

## **Report of the Leader of the Council and the Chief Executive – Review of the Emergency Democratic and Decision-Making Arrangements for the Council**

Lead Member: Cllr David Fothergill, Leader of the Council

Lead Officer: Patrick Flaherty, Chief Executive

Author: Scott Wooldridge - Monitoring Officer

Contact Details: 01823 357628 or [swouldridge@somerset.gov.uk](mailto:swouldridge@somerset.gov.uk)

### **1. Summary**

- 1.1** The current Covid-19 (coronavirus) outbreak has been designated a global pandemic by the World Health Organisation.
- 1.2** The Government 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 suspended all of its public and committee meetings pending further advice from the Government of when normal arrangements can resume. This was to comply with the Government's requests for social distancing and limiting the spread of this pandemic.
- 1.3** **On 27 and 28 March, to ensure that decisions could be made and services continue to operate during the 'lockdown period' the Leader of the Council and the Chief Executive set out and agreed their proposed democratic and decision making arrangements for the emergency.**

**A commitment was given that these arrangements would be reviewed after three months, to establish if they are still required, require amendment and/or require an extension of time.**

The emergency arrangements required 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 was essential for organisational resilience and to support the emergency.

- 1.4** The Leader of the Council and relevant Cabinet Members retained oversight of the delegated powers given to Officers throughout the emergency period to ensure democratic accountability and assurance to the public. This assurance has also been supported by the virtual meeting arrangements developed for scrutiny and audit committees since early May.
- 1.5** The Council's Constitution and Scheme of Delegation already provided 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.

- 1.6** 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.
- 1.7** 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.
- 1.8** 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.

## **2. Recommendations**

### **2.1 Democratic and decision-making arrangements**

**That the Council:**

- 1) Notes the comments and recommendations from the Cabinet, Scrutiny Place and Constitution and Standards Committees as set out in this report**
- 2) Commends the Council's achievements during the emergency response delivered with the benefit of the emergency democratic and decision-making arrangements**
- 3) Agrees that all of its committees and public meetings where it is the Administering Authority continue to meet virtually in accordance with regulations.**
- 4) Notes that a further review of 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 Council at its meeting in November 2020.**
- 5) Requests that further guidance on the council's website is produced to assist the public and press in participating and observing virtual committee meetings**
- 6) Supports further development and implementation of webcasting solutions to enable live transmission of physical and virtual committee meetings, especially as part of the refurbished committee rooms in A block**
- 7) Agrees and requests that the Leader of the Council lobby Government**

**for changes to regulations and guidance to enable 'hybrid' meetings to take place where necessary during and after the emergency.**

- 8) Agrees to revise the Council's Audio Recordings Protocol to a Video and Audio Recording Protocol of committee proceedings (Full Council, Cabinet, Audit, Scrutiny Committees, Health & Well-Being Board and Regulation Committee) and for the associated recordings to be published on the council's website and retained for a period of six years. Furthermore for the recording and publication on the website of partnership committees that the Council administers such as Somerset Waste Board and Avon and Somerset Police and Crime Panel to be recommended to those bodies to approve.**
- 9) Authorises the Monitoring Officer to take forward the implementation of recommendations 3-8 above.**

## **2.2 Constitution and Schemes of Delegation**

**That the Council agrees:**

- a) To return to the constitutional democratic and decision-making arrangements set in the Council's Constitution and Schemes of Delegation (as at 1 March 2020) that preceded the Leader of the Council and Chief Executive's decision dated 28 March 2020;**
- b) To return the scrutiny call-in arrangements as set out in the Council's Constitution (as at 1 March 2020).**

## **3. Background**

### **3.1. Covid - 19 global and national context**

3.1.1 The Covid-19 (coronavirus) outbreak has been designated a global pandemic by the World Health Organisation. Globally, countries continue to deploy 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. Details of the numbers of cases and sadly the number of deaths has been published throughout the pandemic.

The Covid-19 pandemic brings challenges due to its global extent and likely long duration. It is expected that the authority, and the whole of the UK, will be in an emergency situation for a number of months; the impacts will be felt across all communities and business sectors and the recovery period will be prolonged. The UK's emergency response and incident management processes have been operating in a situation that will be unprecedented in the lifetime of most people.

3.1.2 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.

