

SPECIAL ANGUS COUNCIL

3 April 2020

COVID-19: SPECIAL ARRANGEMENTS IN RELATION TO DECISION MAKING POWERS

REPORT BY THE DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES

ABSTRACT

This Report sets out proposed arrangements to be put in place in terms of decision making at council and committee level in light of the COVID 19 pandemic and also proposes extending the delegated authority of certain Officers, until such time as it is deemed to be appropriate to revert back to the current Scheme of Delegation and the Orders of Reference of Committee.

1. RECOMMENDATIONS

It is recommended that the Council:

- (i) Agrees to establish a Special Arrangements Committee on a temporary basis with delegated powers and as listed as in Appendix 1 paragraph (1) to this Report until such time as Council agrees otherwise;
- (ii) Agrees to establish a Special Education Committee on a temporary basis with delegated powers and as listed as in Appendix 1 paragraph (2) to this Report until such time as Council agrees otherwise;
- (iii) Agrees that the Timetable of Meetings of Council and Committee meetings be cancelled up to 1 June 2020 and agrees that the Special Arrangements Committee will have authority to extend this cancellation period;
- (iv) Agrees that the membership of the Special Arrangements Committee consists of 7 members (with substitutes allowed) made up of 4 Administration members, 2 SNP members and 1 non- aligned member, the Convener to be the Leader of the Council and the quorum shall be 3;
- (v) Agrees that the membership of the Special Education Committee consists of 10 members (with substitutes allowed) made up of 4 Administration members, 2 SNP members 1 non- aligned member and the three religious representative who sit on the current Education and Lifelong Learning Committee, the Convener to be the Leader of the Council and the quorum shall be 4;
- (vi) Agrees to suspend the delegations to the current Policy and Resources Committee, the current Children and Learning Committee and the current Communities Committee until such time as Council agrees otherwise
- (vii) Agrees that until such time as Council agrees otherwise any Sub-Committee of the current Policy and Resources Committee, the current Communities Committee and the current Education and Lifelong Learning Committee shall become Sub-Committees of the Special Arrangements Committee, (except in so far as such Sub-Committees order of reference relates to discharge of the functions of the Council as education authority within the terms of the relevant legislation, in which case such Sub-Committees shall become a Sub-Committee of the Special Education Committee).
- (viii) Notes that meetings of all Committees and Sub-Committees can be undertaken on a remote basis as permitted under Section 43 of the Local Government in Scotland Act 2003;

- (ix) Agrees that, until such time as Council agrees otherwise, any meetings of Committees or Sub-Committees will only take place to consider matters which are by their nature time-critical or necessary.
- (x) Agrees that, other than for those Committees of the Council whose delegations have been suspended, the arrangements in relation to all Committees and Sub-Committees of the Council including the Development Standards Committee, the Civic Licensing Committee and the Development Management Review all as outlined in paragraph 4 of this Report shall include arrangements to undertake meetings on a remote basis as permitted under Section 43 of the Local Government in Scotland Act 2003 until such time as Council agrees otherwise;
- (xi) Agrees the interim Standing Orders, as detailed in Appendix 2 to this Report will apply to all Committee and Sub-Committee meetings which take place on a remote basis as permitted under Section 43 of the Local Government in Scotland Act 2003 until such time as Council agrees otherwise;
- (xii) Notes suitable arrangements will also be put in place to ensure that applicants/interested parties are able to take part in the meeting, details of which are currently being developed;
- (xiii) Approves the extension to officer delegation as detailed in paragraph 5 of this Report until such time as Council agrees otherwise; and
- (xiv) Notes that until such time as Council agrees otherwise, the Order of Reference of Committees and the Scheme of Delegation to Officers following part of the current Angus Council Standing Orders and Related Documents will be amended to reflect any changes agreed in terms of this report.

2. ALIGNMENT TO THE COUNCIL PLAN

This Report contributes to the achievement of our priority that the council is efficient and effective as detailed in our Council Plan for 2017 – 2022.

3. BACKGROUND

Mandatory restrictions have been imposed by both the Scottish Government and the UK Government to order to reduce the transmission of coronavirus (COVID-19). These in effect mean that everyone is obliged to stay at home except in certain very specific circumstances; these are to exercise once a day, travel to and from work where “absolutely necessary” shop for essential items and to fulfil any medical or care needs. Consequently it is necessary to put in place new temporary arrangements in terms of decision making at council and committee level.

4. ESTABLISHMENT OF SPECIAL COMMITTEES

- a) With the national COVID-19 situation it is clear that the current arrangements for council and committee meetings taking place in a council building cannot continue if we are to comply with both UK and Scottish Government mandatory restrictions.
- b) Provision does exist under Section 43 of the Local Government in Scotland Act 2003 to allow meetings to take place remotely, as detailed below:

“Remote participation in and calling of local authority meetings

(1)The meetings of a local authority and its committees, including joint committees, and sub-committees thereof may (as well as being conducted in the way in which they have been conducted before the commencement of this section, that is to say, by all members being present together in a pre-determined place) be conducted in any other way in which each member is enabled to participate although not present with others in such a place.”

