

Strategy & Resources Committee - Tuesday, 22 September 2020

Review of Standing Orders for virtual meetings

Report of:	Lidia Harrison – Head of Legal Services and Monitoring Officer
ELT Lead	Elaine Jackson – Acting Chief Executive
Publication status:	Open
Recommendation:	It be recommended to Council that the revisions to Standing Orders, previously agreed at the 7 th May 2020 Council meeting, remain in force for as long as legislation permits the Council to hold virtual or part virtual meetings.
Appendices:	Appendix A - extract from Standing Orders to highlight the previous amendments made by Council, on 7 th May 2020, to facilitate virtual meetings. Appendix B - temporary protocol for virtual meetings (adopted on 7 th May 2020).
Background papers defined by the Local Government (Access to Information) Act 1985	There are no papers

1. Executive Summary

- 1.1 This report enables the Committee to review the operation of Standing Orders in connection with virtual meetings. Such a review was requested by Council, at its meeting on 7th May 2020, when the Standing Orders were originally amended in light of the '*Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020*' ('The Flexibility Regulations').
- 1.2 The Flexibility Regulations came into force on the 4th April 2020 enabling local authorities to hold 'virtual' meetings during the COVID-19 crisis as a way of complying with social distancing requirements. These Regulations are only in force until the 7th May 2021.
- 1.3 The amended Standing Orders in connection with virtual meetings, adopted by Council on 7th May, are shown at Appendix A. The Council has been holding virtual committee and full council meetings in accordance with these Standing Orders ever since.

- 1.4 The Committee is invited to review the operation of the Standing Orders in light of the experience of the numerous virtual meetings held since May 2020. While this report does not recommend any amendments, the Committee is, of course, welcome to do so. The report reminds Members about the temporary protocol for virtual meetings, including rules of etiquette, which was also adopted on the 7th May 2020.
- 1.5 The report also reflects upon the implications of the Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020 which came into force on the 4th July 2020. Due to these Regulations and the subsequent advice received by the Local Government Association from Peter Oldham QC of 11KBW, Members have not been permitted to attend the Council Offices for full council or committee meetings. All local authorities in Surrey have followed Peter Oldham QC's advice and continued with remote meetings.
- 1.6 However, a flexible approach will be taken to future arrangements pending any changes in government guidance relating to public meetings. It is therefore possible that hybrid meetings may be held in future (with some Councillors attending in person and others joining virtually). Currently, none of the Surrey Boroughs or District are moving to in person or hybrid meetings. This situation is considered monthly by the Surrey Administrators and Solicitors ('SAS') group which the Head of Legal attends.
2. Experience of virtual meetings to date
 - 2.1 The Authority has been able to transact business (via Zoom) in accordance with the previously scheduled timetable of full council and committee meetings since 7th May. Two committee meetings were unable to proceed due to circumstances beyond the Council's control, namely external damage to the internet connection to the offices and a local power failure. In both cases, the meetings were rearranged to take place a few days later.
 - 2.2 The webcasting of two other meetings was affected by a loss of audio connection but the fault has since been rectified by the Council's webcasting supplier.
 - 2.3 The application of the Standing Order 31(1) regarding representations at planning committees appears to have worked well. Applicants and objectors have been able to pre-record their 'three-minute' speeches and these have been replayed during the respective meetings.
 - 2.4 Voting at some meetings has been somewhat protracted due to officers having to conduct roll calls. This has partly reflected the need to ensure that the results of votes are beyond doubt, especially at planning committees. A more efficient voting method is now in place, but officers have not had the opportunity to use it yet.
 - 2.5 Some Members have had to overcome poor internet connectivity and /or personal IT device issues, e.g. by participating from alternative locations (other than their homes).
 - 2.6 Members are reminded that, at the full council meeting on 7th May 2020, a temporary protocol, with rules of etiquette for virtual meetings, was adopted. This has since been incorporated within the Council's constitution (Part F) and a copy is attached at Appendix B.

3. Health Protection (Coronavirus, Restrictions) (No. 2) (England) Regulations 2020
(“the No. 2 Regulations”)

3.1 These Regulations came into force on 4th July 2020. The No. 2 Regulations provide that during the emergency period, and subject to various exceptions: -

5(1) ... no person may participate in a gathering which—

(a) consists of more than thirty persons, and

(b) takes place—

(i) in a private dwelling, including a houseboat,

(ii) on a vessel, other than a houseboat or a vessel used for public transport, or

(iii) [in certain types of public outdoor space]

(6) For the purposes of this regulation—

(a) there is a gathering when two or more people are present together in the same place in order to engage in any form of social interaction with each other, or to undertake any other activity with each other; ...

5(3) sets out some exceptions (a to d) where larger gatherings will be permitted.

(a) applies to certain gatherings organised by “a business, a charitable, benevolent or philanthropic institution, a public body, or a political body” where the gathering organiser has carried out a risk assessment which would satisfy the requirements of regulation 3 of the Management of Health and Safety at Work Regulations 1999. A further condition is that the gathering organiser has taken all reasonable measures to limit the risk of transmission of the coronavirus, taking into account the risk assessment.

