

Report to: **Governance Committee**

Date: **7 March 2023**

By: **Assistant Chief Executive**

Title: **Remote attendance at Council meetings**

Purpose: **To consider issues related to remote attendance and whether to grant a dispensation for members who attend meetings of the authority remotely.**

RECOMMENDATIONS

The Governance Committee is recommended to recommend the County Council to:

- 1. agree that any member who does not attend a meeting of the authority in person over a period of six consecutive months shall be granted a dispensation for such non-attendance if they have remotely attended at one or more meetings of the authority during that period;**
 - 2. agree the arrangements set out in paragraphs 2.6 and 2.7 with regard to remote attendance by members and the format of non-statutory meetings; and**
 - 3. the Constitution be amended to give effect to 1 and 2 above**
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1. Background

1.1 As a result of the Covid-19 pandemic, temporary Regulations (The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020) were introduced to allow Councils to hold meetings virtually that would otherwise be legally required to be held at a specific location and for members to attend these meetings remotely where they would ordinarily be legally required to attend in person. The County Council agreed in July 2020 supplementary Standing Orders which set out procedures to ensure the effectiveness of meetings undertaken in this format.

1.2 The arrangements were put in place as a temporary measure to continue until the expiry of the Regulations on 7 May 2021. However, the experience of holding virtual meetings with remote attendance during the pandemic identified a range of benefits including a reduction in carbon emissions and cost, greater flexibility in organising meetings and reduced time spent travelling enabling councillors to have more time for their other duties.

1.3 In light of these benefits, many Councils, including ESCC, called on Government to make permanent legislative provision for local authorities to be able to hold virtual meetings, or allow remote attendance at meetings, at their discretion. The Department for Levelling Up, Housing and Communities (DLUHC) issued a call for evidence on remote meetings in March 2021. The County Council's response called for local authorities to be given the option of holding virtual meetings on a permanent basis in line with a motion agreed unanimously by full Council in October 2020. A Government response to the call for evidence is still awaited.

1.4 Locally, in July 2021, the County Council considered whether there were elements of remote working that could be retained permanently under existing legislation, to enable the benefits of remote attendance identified by members during the pandemic to be retained. The County Council approved Lead Member decisions (which are covered by separate legislation to the majority of Council and committee meetings) being made virtually.

1.5 Council also agreed that remote attendance at meetings would be permitted in the following instances:

- Cabinet – all members of the Cabinet must attend in person. Officers and other councillors (including opposition spokespersons and local members), petitioners etc to be allowed to attend and speak (with the agreement of the Chair) remotely.
- Full Council – All County Council members must attend in person.
- Planning Committee – All members of the committee must attend in person. Officers and members of the public or local members making representations to be allowed to attend remotely.
- At the Council's panels and committees (including Governance Committee, Pension Committee, Scrutiny Committees, Audit Committee and Health and Wellbeing Board) – committee and panel members must be present in person (unless legally permitted to attend remotely). Other participants, including officers and advisors, may attend remotely.
- Pension Board – may be wholly virtual or a hybrid meeting with some members present physically and others attending remotely, at the Chair's discretion.

2. Supporting information

Virtual working – update

2.1 Over the past 18 months, the use of virtual meetings or remote attendance at meetings, where permitted by legislation and as agreed by County Council as set out above, has been implemented successfully. The majority of Lead Member meetings have been held entirely virtually, unless otherwise agreed by the Lead Member, and the remote attendance of non-committee members and other participants at Cabinet and a range of other committees and panels has provided additional flexibility and maintained the benefits of reduced travel and its associated time, cost and carbon emissions as far as possible within current legislative constraints. In addition, fully virtual working has been successfully maintained for a range of non-statutory meetings which do not legally require in person attendance such as many scrutiny boards, Whole Council Forums and member training events. Virtual working / remote attendance in these instances often provides increased flexibility in date setting, and increased ability for members and other participants, such as external scrutiny witnesses, to attend, in addition to the benefits of reduced travel.

2.2 The framework agreed by Council allows for discretion to hold in person meetings where this is deemed more appropriate. For example, the Pension Board has agreed to hold its meetings as hybrid with Board members attending in person and supporting officers and advisers having the option to join remotely. Some Lead Member meetings have been held as hybrid meetings where requested by Lead Members and, on occasion, informal meetings such as scrutiny boards or training events have been held in person where considered beneficial.

2.3 Given the ongoing benefits of virtual working, and lack of Government response to the call for evidence on remote meetings, ESCC and other local authorities have continued to call for national provision to be made which would allow Councils to make their own decisions on remote attendance covering all meetings. This Council has made further representations as follows:

- April 2022 – the Leader signed a letter from all South East 7 Partnership Leaders to the Secretary of State for LUHC expressing ongoing support for permanent legislative provision for remote meetings.
- November 2022 – the Leader wrote to the Prime Minister, copied to the Secretary of State for LUHC and Leader of the House of Commons, to renew this Council's request that the Government takes action to enable remote attendance at all council meetings. In response, the Secretary of State for LUHC indicated, in January 2023, that Government expected to be able to set out its response to the call for evidence shortly.

