

BRECKLAND DISTRICT COUNCIL

Report of: Director of Strategy & Governance (Monitoring Officer)

To: Council - 22 July 2020

Author: Jacqui Berridge - Lawyer

Subject: Coronavirus - Emergency Governance Measures

Purpose: To consider emergency Governance measures in relation to (i) virtual meetings; (ii) the peacetime emergency delegation to the Chief Executive; and (iii) vacation of office by failure to attend meetings.

Recommendation(s):

- 1) **Virtual meetings** - that the amendments to the Council's Standing Orders and Access to Information Procedure Rules, set out in **Appendix A**, be approved and the Constitution be amended accordingly, such amendments (with the exception of the proposed amendment to Standing Order no. 14.1) to apply up to but not including 7 May 2021 (being the date on which the virtual meeting regulations expire), or such longer period as the law allows virtual meetings to be held, the amendments then to be removed from the Constitution without a further report.
- 2) **Emergency delegation to the Chief Executive** - that the proposed amendments to the emergency delegation to the Chief Executive, shown in **Appendix B**, be approved, and the Constitution be amended accordingly.
- 3) **Vacation of office due to failure to attend meeting** - that where any member fails throughout a period of six consecutive months to attend any meeting of the authority, including where an executive member fails to attend any meeting of the Executive or to take any executive decision, such failure be an approved absence due to the coronavirus peacetime emergency under section 85 of the Local Government Act 1972 and Standing Order no. 56, up to and including the date of the Annual Council meeting in 2021.

1.0 VIRTUAL MEETINGS

- 1.1 The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 came into force on 4 April 2020. The regulations allow local authority meetings held before 7 May 2021 to be held remotely, and allow Councils to make standing orders, and other rules governing remote attendance at meetings of that authority, which may include provision for:
 - (a) voting;
 - (b) member and public access to documents; and
 - (c) remote access of public and press to a local authority meeting to enable them to attend or participate in that meeting by electronic means, including by telephone conference, video conference, live webcasts, and live interactive streaming.
- 1.2 Proposed amendments to the Council's Constitution, including amendments to Standing Orders, to deal with remote meetings are attached at **Appendix A**. The proposed Standing

Orders are based upon model Standing Orders prepared jointly by the Association of Democratic Services Officers and Lawyers in Local Government.

- 1.3 Under Standing Order no. 53 any motion to add to, vary or revoke Standing Orders must, when proposed and seconded, stand adjourned without discussion to the next ordinary meeting of the Council. This is designed to ensure that the implications of any proposal raised at a meeting of the Council are considered before Standing Orders are amended. This requirement does not apply where amendments arise from a report approved by the Monitoring Officer. The Monitoring Officer has approved this report.
- 1.4 **Options**
- 1.5 To approve the proposed Constitutional amendments detailed in **Appendix A**.
- 1.6 To propose alternative arrangements
- 1.7 To do nothing. This is not considered appropriate as it is important to agree the Council's internal procedural arrangements for dealing with virtual meetings in order to ensure conformity; ensure that members of the public are aware how things work; and resist legal challenge.
- 1.8 **Reasons for Recommendations**
- 1.9 The way a meeting is conducted virtually means that we need additional Standing Orders to accommodate this new way of working (dealing with matters such as how members indicate their vote). The main amendments are based on advice issued jointly by the Association of Democratic Services Officers and Lawyers in Local Government.
- 1.10 **Expected Benefits**
- 1.11 The proposed amendments will provide clarity to members, and members of the public about how virtual meetings will work. They will also provide conformity and help to resist legal challenge.
- 1.12 **Constitutional & Legal implications**
- 1.13 As virtual meetings are likely to be with us for some time, it is appropriate for the Council to adopt governance arrangements for virtual meetings.
- 1.14 Changes to the Constitution must be approved by the full Council unless the changes are minor, required to remove inconsistency or ambiguity, or required to put into effect any decision of the Council or its committees or the Cabinet.
- 1.15 **Financial implications**
- 1.16 No financial implications arise directly out of this report.
- 1.17 **Risk management implications**
- 1.18 The proposals mitigate, so far as possible, any risk of challenge arising from the method of decision making.

