



## Annual Meeting of the Council

29 April 2021

**Report from the Director of Legal, HR, Audit & Investigations**

### Changes to the Constitution and Pay Policy Statement

<b>Wards Affected:</b>	N/A
<b>Key or Non-Key Decision:</b>	N/A
<b>Open or Part/Fully Exempt:</b> <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
<b>No. of Appendices:</b>	Four Appendix 1: Delegations agreed by the Leader of the Council in respect of executive functions Appendix 2: Delegation changes proposed in respect of non-executive functions Appendix 3: Changes to Contract Standing Orders Appendix 4: General changes and updates to the Constitution
<b>Background Papers:</b>	None
<b>Contact Officer(s):</b> <small>(Name, Title, Contact Details)</small>	Debra Norman, Director of Legal, HR, Audit and Investigations Tel: 0208 937 1578 Email: <a href="mailto:debra.norman@brent.gov.uk">debra.norman@brent.gov.uk</a>

#### 1.0 Summary

- 1.1 Regulations made under the Coronavirus Act 2020 have permitted Local Authority meetings to be held on a remote or hybrid basis during most of the pandemic period. The Regulations expire on 6 May 2021 and it is the government's view that meetings after that date cannot be held on that basis.
- 1.2 This report explains a legal challenge being made to this position and considers steps that can be taken if that challenge is unsuccessful to minimise and manage face to face council, Cabinet and committee meetings while the pandemic continues.
- 1.3 The report also proposes changes to the council's Contract Standing Orders to bring them up to date and to enhance the role of the Procurement Service and some general changes to the Constitution following the annual review of its provisions.

- 1.4 In addition, changes are proposed to the Council's Pay Policy Statement 2021-22 following the withdrawal of Regulations concerning public sector employee exit payments.

## **2.0 Recommendations**

Full Council is asked:

- 2.1 To note the current legal position in respect of remote meetings.
- 2.2 To note changes to officer and Cabinet Member delegated powers agreed by the Leader of the Council set out in Appendix 1.
- 2.3 To agree the changes to officer delegated powers set out in Appendix 2
- 2.4 To agree the arrangements for review of the changes to officer delegated powers referred to at 2.2 and 2.3 set out a paragraph 3.8 of the report.
- 2.5 To agree the changes to contract standing orders set out in Appendix 3
- 2.6 To agree the general changes and updates to the Constitution set out in Appendix 4.
- 2.7 To authorise the Director of Legal, HR, Audit and Investigations to amend the Constitution to remove changes previously made to permit remote attendance at meetings in the event that the judicial review claim currently in progress is unsuccessful.
- 2.8 To note that, to the extent that the changes set out in this report relate to executive functions of the Council, they have been approved by the Leader.
- 2.9 To authorise the Director of Legal, HR, Audit & Investigations to amend the Constitution accordingly, including making any necessary incidental or consequential changes.
- 2.10 To agree the changes to the Pay Policy Statement for 2021-22 set out at paragraph 3.12 of the report.

## **3.0 Background**

- 3.1 **Cessation of remote and hybrid meetings:** Section 8 of the Coronavirus Act 2020 (CA 2020) gave the Secretary of State power to make regulations in respect of various requirements relating to the holding of Local Authority meetings, including in particular provision for persons to attend, speak at, vote in, or otherwise participate in, local authority meetings without all or any of them being together in the same place. The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations ("the Regulations") were duly made and had the effect of permitting local authority meetings before 7<sup>th</sup> May 2021 to be held remotely or as hybrid meetings. The Government position is that the existing Regulations cannot be extended under the CA 2020.

- 3.2 The Lawyers in Local Government (LLG) and Association of Democratic Services Officers (ADSO) (along with Hertfordshire County Council) have issued judicial review proceedings against the Government. They are seeking in particular a declaration that the Local Government Act 1972 Act does not prevent remote or hybrid meetings and that these can therefore continue notwithstanding the expiry of the Regulations.
- 3.3 It is anticipated the matter will be heard on or around 21 April 2021 although the outcome may not be immediately available. In the meantime plans have been made to manage the situation when the Regulations expire on the assumption that there may not be clear legal authority to continue with remote or hybrid meetings. This report requests in that event that the Director of Legal, HR, Audit & Investigation be authorised to amend the Constitution to remove the provisions specifically introduced to facilitate the holding of remote or hybrid meetings.
- 3.4 **Extending use of officer and member powers:** Luke Hall MP Minister of State for Regional Growth and Local Government wrote to Leaders and Principal Councils on 25 March 2021 giving advice to council's about the position once the Regulations expire. This included recommending that council's use existing powers to delegate decision making to officers or Cabinet members to reduce the number of meetings required.
- 3.5 The Leader of the Council has agreed the changes to delegated powers set out in Appendix 1, which the Council is asked to note.
- 3.6 Council is asked to approve the additional delegations to officers in respect of non-executive functions set out in Appendix 2.
- 3.7 The changes in Appendix 1 are not time limited other than those described at item 4.
- 3.8 It is proposed that the changes at item 4 referred to at 3.7 and the changes set out in Appendix 2 are agreed for a limited period and will cease to apply from such date, if any, on which it becomes possible to resume remote or hybrid meetings and are subject to review in any event at the next full council meeting.
- 3.9 **Contract standing orders** -. A general review of the Contract Standing Orders (CSOs) was undertaken to ensure the CSO's are in line with existing procurement processes and reflect changes in the light of Brexit. The proposed changes cover, for example:
- a) clarification of the defined CSO's terms, to ensure they accurately reflect the current position. For example, that the procurement team is now referred to as the Procurement Service, Dynamic Purchasing System is now a defined term and the E-auction facility and Electronic Tender facility are now to be approved by the Head of Procurement.
  - b) clarification of when approval or advice should be sought from the Head of Procurement as opposed the Director of Legal, HR and Investigations (the Monitoring Officer). For example, cases of extreme urgency are to be agreed between the Head of Procurement and the Monitoring Officer (para 86 (f) (ii)).

