

COVID-19 Council decision Making Briefing Note No. 20-13

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Purpose of this Briefing note

1. To outline arrangements for taking decisions during the corona virus situation within the legal and constitutional framework

Background

2. Central Government is providing daily public updates regarding its approach to tackling the spread of COVID-19. All Wiltshire Council teams are actively responding to the virus' impact and are deploying their Business Continuity Plans. The council's current priority is to maintain the delivery of key services to protect the health and wellbeing of Wiltshire residents, particularly those in vulnerable groups.
3. For up-to-date information on council services during the current situation please visit: <http://www.wiltshire.gov.uk/public-health-coronavirus>.
4. For current NHS guidance for the public on the virus please visit: <https://www.gov.uk/government/collections/coronavirus-covid-19-list-of-guidance>.
5. The Local Government Association (LGA) has created webpage with a range of information on the ongoing situation aimed at local authorities (link below). This includes [guidance for councillors](#) on exercising their community leadership role at this time: <https://www.local.gov.uk/coronavirus-information-councils>

Decision making

6. The current situation is impacting on all areas of life and therefore all council services. To support communities and protect the vulnerable, Wiltshire councillors and senior officers must be able to take effective decisions quickly. However, decisions must continue to be legally sound and in-keeping with the principles of decision making set out in the council's constitution. These include:
 - to produce action that is proportionate to the desired outcome
 - to ensure open, fair and honest administration
 - to be clear over desired outcomes and aims
 - to record the options considered and discarded
 - to state the reasons for the action
 - to consult interested parties where appropriate and practicable
 - to consult appropriate officers and to seek their professional advice
 - to show due respect for human rights, and to provide equality of opportunity.
7. The council's Business Plan 2017-27 also commits to decision making that is,
 - a) Open, transparent and inclusive
 - b) Flexible i.e. taken at the right level
 - c) Responsive.
8. Changing government guidance regarding isolation and social distancing means that the normal practical procedures for making decisions and facilitating engagement on them (such as through public meetings) have become increasingly unsafe. The council is therefore considering and implementing practicable alternatives that will maintain robust and, as much as possible, open and transparent governance.

Normal decision-making arrangements

9. It should be noted that most incidental decisions regarding the council's operations are taken by officers. The functions and decision making powers of the Council, Cabinet and various councillor committees are set out in the constitution¹ and underpinned by legislation. In summary:
 - Under current legislation (and also reflected in the Constitution) councillors must be **physically present** at any formally constituted meeting (such as those listed below) to be part of the quorum, vote and thereby take decisions. In keeping with this, there is a requirement for councillors to attend a council meeting in-person at least once every six months.
 - There are certain decisions that only **Full Council** can take, including adopting or amending the council's budget and policy framework and changing the constitution.

¹ Part 3

- Functions **not** reserved to Full Council or its committees by law or under the constitution are the responsibility of the Leader either directly or through Cabinet. Cabinet's functions include deciding policies that fall within the Budget and Policy Framework and implementing and delivering the Budget and Policy Framework.
- The Leader may delegate authority to individual cabinet members to make decisions within their remit.
- Area Boards have delegated authority to make executive decisions within the parameters set out in the Constitution.
- Officers have delegated authority to make executive and non-executive decisions under the Council's Scheme of Delegation to Officers.,.
- These delegations are interpreted widely to aid the smooth running of the council, the efficient delivery of services and the achievement of the council's goals.
- Directors can delegate authority to officers in their service areas through schemes of sub-delegation.

Decision making in the current circumstances

Remote decision making by councillors

10. Despite previous lobbying of the Ministry for Housing, Communities and Local Government (MHCLG) remote decision-making is currently not permitted under legislation². A relaxation of this is **not** currently contained within the draft Coronavirus Bill, but it is understood that amendments to the Bill regarding council meetings are due to be proposed. Proposed amendments to the Bill will be published [here](#) and councillors will be updated on this situation and the implications for how decisions are taken.
11. If remote decision making becomes lawful, the council will employ the technology available to facilitate it along with public engagement. If councillors' physical attendance continues to be required and the current public health precautions remain – and in cases where the delegations to individuals below are not appropriate – practical alternatives will be used. This could include, for example, holding meetings with the minimum permitted number of councillors physically present for quorum (maintaining political balance where appropriate) with others joining remotely. Officers are already exploring all these options so that the council is prepared, whether new legislation is passed or not.