Remote participation as outlined above can only take place, however, on the direction of the convener, whom failing, the deputy convener of the authority, committee or, as the case may be, sub-committee. The Provost has agreed that today's meeting of Council can take place remotely. Interim Standing Orders are to be put in place for future meetings as provided for in the recommendations of this report.

It is proposed that these arrangements are put in place with immediate effect so that they may be used as required during the current public health emergency. Such arrangements would include remote access to meetings for the public and press as appropriate.

Coupled with this, it is proposed that a Special Arrangements Committee be established with delegated powers to decide any matter which would normally be decided by the Council, Communities Committee and the Policy and Resources Committee and any matter which would normally be decided by the Education and Learning Committee other than with regard to the functions of the Council as education authority within the terms of the relevant legislation. It is recommended that matters related to such education functions be determined by a Special Education Committee. Details of the remits of each special committee are provided in Appendix One of this report.

- c) Section 124 of the Local Government (Scotland) Act 1973 requires all local authorities to appoint three persons representing churches and other religions to committees or groups either advising the council on education or discharging education functions of the council on its behalf. As the Special Arrangements Committee would not have church representatives on it, it is proposed that a Special Education Committee be established with delegated powers to decide any functions of the Council as education authority within the terms of the relevant legislation which would normally be decided by the current Children and Learning Committee. It is also proposed that should both the Special Education Committee and the Special Arrangements Committee be convened on the same day, the Special Education Committee takes place before the Special Arrangements Committee.

These arrangements are in order to take account of the current public health emergency. Only matters which are by their nature time-critical or necessary will be considered by the proposed Special Committees and any other Committee or Sub-Committee. Routine matters will simply cease to be considered. It is recommended that these interim arrangements cease to exist once the public health emergency is over.

- d) While the remit of the Special Arrangements Committees would allow the Committee to deal with certain business, members should note that the certain functions by statute, can only be determined by Council, including:

Changing the name of the Council in terms of section 23 of the 1973 Act.

The appointment of the Leader and Depute Leader of the Council and early removal from office.

The appointment of Committees in terms of section 57 of the 1973 Act.

The promotion and opposition of private legislation in terms of section 82 of the 1973 Act.

Setting Council Tax in terms of section 56(6) of the 1973 Act.

Approval of any annual investment strategy or annual investment report required by any consent issued by the Scottish Ministers by virtue of section 40 of the Local Government in Scotland Act 2003 (asp 1)

Borrowing money

Receiving the uncertified abstract of the Council's annual accounts.

The consideration of reports by the Head of Paid Service under section 4 of the 1989 Act.

The consideration of reports by the Monitoring Officer under section 5 of the 1989 Act.

To determine whether or not to divide the Council's area into Licensing Divisions and whether or not to revoke a previous determination, in terms of Section 5 of the Licensing (Scotland) Act 2005 and to elect Members to Boards in terms of Schedule 1 to the Licensing (Scotland) Act 2005.

Preparation and review of the Scheme for Community Councils (Special Meeting).

To consider any report from the Standards Commission for Scotland in respect of any breach of the National Code of Conduct by an Elected Member

To approve reasons for the non-attendance of Councillors at meetings in terms of section 35 of the 1973 Act

To determine planning applications which are (a) national developments or (b) major developments which are significant contrary to the Development Plan in terms of the Town and Country Planning (Scotland) Act 1997 –

Notwithstanding these exclusions the Special Arrangements Committee would allow the most critical business of the Council to be conducted without undue delay.

It should be noted that although the under-noted items at e) below, currently sit within the remit of Council in terms of Standing Order 41, these do not require by law to be determined by Council. Consequently, they will fall within the remit of the Special Arrangements Committee. As detailed, only time-critical or urgent matters will be put before each special committee. Also, to ensure that elected members are sighted on all matters being considered by both the Special Arrangements Committee and the Special Education Committee, the agenda for each meeting will be circulated in advance to all elected members.

- e) (ii) the incurring of capital expenditure for which no provision or insufficient provision has been made in the capital budget
- (iv) the incurring of revenue expenditure for which no provision or insufficient provision has been made in the revenue budget
- (v) the acquisition (other than by the Policy and Resources Committee), of any land or buildings or other interests therein required for the purposes of any service controlled by a particular Committee;
- (vi) the dismissal of Directors;
- (vii) the making, alteration or revocation of Byelaws and Management Rules;
- (viii) the making, alteration or revocation of Standing Orders and Financial Regulations; (in so far as permitted by statute)
- (ix) the making and amendment of the Local Development Plan;
- (x) any matter involving determination of differences between Committees;
- (xi) proposals for the promotion of, or opposition to, parliamentary powers;
- (xii) the appointment of elected members to outside bodies.”