The Head of Procurement to be involved in Small Works and Services, Approved Lists of contractors and Online Marketplace (in place of the Director of Finance) (para 97); and the Online Market Place (i.e., contracts set up by Procurement and Framework Agreements) shall be approved by the Monitoring Officer in consultation with the Head of Procurement (para 97 (f)) as well as clarifications around pre-tender considerations.

- c) clarification of the defined CSO's terms, to ensure they accurately reflect the current position. For example, that the procurement team is now referred to as the Procurement Service, Dynamic Purchasing System is now a defined term and the E-auction facility and Electronic Tender facility are now to be approved by the Head of Procurement.
- d) clarification of when approval or advice should be sought from the Head of Procurement as opposed to the Director of Legal, HR and Investigations (the Monitoring Officer). For example, cases of extreme urgency are to be agreed between the Head of Procurement and the Monitoring Officer (para 86 (f) (ii)). The Head of Procurement to be involved in Small Works and Services, Approved Lists of contractors and Online Marketplace (in place of the Director of Finance) (para 97); and the Online Market Place (i.e., contracts set up by Procurement and Framework Agreements) shall be approved by the Monitoring Officer in consultation with the Head of Procurement (para 97 (f)) as well as clarifications around pre-tender considerations.

3.10 The proposed changes to the contract standing orders are set out in Appendix 3 and include proposed changes to reflect extending the use of officer and member power referred to in paragraph 3.4 above

3.11 **Annual Review of the Constitution** - Proposed changes have been made to the Responsibility of Functions pertaining to the Director of Finance and Director of Legal, HR and Audit and Investigations in order to clarify the audit and risk responsibilities; in addition it is proposed to change the Planning Committee terms of reference by removing the exclusion at 1 vi. (c) certificates of lawful use and development and d) prior approvals, as they are not applications for planning permission and so are not relevant to that part of the terms of reference. Further, it is proposed to update the Local Code of Corporate Governance to reflect changes arising from the Borough Plan and Brent 2020.

3.12 **Pay Policy Statement** – The Council's Pay Policy Statement for 2021-22 was adopted with changes to reflect The Restriction of Public Sector Exit Payments Regulations 2020. Those Regulations have now been rescinded. It is therefore proposed that the Pay Policy Statement be amended to reinstate the previous provisions to reflect the legislation and guidance which predated the Regulations and which remain in force. The proposed amendment to achieve this is set out below:

### **Payments on Termination of Employment**

In the event that the council terminates the employment of an employee on the grounds of redundancy the terms of the council's redundancy and early retirement arrangements will apply. Termination payments are also subject to any caps and/or repayment requirements introduced by government legislation.

It is anticipated that regulations on capping payments and repayment of severance will be introduced although the timescale is unclear. Where practicable, and unless the Chief Executive agrees otherwise, termination payments which exceed £100k will normally be agreed by full council or a committee of the council.

#### **4.0 Legal implications**

4.1 These are contained in the body of the report

#### **5.0 Financial Implications**

5.1 No specific financial implications arise from this report.

#### **6.0 Diversity Implications**

6.1 Under Section 149 of the Equality Act 2010, the Council has a duty when exercising their functions to have 'due regard' to the need:

- to eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited under the Act;
- advance equality of opportunity; and
- foster good relations between those who share a "protected characteristic" and those who do not.

This is the Public Sector Equality Duty (PSED). The 'protected characteristics' are: age, disability, gender reassignment, pregnancy and maternity, marriage and civil partnership, race, religion or belief, sex, and sexual orientation

6.2 An Equality Impact Assessment (EIA) was prepared at the time use of remote meetings commenced indicated that this would increase access for some groups but be potentially more difficult for some other groups. This is now being reviewed in respect of the proposals to return to face to face meetings. This EIA will be finalised upon the outcome of the Judicial Review case referred to in paragraph 3.3.

### **7 Background Papers**

7.1 None

Report sign off:

***Debra Norman***

Director of Legal, HR, Audit &  
Investigations