
EMERGENCY DECISION MAKING POWERS FOR URGENT DECISIONS

Report by Chief Executive

SCOTTISH BORDERS COUNCIL

26 March 2020

1 PURPOSE AND SUMMARY

- 1.1 This report recognises the need for Scottish Borders Council take steps to reduce risks for its Members, Staff and citizens arising from Coronavirus (COVID-19). It notes that, to mitigate those risks, all formal Council and Committee meetings are being cancelled. Public consultation meetings will also be postponed.**
- 1.2 It is however vital to ensure that the Council is able to continue to exercise its essential functions. This means there needs to be a process whereby urgent decisions can be made during this extraordinary period. The report therefore proposes an interim decision making process and, to implement that process, proposes some additions to Standing Orders.**
- 1.3 It is important that those urgent decisions are able to be made in the most efficient and effective way possible. This will enable the Council to be agile and responsive at this difficult time. The report therefore proposes amending Standing Orders to delegate further decision making responsibility to the Chief Executive on a temporary basis. This delegation will be exercised in consultation with Members, as described in Paragraph 4.2 of the Report.
- 1.4 There may however be situations where formal Council or Committee meetings do require to take place during this period. Where that is necessary, it is proposed that such meetings should minimise social contact and therefore Members should mostly attend those meetings remotely.
- 1.5 Ordinarily Local Authority meetings need to be held in public and in one place with all Members together in that place. However, section 43 of the Local Government in Scotland Act 2003 ("the 2003 Act") allows a Local Authority to vary that process and conduct a meeting by other ways. It therefore allows Members to attend a meeting remotely by use of electronic means. It is therefore proposed to add an additional Standing Order enabling this provision to be used for any formal meetings which do need to take place during this period.

2 RECOMMENDATIONS

2.1 I recommend that the Council agrees:-

- (a) to hold Council and committee meetings only where absolutely necessary for statutory reasons, from now until 30 September 2020, to minimise social contact during the Coronavirus (Covid-19) outbreak;**
- (b) to delegate to the Chief Executive in consultation with those Officers and Members identified in Paragraph 4.2 (through the addition of Standing Order No. 49 (a)(ii)) those decision making functions of Council which can be legally delegated until 30th September 2020;**
- (c) to add Standing Order 49 (a)(iii), providing that Convenor of Council and /or the Chair of its Committees (whom failing the Vice Convener or Vice Chair) will direct that any meeting which must be held before 30 September will be held in accordance with Section 43 of the Local Government in Scotland Act 2003 ("the 2003 Act") and that other Elected Members who attend will attend such meetings remotely using video or audio technology;**
- (d) that the above decisions can be revoked without suspension of Standing Orders if, before 30 September 2020, the situation improves and the health risks have significantly reduced or, that the date can be extended if the outbreak continues to pose risk;**
- (e) to add Standing Order 49 (a)(iv), which provides the procedure whereby Standing Order 49 (a)(ii) and Standing Order 49 (a)(iii) can be revoked; and**
- (f) to amend Standing Order 51(b) to provide that Standing Order 49 (a)(iv), shall not be capable of suspension.**

3 BACKGROUND

- 3.1 Under local government law almost all functions of Council are exercisable by decisions of full Council. Councils are free to decide how best to vary that by delegating matters. That delegation can be either to Officers, or Committees. Where a function is to be exercised by Council, or its Committees, those decisions must be made at a meeting. Schedule 7 of the Local Government (Scotland) Act 1973, governs the meetings and proceedings of Local Authorities. It requires notice of the time and place of an intended meeting be published at the Council's offices at least three clear days before the meeting. It provides that Members must be physically present at a meeting. However, Section 43 of the Local Government in Scotland Act 2003 allows a local authority to conduct a meeting with Members in other ways. To adopt this process, provision should be made in the Council's Standing Orders.
- 3.2 Scottish Borders Council's Scheme of Delegation already delegates a variety of functions to officers and, in addition, Standing Order Number 49 confers a system of Emergency Powers in which the Chief Executive makes decisions on behalf of the Council.
- 3.3 Corona virus (Covid-19) started to appear at the end of December 2019 in Wuhan, China. Since then, the virus has spread across the world and the World Health Organisation declared this a pandemic on 11 March 2020. A number of measures have been put in place by various countries to try to contain the spread of the virus, which particularly impacts on older people and those with underlying health conditions. Advice and guidance from the UK and Scottish Governments and Public Health Scotland is updating regularly. Citizens are now being urged to reduce social contact in a variety of ways and are being asked to not attend venues where there will be large numbers of people present. As the virus makes a wider impact on public life, Scottish Borders Council must consider how to respond. In taking any decision to protect health by limiting social contact, it must also ensure processes are in place to enable it to continue to make urgent decisions

