessity under the Regulations. Whilst the Council has a good degree of control over a) and c) above, there are risks with the requirement that a Member be able to hear and be heard by any party who is entitled to speak at a meeting. This means that if the technology of an individual in this category fails, and they are unable to hear the Members or to make themselves heard, the Members would be deemed to be absent. This would make the meeting inquorate and invalidate any decisions taken.
- 5.7 The Regulations do not override existing Constitutional provisions about how meetings are to be held. Therefore, when holding a virtual meeting, the Council will need to ensure that it complies with both the technical requirements of the Regulations and the relevant Constitutional rules.
- 5.8 There are a number of instances where the Council's Constitution permits public participation in meetings where this is not required by law, for example, public questions and the ability for parties to address Planning Committees. This report therefore proposes amendments to the manner of public participation in Remote Council Meetings, where this is currently permitted under the Constitution. Specifically, where the public have a right to speak at any meeting, it is proposed to amend that so that the public will have the right to make a written submission only.
- 5.9 This will mean that despite the existence of social distancing measures in place at this time, Members will be able to continue to take the decisions that are currently reserved to Members under the Constitution. It will also ensure that the public continue to have the ability to participate and engage in the decision making process, albeit by way of written rather than verbal representations.

Proposals

- 5.10 It is proposed that any non-statutory right granted by the Council's Constitution ("the Constitution") for a person other than a Member or Officer of the Council to attend, and/or speak at, and/or raise verbal questions at, a Meeting shall be replaced at Remote Council Meetings by:
- (a) a facility to permit members of the public to view or listen to the proceedings of the Meeting remotely;
 - (b) a facility to make a written submission to a Meeting where the Constitution gives a right to make an oral submission;
 - (c) a facility to submit a written question to a Meeting where the Constitution gives a right to ask a question at a Meeting.
- 5.11 Written submissions that replace the right to speak for up to five minutes at a Meeting, shall be limited to a written submission of no more than 500 words. (This limit shall be applied pro rata to any different time limit detailed within the Constitution.) Written

submissions must be submitted to the Council no later than midday, two days before the meeting.

- 5.12 Where practicable, written submissions made as an alternative to a previous right to address a Committee will be read aloud at the Remote Council Meeting. Where multiple parties make written submissions, these will be made available to the Members of the Committee, but it will not be appropriate to read all of them in full during the Remote Council Meeting. In such circumstances, an officer will summarise for the Remote Council Meeting the issues raised.
- 5.13 Where a member of the public has the right under the Constitution to ask a question at a meeting of the Council, they will continue to have the right to ask the question at a Remote Council Meeting, but that will be done in writing only. Members of the public will have no right to ask a supplementary question during a Remote Council Meeting.
- 5.14 The Chairman of a Remote Council Meeting may determine to provide written answers only to questions submitted by members of the public. However, questions submitted to Remote Council Meetings and the responses provided will be published in full. Questions and answers will be published on the Council's website within five clear working days of the meeting taking place.
- 5.15 Members of the public will have no right to present a Petition during a Remote Council Meeting. However, Petitions may be submitted on line, providing that they meet the relevant criteria detailed in Appendix C to Part 13 of the Constitution.
- 5.16 It is considered that the above proposals ensure that the Council will continue to comply with all relevant statutory obligations, and will reduce the risk of decisions being challenged for reasons that are beyond the control of the Council. A Protocol for Remote Council Meetings has been developed, as has a Guidance note for Remote Council Meetings. A copy of the Protocol is attached to this report as Appendix A. The Protocol will be kept under review to ensure that the Council is operating appropriately and effectively.

6 Other options considered

- 6.1 There are provisions within the Constitution that enable the Chief Executive to operate in an emergency. It is considered that matters which Council has reserved to Members should be determined by Members. It was not therefore considered appropriate for such matters to be determined by way of officer delegated decisions.
- 6.2 Careful consideration was given to maintaining the status quo. However, due to the manner in which the legislation has been drafted, public speaking rights will potentially compromise the Council's ability to take decisions and will effectively give rise to a significant risk of legal challenge. For those reasons, this option is not recommended.

7 Conclusion

- 7.1 The Council needs to continue to operate notwithstanding the social distancing guidelines.

- 7.2 The proposals detailed in this report will mean that notwithstanding social distancing measures, Members will be able to continue to take the decisions that are currently reserved to them under the Constitution. The proposals will also ensure that the public continue to have the ability to participate and engage in the decision making process.
- 7.3 In view of the above, it is considered that the recommendations in this report will enable the Council to conduct its business at Remote Council Meetings and to do so lawfully.

8 Appendices

Appendix A – Protocol for Remote Council Meetings

Background Papers:

None

Subject to Call-In:

Yes: ☐ No: ☒

The item is due to be referred to Council for final approval



Wards affected: All

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Document Control

Document Ref:	SC	Date Created:	21 April 2020
Version:		Date Modified:	
Author:			
Owning Service			

Change History

Version	Date	Description	Change ID
1			
2			

West Berkshire Council – Protocol for Remote Council Meetings

Introduction

The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (“the Regulations”) came into force on the 4 April 2020.

