

Report of the Leader of the Council and the Chief Executive – Proposed Emergency Arrangements for the Council

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1. Summary

- 1.1** The current Covid-19 (coronavirus) outbreak has been designated a global pandemic by the World Health Organisation.
- 1.2** The UK Government has been regularly convening COBRA meetings and more recently there have been regular announcements from the Prime Minister and other Secretaries of State regarding this emergency and actions being undertaken. This is an unprecedented situation and local government is playing a significant role in supporting vulnerable people and local communities.
- 1.3** The Government has urged councils to continue delivering essential services including supporting vulnerable people and ensuring that important functions that have an economic impact such as planning and highways, continue to be delivered as close to normal as possible. In response to the Government's emergency declarations, the County Council has suspended all of its public and committee meetings pending further advisement from the Government of when normal arrangements can resume. This is to comply with the Government's requests for social distancing and limiting the spread of this pandemic.
- 1.4** **To ensure that decisions can be made and services continue to operate then the Leader of the Council and the Chief Executive wish to set out their proposed democratic and decision making arrangements for the emergency.**

These arrangements will be reviewed after six months by the Leader of the Council and the Chief Executive (following consultation the Opposition Group Leader and the Chairs of the Scrutiny Committees and Audit Committee) to establish if they are still required, require amendment and/or require an extension of time.

These emergency arrangements will be require amendments to the Scheme of

Delegation and additional decision making being delegated to the Chief Executive and in his absence then to other Directors and Senior Managers. This is essential for organisational resilience.

A Special Council meeting had been convened for Friday 27 March for members to consider the proposals in this report. Unfortunately in the light of Government advice about social distancing and gatherings this meeting is not sensible or viable in the current circumstances. As a consequence it is proposed that members will be consulted by the Leader of the Council, the Chief Executive and the Monitoring Officer via a skype meeting. This will provide an opportunity for members to scrutinise these proposals prior to the Leader of the Council and the Chief Executive then taking a decision to approve these arrangements.

- 1.5** The Leader of the Council and relevant Cabinet Members will retain oversight of the delegated powers being given to Officers throughout the emergency period to ensure democratic accountability and assurance to the public. This assurance will be supported by virtual arrangements for scrutiny and audit functions that are being developed.
- 1.6** The Council's Constitution and Scheme of Delegation already provides delegated powers to the Chief Executive (and any officer authorised by the Chief Executive) to take any and all actions necessary to protect and / or further the best interests of the Council, the County of Somerset and the public.
- 1.7** The Constitution also empowers Senior Leadership Team officers to manage the services for which they are responsible for commissioning and delivering and to act to safeguard, protect and promote the interests of the Council.
- 1.8** Both of these provisions have existed for many years and mirror arrangements in many other councils in England. These arrangements are critical to enable service delivery during an emergency and have been used when emergency events have previously arisen such as the Somerset floods in 2014.
- 1.9** A review of the Scheme of Delegation has been carried out to ensure that the Chief Executive (and Directors if the Chief Executive is not available) have sufficient powers to allow the business of the Council to continue to function as Council meetings are postponed on Government advice. The proposed emergency arrangements are set out in this report.

2. Recommendations

2.1 Democratic and decision making arrangements

That the Council :

- a) Recognises the serious and unprecedented nature of this emergency and its impact on the Council's democratic and decision making arrangement requiring all committee and public meetings to be postponed until such time as the Government announces that the Covid-19 crisis is over and physically attended meetings can resume.
- b) Notes that subject to Government legislation and technology, then relevant members or committees may be able in due course to take decisions remotely by virtual meetings, subject to this being practicable.
- c) Notes that the emergency powers and operation of delegated decision making arrangements set out in this report to the Chief Executive and his authorised officers will be reviewed by the Leader of the Council and Chief Executive after six months of operation.

2.2 Constitution and Schemes of Delegation

That the Leader of the Council and the Chief Executive (using his emergency powers on behalf of the Council) agree :

- a) To delegate authority to the Chief Executive and/or his authorised officers to take decisions and actions in relation to all full council functions and powers, key decisions, non-key decisions, quasi-judicial (planning & regulatory), all committee functions and duties and all Contract Procedure Rules procurement and contract award decisions (see Section 3.2 for further details).
- b) To suspend the scrutiny call-in and non-key decision referral arrangements during the Coronavirus Emergency to enable the immediate implementation of both key and non key decisions to enable available resources to be prioritised in ensuring council services respond effectively to this emergency.
- c) To revise the conditions for requesting and agreeing an extraordinary meeting of Full Council so that only the Leader of the Council and / or Chief Executive may do this.
- d) To delegate authority to the Monitoring Officer to undertake any amendments as necessary to the Contract Procedure Rules during the Coronavirus Emergency.
- e) That delegated authority be given to the Monitoring Officer to amend the Constitution to reflect any changes that are required as a direct result of the proposals in this report and any Government