(b) the person concerned is an elite sportsperson, the coach of an elite sportsperson, or (in the case of an elite sportsperson who is a child), the parent of an elite sportsperson, and the gathering is necessary for training or competition,

(c) the gathering is reasonably necessary – (i) for work purposes, or for the provision of voluntary or charitable services, (ii) for the purposes of education or training, (iii) for the purposes of childcare provided by a person registered under Part 3 of the Childcare Act 2006, or as part of supervised activities provided for children, (iv) to provide emergency assistance, (v) to enable one or more persons in the gathering to avoid injury or illness or to escape a risk of harm, or

(d) the person concerned is fulfilling a legal obligation.

3.2 Although, the No. 2 Regulations prevent gatherings (i.e. meetings) of over thirty people in private dwellings, on vessels, and in certain outdoor places, it does not prevent a meeting, of any number of people, which takes place in other places. This would include meetings in the Council offices.

3.3 However, the fact that the No. 2 Regulations do not expressly prevent local authorities from holding physical meetings, it is the view of Peter Oldham QC that they should not hold such meetings. Accordingly, it is felt that while the Government advice on the use of council buildings still applies remote meetings 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 ('Flexibility Regulations') should continue.

3.4 As stated in para 3.3, on 30th June 2020, the Government published (non-statutory) guidance entitled "COVID-19: Guidance for the safe use of council buildings", at <https://www.gov.uk/government/publications/covid-19-guidance-for-the-safe-use-of-council-buildings/covid-19-guidance-for-the-safe-use-of-council-buildings>. Section 3d of that document which is headed 'Meetings and civic functions' provides the following:-

"We continue to recommend that where meetings can take place digitally without the need for face-to-face contact, they should continue to do so. Where community facilities need to be used for physical meetings, these meetings should be managed within the social distancing guidance....."

The principles set out in the 'Safer workplaces' guidance apply, including but not limited to:

- *meetings of civic, political or community groups (e.g. parish council meeting, ward meeting of political party; charity board of trustees);*
- *MP or councillor surgery/drop-in sessions. The government is discouraging unnecessary physical attendance at meetings. Where necessary to take place physically, participants should maintain 2 metres (or 1 metre with risk mitigation) separation throughout*
- *public meetings and local consultations (e.g. planning).*

Local authorities in England have some powers to hold public meetings virtually by using video or telephone conferencing technology."

3.5 If the Council has identified the need to hold a physical meeting, as it is unable to conduct Council business any other way, then it is possible to do so from 4th July 2020. These meetings must be managed within the social distancing and 'safer workplaces' guidance produced by Government, which includes the requirement to conduct a risk assessment to determine if it is feasible and safe to hold a physical meeting. It is important that this risk assessment is carried out, and any identified actions to reduce risk to attendees are implemented before any face to face meetings resume. The Council would need to keep documentation of this risk assessment and the reasons why it has taken the decision to return to face to face meetings.

3.6 Similarly, the Council owes health and safety obligations to Members, Officers and possibly others. These duties arise, for instance, in tort, in contract (as regards Officers), and under the Health and Safety at Work etc Act 1974 and are unaffected by the No. 2 Regulations. Therefore, there is a potential source of liability if things were to go wrong and individuals became infected. There is no reason why the Council would want to take any unnecessary risk to hold any physical meetings, whether hybrid or not, unless there was a real need to do so. Even if there was a real need of this nature, the numbers meeting physically should be as low as possible.

4. Climate Change implications

- 4.1 It is considered that there are no issues arising from the report which impact, positively or negatively, upon the carbon footprint of the Council or others.

5. Equality implications

- 5.1 It is important that Members consider the different groups in the community with protected characteristics (as defined by the Equality Act 2010). Any Member who falls into one of the more vulnerable categories (e.g. due to age, gender, underlying health conditions, etc.) would be potentially disadvantaged if the Council were to revert to physical meetings in the foreseeable future. This would be an equality issue for Members, Officers and members of the public.
- 5.2 It cannot be ignored however that some members of the public have not been confident, or able to, access remote meetings online.

6. Comments of the Chief Finance Officer

It is considered that there are no issues arising from the report which will have any financial implication for the Council

7. Comments of the Head of Legal Services

- 7.1 Any legal implications have been detailed in the main body of this report.

8. Conclusion

- 8.1 To date, it appears that the amended Standing Orders are suitable for the operation of virtual meetings and that, subject to the Committee's views, no changes are required. However, as the Flexibility Regulations are only in force until the 7th May 2021, statutory provisions will need to be placed on a more permanent footing for the Council to continue to hold virtual or part virtual (i.e. with some participants in the chamber and others attending remotely) meetings beyond that date.
- 8.2 Until the Government's advice has superseded or the other Surrey Boroughs or District have decided to move in person or hybrid meetings Members will not, unfortunately, be permitted to attend the Council Offices for committee or full council meetings. There is the availability of remote meetings and the Flexibility Regulations allow for Members to attend meetings by phone if it is 'not practicable' for a video link to be maintained. Consequently, the fact that a Member may be unable to establish or maintain a video link due to IT issues does not make it reasonably necessary to attend a meeting in person. In addition, the rules of quoracy may well permit a meeting to go ahead without a Member present in any event.

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