

**HERTFORDSHIRE COUNTY COUNCIL**

**COUNTY COUNCIL**

**TUESDAY, 19 MAY 2020 AT 10.00AM**

Agenda Item No.

**11**

## **URGENT CHANGES TO THE OFFICER SCHEME OF DELEGATION**

### Report of the Chief Legal Officer

Report author: Quentin Baker, Chief Legal Officer (Tel: 07976 611271)

Executive Member: Ralph Sangster, Executive Member Resources & Performance

#### **1. Purpose of report**

- 1.1 This report contains proposed time limited amendments to the County Council's officer scheme of delegation which are designed to ensure that there are routes of decision making available in circumstances urgency or civil emergency where, due to incapacity or lack of availability, it isn't possible to achieve a quorum of members within a committee and a fall-back position is required to enable the business of the County Council to proceed.

#### **2. Summary**

- 2.1 The rapid emergence and spread of the Covid 19 outbreak within the UK has created the real risk that it will not be possible to hold quorate meetings. Although the government has legislated to enable meetings to be conducted with members attending remotely there remains a risk that due to incapacity/ill-health members will be unable to participate in virtual meetings and/or staff may not be able to support such meetings.
- 2.2 It is essential that the work of the Council is able to continue throughout the period of the outbreak and any social distancing and/or quarantine and this entails on-going decision-making on a wide range of executive and non-executive matters.
- 2.3 The existing scheme of delegation contains a number of provisions which enable decisions to be made by the Chief Executive in circumstances of urgency. Directors also have a wide delegated authority to make decisions within their functional areas. However, a detailed review has highlighted two discrete areas where the delegated authority isn't explicit and in the current circumstances presents a risk of a gap in the Council's urgent decision-making powers.

- 2.4 The first of these gaps is that of the Chief Executive's (CEX's) authority to take 'Non-executive' decisions in situations of urgency or civil emergency, which is not explicit in the scheme of delegations. This contrasts with the CEX's authority to take 'Executive' decisions in situations of urgency which is specifically set out in the scheme of delegation. The reason for this difference is unclear although it is possible it resulted from oversight in the original drafting process.
- 2.5 The second gap concerns the absence of delegated authority, in circumstances of urgency or civil emergency, for the County Council's Directors to make decisions, (non-executive), relating to their functional areas.
- 2.6 In view of the current wholly exceptional circumstances it is recommended that a fall-back position be created. It should be emphasised that such fall-back powers would only be used in circumstances of urgency or civil emergency where no other route was available.
- 2.7 The proposed delegation to Chief Executive and Directors includes a condition that the Chairman (or Vice Chairman) of Council and Group Leaders be consulted before exercise of the delegated authority.

### **3. Recommendations**

- 3.1 It is recommended that Full Council: -
- i) Approve the amendment of the scheme of delegation regarding 'non-executive' functions to: -
    - a. provide for the Chief Executive to exercise any non-executive function in circumstances of urgency or civil emergency and
    - b. authorise the Directors, in circumstances of urgency or civil emergency, to exercise all non-executive decisions in relation to their functional area.
  - ii) To authorise the Chief Legal Officer to amend the constitution accordingly, (see Appendix A) and for a review to be undertaken by Group Leaders before the 14th January 2021 as to the continuing need for these measures.

### **4. Background**

- 4.1 The developing outbreak raises a number of risks in respect of Local Authorities' ability to make decisions rapidly in response to emerging developments of particular relevance are the following: -
- Possibility that there will be insufficient Councillors to form a quorum at a meeting due to reasons of incapacity or personal safety.
  - Potential for a directive to be issued restricting the holding of council meetings.

- Need for urgent/rapid decisions to be taken in response to external factors.
- 4.2 The legal framework underlying Local Authority committees including the Cabinet, Full Council and committees, imposes requirements as to their quorum. Protecting the personal safety of councillors, officers and the public is a key priority and this may require that decisions usually taken in committee should be taken by officers under delegated powers. In such situations, measures will be taken to ensure that the impact upon democratic input to the process is, as far as possible, mitigated.
- 4.3 The interests of personal safety are paramount and this may dictate that the Council cease to hold meetings where it is possible to exercise the decisions of that committee by other means such as delegated authority of the Council Leader, the Chief Executive or Directors. Such measures will enable the Council to continue to operate in the short term whilst avoiding the risks involved in bringing together groups of councillors and officers.
- 4.4 A review of the scheme of delegations has revealed that there are some gaps in the provisions enabling officer decisions required as a matter of urgency or civil emergency. These can be addressed by minor amendments in the officer scheme of delegation, a suitably amended extract of which is attached to this report as Appendix A. Proposed revisions are shown in tracked changes for ease of reference.
- 4.5 The amendments include conditions on the exercise of the Authority so as to ensure that there is democratic oversight of its use. It should be stressed that these delegations are a fall-back position and may not be required in practice and, if required, will only be used to the extent necessary to achieve the required outcome.

## **5. Legal Considerations**

- 5.1 The Local Government Act 1972 and subsequent legislation provides a detailed framework for the delegation of powers to officers and procedural requirements for the exercise of such delegated authority.

## **6. Financial Considerations**

- 6.1 There are no financial implications arising from the recommendations contained in this report

## **7. Equality Implications**

- 7.1 When considering proposals placed before Members it is important that they are fully aware of and have themselves rigorously considered the equalities implications of the decision that they are taking.
- 7.2 Rigorous consideration will ensure that proper appreciation of any potential impact of that decision on the County Council's statutory obligations under the Public Sector Equality Duty. As a minimum this requires decision makers to

read and carefully consider the content of any Equalities Impact Assessment (EqIA) produced by officers.

- 7.3 The Equality Act 2010 requires the Council when exercising its functions to have due regard to the need to (a) eliminate discrimination, harassment, victimisation and other conduct prohibited under the Act; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The protected characteristics under the Equality Act 2010 are age; disability; gender reassignment; marriage and civil partnership; pregnancy and maternity; race; religion and belief, sex and sexual orientation.
- 7.4 Given the nature of the recommendations it is not considered necessary to undertake an Equality Impact Assessment (EqIA).

Legal Review: Quentin Baker, Chief Legal Officer  
Financial Review: N/a

Background Information

Local Government Act 1972 <http://www.legislation.gov.uk/ukpga/1972/70/contents>