



<b>Report for:</b>	<b>Council</b>
<b>Date of meeting:</b>	<b>15<sup>th</sup> April 2020</b>
<b>Part:</b>	<b>1</b>
If Part II, reason:	

<b>Title of report:</b>	<b>Covid 19 – Emergency Constitution amendments</b>
Contact:	<p>Cllr Andrew Williams, Leader of the Council</p> <p>Author/Responsible Officer:</p> <p>Sally Marshall – Chief Executive</p> <p>Mark Brookes, Assistant Director, Corporate and Contracted Services and Monitoring Officer</p>
Purpose of report:	To seek approval to amend the Constitution to provide additional emergency decision make powers and agree procedures for the remote conduct of meetings.
Recommendations	<ol style="list-style-type: none"> <li>1. That Council agree to the changes to the Constitution and procedures as set out in paragraphs 8-44 to this report and authorise the Monitoring Officer to make the required changes to the Constitution.</li> <li>2. In the event that government guidance changes the Leader of the Council in consultation with the Chief Executive and the Leader of the Opposition shall have authority to agree to reintroduce face to face meetings and suspend either in full or in part these temporary arrangements pending formal agreement at the next available Council meeting.</li> <li>3. That authority be delegated to the Chief Executive, in consultation with the Leader of the Council and the</li> </ol>

	<p>S151 Officer, to draw down funds from reserves in order to finance expenditure that may be required in the Council's response to Covid-19. This expenditure will be reported back to Cabinet and Council at the next available meeting.</p>
Corporate Objectives:	<p>The Constitution supports all of the Council's Corporate Objectives as they provide the governance framework for all decisions, strategic and operational.</p>
Implications:	<p><u>Financial</u></p> <p>There are no financial implications arising from this report</p>
'Value For Money Implications'	<p><u>Value for Money</u></p> <p>There are no implications arising from this report.</p>
Risk Implications	<p>Failure to have an up to date and accurate Constitution could lead to legal challenge and operational, reputational and financial costs may follow if the challenge was successful.</p>
Community Impact Assessment	<p>There are no community impacts, which require assessing resulting from this report.</p>
Health And Safety Implications	<p>There are no Health and Safety implications connected to this report.</p>
Monitoring Officer/S.151 Officer Comments	<p><b>Monitoring Officer:</b></p> <p>The amendments set out in this report are proposed to ensure that the Council can continue to operate efficiently during the period in which the Covid-19 movement restrictions are in place.</p> <p><b>S.151 Officer:</b></p> <p>Decisions made by the Chief Executive under the Emergency Powers outlined in this report will be subject to the same formal decision-making process already in place for Officer Decision Sheets, i.e. they will be subject to comments from the S151 Officer and the Monitoring Officer in advance of implementation. The documentation behind each decision will be retained for audit purposes.</p> <p>The timeframes of this formal process will be shortened to enable quick decision-making, whilst at the same time maintaining the appropriate checks and balances for decisions that could have significant and long-lasting financial and legal implications for the Council.</p>
Consultees:	<p>Councillor Andrew Williams (Leader of the Council)</p> <p>Councillor Ron Tindall (Leader of the Opposition)</p> <p>Sally Marshall, Chief Executive</p>

	<p>James Deane, Corporate Director (Finance and Operations)</p> <p>Mark Gaynor, Corporate Director (Housing and Regeneration)</p>
Background papers:	<p>The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020</p> <p>Planning Officers Society Good Practice Guidance Note</p> <p>DM Decision Making + COVID-1</p>
Glossary of acronyms and any other abbreviations used in this report:	<p><b>The Regulations</b> - The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020</p>

## Background

1. The Monitoring Officer is under a continuous duty to review the Constitution to ensure that it is up to date and provides an appropriate governance framework for all Council decision making.
2. The Covid-19 Pandemic and government guidance means that normal Constitutional decision making and meeting procedures need to be reviewed to give effect to movement restrictions and social distancing measures with an aim to restrict face to face meetings wherever possible but allow the decision making process to continue.
3. The changes proposed in this report will continue until further decision of Council and will be kept under continuous review following Government advice.

