

HAMPSHIRE COUNTY COUNCIL

Report

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| Decision Maker: | Cabinet |
| Date: | 9 February 2021 |
| Title: | Constitutional Matters |
| Report From: | Chief Executive |

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Purpose of this Report

1. The purpose of this report is to advise changes to the allocation of Executive Functions.
2. In addition, this report proposes a change in the responsibility for scrutiny of Regulatory Services from the Policy and Resources Select Committee to the Culture and Communities Select Committee.
3. This report also proposes an update to Standing Order 12 and Executive Procedures in order to enable continuation of the ability for deputations to be received remotely, and for Individual Executive Member Decision Days to continue to be held remotely, in consequence of the continued restrictions posed by the Covid-19 pandemic, to provide certainty for the business of the County Council.
4. This report also proposes an amendment to Contract Standing Orders, clarifying the position regarding the '10% rule'.

Recommendation(s)

Cabinet is asked to:

5. Note the revised allocation of responsibility for Executive Functions at Appendix 1 of this report to be reported to the County Council at the County Council meeting on 25 February 2021.
6. Recommend the revised allocation of Scrutiny Functions contained at Appendix 2 of this Report for approval by the County Council, to be effective from 1 April 2021.

7. Recommend the amendments to Standing Order 12 and Executive Procedures, as indicated at Appendix 3 and 4 to this Report for approval by the County Council.
8. Recommend the amendment to Contract Standing Order 3 contained at Appendix 5 of the Report for approval by the County Council.

Executive Summary

9. Part 1, Chapter 17, Paragraph 1.3 of the County Council's Constitution requires that changes to the Constitution consequential upon the allocation of responsibility for Executive Functions decided by the Leader, be reported to the Cabinet and then to the County Council. Following the resignation of Councillor Woodward as Executive Member for Recreation and Heritage on 14 December 2020, the Leader has revised the portfolios of Members of Cabinet, combining the previous portfolios of the Executive Member for Recreation and Heritage and the Executive Member for Countryside and Rural Affairs. The title of the revised portfolio is Executive Member for Recreation, Heritage, Countryside and Rural Affairs.
10. This report identifies the portfolios of Members of Cabinet, including the revised portfolio of the Executive Member for Recreation, Heritage, Countryside and Rural Affairs, and the functions, powers and responsibilities around which Executive Members can make decisions.
11. Cabinet will recall that responsibility for Regulatory Services has been reallocated from the Executive Member for Policy and Resources to the Executive Member for Recreation and Heritage (now Executive Member for Recreation, Heritage, Countryside and Rural Affairs). It seems appropriate also that responsibility for scrutiny of Regulatory Services be within the Culture and Communities Select Committee, so that the Culture and Communities Select Committee is able to scrutinise all services within the Executive Member portfolio. It is suggested for budgetary purposes that any change be effective from 1 April 2021.
12. Cabinet will also recall that following the recommendation of Cabinet at its Meeting on 15 May 2020, the County Council approved at its Meeting on 29 May 2020, the application of the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panels Meetings) (England and Wales) Regulations 2020 (2020 Regulations), to deputations and Individual Executive Member Decision Days, thereby enabling Individual Executive Member Decision Days to be held remotely and for deputations to be received at Meetings of the County Council, Committees and Standing Panels, Cabinet and Individual Executive Member Decision Days held remotely for the duration of the 2020 Regulations. The 2020 Regulations are due to expire on 7 May 2021, and this report therefore recommends continuation of these provisions.

13. Contained within Financial Regulations is a requirement within the tender process that, if after allowing for inflation tenders/quotations exceed an approved estimate by more than 10%, then further Executive Member approval is required. For clarity and to guard against any potential challenge it is suggested that direct provision for this is included in Contract Standing Orders.

Contextual information

Responsibility for Executive Functions

14. By virtue of Section 9E of the Local Government Act 2000 (as amended) ('the 2000 Act'), and by virtue of operation of a Leader and Cabinet form of Executive Arrangements, Members of Cabinet are appointed by the Leader. Allocation of Executive Functions between individual Members of Cabinet is also the responsibility of the Leader.
15. Responsibility for Executive Functions as allocated by the Leader is set out in Part 2, Chapter 3 of the Constitution. Attached at Appendix 1 to this Report is a revised Part 2, Chapter 3 of the Constitution consequential upon the revised allocation of Executive Functions as determined by the Leader, as referred to at paragraph 4 of this report.

Allocation of Scrutiny Functions

16. Allocation of Scrutiny Functions is the responsibility of the full Council. Attached at Appendix 2 to this report is a revised Part 2, Chapter 5 of the Constitution detailing allocation of responsibility for Scrutiny Functions.

Deputations at Remote Meetings and Individual Executive Member Decision Days

17. As indicated at Paragraph 12 of this Report, at its Meeting on 29 May 2020, the County Council approved provision enabling deputations to be received at Meetings of the County Council, Committees and Standing Panels, Cabinet and Individual Executive Member Decision Days held remotely in accordance with the provisions of the 2020 Regulations, prior to expiry of the 2020 Regulations. At this stage is not known whether or not Government will extend the 2020 Regulations.
18. Cabinet will be aware that provisions in respect of Standing Orders contained within the Constitution are the responsibility of the County Council. Thus, whatever the position might be regarding any extension of the 2020 Regulations, in order that this might apply to deputations after 7 May 2021, specific provision for this needs to be agreed by the County Council.