- 3.1.3 As a Local Authority Somerset County Council has a duty under the Civil Contingencies Act 2004 to plan and prepare for emergencies alongside other agencies. Whilst Covid-19 is a health led incident, local authorities have a planning, response and recovery role working alongside other organisations to deliver and coordinate a system wide response. The Authority has a duty under the Act to plan for and maintain the business continuity of its critical services.
- 3.1.4 The Council began to stand up its response to Covid-19 in February 2020, initially mobilising the Public Health Incident Room following the first confirmed case of coronavirus in the UK on 29<sup>th</sup> January 2020. This was closely followed by the SCC incident room in early March 2020. The Avon and Somerset Local Resilience Forum (ASLRF) declared a Major Incident on 19<sup>th</sup> March, triggering the local responding organisations to design and mobilise multi-agency workstreams and groups fit for managing the response.
- 3.1.5 The Government 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.
- 3.1.6 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.
- 3.1.7 The Government put in place further emergency legislation including the Coronavirus Act during March 2020.
- 3.1.8 The Government 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 suspended all of its public and committee meetings pending further advisement from the Government of when normal arrangements can resume. This was to comply with the Government’s requests for social distancing and limiting the spread of this pandemic.
- 3.1.9 On 27 and 28 March, to ensure that decisions could be made and services continue to operate during the ‘lockdown period’ the Leader of the Council and the Chief Executive set out and agreed their proposed democratic and decision making

arrangements for the emergency. A commitment was given that these emergency arrangements would be reviewed after three months, to establish if they are still required, require amendment and/or require an extension of time.

- 3.1.10 In early April the Secretary of State for MHCLG agreed the Local Authorities and Police and Crime Panels (Coronavirus)(Flexibility of Local Authority Police and Crime Panel Meetings) (England and Wales) Regulations 2020. These regulations have given local authorities new powers to hold public meetings virtually by using video or telephone conferencing technology. The regulations are clear that a meeting is not limited to those present in the same place, but includes electronic, digital or virtual locations (internet locations, web addresses or conference call telephone numbers).
- 3.1.11 The Council has embraced the new regulations and moved rapidly to implement virtual committee meetings from early May using Microsoft Teams technology.
- 3.1.12 The Council's Constitution and Scheme of Delegation already provided 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.
- 3.1.13 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.
- 3.1.14 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.
- 3.1.15 A review of the Scheme of Delegation was 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 during the emergency lockdown period. Details of the emergency arrangements agreed can be viewed in the Leader's decision report dated 28 March 2020 that is published on the Council's website.

### **Review of the Emergency Democratic & Decision Making Arrangements**

- 3.2.1 Extensive corporate work by Democratic Services and Corporate ICT has enabled the Council to put in place new ways of working within a very rapid time for members, public, partners, press and staff to participate in virtual committee meetings and virtual school appeals hearings from early May. These arrangements have been supplemented by weekly members' briefing meetings convened by the Chief Executive and supported by the Senior Leadership Team.
- 3.2.2 Virtual meeting procedures, training and guidance notes were developed and support enabling democratic arrangements to continue during the emergency.
- 3.2.3 The Council has extended its virtual meeting arrangements to a number of

partnership meetings that it administers such as the Heart of the South West Joint Committee, Avon & Somerset Police and Crime Panel and Somerset Waste Board. This support has involved putting in place training and technical support for representatives from 17 other councils.

