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## **EMERGENCY POWERS REPORTING**

**Report by Executive Director, Finance & Regulatory Services**

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### **SCOTTISH BORDERS COUNCIL**

**25 February 2021**

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#### **1 PURPOSE AND SUMMARY**

- 1.1 **This report proposes a method for formally notifying Members of any decisions made using Emergency Powers under Standing Order No. 49(a)(i).**
- 1.2 Standing Order No. 49(a)(i) enables the Chief Executive to take decisions under Emergency Powers, having consulted with various Elected Members. The power is not used frequently and there were five such reports in 2020.
- 1.3 In the past, these Emergency Powers reports were detailed in the Members' bulletin and copies were placed in the Members' library. However, there is no longer a Members' bulletin and a gap therefore exists as there is no process in place for reporting those decisions to all Members and the public.
- 1.4 It is therefore proposed that, in future, any decision made under Emergency Powers is then included in the next available Scottish Borders Council agenda as a separate item for noting. Subject to the provisions of the 1973 Act, these will either be considered in public or private, depending on the content of the report. Members may wish to ask for further explanation but there will be no opportunity to change the actual decision(s).
- 1.5 Changes are proposed to the Council's Standing Orders and Scheme of Administration to formalise this.

#### **2 RECOMMENDATIONS**

- 3.1 **I recommend that the Council agrees that:**
  - (a) **once concluded, all Emergency Powers decisions are referred to the next available meeting of Scottish Borders Council for noting;**
  - (b) **a further sentence is added at the end of Standing Order No. 49(a)(i) – "Such Emergency Powers decisions shall be reported**

**to the next available meeting of Scottish Borders Council for noting.”; and**

- (c) the following addition is made to the “Other Functions” of Scottish Borders Council contained in Section III of the Scheme of Administration:**

**“34. Note decisions taken under Emergency Powers in Standing Order No. 49(a)(i).”**

### **3 BACKGROUND**

- 3.1 Scottish Borders Council, as with most other Local Authorities, includes in its Standing Orders a provision to deal with matters of urgency, to cover a situation whereby a decision which would normally be taken by Council or one of its committees needs to be taken before the next meeting of such a body. In those circumstances, Standing Order No. 49(a)(i) enables the Chief Executive to take those decisions, having consulted with various Elected Members. Standing Order 49(a)(i) is detailed thus:

“Notwithstanding the terms of Standing Orders and the Scheme of Administration, including in relation to delegated matters, where a situation or condition arises which is, in the opinion of the Chief Executive, whom failing another Director appointed by the Chief Executive, of such urgency as to make it unwise to delay a decision until the next meeting of the committee concerned with the function in question or the next Ordinary Meeting of the Council, a system of Emergency Powers shall be exercisable. In such circumstances, the appropriate Officer specified shall, following consultation with (a) the Convener, whom failing the Vice-Convener, (b) the Leader of the Council, whom failing one of the Depute Leaders of the Council, and (c) a member of the Executive having the Portfolio for the matter concerned, whom failing any other member of the Executive, have power to take all steps and make any decisions considered necessary to deal with the situation, which steps and decisions shall be binding upon the Council.”

- 3.2 It is important to note that this standing order can only be used where a decision needs to be taken as a matter of urgency. It is therefore important to ensure that these decisions, once made, are certain and are not therefore subject to ratification or change.
- 3.3 Emergency Powers reports are subject to the same guidelines as all other Committee reports regarding consultation. Equally, they can be “public” or “private” in accordance with the normal rules contained in the Local Government (Scotland) Act 1973 (the “1973 Act”), depending on their content. The power is used infrequently and there were five such reports in 2020. This does not include the Covid emergency powers which were also used in 2020, but dealt with under a separate Standing Order and published through the Modern.gov committee system.
- 3.4 In the past, these Emergency Powers reports were detailed in the Members’ bulletin and copies were placed in the Members’ library. However, there is no longer a Members’ bulletin and a gap therefore exists as no process is in place for reporting those decisions to all Members and the public.

### **4 EMERGENCY POWERS DECISIONS REPORTING**

- 4.1 It is important to put a system in place for the reporting of emergency powers decisions to ensure openness and transparency in decision making. However, it is also important to recognise that these decisions have already been made, and that they are binding to the Council. The proposed process does not therefore create an opportunity to approve or otherwise amend the decisions.

- 4.2 It is therefore proposed that, in future, once concluded and the decision made, any Emergency Power report is then included in the next available Scottish Borders Council agenda as a separate item for noting. Subject to the provisions of the 1973 Act, these will either be considered in public or private, depending on the content of the report. Members may wish to ask for further explanation but there will be no opportunity to change the actual decision(s).
- 4.3 In this respect, it is proposed to add a further sentence at the end of Standing Order 49(a)(i) "Such Emergency Powers decisions shall be reported to the next available meeting of Scottish Borders Council for noting." An addition is also proposed to the "Other Functions" of Scottish Borders Council contained in Section III of the Scheme of Administration:
- "34. Note decisions taken under Emergency Powers in Standing Order No. 49(a)(i)."

## **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 by not reporting Emergency Powers decisions more widely, the Council could be seen as operating behind closed doors. By reporting these decisions to full Council, this will ensure that all formal decisions are recorded and published, thus ensuring openness and transparency for all Members, and the wider public.

### **5.3 Integrated Impact Assessment**

The proposals in this report will not discriminate against people who share a characteristic (age, disability, gender re-assignment, trans/transgender identity, marriage or civil partnership, pregnancy and maternity, race groups, religion or belief, sex-gender identity, and sexual orientation) and those who do not.

### **5.4 Acting Sustainably**

There are no economic, social or environmental effects by carrying out the proposals in this report.

### **5.5 Carbon Management**

There is no impact on the Council's carbon emissions from carrying out the proposals in this report.

### **5.6 Rural Proofing**

The proposals in this report will apply across the Borders.

### **5.7 Changes to Scheme of Administration or Scheme of Delegation**

Changes are being proposed to Standing Orders and the Scheme of Administration and are detailed in the report.

