

COUNCIL

WEDNESDAY, 18TH MARCH, 2020

At 10.30 am

in the

COUNCIL CHAMBER - TOWN HALL, MAIDENHEAD

SUPPLEMENTARY AGENDA

PART I

<u>ITEM</u>	<u>SUBJECT</u>	<u>PAGE NO</u>
3.	<u>CONSTITUTIONAL AMENDMENTS: EMERGENCY DECISION- MAKING POWERS</u> To consider the above report	3 - 8

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Report Title:	Constitutional Amendments: Emergency decision-making powers
Contains Confidential or Exempt Information?	No - Part I
Meeting and Date:	Extraordinary Full Council 18 March 2020
Responsible Officer(s):	Duncan Sharkey, Managing Director
Wards affected:	All

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REPORT SUMMARY

1. The Local Government Act 1972 requires that all decision making Members of Council meetings must be physically present in order to be part of the quorum and to vote. This conflicts with current government advice for the Covid-19 crisis that people should now avoid public gatherings. Considerable concern has been expressed by Members about the need to have public meetings during this time of crisis. It has been pointed out that some Members of the Council would be considered to be within the vulnerable group classification and advised not to attend public gatherings.
2. The government is currently working on changing legislation; however, this is unlikely to be forthcoming as soon as is necessary for this Council to fulfil its statutory responsibilities, and to comply with ensuring safety for Members and the public.
3. The report therefore recommends the cancellation of all scheduled council meetings with immediate effect. In addition, to allow business to continue, the delegation of emergency powers to the Managing Director to make decisions currently delegated to Committees and Panels is also recommended. This would be either in consultation with the relevant senior qualified officer(s) and Chairman of the relevant Committee or Panel, or the Managing Director may delegate decisions directly to qualified senior officers in consultation with the relevant Chairman.

1. DETAILS OF RECOMMENDATION(S)

RECOMMENDATION: That full Council notes the report and:

i) Agrees that all scheduled council meetings included in the programme of meetings agreed by Council on 26 February 2019 and 25 February 2020 be cancelled with immediate effect. The decision to reinstate council meetings at an appropriate time shall be delegated to the Managing Director.

ii) Approves amendments to the Constitution, detailed in Appendix A.

iii) Agrees that for this current Covid-19 crisis, if legislation is brought into effect to change the law so that 'virtual' meetings can be held, and provided the Council has the technology to ensure this can be provided,

meetings will revert back to the council meeting schedules which were agreed by Council on 26 February 2019 and 25 February 2020.

2. REASON FOR RECOMMENDATION AND OPTIONS CONSIDERED

2.1 The Prime Minister has announced significant new measures to prevent the spread of Covid-19. In general, current medical advice is that people should stop non-essential contact with others and public gatherings should be avoided. There is therefore an overwhelming reason for the Council to find a different way to conduct business without holding meetings in public.

2.2 The Local Government Act 1972, (paras. 6 and 39 of Schedule 12) provides a statutory requirement for decision making Members to be physically present at a meeting in order to be part of the quorum for that meeting, and to vote. The Council cannot therefore lawfully hold meetings without a public element, in other words, a decision taken 'virtually' by, for example Skype or conference calls. The Secretary of State, the Rt Hon Robert Jenrick MP has issued a press release to say that the government is considering bringing forward legislation to allow council committee meetings to be held virtually for a temporary period, however this will not be forthcoming as soon as is necessary to deal with meetings due to be held in the immediate future.

2.3 This Council, as with all other local authorities, has a statutory responsibility to make certain decisions within a reasonable time. There are also other kinds of decisions where to delay or defer would cause significant inconvenience, or harm, or distress to the general public, or put unnecessary pressure on the Council budget. There is therefore no option to delay or defer such decisions. In any event, there is significant uncertainty with regard to how long the current crisis will continue, making any delay unworkable. If legislation is passed to allow virtual meetings to take place, then we would return to Committee and Panel meetings, as per the Council Calendar. These would be held on a 'virtual' basis if the technology is available.

2.4 The Constitution does not currently have clear provisions for Council decision making made in times of an emergency of this nature, that is, when there is an imminent, serious danger requiring immediate action. The recommendations will allow the Managing Director to make Council decisions in such times, in consultation with the relevant senior qualified officer(s) and Chairman of the relevant Committee or Panel responsible for the subject matter of the decision and others deemed necessary according to the requirements of the decision at hand.

