

Cheltenham Borough Council
Council – 23 March 2020
Update to the Constitution

Accountable member	Leader of the Council, Councillor Steve Jordan
Accountable officer	Chief Executive, Gareth Edmundson
Ward(s) affected	All
Key/Significant Decision	N/A
Executive summary	<p>Paragraph 39 of Schedule 12 to the Local Government Act 1972 states that any decision taken at a local authority meeting (including committees and sub committees) shall be decided by a majority of those present and voting. This requires Members to be physically present in order for the meeting to take place.</p> <p>In light of the current COVID-19 emergency this Council has now postponed all scheduled Committee meetings of the authority until further notice due to the current and necessary restrictions.</p> <p>In advance of anticipated emergency Government legislation it is necessary for the Council to make temporary arrangements for continuity of decision-making, so far as is permissible, by temporary changes to the Council's Constitution.</p> <p>These proposed changes are necessary to enable decisions to be taken on non-executive and regulatory functions via temporary changes to the scheme of delegation as set out in the report.</p>
Recommendations	<ol style="list-style-type: none"> 1. That the arrangements, including recommended changes to the Council's Constitution as set out in sections 3 and 4 of this report, be implemented immediately. 2. That the arrangements referred to in 1 above be reviewed regularly by the Chief Executive in consultation with the Leader of the Council, the Mayor, Committee and Sub-Committee Chairs and Political Group Leaders and be discontinued when arrangements are in place for the resumption of meetings of all Council, Committees and Sub-Committees. 3. That the Borough Solicitor be authorised to make any textual or other amendments which are necessary to ensure the accuracy, consistency and legality of the Constitution when incorporating the temporary revisions referred to in 1. above

<p>Financial implications</p>	<p>Whilst there are no direct financial implications arising from this report, clearly some decisions will have direct financial implications. It is therefore essential that the Executive Director Finance and Assets (Section 151 Officer), or his nominated deputy, are consulted on any decisions that require additional financial resources to ensure:</p> <ul style="list-style-type: none"> • it is lawful expenditure • it is recorded correctly • budgetary provision is set aside or a request to central government for additional funding is applied <p>Contact officer: Paul Jones, paul.jones@cheltenham.gov.uk, 01242 264365</p>
<p>Legal implications</p>	<p>Currently Full Council, Committees and/or Sub-Committees must physically meet in order to make decisions as the law does not permit meetings to be held by remote access. Legislation would be required to change that position. It is therefore necessary to put in place alternative decision-making processes for the Council to enable decision making in the absence of meetings and remote meetings.</p> <p>Under a Committee system of governance, no individual member or officer can exercise delegated authority to take a decision on behalf of the council unless that member or officer has the authority to do so. The amendments to the scheme of delegation outlined in the report will introduce changes to the decision making structure that will enable certain decisions to be taken without the need to call meetings.</p> <p>The alternative arrangements do not however override the requirement for decisions to be made within the legal framework of the Local Government Act 1972 and other legislation. The proposed arrangements are intended to allow decisions to continue to be made within that framework. There are however certain decisions (for example, the setting of the council budget, certain policy adoptions or the determination of an application for a premises licence under the Licensing Act 2003 where representations have been received) that are by law reserved to Full Council or Committees and cannot therefore lawfully be delegated to officers.</p> <p>The recommendation therefore reflects this position and the delegation of decision making is limited to those decisions where delegation is permitted by law. Officers should therefore continue to seek legal advice prior to making any decisions.</p> <p>The process and procedures for recording decisions will still apply and the authority is required to ensure open and transparent decision making. The authority will continue to publish decisions that are taken and those decisions will still be the subject of the call-in process.</p> <p>Contact officer: legal.services@tewkesbury.gov.uk, 01684 272012</p>

HR implications (including learning and organisational development)	None identified
Key risks	As outlined in appendix 1
Corporate and community plan Implications	The recommendations as set out will enable the council to expedite efficient decision making that will enable it to continue to deliver the priorities as set out in the corporate plan.
Environmental and climate change implications	N/A
Property/Asset Implications	The proposed recommendations will not have a direct impact on property matters.