4 EMERGENCY DECISION-MAKING POWERS

- 4.1 It is therefore proposed that Council and committee meetings are cancelled until 30 September 2020 unless they need to take place for statutory reasons. It is further proposed that public consultation meetings are also postponed. If of course the situation changes and the risk no longer exists meetings can be reinstated at an earlier date.
- 4.2 In order to allow decisions to be made, it is proposed that all those decision-making functions of Council which can lawfully be delegated, be delegated to the Chief Executive to be made in consultation with Members and relevant senior officers. This delegation will continue in place until the 30 September 2020, but can be revoked by Council earlier if the health risks have been removed. The procedure for revocation is detailed in new Standing Order 49(a)(iv). Standing Order 49(a) will be amended as follows:
- (a) Existing Standing Order No. 49(a) is simply renumbered and becomes 49(a)(i);
 - (b) New Standing Order No. 49(a)(ii) is added. It provides– "As a result of the Coronavirus outbreak, where an essential decision of the Council is required, all legally delegable decisions will be delegated to the Chief Executive until 30 September 2020. In the event that the Chief

Executive is unavailable to exercise this function, it will be exercised by an Executive Director. The decisions will be made once the following consultation process has taken place:

- The Chief Executive, one of the Executive Directors or relevant Service Director shall prepare a briefing note with details of the decision required;
- This note shall be circulated via email to the Leader, the Convenor, and the Leader of the Opposition. The Leader shall take reasonable and proportionate steps to sight Members of the Administration of the note. The Leader of the Opposition will take reasonable and proportionate steps to sight Members of all of the opposition parties of the note. The Leader, the Convenor, and the Leader of the Opposition will have 3 days to respond to the note. For the avoidance of doubt, in the event that the Leader, the Convenor, or the Leader of the Opposition become unable to fulfil their role under this consultation process, they shall nominate a deputy to act on their behalf;
- The note will also be sent, as appropriate, to the Executive Director Finance and Regulatory Services, the Chief Legal Officer, the Service Director HR and Communications, Chief Officer Audit and Risk and such other as is appropriate having regard to the decision being made. Such officers will respond as soon as possible and certainly within 3 working days."

(c) New Standing Order No. 49(a)(iii) is added. It provides: – "As a result of the Coronavirus outbreak, where an essential decision of Council or one of its committees is required in respect of a matter which cannot legally be delegated, the following procedure shall be adopted until 30 September 2020:

- The Chair or Convenor of the meeting (whom failing their Deputy) shall direct that the meeting will take place in accordance with Section 43 of the 2003 Act.
- The Chair, or Convenor as relevant, and relevant officers in support will be present in one of the committee rooms at Council HQ and will manage the meeting;
- Other Elected Members who are to join the meeting will do so using video or audio functionality;
- The meeting will otherwise be called in the usual manner, with the agenda and papers published on the Council website;
- The meeting will be open to the press and public to attend at Council HQ
- A minute of the meeting will be taken and published on the Council website

(d) New Standing Order 49(a)(iv) is added. It provides: - "Standing Orders 49(a)(ii) and (a)(iii) can be revoked before the 30th September 2020 (or such different date as may have been substituted by Council from time to time for their continued operation) only in accordance with this paragraph. Either

- a. The Chief Executive prepares a report seeking the revocation of either or both said Standing Orders; or
- b. Any Member submits a written motion to the proper officer, which motion is signed by that Member and 10 other Members seeking the revocation of either or both of said Standing Orders.

When the proper officer receives such a report prepared by the Chief Executive or a duly signed Motion in accordance with this paragraph, a meeting of Council will be convened within 5 working days to consider said Report or Motion. For the avoidance of doubt that

meeting will be held in accordance with Standing Order 49(a)(ii) unless that Standing Order has been earlier revoked.

- (e) To ensure that this process is followed, it is further proposed that Standing Order 51(b) is amended by adding the phrase "49(a) (iv)" after the phrase "47" so that these new Standing Orders shall not be capable of suspension.

5 IMPLICATIONS

5.1 Financial

There are no costs attached to any of the recommendations contained in this report.

5.2 Risk and Mitigations

There is a risk that, should Council and committee meetings continue in their present form that the Coronavirus will spread wider in the community. Council business, including decision-making, must however continue so that there is least impact on service provision. By allowing greater flexibility in the decision-making processes, the Council can be confident that it will be able to carry out its functions in a way that creates least risk to public health.

5.3 Equalities

It is not anticipated that any of the recommendations in this report will have a potential negative impact on any particular group or discriminate on the basis of age, disability, gender, race, sexual orientation, pregnancy and maternity or religion and belief.

5.4 Acting Sustainably

There are no economic, social or environmental effects arising from the proposals in this report.

5.5 Carbon Management

A reduction in the number of Committee meetings is liable to slightly reduce the Council's carbon emissions.

5.6 Rural Proofing

The proposals in this report will have no impact on rural proofing.

5.7 Changes to Scheme of Administration or Scheme of Delegation

A change is required in Standing Orders and there may be minor changes required to the Scheme of Administration and the Scheme of Delegation should Council agree to the proposals in this report. That being the case, any subsequent changes required to the two Schemes will be made by the Clerk to the Council.

6 CONSULTATION

- 6.1 The Executive Director (Finance & Regulatory), the Chief Officer Audit and Risk, the Service Director HR, and Corporate Communications are being consulted and any comments received will be incorporated into the final report.

Approved by

Tracey Logan
Chief Executive

Signature

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Background Papers: Nil

Previous Minute Reference: None

Note – You can get this document on tape, in Braille, large print and various computer formats by contacting the address below. Jenny Wilkinson can also give information on other language translations as well as providing additional copies.

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