2.0 EMERGENCY POWERS OF CHIEF EXECUTIVE

- 2.1 Under Part 3 Section F2 paragraph 6 of the Council's Constitution the Chief Executive has power, after consultation with the Leader, to declare an incident to be a major incident under the Peacetime Emergency Plans and thereafter to take any necessary immediate action in respect of the incident including expenditure of money subject to obtaining the agreement of the Leader and to calling a meeting of Cabinet as quickly as possible and so far as practicable thereafter acting in consultation with Cabinet.
- 2.2 The current crisis has identified a number of issues as set out below, and there is a need to amend and clarify this power to ensure that it works as intended:
- the emergency power assumes that the Chief Executive has declared an emergency. It needs to reflect the fact that an emergency may already have been declared at a national or regional level
 - if the Chief Executive is not available the power is not actionable. A deputy should be available to act in the place of the Chief Executive
 - if the Leader is not available to approve the emergency action the Deputy Leader may, under the terms of the Constitution, exercise all of the functions of the Leader but this should be clear in the delegation
 - as, by definition, there is not time for call-in of decisions made under an emergency delegation, the delegation should state that call-in does not apply. This will ensure that emergency decisions are implemented with appropriate speed, but will not prevent the Overview and Scrutiny Commission from scrutinising decisions at a later date
 - the delegation is not clear about the level of expenditure of money
 - the delegation is not clear about the requirement to call a Cabinet meeting.
- 2.3 A proposed amended delegation is included at **Appendix B** for consideration.
- 2.4 **Options**
- 2.5 To approve the proposed amended delegation at **Appendix B**. This is the recommended option.
- 2.6 To propose alternative arrangements.
- 2.7 Do nothing. This is not considered appropriate. This is the first time that this delegation has been tested and the recommendations in this report arise out of experience of using the delegation.
- 2.8 **Reasons for Recommendations**
- 2.9 The proposed amendments clarify issues that have become apparent during the coronavirus pandemic. It is not intended to extend the delegation, which may only be used in exceptional circumstances where usual procedures cannot be followed.
- 2.10 **Expected Benefits**
- 2.11 The amended delegation will provide further clarity about the limits of the delegation, and allow other officers to invoke the power where the Chief Executive is not available.

2.12 **Constitutional & Legal implications**

2.13 Under section 101 of the Local Government Act 1972 the full Council may authorise officers to discharge any functions. Most local authority Constitutions contain emergency powers for use by the Chief Executive in a crisis.

2.14 As the delegation is specifically contained within the Constitution the proposed change must be approved by the full Council. Only minor changes, changes required to remove inconsistency or ambiguity, or changes required to put into effect any decision of the Council or its committees or the Cabinet can be made without approval by full Council.

2.15 **Financial implications**

2.16 No financial implications arise directly out of the report.

2.17 **Risk management implications**

2.18 Any emergency decision made by the Chief Executive, or any deputy acting for the Chief Executive, arising from this delegation will be subject to approval by the Leader.

3.0 **VACATION OF OFFICE BY FAILURE TO ATTEND MEETINGS**

3.1 Under section 85 of the Local Government Act 1972, and the Council's own Standing Orders (number 56), if a member fails for a period of six consecutive months to attend any meeting of the authority then, unless the failure is due to some reason approved by the authority before the expiry of the period, the member ceases to be a member of the authority.

3.2 In addition, if a member of the Cabinet fails for a period of six consecutive months to attend any meeting of the Cabinet, or to make any individual executive decisions then, unless the failure is due to some reason approved by the local authority before the expiry of that period, the member cease to be a member of the local authority.

3.3 During the current crisis more routine decisions are fewer in number, as are meetings that members can attend. In addition, even where meetings are now held virtually, not all members will be able to attend for a variety of reasons (such as sickness, family commitments and potential IT difficulties).