Full Council

² Section 99 and paragraphs 6 and 39 of Schedule 12 to the Local Government Act 1972

12. Under the Local Government Act 1972, Full Council must hold a meeting between March and May each year to consider certain matters. As with remote decision making, a relaxation of this requirement is not contained within the draft Coronavirus Bill, but this could change through amendment. If such an amendment is not agreed, alternative arrangements such as those outlined under paragraph 11 may be required.

13. Whether or not the legislation changes or not, consideration will be given to amending the current constitutional requirements regarding councillors attending a meeting in-person every 6 months.

Delegated Cabinet Member decisions

14. Under the constitution³, **individual Cabinet Members** can exercise any executive functions within their portfolio areas as determined by the Leader.

15. While these broad powers are **not** emergency provisions and in fact apply in **normal circumstances**, custom and practice at Wiltshire Council is that significant executive decisions (including key decisions) are taken at full meetings of the Cabinet. This is in the interest of open and transparent governance.

16. If holding full Cabinet meetings is no longer possible because of Government advice, greater reliance may be placed on the decision making powers of the Leader or individual Cabinet members. All such decisions are made in accordance with the Leader's Protocol on Individual Cabinet Member Decision Making in the Constitution and are published on the council website, with email alerts sent to all Wiltshire councillors. The Protocol requires 5 clear days' public notice of the intention to make such decisions (unless they are classified under the constitution as urgent), allowing for a period of public engagement and challenge. Overview and Scrutiny (see below) has powers to "call in" and pause or halt implementation of such decisions⁴ (bar urgent ones). If in the current situation the Leader or individual Cabinet members need to take more significant executive decisions, additional opportunities for prior engagement with the public and non-executive councillors can be explored.

17. It should be noted that where a cabinet member is unable to act because of absence, or any other reason, the Leader of the council may nominate another member of the cabinet to exercise the function on their behalf.

Key decisions

18. In normal circumstances, **key decisions**,

- Are taken at meetings of the full Cabinet (though this is not a requirement)

³ Part 3, Section C

⁴ Providing certain conditions are met – see Part 8 of the constitution.

- Must be included in the published Cabinet Forward Work Plan at least 28 calendar days before the decision is taken.
- Cannot be taken unless:
 - a notice (in the Cabinet Forward Plan) has been published on the council website and made available to the public at council offices; and
 - at least 28 clear calendar days have elapsed since the publication of this forward plan; and
 - where the decision is to be taken at a meeting of the Cabinet, the usual public notice of the meeting as required by the Constitution and legislation has been given.

19. In the current situation, it is possible that a key decision would need to be taken more quickly, and the constitution's provisions of **General Exception** and **Special Urgency** can allow this:

20. Under **General Exception**, if a matter that is likely to be a key decision has **not** been included on the forward plan, the decision **can** still be taken if:

- the decision must be taken by such a date that it is impracticable to defer it until it has been included in the next forward plan and until the start of the first month to which the next forward plan relates;
- the Proper Officer has informed the chair of the Overview & Scrutiny Management Committee, or if there is no such person, each member of that committee in writing, by notice, of the matter to which the decision is to be made.

21. Under **Special urgency**, if, by virtue of the date by which the decision must be taken, the procedure regarding general exception (above) cannot be followed then the decision can be taken if the individual decision taker or the chair of the body making the decision, obtains the agreement of;

- the chairman of the Overview and Scrutiny Management Committee; or
- if there is no such person, or if the chairman of the Overview and Scrutiny Management Committee is unable to act, the chairman of Full Council; or
- where there is no chairman of either the Overview and Scrutiny Management Committee or of Full Council, the vice-chairman of Full Council

...that the taking of the decision is urgent and cannot be reasonably deferred.

It must be recognised that under the developing Covid-19 situation it will be necessary for relevant key decisions to be made by directors under the emergency powers described above.

Emergency powers

22. As noted above, most incidental decisions regarding the council's operations are taken by officers. This would continue under the current circumstances with arrangements for appropriate councillor consultation in place. However, under Part 3, Section D1 of the constitution, **council directors** are also empowered to take **all necessary decisions in cases of emergency**. Under this scheme, "emergency" means any situation in which the relevant officer believes that there is a risk of damage to property, a threat to the health or wellbeing of an individual or that the interests of the council may be compromised. This would cover the current situation regarding Covid-19 given the critical issues this is causing, Government advice and the declaration of a major incident by Local Resilience Forum (LRF) on 19th March 2020.