**The Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 (“The Regulations”)**

4. The regulations were made on 1 April 2020 and will come into force on 4 April 2020. They apply to meetings taking place before 7 May 2021 (which could be brought back to an earlier date if the existing restrictions are relaxed).
5. The regulations enable local authorities to hold meetings remotely including by (but not limited to) telephone conferencing, video conferencing, live webcast, and live interactive streaming.
6. The regulations also remove the requirement for local authorities to hold annual meetings, and to enable requirements for public and press access to local authority meetings and associated documents to be complied with through remote means and website access.
7. The regulations apply (among others) to county councils, district councils, combined authorities, parish councils, joint committees constituted to be a local planning authority, joint waste authorities, fire and rescue authorities and national park authorities. The regulations apply to meetings of a local authority, an executive of a local authority, a joint committee of two or more local authorities, and a committee or sub-committee of any of those bodies.

**PROPOSED CONSTITUTION AND PROCEDURAL CHANGES**

8. The following part of this report will consider each Council, Cabinet and committee meeting and set out proposed changes for consideration and approval. If no changes are proposed the existing process as set out in the Constitution will continue.

**Council**

9. As set out the regulations there is no requirement to hold annual council therefore all appointments to Cabinet, Committees and Sub-Committees will continue until annual council 2021. This includes the appointment of the Mayor Councillor Terry Douris and the Deputy

Mayor, Councillor Stewart Riddick who will continue until annual council 2021.

10. Annual Council currently scheduled for 13<sup>th</sup> May will be cancelled.
11. Future meetings of Council will be conducted by remote means by Microsoft Team (or similar remote conference facility) and training will be given to Members in advance, but all other procedures including motions, questions by members of the public and questions by councillors will continue in accordance with normal procedural rules.
12. Timing of meetings – Council meetings will start remotely at 6.30pm unless the Mayor in consultation with the Monitoring Officer agree a different time which shall be published on the agenda.
13. Voting – Voting shall take place by the Mayor asking members to vote and they shall type a “For” or “Against” in the chat message box on Microsoft Teams. If this doesn’t work for any reason, the Mayor will call out each councillor’s name and ask them to confirm their vote verbally if a vote is required.
14. Public and press access to the meeting – The Council agenda and associated reports shall be published in accordance with normal council procedures. There shall be no public or press access to the meeting remotely unless a request to listen to the meeting via whatever remote system is being used, is made in writing to the Assistant Director (Corporate and Contracted Services) by 5pm on the Friday proceeding the meeting. In the unlikely event that the number of requested participants exceeds the capacity of the remote system, public attendance will be selected on a first request basis. The Mayor shall have absolute discretion to remove any member of the public from the meeting if any disturbance is caused.

### **Cabinet**

15. Cabinet shall continue in accordance with the approved Committee Diary and will be conducted remotely by Microsoft Teams (or other appropriate meeting conferencing system).
16. Meetings will commence at 6.30pm unless the Leader of the Council in consultation with the Monitoring Officer agree a different time which shall be published on the agenda.
17. Voting – Voting shall take place by the Leader of the Council asking members to vote and they shall type a “For” or “Against” in the chat message box on Microsoft Teams. If this doesn’t work for any reason, the Leader of the Council will call out each councillor’s name and ask them to confirm their vote verbally if a vote is required

18. Public and press access to the meeting – The Cabinet agenda and associated reports shall be published in accordance with normal procedures. There shall be no public or press access to the meeting remotely unless a request to listen to the meeting via whatever remote system is being used, is made in writing to the Assistant Director (Corporate and Contracted Services) by 5pm on the Friday preceding the meeting. In the unlikely event that the number of requested participants exceeds the capacity of the remote system, public attendance will be selected on a first request basis. The Leader of the Council shall have absolute discretion to remove any member of the public from the meeting if any disturbance is caused.