3.4 It is recommended that the Council authorises all such absence for a period ending upon the Council's Annual Meeting in May 2021, which is a few days after the virtual meetings regulations expire.

3.5 **Options**

3.6 That all absences from meetings of the Council, Cabinet, and their Committees and Sub-Committees, including failure by any executive member to take any executive decisions, for a period ending upon the Council's Annual Meeting in May 2021, be approved as an authorised reason under section 85 of the Local Government Act 1972 and Standing Order no. 56. This is the recommended option.

3.7 To propose alternative arrangements.

3.8 Do nothing. This is not considered appropriate as failure to attend meetings, or take executive decisions, for a period of 6 months without approved absence results in vacation of office.

3.9 Reasons for Recommendations

3.10 The recommendation will ensure that absences during the current crisis will not affect members' ability to retain office.

3.11 Expected Benefits

3.12 Members will not be prejudiced by failure to attend meetings, or make executive decisions, during the current crisis.

3.13 Constitutional & Legal implications

3.14 Any member who fails to attend a relevant meeting for a period of six months, including executive members making executive decisions, ceases to be a member of the authority, unless the failure is due to some reason approved by the authority prior to expiry of the six month period. As meetings, and executive decisions, are likely to be fewer in number during the crisis, it is considered appropriate to ensure that members are protected from potential vacation of office. In addition, should seats be vacated, it would be impossible to hold a by-election at the present time.

3.15 Financial implications

3.16 No financial implications arise directly out of the report.

3.17 Risk management implications

3.18 Approving the failure of members to attend meetings during crisis avoids the risk of members inadvertently losing office where meetings cannot be held, or executive decisions cannot be made.

4.0 IMPLICATIONS

4.1 In preparing this report, the report author has considered the likely implications of the decision - particularly in terms of Carbon Footprint / Environmental Issues; Constitutional & Legal; Contracts; Corporate Priorities; Crime & Disorder; Data Protection; Equality & Diversity/Human Rights; Financial; Health & Wellbeing; Reputation; Risk Management; Safeguarding; Staffing; Stakeholders/Consultation/Timescales; Transformation Programme; Other. Where the report author considers that there may be implications under one or more of these headings, these are mainly identified above as part of each item within the report, or dealt with below.

4.2 Health & Wellbeing

4.3 The proposals are considered appropriate for the purposes of keeping members, staff and members of the public as safe as possible.

5.0 WARDS/COMMUNITIES AFFECTED

5.1 All wards.

6.0 ACRONYMS

6.1 None

Background papers:- The Council's Constitution, which can be found on the Breckland District Council website
"Remote meetings protocol and procedure Rules" issued jointly by the Association of Democratic Service Officers and Lawyers in Local Government on 17 April 2020

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Key Decision: N

Exempt Decision: N

This report refers to a Mandatory Service

Appendices attached to this report:

Appendix A Proposed amendments to the Constitution relating to virtual meetings
Appendix B Proposed amendments to the Emergency Delegation to the Chief Executive following declaration of a major incident and associated amendments

APPENDIX A - Proposed amendments to the Constitution relating to virtual meetings

Additional words are shown in bold italics and deletions in ~~strikethrough~~

- A. The Glossary of Terms be amended by the addition of the following definition in the list of Miscellaneous Definitions:

"Virtual meeting" means a virtual meeting held under the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020

- B. Standing Orders be amended as follows:

Standing Order no. 4 (quorum) be amended by the addition of the following:

4.4 Where a virtual meeting is held, a member in remote attendance is present and attends the meeting, including for the purposes of the meeting's quorum, if at any time all three of the following conditions are satisfied, those conditions being that the member in remote attendance is able at that time:

- to hear, and where practicable see, and be so heard and, where practicable, be seen by, the other Members in attendance; and***
- 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***
- to be so heard and, where practicable, be seen by any other members of the public attending the meeting.***