1. Background

- 1.1** Paragraph 39 of Schedule 12 to the Local Government Act 1972 states that any decision taken at a local authority meeting (including committees and sub committees) shall be decided by a majority of those present and voting. Members are therefore required to be physically present in the meeting.
- 1.2** In light of the current COVID-19 emergency and advice from the Government and Public Health England, this Council has now postponed all scheduled committee meetings of the authority until further notice due to the current and necessary restrictions
- 1.3** Recognising the above, the Government has indicated its intention to bring in emergency legislation within an expedited timescale. In advance of that emergency legislation being introduced, it is necessary to put in place alternative decision-making processes for the Council to provide a mechanism to ensure continuity in decision making by the authority, so far as it is permissible within current legislation. This report recommends necessary changes to the Council's Constitution to enable decision-making to continue.
- 1.4** These are temporary measures to address the current circumstances and are only intended to remain in place until the necessary legislative changes have been implemented or the advised restrictions on social isolation are removed. It is therefore recommended that the Chief Executive in consultation with the Leader of the Council, Committee and Sub-Committee Chairs and Political Group Leaders keep the arrangements under regular review and that the measures be discontinued when arrangements are in place for the resumption of all meetings of the Council, Committees and Sub-Committees
- 1.5** Due to the urgency, the Chair of the Constitution Working Group (CWG), which is the Member Group with responsibility for reviewing the Constitution, agreed that this report be brought as an urgent item before Council at its scheduled meeting on 23 March to expedite the constitutional changes required.

2. Executive Functions

- 2.1** The Leader of the Council has authority to take urgent key decisions in accordance with part 3 E (Executive Functions) of the council's constitution. Such decisions are published on the Council's website accordingly. Consequently, there are no changes recommended in this regard.

3. Non-Executive Functions

- 3.1** Table 4, Part 3D of the Council's Constitution –Responsibility for Functions-makes provision for the Chief Executive to take an urgent decision in respect of a non-executive function, including a Significant Decision, in a situation where there is not sufficient time for a report to be considered by Council or Appropriate Committee unless it is a decision that in law can only be made by Council. Wherever possible this shall be done in consultation with the Mayor or Appropriate Committee Chair.
- 3.2** It is proposed that this authority be extended to include the Council's Executive Directors in the absence of the Chief Executive and amended to include the following :

Chief Executive and Executive Directors	
Function	Condition
To make any decisions on behalf of the Council which can lawfully be delegated to officers	<p>The Chief Executive/Executive Director shall, before making any decision;</p> <ul style="list-style-type: none"> (a) circulate a report detailing the decision to be taken, to all Members of the Council (b) consider all representations made by Members of the Council (c) not take any decision until the expiry of 5 clear working days from the circulation of the report referred to in (a) above (d) consult with the Chief Executive/relevant Executive Director as appropriate (e) the Chief Executive/Executive Director shall report the decision taken to the next scheduled meeting of the Council or appropriate Committee (f) publish the decision on the Council's website

- 3.3** It is important to note that in law there are some non-executive matters solely reserved for the Council which could not appropriately be delegated to Officers and would therefore be unaffected by the proposed change.

4. Regulatory Functions

- 4.1** In the current emergency situation it is important that the authority is able to continue to exercise its statutory planning and licensing functions. This is to ensure both statutory compliance and that the part of the economy supported by development, growth and licencing is not unnecessarily hindered. The changes proposed seek to address these challenges
- 4.2** **Planning Committee-** Under Part 3 D of the Council's Constitution (Responsibility for Functions), the relevant extract of which is attached as Appendix 2 to this report, the Council has delegated to the Director of Planning, a range of development management decisions, including planning applications, listed buildings applications, conservation area consent and tree preservation orders. This delegation is, however, constrained by conditions allocating some decisions to the Planning Committee as set out in Part 3 C of the Constitution, an extract of which is attached at Appendix 3 to this report.
- 4.3** Pending implementation of the legislation referred to above, and in order to ensure that decisions continue to be made, it is proposed that the changes be made to the Constitution as set out in the table below.
- 4.4** Part 3 D

Director of Planning		
Function	Current Condition	Proposed Condition
<p>Determine applications for:</p> <p>(a) full planning permission;</p> <p>(b) outline planning permission;</p> <p>(c) approval of reserved matters;</p> <p>(d) listed building consent;</p> <p>(e) conservation area consent;</p> <p>(f) advertisement control consent</p>	<p>Except as specifically allocated to Planning Committee under Part 3C Table 2</p>	<p>Before any decision is made in respect of any applications falling within paragraphs (a) (b) (c) (d) (e) and (f) under “Planning, etc. applications” within Table2 of Part 3C (Appendix 3 to this report), the Director of Planning shall:-</p> <p>(a) circulate to all Members of the Planning Committee a full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all representations made by Members of the Planning Committee in response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
<p>Determine planning applications relating to trees including (a) trees covered by Tree Preservation Orders: and (b) trees within Conservation Areas.</p>	<p>Except as specifically allocated to Planning Committee under Part 3C Table 2</p>	<p>Before any decision is made in respect of any applications falling within paragraphs (a) and (b) under “Trees” within Table2 of Part 3C (Appendix 3 to this report),the Director of Planning shall:-</p> <p>(a) circulate to all Members of the Planning Committee a full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all representations made by Members of the</p>