### **Overview and Scrutiny Committees**

19. Meetings shall continue in accordance with the approved Committee Diary and will be conducted remotely by Microsoft Teams (or other appropriate meeting conferencing system).
20. Chairman will be requested to review Committee workplans to ensure that only essential business comes before the committee to ensure that meetings are managed as efficiently as possible. Service Performance update reports or other non-essential reports as determined by the Chairman shall be provided on the agenda and published as normal but members shall only be entitled to ask questions in writing (by email) up to 5pm on the day before the committee meeting to the Corporate Support Team and responses shall be provided in writing (by email) by the author of the report as soon as reasonably practicable.
21. Meetings will commence at 6.30pm unless the Chairman of the Committee in consultation with the Monitoring Officer agree a different time which shall be published on the agenda.
22. Voting – Voting shall take place by Chairman asking members to vote and they shall type a “For” or “Against” in the chat message box on Microsoft Teams. If this doesn’t work for any reason, the Chairman will call out each councillor’s name and ask them to confirm their vote verbally if a vote is required
23. Public and press access to the meeting – The agenda and associated reports shall be published in accordance with normal procedures. There shall be no public or press access to the meeting remotely unless a request to listen to the meeting via whatever remote system is being used, is made in writing to the Assistant Director (Corporate and Contracted Services) by 5pm on the Friday preceding the meeting. In the unlikely event that the number of requested participants exceeds the capacity of the remote system, public attendance will be selected on a first request basis. The Chairman shall have absolute discretion

to remove any member of the public from the meeting if any disturbance is caused.

**The Licensing and Health & Safety Enforcement Committee**  
**The Licensing and Health & Safety Enforcement Sub Committee**  
**The Licensing of Alcohol & Gambling Sub Committee**  
**The Appeals and Reviews Committee**  
**The Audit Committee**

24. Meetings shall continue in accordance with the approved Committee Diary and will be conducted remotely by Microsoft Teams (or other appropriate meeting conferencing system).
25. Chairman will be requested to review committee workplans to ensure that only essential business comes before the committee to ensure that meetings are managed as efficiently as possible.
26. Meetings will commence at 6.30pm unless the Chairman of the Committee in consultation with the Monitoring Officer agree a different time which shall be published on the agenda.
27. Voting – Voting shall take place by Chairman asking members to vote and they shall type a “For” or “Against” in the chat message box on Microsoft Teams. If this doesn’t work for any reason, the Chairman will call out each councillor’s name and ask them to confirm their vote verbally if a vote is required
28. Public and press access to the meeting – The agenda and associated reports shall be published in accordance with normal procedures. There shall be no public or press access to the meeting remotely unless a request to listen or participate in the meeting via whatever remote system is being used, is made in writing to the Assistant Director (Corporate and Contracted Services) by 5pm on the Friday proceeding the meeting. In the unlikely event that the number of requested participants exceeds the capacity of the remote system, public attendance will be selected on a first request basis. The Chairman shall have absolute discretion to remove any member of the public from the meeting if any disturbance is caused.

**Development Management Committee**

29. The Government has emphasised the importance of continuing to progress and determine planning applications as expediently as possible in order to support the local and national economy.

30. Therefore and due to the volume and complexity of many planning applications an enhanced scheme of delegation to officers is proposed to ensure that applications can continue to be determined during the period of the pandemic. The following changes are therefore proposed:
31. Except as set out in paragraph 32 below all proposals, applications or enforcement action which would usually be referred to Development Management Committee under Part 3 (Responsibility for Functions) will now be delegated to the, Assistant Director (Planning, Development and Regeneration), Group Manager (Development Management and Planning). This will mean Group Manager or above will review the proposal, including all comments received and decide whether planning permission is granted or refused or enforcement action be commenced.
32. If in the opinion of the Assistant Director (Planning, Development & Regeneration) or the Group Manager (Development Management & Planning) a proposal is of significant public interest, would have a significant impact on the environment, or should otherwise be reported to the Development Management Committee the Assistant Director or Group Manager shall have the authority not to exercise their delegated authority and convene a remote meeting of the Committee to consider the proposal. If such a meeting is convened the normal public rules of participation as set out in the Constitution pre Covid-19 will apply but shall be conducted remotely.
33. Any call in requests or referrals to Development Management Committee received in accordance with existing constitution rules from Ward Members or Parish and Town Councils will trigger a new process to ensure that the committee members, applicants and objectors get a chance to submit comments in relation to the officer's report before the proposal, application or enforcement action is finally determined.
34. By 5pm on the Wednesday the week before what would normally be a committee Thursday date a report pack will be published on-line and directly sent to all Committee Members. The report pack will also be published on-line to enable applicants/objectors/town parish councils to make any further comments they wish in writing (email or letter but deadlines for receipt will be set) before the application is considered. Committee Members will have the same 5 day period to submit comments in writing but can contact the case officer by phone or email if they have any questions.
35. The report will then be further considered in the light of the comments received and then a final consultation meeting will take place with the

chairman or vice chairman to consider all comments received before the final determination is made noting that the final decision is delegated to the Assistant Director (Planning, Development and Regeneration) or Group Manager (Development Management and Planning). A flowchart to demonstrate this process is annexed to this report.