4.5 A member in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in Standing Order 4.4 above are not met. In such circumstance the Chairman may, as he/she deems appropriate;

- where the issue relates to failure of the equipment, adjourn the meeting for a short period to permit the conditions for remote attendance of a member contained in 4.4 above to be re-established; or***
- count the number of members in attendance for the purposes of the quorum;***
- provided there is a quorum present at the meeting continue to transact the remaining business of the meeting in the absence of the member in remote attendance.***

Standing Order no. 5.1 (Order of Business - signing of minutes) be amended as follows:

(c) Approve and sign the minutes of the last meeting ***or, at a virtual meeting, approve the minutes ready for signature at a later date in accordance with Standing Order no. 10.***

Standing Order no. 10.1 (minutes) be amended as follows:

10.1.1 Signing the Minutes

Unless the next paragraph applies, the Chairman will sign the minutes of the proceedings at the next suitable meeting (including the annual meeting of the Council). The Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record. The only part of the minutes that can be discussed is their accuracy.

At a virtual meeting the Chairman will invite a member to move that the minutes of the previous meeting be signed as a correct record and the minutes will be signed as soon as practicable thereafter. The only part of the minutes that can be discussed is their accuracy.

Standing Order no. 14.1 (disturbance by member of the public) be amended to read as follows - this amendment to stand at all times:

14.1 If a member of the public interrupts the proceedings at any meeting the Chairman shall warn him. If he continues the interruption the Chairman shall order their removal from the Council Chamber ***meeting***. In case of general disturbance in any part of the chamber ***meeting place*** open to the public the Chairman shall order that part to be cleared.

Standing Order no. 16 (voting - (applies only to Council meetings)) be amended as follows:

16.1 All questions coming or arising before the Council shall be decided by a majority of the members of the authority present and voting thereon. In the case of an equality of votes, the person presiding at the meeting shall have a second or casting vote.

16.2 ***Apart from virtual meetings when Standing Order no. 16.6 below shall apply,*** the method of voting at meetings of the Council shall be by show of hands. If in the opinion of the Chairman the result is uncertain he shall call upon the Council to determine the question by a recorded vote, in which case the names of all members voting for and against the motion or amendment shall be taken down and recorded in the minutes.

16.3 On the requisition of any member of the Council made before the vote is taken and supported by twelve other members who signify their support by rising in their places the voting on any question shall be taken by a recorded vote as above. ***At a virtual meeting, where a member has requisitioned a recorded vote, the Chairman shall, entirely at his discretion, either take a vote by roll-call to determine whether twelve other members support the requisition, or use any other means described in Standing Order 16.6(c) below.***

16.4 Where at a meeting any member so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that member voted for the question, against the question or abstained from voting.

16.5 The Chairman may, at their discretion, ask that the number of members voting for and against a motion or amendment be recorded in the minutes.

16.6 At virtual meetings the Chairman shall take the vote by roll-call, and the number of votes for or against the motion or amendment or abstaining from voting shall be recorded in the minutes, unless:

(a) a recorded vote is required by the Chairman under Standing Order no. 16.2; or

(b) a recorded vote is requisitioned under Standing Order no. 16.3; or

(c) at the Chairman's discretion, the vote is taken by one of the following methods:

- (i) by use of an electronic voting system for remote voting where available; or**
- (ii) by use of electronic hand raising where available; or**
- (iii) by physical hand raising where practicable**

except that where (c) applies a roll-call shall still be required if requisitioned by any member and supported by two further members.

Standing Order no. 17.2 (voting on appointments) be amended to read as follows:

17.2 The Chairman may at their discretion call upon the Council to vote:

- (a) by each member, when called upon, announcing to the Council the name of the person for whom he votes;
- (b) by each member entering that name upon a voting paper to be signed by him and delivered to the Chief Executive;

Provided that **at any virtual meeting method (a) shall apply, and at any non-virtual meeting** any member may demand that method (b) be employed and if one third of other members signify their support by rising in their places the vote shall be taken.