		<p>Planning Committee in response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
Other actions and decisions (including enforcement, entry on to land and planning agreements) as local planning authority under the Town & Country Planning Act 1990, Planning (Listed Building & Conservation Area) Act 1990 and all planning related legislation	Except as specifically allocated to or by Council	Except those functions that may only be exercised by the Council as set out in Table 1, Part 3B of the Constitution.
Highway authority functions relating to on-street parking (as delegated to the Authority by the County Council)		No change
Authorise the stopping up or diversion of a highway, footpath or bridleway or extinguish public rights of way over land held for planning purposes		No change
Extinguish public right of way over land acquired for clearance		No change
Undertake functions relating to high hedges and protection of important hedgerows		No change

4.5 The effect of these changes are that, for the temporary period for which these changes apply, all matters listed in the above table will be delegated to the Director of Planning for decision subject to consultation with all Members of Planning Committee before any decision is taken. The provisions of Part 3 C of the Constitution (Appendix 3) will, during this period, be temporarily replaced, pending the resumption of meetings of the Planning Committee.

4.6 Public participation in the planning process is essential. Public comments received as part of the planning application consultation process, together with the views expressed by elected Members, will continue to form an important part of the

planning decision making process.

- 4.7** Unlike Planning Committee, it is not practicable to publish Officer reports and recommendations prior to determination. Instead, delegated decisions are published once the application has been determined. It is quite likely that the number of planning applications received will reduce in coming weeks. It is therefore probable that the number of applications requiring Planning Committee decisions will likewise reduce.
- 4.8 Licensing Committee-** The authority is, in respect of licensing and gambling bound by statute and certain determinations cannot be delegated to officers. Equally it is recognised that Licensing Policies are, in law, required to be adopted by Council. Council is asked to consider the proposed changes to the scheme of delegation where they are permitted in law.
- 4.9** The impact of any policy changes facilitated by the Scheme of Delegation will be considered and consulted upon prior to implementation and taken in a reasonable and fair way.
- 4.10** To ensure that the delegated decision making is properly considered and recorded all decisions will be published on the Council's website.
- 4.11** Any changes to the licensing scheme of delegation will ensure fairness in decision making.
- 4.12** Council is asked to consider the proposed temporary changes to the scheme of delegation to facilitate in year changes to licensing policy and limited functions relating to taxi and private hire determinations where they are permitted in law, as set out in the tables included below.

4.13 Part 3C - MISCELLANEOUS LICENSING SUB COMMITTEE

Function	Current delegation	Proposed Delegation
HACKNEY CARRIAGE AND PRIVATE HIRE		
Determine an application for the grant, variation or renewal of driver or vehicle licence	Misc. Licensing Committee if a relevant objection is made	Licensing Team Leader Before any decision is made in respect of any application falling within this paragraph under "Miscellaneous Licensing Sub Committee" within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:- (a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken;

		<p>(b) consider all representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
Determine an application for the grant or variation of an operators' licence	Misc. Licensing Committee if a relevant objection is made	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any application falling within this paragraph under "Miscellaneous Licensing Sub Committee" within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:-</p> <p>(a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
Determine an application for the transfer of a vehicle licence	Misc. Licensing Committee if a relevant objection is made	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any applications falling within this paragraph under "Miscellaneous Licensing Sub Committee" within Table 2 of Part 3C</p>

		<p>(Appendix 3 to this report), the Licensing Team Leader shall:-</p> <ul style="list-style-type: none"> (a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken; (b) consider all representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application (c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above
<p>Suspend or continue the suspension of a driver, vehicle or operator's licence</p>	<p>Misc. Licensing Committee</p>	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any applications falling within this paragraph under "Miscellaneous Licensing Sub Committee" within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:-</p> <ul style="list-style-type: none"> (a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken; (b) consider all representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application (c) not take any decision on the application until the expiry of 5 clear working days from the circulation

		of the report referred to in (a) above
Revoke a driver, vehicle or operator licence	Misc. Licensing Committee if a relevant representation is made	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any decision falling within this paragraph under “Miscellaneous Licensing Sub Committee” within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:-</p> <p>(a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
Adopt and amend standard conditions for hackney carriage and private hire licences	Misc. Licensing Committee	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any decision falling within this paragraph under “Miscellaneous Licensing Sub Committee” within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:-</p> <p>(a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all</p>