19. So as to provide certainty in this regard, and bearing in mind that after the Meeting of the County Council on 25 February 2021 the next scheduled Meeting of the County Council is not until the AGM on 27 May 2021, so as to avoid any 'vacuum' between expiry of the 2020 Regulations and any subsequent extension amendment to or replacement of the 2020 Regulations, it is considered appropriate that the County Council is asked at its Meeting on 25 February 2021 to approve continuation of the provision in Standing Orders enabling deputations to be received at remote Meetings of the County Council, Committees and Standing Panels, Cabinet, and Individual Executive Member Decision Days held remotely.
20. In addition, and bearing in mind that it is not possible at this stage to link any extension regarding remote Meetings to specific Regulations or Legislation yet to be made, and to avoid any subsequent 'vacuum' between the coming into force of any such Regulations or Legislation, it is considered appropriate that in such an event the Chief Executive be authorised to approve arrangements in respect of remote deputations at Individual Executive Member Decision Days, subject to the caveat that any such arrangements are no less accessible to members of the public as the current provisions in Standing Orders.
21. Contained at Appendix 3 to this Report is a proposed revised Standing Order 12.

Executive Member Decision Days

22. Also as indicated at Paragraph 12 of this Report, at the same time as approval of provisions for receipt of remote deputations, the County Council approved amendment to Executive Procedures, enabling Individual Executive Member Decision Days to be held remotely. Again, as with deputations, this provision was time limited to the expiry of the 2020 Regulations.
23. For the same reason as expressed in Paragraph 19 above, so as to avoid any 'vacuum' and to enable the business of the County Council to continue efficiently during the course of the pandemic while enabling the same level of public access and scrutiny as currently applies to remote Meetings, it is considered appropriate that the provision in Executive Procedures regarding remote Individual Executive Member Decision Days be similarly extended. Contained at Appendix 4 to the Report is a revised Part 3, Chapter 2, Paragraph 4 of the Constitution.
24. In doing so it is recognised that Individual Executive Member Decision Days are not 'meetings' so far as the general legislation relating to Executive Meetings and provisions of the 2020 Regulations go. Rather treating them in a similar way to meetings is the choice of the County Council in its governance arrangements in the Constitution. Therefore, in the absence of extension of specific provision in the Constitution enabling Individual Executive Member

Decision Days to be held remotely, whether or not the 2020 Regulations are extended, should it not be possible under the general Covid-19 legislation to hold Individual Executive Member Decision Days physically in public, the County Council would need to revert to the decision making Protocol it agreed at the start of the Covid-19 pandemic. In addition even if going forward it became possible for Individual Executive Member Decision Days to be held physically in public, some members of the public and individual County Councillors might, notwithstanding progress made in respect of a vaccine, for health reasons understandably be hesitant for some time as regards attending any physical public decision making forum. It is considered therefore in this regard that the ability to hold Individual Executive Member Decision Days remotely not only aids the efficiency of the business, but also promotes generally inclusion and participation in the County Council's business. For this reason, in the absence of extension of the 2020 Regulations it is considered appropriate, subject to paragraph 25 below, that the Chief Executive be authorised to approve arrangements in respect of the continuation of remote Individual Executive Member Decision Days, subject to the caveat that any such arrangements are no less accessible to members of the public as the current provisions in Standing Orders.

25. Cabinet will recall that at its Meeting on 15 May 2020, Cabinet approved a recommendation asking the Chief Executive to undertake in consultation a review of the County Council's governance arrangements at the end of the Covid-19 crisis. This review will include specific consideration as to the success, benefit or any other learning points around the holding of remote Individual Executive Member Decision Days, and recommendations in this regard following the review will be included in the consequential report to Cabinet.

Contract Standing Orders – 10% Rule

26. Since Contract Standing Orders form part of the Constitution, approval of amendment thereof is a responsibility of the full Council. Attached at Appendix 5 is a revised Contract Standing Order 3 including direct provision regarding the 10% rule.

REQUIRED CORPORATE AND LEGAL INFORMATION:

Links to the Strategic Plan

This matter does not link to the Strategic Plan but, nevertheless, requires reporting to Cabinet and full Council in accordance with the requirements of the Constitution.

Other Significant Links

Direct links to specific legislation or Government Directives

| <u>Title</u> | <u>Date</u> |
|----------------------|-------------|
| Local Government Act | 2000 |

Section 100 D - Local Government Act 1972 - background documents

The following documents discuss facts or matters on which this report, or an important part of it, is based and have been relied upon to a material extent in the preparation of this report. (NB: the list excludes published works and any documents which disclose exempt or confidential information as defined in the Act.)

| <u>Document</u> | <u>Location</u> |
|-----------------|-----------------|
| None | |

EQUALITIES IMPACT ASSESSMENT:

1. Equality Duty

The County Council has a duty under Section 149 of the Equality Act 2010 ('the Act') to have due regard in the exercise of its functions to the need to:

- Eliminate discrimination, harassment and victimisation and any other conduct prohibited by or under the Act with regard to the protected characteristics as set out in section 4 of the Act (age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation);
- Advance equality of opportunity between persons who share a relevant protected characteristic within section 149(7) of the Act (age, disability, gender reassignment, pregnancy and maternity, race, religion or belief, sex and sexual orientation) and those who do not share it;
- Foster good relations between persons who share a relevant protected characteristic within section 149(7) of the Act (see above) and persons who do not share it.

Due regard in this context involves having due regard in particular to:

- The need to remove or minimise disadvantages suffered by persons sharing a relevant protected characteristic that are connected to that characteristic;
- Take steps to meet the needs of persons sharing a relevant protected characteristic that are different from the needs of persons who do not share it;
- Encourage persons sharing a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

2. Equalities Impact Assessment:

It is considered that this report will have no adverse impact or cause no disadvantage to groups with protected characteristics.