2.4 Unless and until a national position on remote attendance / virtual meetings is brought forward by Government, there will remain limitations on the extent to which virtual working can be adopted by ESCC under current legislation. In the meantime, the current approach agreed by Council in July 2021 would benefit from further clarity on how virtual working arrangements apply in specific circumstances, building on the experience to date.

Remote attendance considerations

2.5 Experience of remote attendance over the past 18 months has identified that additional clarity would be beneficial in some specific circumstances:

2.6 **Remote attendance by committee members:** On occasion, specific circumstances (such as weather conditions, health concerns or travel disruption) have prevented members of committees or panels attending a meeting in person, and the option to attend remotely has been requested, either in place of a substitution or as well as. Whilst it is clear that remote attendance by a committee member cannot be regarded as them being 'present' according to current legislation, there is a need to clarify the position in these circumstances. For the avoidance of doubt it is therefore recommended that:

- Where a substitute member attends the meeting, the relevant substantive committee or panel member will be recorded in the minutes of the meeting as having given apologies. Should they choose to attend remotely they will be doing so on the same basis as a non-committee member.
- Where a substitute member is not appointed, a committee member may, at the discretion of the Chair, participate in the meeting remotely. However, the member may not vote on any matter on the agenda, will not count towards the quorum for the meeting, and will be recorded in the minutes as 'in remote attendance' rather than 'present'. In reaching a view on whether remote attendance can be accommodated the Chair may consider factors including the format and content of the meeting and the potential impact of remote participation by a committee member on the effectiveness of the meeting.

2.7 **Format of non-statutory meetings:** Whilst a range of non-statutory meetings such as scrutiny boards may be held entirely virtually and this often works well, there can be occasions where an in-person meeting is considered more appropriate. It is recommended that the Chair of relevant boards or informal meetings be granted the discretion to determine the appropriate format. Where the preferred format is in-person, any requests for remote attendance may be considered by the Chair by exception, taking account of the availability of necessary technology and the effectiveness of the meeting.

3. Member Attendance Requirements

3.1 The opportunities for members to attend certain meetings remotely, as previously agreed by Council, and set out in paragraph 1.5 above, may result in reduced physical attendance at committee, Lead Member and Cabinet meetings as many members, where permissible, take advantage of the increased flexibility to participate remotely.

3.2 Section 85 of the Local Government Act (LGA) 1972 provides that if a member fails throughout a period of six consecutive months to attend a meeting of the authority then they cease to be a member of the authority, unless the failure was due to some reason approved by the Authority before the expiration of the period.

3.3 When a member ceases to hold office, the Monitoring Officer is required by law to declare the office vacant under Section 86 of the LGA 1972. This is in all cases apart from where a failure to attend meetings was for a reason approved before the expiration of the six month period (a dispensation).

3.4 As set out above, under Section 85(1) of the LGA, a councillor will not be disqualified for non-attendance if the County Council has agreed the reason for the councillor's non-attendance before the period of six months has elapsed. In practice, where it has been necessary to consider a councillor's non-attendance, the Council has recorded the approval of such a reason by granting a dispensation from the requirement for councillors to attend at meetings, thereby allowing the councillor to remain qualified until such time as they are able to attend a meeting of the Council.

3.5 In light of the advantages demonstrated by allowing remote attendance, and in the context of the arrangements set out in paragraph 1.5, it is proposed that the County Council

agrees the reason for absence in relation to, and grants a dispensation for, any member who does not attend a meeting of the authority in person over a period of six consecutive months provided they have attended one or more meetings of the authority remotely during that period.

4. Conclusion and reasons for recommendations

4.1 The committee has previously recognised the numerous benefits that virtual meetings provide and has agreed recommendations to facilitate remote attendance where possible. The previously agreed approach has been implemented successfully, and a review of learning to date has identified that additional clarification in some areas would be beneficial in taking forward the Council's virtual working arrangements, pending any national legislative change.

4.2 The committee is therefore recommended to recommend the County Council agrees the arrangements set out in paragraphs 2.6 and 2.7 with regard to remote attendance of committee members and the format of non-statutory meetings and that the Constitution be amended accordingly.

4.3 Furthermore, in light of increased remote attendance at meetings, which may not fulfil the attendance criteria under Section 85 of the LGA 1972, the committee is recommended to recommend the County Council to agree the reason for absence of any member who does not attend a meeting of the authority in person over a period of six consecutive months, and to grant a dispensation for such non-attendance, provided the member has attended one or more meetings of the authority remotely during that period.

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BACKGROUND DOCUMENTS
None