2.5 Cabinet decisions can be delegated to an individual relevant Cabinet Lead Member or officer. However, current legislation says that Cabinet decisions will need to continue to be held in public. It is hoped that such meetings can be held with a safe space between the Cabinet Lead Member making the decision, the clerk and any members of the public who choose to attend. Scrutiny arrangements for Cabinet decisions (i.e. call-ins) also remain in place, as do the access to information rules, Part 8E of the Constitution.

2.6. For decisions on planning and licensing matters, all objections will be taken into account in the normal way – albeit there will be no public hearing available to an objection. Decisions made in Appeals Panels (taxi licensing, home to school transport), and Member Standards Sub Committee meetings will continue to be

made by Members in private. Such meetings will be managed in such a way so that a 2m distance between people will be arranged.

2.7 All relevant legislation and other requirements of decision making would continue to apply to all decision making, including those delegated to individual Cabinet Members, the Managing Director or other Officers.

Options

Table 1: Options arising from this report

Option	Comments
To amend the constitution to delegate decisions currently undertaken by Committees/Panels to the Managing Director in an Emergency This is the recommended option	This is to ensure the safety of Members and the public during a time when the Government has issued a requirement to avoid public gatherings for their safety
Not to delegate decisions currently undertaken by Committees/Panels, and to continue holding meetings in public for Council decision making This is not the recommended option	This would not adhere to Government guidance and would put the safety of Members, staff and the public at risk

3. KEY IMPLICATIONS

Table 2: Key Implications

Outcome	Unmet	Met	Exceeded	Significantly Exceeded	Date of delivery
To delegate all Council decision making currently delegated to Committees/Panels to the Managing Director	Not to delegate Council decisions currently delegated to Committees/Panels to the Managing Director	To ensure the making of Council decisions currently delegated to Committees/Panels without the need for meetings in public	n/a	n/a	Immediate from the approval of the recommendations

4. LEGAL IMPLICATIONS

Local Government Act 1972, Sch. 12, paragraphs. 6 and 39 are relevant to this decision.

Consideration has been given to the Human Rights Act 1998 in suggesting changes to the decision-making arrangements. As all rights to object and comment on decisions in advance will be maintained it is not considered that there is an impact on individual human rights.

5. RISK MANAGEMENT

Table 3: Impact of risk and mitigation

Risks	Uncontrolled risk	Controls	Controlled risk
To facilitate spread of the Covid-19 Virus	To fail to prevent spread of the Covid-19 Virus	Limit meetings in public	Delegate decision making to the Managing Director to prevent the need to hold meetings in public.

6. POTENTIAL IMPACTS

6.1 Equalities. None

6.2 Climate change/sustainability. None

6.3 Data Protection/GDPR. None

7. BACKGROUND DOCUMENTS

This report is supported by two background documents:

- The Local Government Act 1972 Sch. 12, paras 6 and 39
- [Press release from Rt. Hon. Robert Jenrick MP, Secretary of State for Local Government:](#)

CONSULTATION (MANDATORY)

Name of consultee	Post held	Date sent	Date returned
Duncan Sharkey	Managing Director	17/3/20	17/3/20
Karen Shepherd	Head of Governance	17/3/20	17/3/20

REPORT HISTORY

Decision type: Council decision	Urgency item? Yes The urgency comes from the current Covid-19 crisis and current advice from the Prime Minister. As per paragraph Part 2C 6.2 of the constitution, the Mayor has agreed that this item can be treated as an urgent item.	To Follow item? Yes
Report Author: Mary Severin, Monitoring Officer, 078273 11666		

TO ADD TO

Part 5A – Scheme of Delegation

3. Powers of the Managing Director

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3.8 In an Emergency, to make decisions currently delegated to Committees or Panels, in consultation with the relevant senior qualified officer(s) and Chairman of the relevant Committee or Panel and others deemed necessary according to the requirements of the decision at hand. Emergency is defined as a time of direct or indirect imminent, serious danger requiring immediate action for the safety of the public, officers or Members, whether individually or as a group.

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