2.3 Appointments

That the Leader of the Council and the Chief Executive agrees:

- a) The following member appointments :
 - Cllr Nigel Taylor as the Chair of the Council until the May 2021 Annual General Meeting
 - Cllr Mark Keating as the Vice Chair of the Council until the May 2021 Annual General Meeting
 - Cllr Mike Lewis as the Chair of the Audit Committee until the May 2021 Annual General Meeting
 - Cllr XXXX (to be advised at the Council meeting) as the Vice Chair of the Audit Committee until the May 2021 Annual General Meeting
 - Cllr XXXX (to be advised at the Council meeting) to be appointed to the vacancy on the Audit Committee until the May 2021 Annual General Meeting
- b) To amend the Constitution to recognise that any Appointments Panel and Appointments Committee in relation to Senior Management appointments will be undertaken as virtual meetings, noting that the decision to appoint already is delegated to the Chief Executive as the Head of Paid Service
- c) To provide a dispensation to all elected members of the Council until 31 December 2020 in relation to not being able to attend any meetings of the council under Section 85 of the Local Government Act 1972

3. Background

3.1. Covid - 19 global and national context

- 3.1.1 The current Covid-19 (coronavirus) outbreak has been designated a global pandemic by the World Health Organisation.
- 3.1.2 Globally, countries are deploying a range of measures to contain the spread of the virus and its impacts. There is currently no vaccination against the virus, however extensive work is being undertaken to develop a vaccine. The NHS and Public Health England have shared that the virus is particularly difficult for individuals who are older and / or have an underlying health condition and there has been a growth in the number of cases in the UK, sadly including a number of deaths.
- 3.1.3 The UK Government has been regularly convening COBRA meetings and more recently there have been announcements from the Prime Minister and other Secretaries of State regarding this emergency and actions being undertaken. This is an unprecedented situation and local government is playing a significant role in

supporting vulnerable people and local communities.

- 3.1.4 The [Government has introduced emergency regulations](#) to prevent the further spread of coronavirus. The [Health Protection \(Coronavirus\) Regulations 2020](#) were laid before Parliament on 10 February 2020. They give health professionals the power to detain patients with Covid-19 for the specific purposes of screening and assessment, or to isolate them for a period of time. The regulations also empower police constables to detain people suspected of having the virus. The [Government has stated](#) that the regulations are intended to apply to people who attempt to “leave supported isolation before the current quarantine period of 14 days is complete”.
- 3.1.5 The regulations were issued under the emergency procedure in section 45R of the Public Health (Control of Disease) Act 1984 (as amended by the Health and Social Care Act 2008). The regulations were ‘[made affirmative](#)’ instruments, meaning they entered into force immediately and would only cease to have effect if either House of Parliament failed to approve them within 28 days. They have a sunset clause of two years, meaning they will automatically expire after that time, unless Parliament decides to extend them.
- 3.1.6 The Government has said that responding to a wider pandemic of coronavirus will require further emergency legislation. The [Government announced on 8 March 2020](#) that it intended to introduce a “Covid-19 emergency bill”. The bill’s powers would include:
- Expansion of court hearings by television and video link;
 - “Additional employment safeguards” for those who volunteer in the health and social care system, so they can “leave their main jobs and temporarily volunteer in the event of a widespread pandemic”; and
 - [A range of previously announced](#) measures, such as emergency registration of health professionals who have retired, and relaxation of rules around staff to pupil ratios in education and childcare settings.
- 3.1.7 On 17 March 2020, the Government published a [guidance document providing further information on the bill](#). The guidance document said the bill was intended to enable the UK government and the devolved administrations to take action in the following five areas:
1. **Increasing the available health and social care** workforce—by removing barriers to allow recently retired NHS staff and social workers to return to work (and in Scotland, in addition to retired people, allowing those who are on a career break or are social worker students to become temporary social workers).
 2. **Easing the burden on frontline staff**—by reducing the number of administrative tasks they have to perform, enabling local authorities to prioritise care for people with the most pressing needs, allowing key workers to perform more tasks remotely and with less paperwork, and taking the power to suspend individual port operations.

3. **Containing and slowing the virus**—by reducing unnecessary social contacts, for example through powers over events and gatherings, and strengthening the quarantine powers of police and immigration officers.
4. **Managing the deceased with respect and dignity**—by enabling the death management system to deal with increased demand for its services.
5. **Supporting people** – by allowing them to claim statutory sick pay from day one, and by supporting the food industry to maintain supplies.

