

FOR PUBLICATION

COVID-19 – URGENT CHANGES TO DELEGATION SCHEME

MEETING: (1) STANDARDS AND AUDIT COMMITTEE
(2) CABINET MEMBER FOR GOVERNANCE

DATE: (1) 19TH MARCH 2020
(2) tbc

REPORT BY: MONITORING OFFICER

WARD: ALL

1.0 PURPOSE OF REPORT

1.1 To enable members to agree revised decision-making structures during emergencies, such as the Covid-19 pandemic.

2.0 RECOMMENDATION

2.1 That, subject to the effect of any emergency legislation the measures to modify the delegated functions summarized in this report and set out in the Appendix be approved.

3.0 BACKGROUND

3.1 In view of the pressing nature of this matter, this report has been developed in consultation with the Chief Executive, the Leader and Leader of the Opposition. In view of the need to get alternative decision-making structures in place as soon as possible, urgency procedures have been approved by the relevant scrutiny Chair of Overview and Performance Scrutiny Forum to enable the report to be brought before members as soon as possible.

- 3.2 At a time of emergency it is still vital for the Council to make lawful decisions. Decisions can be challenged as ultra vires if not made lawfully, or a complaint might be sustained.
- 3.3 The law operates to require most member decisions to be at a physical meeting. Neither the constitution nor the current emergency plan puts in place a system for decision making in an emergency.
- 3.4 Only individual Cabinet Member decisions and delegated officer decisions can be made lawfully without a physical meeting.
- 3.5 Under the Local Government Act 1972 all other member level decisions require councillors to be physically present and to vote.
- 3.6 An individual member cannot make decisions in relation to a non-executive matter i.e. one which would usually be decided by a committee. An officer can be delegated to take such decisions.
- 3.7 Decisions legally required to be taken by Full Council cannot be delegated. In some cases this is because the Council has decided this, in others because the law says this. Other full council decisions can be delegated.
- 3.8 There are no general provisions in the constitution for making responsive and quick changes to decision making delegations in time of national emergency such as Covid-19.
- 3.9 On 16th March the LGA informed local authorities that the MHCLG was currently drafting emergency Covid-19 legislation which will address decision making issues and other local government statutory responsibilities. On 18th March MHCLG advised the LGA that while it is pursuing expedited legislation local authorities should put their own measures in place. It is not currently known what changes will be made or when they will be available. This report is subject to or supplementary to any legislation that emerges.
- 3.10 Any changes to current delegations can be approved by Standards and Audit Committee or Full Council (the Leader also has some legal powers to make changes to executive decision making). The Constitution says that the functions of the Standards and Audit Committee include:

To approve any proposed amendments to the constitution, unless appropriate, or required by law to be approved by Full Council (or Leader or Cabinet).

- 3.11 It is considered that it is appropriate for delegations to be modified by Standards and Audit Committee, as it could be convened quite easily and it is not considered feasible to call a full council meeting for this one item at the current time. The Leaders of the three political groups have been consulted and agree that this is the most appropriate way forward.
- 3.12 Subject to the ability to convene a quorate meeting of Standards and Audit Committee, a meeting of the Committee should be convened as soon as practicable to consider this report. A suitably authorized urgent meeting might be required to enable these delegations to be put in place as soon as possible.

4.0 MEMBER LEVEL MEETINGS

- 4.1 Subject to government legislation (referred to above) and/or any restrictions on the ability to hold meetings being put in place, any cabinet, committee or other meeting of the council is quorate if at least three members are present. A meeting cannot make a binding decision unless quorate.
- 4.2 The senior democratic and scrutiny officer has carried out a desktop exercise to identify those members particularly who may need to self-isolate due to being over 70 or with other vulnerabilities. This shows that, in theory at least, it would be possible to continue holding member level meetings. However, there may be other factors affecting a member's willingness or ability to attend a meeting (e.g. a family member over 70 or with vulnerabilities).
- 4.3 Provided a meeting is quorate, the fact that many of its members are unable to attend does not affect the legality of the decision. So only sufficient members to make a quorum could attend, even if all invited, by agreement with the political groups. Special arrangements could be put in place to prevent risk of transfer – eg hold meetings in the Council Chamber to allow a 2 metre distance between individuals.

5.0 PROPOSALS FOR DELEGATIONS

- 5.1 These proposals are subject to any government legislation and the ability/the Council's desire to continue to hold member level meetings (see section 4).
- 5.2 While consideration of some matters might be postponed and some decisions deferred it is important for council business to continue where possible.
- 5.3 The following principles propose decision making by a single member or officer, but in consultation with members (while all relevant members would

be consulted there would be no requirement for a quorum). These are summarized below but set out in more detail in the Appendix to this report.

Council – Unless required by law to be made by full council, the Chief Executive in consultation with the Leader, the Deputy Leader (or most appropriate Cabinet member dependent on the subject matter of the decision being made) and the Leader of the Opposition.

Cabinet - All Cabinet decisions to be made by the Leader or Deputy Leader after consultation with Cabinet Members and Leader of the Opposition.

Planning Committee – Consideration of matters delegated to each of the Development Management and Conservation Manager and the Principal Planner or to the Assistant Director – Economic Growth in consultation with the Chair and members of Planning Committee. If appropriate items could be deferred with agreement of the applicant.

Other committees, such as Appeals and Regulatory Committee - could have decisions delegated to the appropriate Assistant Director. In circumstances where the Assistant Director already has a decision-making role in the process being considered, an Executive Director. Due to the range of matters considered by the committee detailed arrangements are set out in the appendix.

Joint Crematorium Committee: this discharges executive functions on behalf of the three constituent authorities in relation to the crematorium. The function could be discharged in relation to this authority by a Cabinet Member, though the other constituent authorities would need to put arrangements in place too.