- 3.2.4 By 3 July, virtual committee meetings had been held for Cabinet, Scrutiny Place, Scrutiny Childrens & Families, Scrutiny Adults & Health, Regulation, Audit, Pensions, Health & Well-Being, HotSW Joint Committee and Avon & Somerset Police and Crime Panel.
- 3.2.5 At the time of writing this report, a number of councils are investigating the potential for what are known as 'hybrid' meetings. These are meetings where members and the public can attend a venue as well as other members and the public participating in the meeting by virtual means. Unfortunately, these types of new meeting arrangements are not allowed by the Coronavirus regulations as they are a 'gathering' and do not currently meet the defined exemptions. Therefore, democratic meetings in a meeting venue are still not allowed during the emergency and councils need to continue to use the virtual meeting regulations to support holding democratic meetings.
- 3.2.6 Whilst technology and support exists to enable virtual democratic meetings to take place the review has highlighted that there remains a need to manage expectations as the council's resources are still prioritised towards the Covid-19 emergency response. Consequently, it is not considered possible for the next few months that committees can fully return to their usual level of business and lines of enquiry. It is recommended that committees, with the support of their Chairs and Vice-Chairs, focus their frequency of meetings and agendas on essential business only. This position will remain under regular review as the emergency response develops further and Government guidance is issued.
- 3.2.7 Managing expectations and work programmes is essential not only to avoid impacting on the Covid 19 response but also recognising that democratic resources are also required to commence the planning work for the scheduled elections in May 2021 and subject to approval by the Council, the considerable governance support needed for the One Somerset proposals.
- 3.2.8 Nevertheless, the current position shows that the Council is able to return some of the delegated arrangements back to committees to further support democratic and public accountability during the emergency response.
- 3.2.9 The review recommends the following changes:
- All committees to be able to meet in accordance with government regulations (currently only virtually)
  - Reactivate the former provisions for scrutiny call-in arrangements for member and officer key decisions (as defined in the Constitution prior to 28 March 2020)
  - Reactivate the former provisions for calling an extraordinary meeting of Full Council (as defined in the Constitution prior to 28 March 2020)

- Reactivate the former provisions for any changes to the Council's Constitution to be agreed by Constitution & Standards Committee or Full Council (as defined in the Constitution prior to 28 March 2020)

3.2.10 In view of the existing emergency response, the review recommends that the following arrangements are still retained and further reviewed and reported to the November Full Council meeting:

- Continue to suspend the non-key decision referral provisions as they are more likely to be related to the emergency response
- Continue the dispensation for all elected members until 31 December 2020

3.2.11 The County Council has an advanced Scheme of Delegation which has helped to support the emergency response. 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 (albeit to be operated virtually).

3.2.12 The review of the emergency democratic arrangements was considered at the Constitution and Standards Committee on 10 July and the committee recommended that the following be considered:

- Improved guidance on the council's website to assist the public and press in participating and observing virtual committee meetings
- Support development and implementation of webcasting solutions to enable live transmission of physical and virtual committee meetings, especially as part of the refurbished committee rooms in A block
- Lobby Government for regulations and guidance to enable 'hybrid' meetings to take place during and after the emergency
- Revise the Council's Audio Recordings Protocol to a Video and Audio Recording Protocol of committee proceedings (Full Council, Cabinet, Audit, Scrutiny Committees, Health & Well-Being Board and Regulation Committee) and for the associated recordings to be published on the council's website and retained for a period of six years. Furthermore for the recording and publication on the website of partnership committees that the Council administers such as Somerset Waste Board and Avon and Somerset Police and Crime Panel to be recommended to those bodies to approve.

3.2.13 The Scrutiny Committee for Policies and Place considered the review of emergency democratic arrangements at their meeting on 15 July. The Committee supported the proposed approach and the recommendations from Constitution and Standards Committee (in particular the future webcasting of Full Council, Cabinet, Regulation and Scrutiny Committee meetings).

3.2.14 The Cabinet meeting on 20 July considered the proposals set out in this report, along with the recommendations from Constitution & Standards and Scrutiny Committee for Policies and Place. The Cabinet supported the recommendations from Constitution & Standards and Scrutiny Place, together with the recommendations from the review.

- 3.2.15 Further work will continue to be undertaken by the Monitoring Officer in conjunction with Corporate Services in relation to:
- Options to improve virtual meetings
  - Investigating potential for 'hybrid' meetings
  - Any recommendations identified by Constitution and Standards, Scrutiny Place, Cabinet and Full Council

This work will need to be completed ahead of the expiry of the regulations in May 2021.

## 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 could 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 sustainability or community safety implications as a result of these proposals.

The main financial implications relate to the proposed webcasting solution. The capital and revenue costs associated with this proposal were agreed as part of the Capital Programme approvals in February 2020.

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.

## 5. Background papers

- 5.1** Council's Constitution  
Civil Contingency Act 2004  
Government advice - <https://www.gov.uk/government/topical-events/coronavirus-covid-19-uk-government-response>  
Emergency democratic and decision making arrangements – agreed by the Leader and Chief Executive 28 March 2020  
Coronavirus Act 2020