23. Executive decisions taken by officers, including emergency powers, under delegated powers must be taken in accordance with the Scheme of Delegation, recorded and published on the council website.

Regulatory decisions

24. The majority of the council's decisions as a **planning** authority are taken by officers under delegated powers⁵ with the more contentious applications being "called in" by Wiltshire councillors for determination at planning committee. If planning committees cannot meet, it may be appropriate for those decisions to be deferred, unless it can be demonstrated that a decision is urgent. It may then be appropriate for officers to take the decision under delegated powers following consultation with relevant councillor(s). The appropriate approach may need to be considered on a case-by-case basis taking the changing situation into account, including any change in the rules on council meetings.

25. The specific **licensing** powers delegated to relevant officers are set out in the Constitution⁶. As with planning, decisions will have to be made on a case-by-case basis having regard to the nature and urgency of the matter and taking the changing situation into account.

Area Boards

26. Area Boards meetings and the Joint Strategic Needs Assessment (JSNA) have been suspended in response to Government guidance. The situation will continue to be reviewed. Up to date information on meeting changes can be found [here](#). Councillors can also subscribe to updates [here](#).

27. A decision will follow in the coming months about how the Joint Strategic Needs Assessment process will proceed and this will be communicated once it is established.

⁵ Part 3 Section D3

⁶ Part 3 Section D4

28. An established process is in place to ensure urgent community area grants, youth grants and health and wellbeing grants and other Area Board decisions (such as CATG) can continue to be determined during the current situation. Many Area Boards have delegated authority to the Community Engagement Manager (CEMs), after consultation with the Chairman, to determine grant applications (within an upper financial limit) where they are urgent and a meeting cannot be held.
29. The Leader will determine urgent grant applications that exceed the financial limit delegated to CEMs. In this event, a report will be published on the council's website listing the decisions to be determined and inviting representation from all councillors and members of the public for a period of at least 5 working days. CEMs will directly invite all relevant Area Board members to provide their feedback on proposed decisions in writing, and the details will also be published on the Community Matters website to encourage community feedback.
30. Once feedback has been received, the Leader will consider this and will make the decisions. The decisions will be published online, incorporating the feedback received. If required, this process can also be used to allocate urgent Community Area Transport Group funding.
31. Despite not being able to hold public meetings, the Area Boards may continue to engage with residents and other local organisations. To keep in touch with these groups the Our Community Matters websites will be regularly updated and weekly newsletters will continue to be sent out. To find your local Our Community Matters site follow the link [here](#). The Community Engagement Managers will also continue to update communities via direct communications and through social media, particularly through twitter. You can find your community engagement manager on twitter through the Area Boards page of the Wiltshire Council Website [here](#).
32. In addition to this Wiltshire Councillors and Town and Parish Councils are encouraged to make use of the COVID-19 [Community Pack](#) to support their communities during the ongoing situation. The pack contains a list of key contacts, resources and information in one place.

Other committees

33. Officers in consultation with the relevant chairmen are considering how the council's other committees and advisory bodies can continue to operate in the current circumstances. Councillors will be kept informed and this guidance will be updated.

Overview and Scrutiny

34. The council's four Overview and Scrutiny (OS) committees are constituted to discharge the functions conferred by the Local Government Act 2000 as amended, and associated regulations. OS represents an important part of the Cabinet model

of decision making through facilitating non-executive input on Executive policy development and decisions. Officers will be supporting the leading OS councillors and the Executive to consider appropriate arrangements for overview and scrutiny during the current situation.

Conclusion

35. These arrangements are intended to ensure that the council is able to discharge its responsibilities efficiently and effectively during this critical period. They will be kept under review as the situation develops and in the light of any changes in relevant legislation and guidance.
36. Councillors will be kept informed of developments and this guidance will be updated as necessary in consultation with Group Leaders and the Constitution Focus Group as appropriate.
37. If Councillors have any queries or concerns regarding these matters they should refer to the contact details below.

Further Enquiries to:

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