		<p>representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
<p>Miscellaneous Licensing Functions) (excluding sex establishments) including Street trading, Street collections, House to house collections, Objects on the highway, , Caravan sites, Camping sites and moveable dwellings, Acupuncture, tattooing, ear-piercing and electrolysis, Game dealers, Scrapyards, Zoos, Dangerous wild animals)</p>		
<p>Determine any application for the grant, renewal, variation or transfer of a licence, consent, permit or permission</p>	<p>Misc. Licensing Committee If a relevant representation is made</p>	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any applications falling within this paragraph under "Miscellaneous Licensing Sub Committee" within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:-</p> <p>(a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all representations made by</p>

		<p>Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>
<p>Revoke or withdraw any licence, consent, permit or permission</p>	<p>Misc. Licensing Committee if a relevant representation is made</p>	<p>Licensing Team Leader</p> <p>Before any decision is made in respect of any decision falling within this paragraph under "Miscellaneous Licensing Sub Committee" within Table 2 of Part 3C (Appendix 3 to this report), the Licensing Team Leader shall:-</p> <p>(a) circulate to all Members of the Miscellaneous Licensing Sub Committee full report on the application including the decision which is proposed to be taken;</p> <p>(b) consider all representations made by Members of the Miscellaneous Licensing Sub Committee response to the report before determining the application</p> <p>(c) not take any decision on the application until the expiry of 5 clear working days from the circulation of the report referred to in (a) above</p>

5. Cheltenham Borough Council Constitution

- 5.1 This report relates only to decisions which would, according to the Council's Constitution, be taken by the full Council, Planning and Licensing Committees. All other decision making, including the urgency provisions within the Constitution, is unaffected by these proposals. Apart from those matters specifically set out in sections 3 and 4 above, the provisions within the Constitution, including the right

for the Proper Officer to call Extraordinary meetings of the Council at the request of the Mayor, Leader, Monitoring Officer, Directors etc, or on the requisition of 5 Members of the Council, remain in place.

6. Reasons for recommendations

- 6.1 To facilitate the continuity of decision making in the current COVID-19 emergency.
- 6.2 To ensure that the authority can continue to exercise its statutory planning and licensing functions.

7. Alternative options considered

- 7.1 Not making the changes which would impede continuity of decision making.

8. How this initiative contributes to the corporate plan

- 8.1 The recommendations as set out will enable the council to expedite efficient decision making that will enable it to continue to deliver the priorities as set out in the corporate plan

9. Consultation and feedback

- 9.1 The Mayor, Group Leaders, Chair of the Constitution Working Group, One Legal

10. Performance management –monitoring and review

- 10.1 There are no performance management issues arising from this report.

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Appendices	<ol style="list-style-type: none">1. Risk Assessment2. Extract from Part 3D of the Constitution3. Extract from Part 3C of the Constitution
Background information	<ol style="list-style-type: none">1. Cheltenham Borough Council Constitution

The risk				Original risk score (impact x likelihood)			Managing risk				
Risk ref.	Risk description	Risk Owner	Date raised	Impact 1-5	Likelihood 1-6	Score	Control	Action	Deadline	Responsible officer	Transferred to risk register
	Failure to implement the temporary changes to the constitution would potentially leave the council in a position that it could not legally take important decisions	Chief Executive	20/03/20	4	4	16	reduce	Implement the proposed changes and carefully assess the implications of any decision taken with these powers	24/03/20	Chief Executive	March 2020
	Implementing the temporary changes to the constitution could reduce democratic accountability.	Chief Executive	20/03/20	5	2	10	accept	These changes will be only used as part of a national emergency. Careful consideration will be given to the impact on the community if they are used.	24/03/20	Chief Executive	March 2020
	Confusion over the interpretation of the temporary changes could lead to challenge.	Chief Executive	20/03/20	4	2	8	accept	Internal protocols are included to ensure that the use of the powers are in consultation with other officers or members.	24/03/20	Chief Executive	March 2020
Explanatory notes											
<p>Impact – an assessment of the impact if the risk occurs on a scale of 1-5 (1 being least impact and 5 being major or critical)</p> <p>Likelihood – how likely is it that the risk will occur on a scale of 1-6 (1 being almost impossible, 2 is very low, 3 is low, 4 significant, 5 high and 6 a very high probability)</p> <p>Control - Either: Reduce / Accept / Transfer to 3rd party / Close</p>											