- 5.4 A decision maker cannot fetter their discretion, so while they can give weight to the views of committee members, they must make their own decision.
- 5.5 If such delegated decision making would be a departure from national guidance or specific council policies this would need to be considered in the decision-making process.
- 5.6 A written report would still be prepared and made available on ModGov. Decisions would still be published.
- 5.7 No changes are required for individual Cabinet member decisions or current officer level decisions as they do not require physical presence.

- 5.8 Any system would need to provide for alternative decision makers. The Leader can also reallocate Cabinet decision making powers as necessary.
- 5.9 Scrutiny Committees, if they are to continue (they could be suspended for the time being), as they are not decision-making bodies could work virtually without physical meetings. Further thought would be given to how call in could work, if required.
- 5.10 A reserve delegation to each of the Chief Executive and to the Executive Directors for all delegated functions of the authority could be included.
- 5.11 As this is a temporary workaround it might need adding to, amending or fine tuning as time goes on. A delegation to a responsible officer will be necessary so that fast changes can be made as necessary. If legislation provides a better solution this will be used instead.

6.0 OTHER MATTERS

- 6.1 An officer or member delegated decision means that the decisions are not taken in public. The temporary move away from public meetings will need to be explained and managed in communications.
- 6.2 Planning Committee allows public speaking on applications if notified in advance of the meeting. If all decisions are delegated to an officer this ability will need to be suspended (there is no public speaking right on current officer delegated decisions). While there is no legal right to address a committee there are expectations of this, and some people have already indicated the desire to speak at the next Planning Committee (30th March). Any change will have to be managed carefully.
- 6.2 Alternative arrangements are proposed for sealing council documents, such as legal deeds. Currently they are sealed with the Council seal and then signed by the Mayor (or Deputy Mayor) and an authorized signatory. Alternatively they are signed by two authorized signatories (e.g. two Council solicitors).
- 6.3 As the emergency progresses it might be impracticable to apply the seal or have two signatories. At the time of writing the report it is unclear whether there is a legal requirement for a seal to be applied. Accordingly it is proposed that such documents may be signed by an authorized signatory and, if possible, without the Council seal.

7.0 RECOMMENDATION

7.1 That, subject to the effect of any emergency legislation the measures to modify the delegated functions summarized in this report and set out in the Appendix be approved.

8.0 REASON FOR RECOMMENDATION

8.1 To put in place practicable delegations where member level meetings are impracticable at a time of national emergency.

GERARD ROGERS
MONITORING OFFICER

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APPENDIX

Recommended temporary delegations:

Decisions at a time of National Emergency

At any time when the Chief Executive considers it is not possible or reasonably practicable due to a national emergency to convene a decision-making body of the Council (such as where such meetings are inadvisable or prevented as the result of Covid-19) the following delegations will apply notwithstanding any other delegations or provisions in the Constitution. The Chief Executive can also decide the point where these arrangements will end.

Where not impeding the effective operation of the Council a decision may be deferred by the decision maker until a time where these conditions do not apply.

Full Council: Unless a decision is required by law to be made by Full Council the Chief Executive in consultation with the Leader and leaders of all political groups and all members as appropriate.

Cabinet: All powers of Cabinet will be delegated to the Leader (or in their absence the Deputy Leader) in consultation with Cabinet Members and Leader of the Opposition.

Planning Committee: All non-executive functions of the committee to be delegated to the Development Management and Conservation Manager or, if appropriate the Assistant Director – Economic Growth, in consultation with the Chair and members of Planning Committee.

Appeals and Regulatory Committee: All functions of the committee to be exercised by:

Introductory tenancy reviews (other than rent arrears cases) – An Executive Director or any Assistant Director (other than the Assistant Director – Housing) and notifying the Chair and Members of the Appeals and Regulatory Committee of the decision in any case.

Introductory tenancy reviews (rent arrears cases) – Any Assistant Director (other than the Assistant Director – Housing (or any officer senior to the Senior Rent Officer) and notifying the Chair and Members of the Appeals and Regulatory Committee of the decision in any case.

Taxi licensing – the Assistant Director – Health and Wellbeing (or any officer authorised by him) and notifying the Chair and Members of Appeals and Regulatory Committee of the decision in any case (noting that for exceptional reasons the Council is departing from the normal delegated powers as set out in its taxi licensing policy).

Licensing Committee: All functions of the committee, including contested licensing matters to the Assistant Director – Health and Wellbeing (or any officer authorised by him) and notifying the Chair and members of the Licensing Committee of the decision in any case (noting that the council is departing from government guidance for exceptional reasons)

Employment and General Committee: All functions of the committee to the Assistant Director – Customers, Commissioning and Change in consultation with the Chair and members of the committee.

Standards and Audit Committee: All functions of the committee to the Monitoring Officer in consultation with the Chair and members of the committee.

Joint Crematorium Committee: all functions of this authority (and other authorities, if appropriate) in relation to the crematorium to be discharged by the Cabinet Member – Health and Wellbeing.

Chief Executive and Executive Directors – that each of the Chief Executive and Executive Directors have a reserve delegation of all delegated functions of the authority.

Sealing of Documents – In addition to the current sealing arrangements in part 2 of the Constitution, the affixing of the common seal (if required) may be attested by a single authorized signatory.

Further delegations and/or additions to and/or amendments to these delegations (including the members or officers to whom these functions are delegated) are to be exercised by each of the Chief Executive and Monitoring Officer in consultation with the Leader, Chair of Standards and Audit Committee, Cabinet Member for Governance and/or Chair of the relevant committee as appropriate.