This guidance document also said the Government was aiming for the legislation to reach the statute book and begin to take effect from the end of March 2020. The Government also said provisions relating to statutory sick pay were intended to have retrospective effect to 13 March 2020. The guidance document also indicated that the legislation would be time-limited for 2 years. The new powers in the bill could be 'switched on or off' by the UK government based on the advice of Chief Medical Officers for England, Scotland, Wales and Northern Ireland.

3.1.8 As the Government has described the bill as emergency legislation, it may use the process of expedited legislation, whereby multiple stages of the bill's passage in the House of Commons are completed on the same day. The Government has less control over the timetable for expediting legislation in the House of Lords. However, there are precedents for the House of Lords completing multiple bill stages on the same day to expedite terrorism or Brexit related legislation. On 18 March 2020, the [Government Whips Office in the Lords announced](#) the House of Lords is expected to consider the emergency COVID-19 legislation on 25 and 26 March 2020.

3.1.9 The Government has a range of additional powers to deal with civil emergencies. Part 2 of the [Civil Contingencies Act 2004](#) allows the Government to make regulations to deal with an emergency that "threatens serious damage to human welfare". The definition of an emergency includes events that may involve or cause human illness, loss of life, or disruption to health services or food supplies. Regulations made under the act may have a potentially wide scope, including powers to:

- prohibit or require the movement of people to or from specified places;
- prohibit assemblies of certain kinds; and
- create offences of failing to comply with the regulations.

Section 27 of the act provides for parliamentary scrutiny of the regulations. They must be laid before Parliament as soon as is "reasonably practicable" after they have been made. The regulations lapse after seven days unless "each House of Parliament passes a resolution approving them".

3.2.1 **Covid – 19 and impact on County Council democratic and decision making arrangements**

In light of the Coronavirus (COVID – 19), and the Government's recent announcement to avoid unnecessary social contact to help prevent the spread of the virus, all County Council committee and public meetings have been postponed

and may continue to be postponed into the foreseeable future. This situation will be kept under review by the Chief Executive in discussion with the Leader of the Council and Opposition Group Leader.

- 3.2.2 The Council's Constitution includes allocations of executive and non-executive functions and provides for delegations. In broad terms, the non-executive functions are strategic functions and responsibility for those functions resides with the Full Council which are then generally allocated to the various committees. The vast majority of the County Council's functions are executive functions, and responsibility resides with the Leader and the Cabinet. Both Full Council and the Leader of the Council already delegate powers onto committees, individual councillors, or officers. The current scheme of agreed delegations is set out in the Constitution.
- 3.2.3 A directive has been received from the Secretary of State that Councils should continue to progress as much Council business as possible during the period of coronavirus including services to vulnerable people and services that have an impact on the local economy. If primary legislation can be brought forward to allow Councils to make decisions by remote virtual meetings then these arrangements will be pursued by officers.
- 3.2.4 However at this stage neither the legislation or robust arrangements exist to enable this to be done. Consequently, existing legislation enables councils to empower officers to take decisions to ensure that services can continue to be delivered, which is vital in order to support vulnerable children and adults, together with businesses across Somerset.
- 3.2.5 To enable the decision making process to continue, it is proposed that Councillors continue to receive decision-making reports and submit their comments electronically. If technology permits then debate can take place via skype (an existing business application that the council has been using for some time) or some other teleconferencing technology. However, the decision will be formally made by the Chief Executive (or relevant Director). This is because current legislation states that Councillors must be 'present and voting' to cast their vote on an Executive or Quasi-Judicial decision.
- 3.2.6 It is important that the Scheme of Delegation is fit for purpose. In light of the coronavirus the need to amend the Scheme of delegation has been recognised, to ensure that the Council can continue to operate in the event of further meeting postponements.
- 3.2.7 The County Council already has an advanced Scheme of Delegation which can be enhanced to support this emergency. As an example the Leader of the Council, Cabinet Members and Senior Managers already have delegated executive decision making powers and these will continue to be used where appropriate with provisions for scrutiny call-in arrangements still existing (albeit to be operated virtually).

The Chief Executive (and any other officers that he authorises) currently has emergency powers under Section 8.5.2 of Part 1 of the Council's Constitution:

“In an emergency, the Chief Executive (and any Officer(s) authorised by the Chief Executive) is authorised to take any and / all action(s) he/she considers appropriate to protect and/or further the best interests of the Council, the County of Somerset and / or the public, subject to:

- (a) Consultation with the Leader of Council or in his/her absence the Deputy Leader and any appropriate Member of the Cabinet.
- (b) A report of the action taken and the reasons behind it being presented to the next meeting of the Cabinet, the Council or the relevant Committee.

This includes exercising the Council’s powers under Section 138 of the Local Government Act 1972 to incur expenditure (regardless of whether the value would equate to a key decision) and to suspend aspects of business as usual to enable the Council to comply with its duties under the Civil Contingencies Act.”