Standing Order no. 18 (record of attendances) shall be amended as follows:

18.1 There shall at the beginning of each meeting of the Council be a roll call of members. **Except at virtual meetings where the Chairman (or such other person at the Chairman's direction) shall at the beginning of a meeting take a roll-call of members in attendance**, at all other committee meetings all members present during the whole or part of a meeting must sign their names on the attendance sheets before the conclusion of every meeting. The names of members present at a meeting or part of a meeting will be recorded in the minutes.

Standing Orders nos. 19A and 29A and 35 (cancellation or postponement of full Council, Cabinet meetings and Committee meeting) be amended so that

the words "be posted at the Council Offices" are amended to read "be posted at the Council Offices **(where possible)**, and on the Council's website."

Standing Order no. 39 (voting at Committees and Sub-Committees) be amended as follows:

39.1 Apart from virtual meetings when Standing Order no. 39.4 below shall apply, voting at a meeting of a Committee or Sub-Committee shall be by show of hands.

39.2 A member may request that their own name be recorded in the minutes as voting for or against or abstaining when voting on a motion or amendment.

39.3 The Chairman or any member of the Committee or Sub-Committee may, at their discretion, ask that the numbers voting for and against a motion or amendment be recorded in the minutes.

39.4 At all virtual meetings the Chairman shall take the vote by roll-call and the number of votes for or against the motion or amendment or abstaining from voting will be recorded in the minutes, unless:

(a) a recorded vote is required by the Chairman under Standing Order no. 16.2; or

(b) a recorded vote is requisitioned under Standing Order no. 16.3; or

(c) at the Chairman's discretion, the vote is taken by one of the following methods:

(i) by use of an electronic voting system for remote voting where available; or

(ii) by use of electronic hand raising where available; or

(iii) by physical hand raising where practicable

except that where (c) applies a roll-call shall still be required if requisitioned by any member and supported by two further members.

Standing Order no. 41 (public speaking) be amended as follows:

41.1 A Committee, Sub-Committee or Working Party of the Council may, if it resolves to do so, allow members of the public to address the meeting. In this case, that body may set rules and procedures under which such a scheme will operate. Additionally the Chairman may at any time invite a person to speak where he/she considers it to be appropriate.

41.2 Where a member of the public is entitled to attend a remote meeting in order to exercise a right to speak at the meeting, that person is in remote attendance at any time if all three of the following conditions are satisfied, those conditions being that the member of the public in remote attendance is able at that time:

- to hear, and where practicable see, and be so heard and, where practicable, be seen by, Members in attendance; and**
- to hear, and where practicable see, and be so heard and, where practicable, be seen by, any other members of the public entitled to attend the meeting in order to exercise a right to speak at the meeting; and**
- to be so heard and, where practicable, be seen by any other members of the public attending the meeting.**

41.3 A member of the public in remote attendance will be deemed to have left the meeting where, at any point in time during the meeting, any of the conditions for remote attendance contained in 41.3 above are not met. In such circumstance the Chairman may, as he or she deems appropriate:

- adjourn the meeting for a short period to permit the conditions for remote attendance contained in 41.3 above to be re-established;**
- suspend consideration of the item of business in relation to the member of public's attendance until such time as a following item of business on the agenda has been transacted and the conditions for the member of the public's remote attendance have been re-established or, on confirmation that this cannot be done, before the end of the meeting, whichever is the earliest; or**

- ***continue to transact the remaining business of the meeting in the absence of the member of the public in remote attendance.***

Standing Order no. 42 (rights of other members to attend Committee of Sub-Committee) shall be amended by the addition of the following paragraph after the heading:

Where a member attends a virtual meeting under this Standing Order then Standing Order 4.4 and 4.5 shall apply to that member.