36. In relation to applications which are not subject to the 'call-in' procedure highlighted above officers request that Lead Officers will be added to the list of officer who can approve the more routine applications in order to give more staffing resilience to the team. This will be added to the planning delegations at paragraph 2.3.1 and 2.3.6 of Part 3 of the Scheme of Delegation.

### **Chief Executive Emergency Decision Making Powers**

37. The Chief Executive currently has delegated authority contained in Part 2 of the Scheme of Delegation to:
- (i) To incur expenditure in the event of a civil emergency.
  - (ii) All operational matters in relation to civil aid and emergency Planning.
  - (iii) In cases of urgency, after consultation with the Leader of the Council and the relevant Cabinet Member, to take any decision which could be taken by the Cabinet.
38. It is proposed that there be a minor amendment to (i) above to make it clear that this authority includes the ability to provide funding in whatever form the Chief Executive deems appropriate to external organisations and council contractors. The funding may take the form of grants, loans, contractual variations but this will be delegated to the Chief Executive to make these decisions on a case by case basis. The funding granted will be reported to Cabinet and Council at the earliest opportunity.

39. The new wording for the authority will state:

“To incur expenditure, and grant funding to any external organisation or Council contractor as the Chief Executive deems appropriate, in the event of a civil emergency. The Chief Executive will report all expenditure and funding made pursuant to this delegation to the next available Cabinet and Council meeting.”

### **Other issues**

40. **Sealing** – The completion of Council contracts, leases, transfers and certain other documents require the council to affix its common seal on

the documents to state that they have been validly authorised and completed.

41. The current constitutional position requires:

The Common Seal shall be attested by two different persons present at the sealing of whom:

2.3.1 One shall be the Assistant Director (Corporate and Contracted Services), in his/her absence, the Group Manager (Legal and Corporate Services), or the Chief Executive or one of the Corporate Directors.

2.3.2 The other shall be any of the above-named persons or a legally qualified person in the employment of the Council and duly authorised in that behalf by the Assistant Director (Corporate and Contracted Services).

42. Due to the current emergency position there is the potential for it to become difficult to enable the signature of two officers. It is therefore proposed to include an emergency provision so that the Assistant Director (Corporate and Contracted Services), the Group Manager (Legal and Corporate Services), or the Chief Executive or one of the Corporate Directors can sign documents without the requirement for a countersignatory. A new clause will therefore be added which will state:

“2.3.3 in cases of civil emergency the Assistant Director (Corporate and Contracted Services), the Group Manager (Legal and Corporate Services), or the Chief Executive or one of the Corporate Directors can seal documents without a second countersignatory.

Cabinet and Council shall be updated on the use of this power at the next available meeting.

### **Changes to legislation**

43. Under the current rules, changes to the Constitution can be made by a referral by either the Monitoring Officer or Cabinet to be approved by full Council.

44. There have already been legislative changes and it is anticipated that more will follow due to the Covid-19 Pandemic and also to the United Kingdom's exit from the European Union which will necessitate changes to the Constitution. There are also occasions where other legislative changes occur during the year which require immediate changes to the Constitution – the types of changes that this power is anticipated to be used for is changes to the names of acts or minor

changes to provisions. In order to avoid delays in making the necessary changes, the following amendments are proposed to Part 2 Article 14:-

<b>Current – Part 2 Article 14</b>	<b>Proposed amendment</b>
14.3.4 Changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Cabinet and/or the Monitoring Officer.	14.3.4 Except for changes required to the Constitution following implementation of new or updated legislation, changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Cabinet and/or the Monitoring Officer.
	<p><b>New article to be added as 14.3.7</b></p> <p>The Monitoring Officer may update the Constitution to reflect new or updated legislation. Any changes to the Constitution should be reported to Cabinet and full Council at least annually.</p>

### Development Management Procedure Flow Chart