- 3.2.8 It is proposed to extend this delegation to all Executive and Quasi Judicial (planning and regulatory) decisions listed in the Constitution to ensure that the Council can continue to operate.

For key decisions these arrangements will involve relevant officers consulting the Leader of the Council (or Deputy Leader), the Cabinet Member, Opposition Spokesperson and Chair of the relevant Scrutiny Committee where relevant and practicable.

For non-key decisions these arrangements will only require officers to inform relevant members. Efforts will be made to ensure that local councillors are informed about decisions where they relate to the communities that they represent.

For decisions and the undertaking of functions previously reserved for the County Council or committees then relevant authorised officers will consult with the Chair of the committee (or Vice Chair) and committee members where relevant and practicable.

- 3.2.9 These provisions are to be enacted to support all executive, full council and committee functions where meetings of the relevant committee or Cabinet are unable to be held and for decisions previously reserved for Cabinet Members. Those decisions reserved for the Leader of the Council or previously for the Cabinet will still be undertaken by either the Leader or the Deputy Leader of the Council with the support of the Chief Executive, S151 Officer and Monitoring Officer.

Assurance and scrutiny

- 3.3.1 Pending legislation or regulations to enable committees to meet virtually then the assurance and scrutiny functions of the Audit Committee and the three Scrutiny

committees will be undertaken by officers using delegated powers in consultation virtually with the members of these committees.

Further work will be taking place in developing these arrangements and the Chief Executive (with the support of Democratic Services) will be liaising with relevant Chairs of these committees to develop, establish and maintain engagement with relevant committee members throughout the emergency period.

It was recognised in the Somerset Floods emergency that scrutiny call-in action would not be undertaken as this would inadvertently divert resources away from the emergency.

Consequently it is recommended that the scrutiny call-in arrangements and non-key decision referral arrangements are suspended for the duration of the emergency. In place, the Monitoring Officer will work with the Chairs of the Scrutiny Committees to identify any scrutiny work required during the emergency period and to develop assurance arrangements to ensure members have oversight of how the council is responding to this emergency.

Appointments

3.4.1 Member appointments

With the suspension of County Council meetings and committee meetings the scheduled Annual General Meeting (AGM) in May 2020 will now not be taking place. This meeting deals with a number of member appointments to key roles and committee vacancies.

The annual appointment of the Chair of Council and Vice Chair of Council is made at the Annual General Meeting. These civic roles are important to sustain throughout the coronavirus emergency. Consequently the Leader of the Council is proposing to nominate the current postholders Cllr Nigel Taylor (Chair of Council) and Cllr Mark Keating (Vice Chair of Council) to serve again in these roles until the May 2021 AGM.

In terms of committee appointments the following are proposed :

- Cllr Mike Lewis – Chair of Audit Committee
- Cllr XXXXX – Vice Chair of Audit Committee
- Cllr XXXXX – appointed to the vacancy on Audit Committee following Cllr C Paul's appointment as the Cabinet Member for Public Health & Well-Being and Climate Change

Any further member appointment decisions to vacancies on committees that may occur will be undertaken by the Monitoring Officer in consultation with relevant political group leaders using the delegated powers authorised by Council in 2017.

Senior Leadership Team (SLT) appointments

In addition to member appointments, the Constitution outlines the process for the Chief Executive to make officer appointments to the Senior Leadership Team. It will be necessary for any of these officer appointments to be undertaken in consultation with the Appointments Panel and Appointments Committee virtually during the coronavirus emergency. It should be noted that there are no proposed changes to the current arrangements where the actual appointment decisions rest with the Chief Executive as the Head of Paid Service.

4. Implications

- 4.1 Legal & Risk:** This report complies with all current legal requirements and the proposals can be further developed in the light of any changes made by central government. The main risk to the Council is in the instance that Full Council does not support the proposals set out in this report which would seriously hamper the delivery of services during this pandemic emergency.
- 4.2 Financial, equalities, sustainability and community safety implications:** There are no direct equalities implications arising from any of the proposals in this report. There are also no direct financial, sustainability or community safety implications as a result of these proposals.

The County Council continues to work with central government regarding any necessary financial assistance throughout this emergency to ensure that vital services and support to communities continues to be delivered. In addition to ongoing central government announcements regarding additional funding that is being allocated to support public bodies and agencies during this emergency, members will be aware that the Government may activate the **Bellwin scheme** which is a government emergency financial assistance which "reimburses local authorities for costs incurred on, or in connection with, their immediate actions to safeguard life and property or to prevent suffering or severe inconvenience as a result of a disaster or emergency in their area".

5. Background papers

- 5.1** Councils Constitution
Civil Contingency Act 2004
Government advice - <https://www.gov.uk/government/topical-events/coronavirus-covid-19-uk-government-response>