Standing Order no. 45.2 (interest of members in contracts and other matters) be amended, and Standing Order 45.3 be added, as follows:

45.2 Where a member has a Disclosable Pecuniary Interest the member must declare the interest to the meeting and leave the room ***(or, where the meeting is a virtual meeting, leave the meeting)*** without participating in any discussion or making a statement on the item, except where a member is permitted to remain as a result of the grant of a dispensation.

45.3 Where a member is required to leave a virtual meeting, the means of remote attendance and access is to be severed whilst any discussion or vote takes place in respect of the item or items of business in which the member or co-opted member may not participate.

C. Access to Information Procedure Rules be amended by the addition of the following Rules

2A VIRTUAL MEETINGS

2A.1 For all purposes of the Constitution, including these Rules, the terms “notice”, “summons”, “agenda”, “report”, “written record” and “background papers” when referred to as being a document that is:

(i) “open to inspection” shall include for these and all other purposes as being published on the website of the Council; and

(ii) to be published, posted or made available at offices of the authority shall include publication on the website of the authority.

3A REMOTE ACCESS TO VIRTUAL MEETINGS

3A.1 For all purposes of the Constitution, including these Rules, the term “meeting” is not limited in meaning to a meeting of persons all of whom, or any of whom, are present in the same place, for which purposes any reference to:

- ***“place” is to be interpreted as 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: and***
- ***“open to the public” includes access to the meeting being through remote means including (but not limited to) video conferencing, live webcast, and live interactive streaming and 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; and

3A.2 If the Chairman is made aware that the meeting is not accessible to the public through remote means, due to any technological or other failure of provision, then the Chairman shall adjourn the meeting immediately. If the provision of access through remote means cannot be restored within a reasonable period, then the remaining business will be considered at a time and date fixed by the Chairman. If he or she does not fix a date, the remaining business will be considered at the next ordinary meeting.

3B REMOTE ATTENDANCE AT MEETINGS BY MEMBERS AND MEMBERS OF THE PUBLIC

Please see Standing Orders no. 8 (quorum) and 41 (public speaking)

APPENDIX B - proposed amendments to the Emergency Delegation to the Chief Executive following declaration of a major incident and associated amendments

Additional words are shown in bold italics and deletions in ~~strikethrough~~

Paragraph 5 of Part 3 Section F2 of the Constitution (Delegations to Chief Executive) be amended to read as follows:

6.0 Power, after consultation with the Leader, to declare an incident to be a major incident under the Peacetime Emergency Plans (***or to acknowledge such declaration made nationally or regionally***) and thereafter to take any necessary immediate action in respect of the incident including expenditure of money subject to:

- obtaining the agreement of the Leader, ***or Deputy Leader if the Leader is unable to act for any reason***, and
- ***complying with Financial Management Standard 1.4 (Emergency Procedures)***;
- calling a meeting of Cabinet as quickly as possible ***where practicable***. ~~and~~
- ~~so far as practicable thereafter acting in consultation with Cabinet.~~

Where the Chief Executive is unable to act for any reason authority be delegated to any individual Director. This delegation applies to executive and non-executive functions. Any executive decision taken under this emergency power must be published and the decision notice must make it clear that the decision is taken under this paragraph as an emergency decision and that call-in does not apply.

Paragraph 7 of Part 3 Section D of the Constitution (Delegations to Committees - Cabinet delegations) be amended to read as follows:

7. All Executive Decisions (other than urgent decisions as described in the Access to Information Procedure Rules, ***and decisions made during a major incident under the emergency powers in Paragraph 5 of Part 3 Section F2***) are subject to the Call-in procedures set out later in Part 3.

The call-in procedure included below paragraph 19 of Part 3 Section D of the Constitution (Delegations to Committees - Overview and Scrutiny Commission) be amended to read as follows:

Call-In procedure for Executive Decisions
Call-in does not apply to Executive Decisions taken under Rules 12 to 15 of the Access to Information Procedure Rules, ***nor to decisions made during a major incident under the emergency powers in Paragraph 5 of Part 3 Section F2.***