The Regulations remove the legal obligation to hold local authority meetings at a specified physical location, by permitting members and others attending the meeting to do so by way of ‘remote attendance’.

This Protocol applies to meetings of the Council or its Committees, etc, that would, but for the coronavirus pandemic and the Regulations, be held in public. It does not apply to informal meetings of West Berkshire Council Councillors (“Members”), task groups, advisory panels, etc (although the Chairman of the meeting, task group, advisory panel, etc, may choose to follow the Protocol for convenience).

Participants

For the purpose of this protocol, ‘Participant’ refers to

- a member of Council (“Member”) for a meeting of Council;
- a member of a Committee (including co-opted members) for a meeting of that Committee;
- a member of the Executive for a meeting of the Executive;
- any Member generally when remotely attending any meeting of a body they are not formally a member of, if they are permitted or invited to speak by virtue of the Council’s Constitution;
- an officer or professional adviser assisting proceedings.

Chairman of the meeting

The Chairman will manage the meeting and will be assisted by an officer acting as ‘Host’, who will help to control access to the meeting and monitor participants. (References in this document to the Chairman shall include the Leader of the Executive during meetings of the Executive.)

Protocol

- 1 Participants shall have a Zoom Profile **created for them by IT (?)** so that they are always readily identifiable to members of the public observing proceedings as a member of the Council/Executive/Committee as the case may be, or as a Member, or as an Officer.
- 2 Any Participant who joins a meeting by telephone will be identified by their title, name and a still photographic image where possible.
- 3 To ensure the smooth running of the meeting, Participants should join the Zoom waiting room 10 minutes before the start time of the meeting so that it can start promptly - all Participants will remain in the Zoom waiting room until they are admitted to the meeting by the Host.
- 4 Participants should make a note of their meeting ID, which can be found in two places: (a) at the bottom of the meeting invite, and (b) in the top left hand side of the Zoom screen (indicated by an “i” in a circle). This will be of assistance in the event that a Participant is experiencing technical difficulties, and requires support during a meeting. (The meeting invite will also contain a telephone number enabling a Participant to access the meeting via telephone of their internet connection drops out).

- 5 The meeting will be live streamed and recorded.
- 6 All microphones (except the Chairman's) will be muted on entry into the meeting and they shall remain muted unless a Participant is invited to speak by the Chairman. Participants will be invited to unmute their microphone to speak, and should mute this again immediately when they have finished speaking. Participants who fail to mute themselves will be muted by the Host.
- 7 Participants wishing to speak shall indicate this by using the 'Zoom Raised Hand' (available via the Participants field, in turn triggered by the Participants key at the base of the Zoom screen). The Host will make a note of Participants wishing to speak, and will provide the Chairman with details of those who have indicated a desire to do so, by reading a list of names at the appropriate points in the meeting.
- 8 If any of the Participants have entered the meeting via telephone rather than by way of the video facility, they will be asked by the Chairman whether they wish to speak. This will usually be after Participants who have joined using video, and indicated they wish to speak, have spoken.
- 9 The Chairman will invite Participants to speak in any order (this will not overrule the rules of debate at full Council). Participants should remain seated whilst speaking.
- 10 If any statutory officer (such as the Monitoring Officer or Chief Finance Officer) or any Director indicates a desire to speak by using Zoom Raised Hand, the Host will notify the Chairman of this as soon as practicable (normally be at the conclusion of a Participant's speech).
- 11 Participants wishing to raise a point of order or personal explanation should signal this by unmuting their microphone, stating their name, and saying either, "Point of Order" or "Matter of Personal Explanation". The microphone should then be muted again until the Chairman invites them to address the meeting.
- 12 Voting will take place by way of a named vote. The Monitoring Officer or their representative will read the names of each Participant entitled to vote in respect of any item and the Participant will respond in one of three ways:
 - **"For"** To indicate that they support the proposal
 - **"Against"** To indicate that they oppose the proposal
 - **"Abstain"** To indicate that they do not wish to cast a vote either for or against a proposal.
- 13 If the Chairman considers that the meeting should be adjourned for any reason, s/he will advise the meeting of this fact and provide a time at which the meeting will resume.
- 14 If a meeting contains Items which are confidential then, following a resolution to exclude the press and public, the following steps will happen:
 - The Chairman (or one of the Supporting Officers) will explain that confidential items are to be discussed, and the meeting will therefore then close for members of the public.
 - The Host will be asked to:
 - LOCK the meeting to prevent further individuals attending; and
 - STOP live streaming and recording the meeting.
 - Before the meeting resumes, the Host will be asked to confirm that all attendees have left, and that the meeting is no longer being streamed or recorded.