



## OFFICER REPORT TO COUNCIL

### REVIEW OF COVID RELATED CONSTITUTIONAL CHANGES

#### KEY ISSUE/DECISION:

The Council's Constitution sets out the rules and procedures for both executive (Cabinet) and non-executive (Council) decision making. In light of the national situation around coronavirus and prior to any emergency legislation being put in place, Council approved a number of recommendations and delegations at its meeting on 17 March 2020 in preparation for any special arrangements that may be required in order to allow council business to continue.

It was agreed that these recommendations would be reviewed at the 13 October 2020 Council meeting and it is proposed that due to the Remote Meeting Regulations legislation, that the previous delegations be removed.

#### DECISION MAKING:

##### **Remote meeting legislation**

1. Under the Coronavirus Act 2020 new regulations (The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 were created enabling local authorities to hold meetings remotely before 7 May 2021. The Remote Meeting Regulations came into force from 4 April 2020.
2. These regulations removed obstacles to local decision-making being done remotely. Before this, it was not possible and the reason why the Council took the decision in March to operate through the executive powers of the Leader and delegate non-executive powers to the relevant Proper Officer on an interim basis.

##### **Executive (Cabinet) decision making and Scrutiny**

3. The Leader has authority to make any executive decision and may delegate to Cabinet, individual Cabinet Members or officers as the Leader considers necessary for the proper management of council business.

4. While the Leader is able to amend the delegations with the Leader's Scheme of Delegation, the Council's Financial Regulations and Procurement Standing Orders set out the thresholds for decision making and provide that some decisions need to be made collectively by Cabinet.
5. The 17 March 2020 Council report agreed to amend the Financial Regulations and other rules so that any reference to Cabinet requires either a formal Cabinet meeting or the Leader or nominated Cabinet Member individually making a decision in consultation with two other Cabinet Members (a quorum of Cabinet).
6. In line with the Remote Meetings legislation it is recommended that this definition reverts back and that any reference to Cabinet will be referring to a formal Cabinet meeting.

### **Non-executive decision making**

7. Council has responsibility for non-executive decision making and has delegated some function to committees and officers e.g. planning and regulatory committee and audit and governance committee.
8. In the 17 March report, it was agreed that all non-executive decision making would be delegated to officers (as far as the law allows) and that these delegations would only be used on a case by case basis and following agreement of the chairman or nominated member of the relevant regulatory committee.
9. Now the Remote Meeting legislation is in place, all committees are now able to meet and take decisions lawfully in remote meeting therefore it is proposed that the Council agrees to remove the delegation for all non-executive decision making to officers and for this decision making to be undertaken in line with the Council's Scheme of Delegation and Responsibility for Functions within the Constitution.

### **Decisions taken under the 17 March 2020 delegations (agendas published up to 4 April 2020**

10. As the Remote Meeting Regulations came into force on 4 April the Council only needed to use the delegations that Council agreed on 17 March for decisions that were taken on 31 March and 7 April. Records of these decisions were published on the Council's website. The Audit and Governance Committee reviewed these decisions alongside the Remote Meetings Protocol at its meeting on 22 May 2020 to ensure transparency around decision-making.

### **Urgent decisions**

11. The Council already has arrangements in place for decisions that need to be made in cases of special urgency. Standing orders enable the

Chief Executive to act on behalf of the organisation in consultation with the Section 151 Officer and Monitoring Officer and Cabinet Members as appropriate. These arrangements will remain in place should urgent decision making need to take place.

### **Non-attendance at council meetings**

12. Section 85(1) of the Local Government Act 1972 states that all councillors must attend a committee meeting of the council within a six-month period unless the failure was due to a reason approved by the local authority.
13. On 17 March 2020, Council resolved that special dispensation would be granted to all members for any non-attendance at meetings for virus related reasons to the end of December 2020 and that this should be reviewed at its October meeting.
14. It is proposed that this dispensation is removed from December 2020 as all councillors are now able to attend and participate in remote meetings.

### **Remote Meetings Protocol**

15. The Council developed a Remote Meetings Protocol in consultation with the Chairman of the Council and Group Leaders setting out how remote meeting will operate alongside meeting processes and procedures. All Surrey County Council committees have been operating using this protocol and will continue to do so whilst remote meetings continue.

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| <b><u>RECOMMENDATIONS:</u></b> |
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### **Council agrees:**

1. To redefine the definition within the Council's Constitution to define Cabinet as a formal meeting of Cabinet.
2. To remove the delegation for all non-executive decision making to be delegated to the Proper Officer in consultation with the relevant committee chairman and for any non-executive decision making to be undertaken in line with the Council's Scheme of Delegation.
3. To remove the dispensation for virus-related non-attendance at meetings in relation to the six-month rule as set out in section 85(1) of the Local Government Act 1972.
4. To note that the Council has a Remote Meetings Protocol in place and that this will continue to be in operation for all formal remote committee meetings.

5. To note that the Audit and Governance Committee reviewed the use of original delegations that Council made on 17 March 2020 and the use of the Remote Meetings Protocol to ensure that Members remained informed in relation to council decision making.
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**Sources/background papers:**

Constitution of the Council

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