As it is proposed that the Timetable of Meetings of Council and Committee meetings be suspended, the calling of all meetings will be ad-hoc and when there is time-critical or necessary business which requires to be considered.

- f) For ease of reference a copy of the remit of the Special Arrangements Committee and Special Education Committee are annexed as Appendix One paragraph (1) and as Appendix One paragraph (2) respectively to this report for approval.

- g) Further arrangements are however required in relation to the Council's Regulatory/Quasi-Judicial Committees including Civic Licensing, Development Standards Committee and the Development Management Review Committee. It is therefore proposed, subject to direction of each convenor/vice-convenor as appropriate that the regulatory/quasi-judicial committees would meet on a remote basis in terms of Section 43 of the Local Government in Scotland Act 2003 where a decision on an application or matter is regarded as necessary or time critical. Arrangements will also be put in place to ensure that applicants/interested parties are able to take part in the meeting, details of which are currently being developed. Such remote meeting arrangements are recommended for any other committee or sub-committee of the Council which shall also only meet during this public health emergency to consider time-critical or urgent matters.
- h) The Scrutiny and Audit Committee is a key component of the Council's corporate governance framework. It provides an independent and high-level focus on the audit, assurance and reporting arrangements that underpin good governance and financial standards. It is therefore proposed that subject to direction of the convenor/vice-convenor as appropriate that this committee would meet on a remote basis in terms of Section 43 of the Local Government in Scotland Act 2003 to consider such matters as are regarded as necessary or time critical.
- i) The above arrangements will ensure that elected members continue their democratic role, which, though more difficult to do now practically, is even more important to ensure there is local democratic accountability for decisions that can profoundly affect everyone in our communities or distinct groups and individuals and for matters to be considered in an open and transparent manner. Consequently with these special arrangements in place it is proposed that meetings of the Council and Committees as detailed in the Timetable of Meetings be cancelled for a period up until 1 June 2020, in the first instance.

Members will be aware of their appointments to various outside bodies including AngusAlive, Angus Health and Social Care Partnership, Joint Committees etc. It is for such bodies to determine how to conduct their business in light of situation and elected members should contact them to clarify what interim meeting arrangements they are putting in place.

5. EXTENSION OF OFFICER DELEGATION

The Scheme of Delegation to Officers details what certain officers can do. In addition, paragraph 5 of the Chief Executive's delegation states:-

“(5) in an emergency, to initiate action under any statutory procedure related to a function of the Council, subject to a report being made to the appropriate Committee at the first opportunity on any item for which Committee approval would normally be necessary;”

It is difficult to say how matters will progress and for how long as we are in an unprecedented situation. Following consultation with the Council's Leadership Team, it is therefore proposed that with immediate effect, the following additional delegations be granted to officers, on an interim basis during the COVID-19 pandemic. Where it is possible to do so in terms of any time constraints, the relevant officers will consult with the Leader of the Council and Leader of the Opposition.

1. Chief Executive

- i. Subject to existing officer delegations already in place, and only where there is urgency and a decision cannot wait until the next meeting of the Council or the relevant Committee or Sub-Committee to take or arrange to be taken such action as is required in accordance with the Council's statutory powers, including the incurring of expenditure:
 - i. to maintain, reduce or increase statutory services

- ii. to support the emergency services and other organisations involved in the immediate response;
- iii. to provide support services for the community and others affected by the COVID -19 pandemic
- iv. to enable the community to recover and return to normality as quickly as possible
- v. and/or to provide aid to other local authorities

subject in all instances to a report being made to Council or the appropriate Committee or Sub-Committee at the first opportunity on any item for which Council or Committee or Sub-Committee approval would normally be necessary;

2. Director Legal and Democratic Services

- i. to extend all licences granted under the Civic Government (Scotland) Act 1982 and all other civic miscellaneous Acts for a period of up to three months where there is an urgent need to avoid a Licence expiring due to non-compliance with a regulatory requirement which is outwith the control of the applicant or due to difficulties in the administration of the application process.

3. Director of Communities

- i. Delegated authority to issue or amend licences in terms of the Caravan Sites and Control of Development Act 1960.
- ii. Take such action as is necessary, including the giving of prohibition notices, to enforce the requirements of Regulations 3 and 4 of the Health Protection (Coronavirus) (Restrictions) (Scotland) Regulations 2020.

4. Director of Infrastructure

- i. Delegated authority to close Council buildings as required.
- ii. Delegated authority to suspend the application of the Council's policies in respect of the under-noted matters
 - a. allocation of housing;
 - b. unplanned repairs including the Right of Repair except in all cases of emergency repairs; and
 - c. the eviction of tenants from residential properties who find themselves in financial or other difficulties as a result of the coronavirus pandemic.
- iii. Delegated authority to reduce the provision of temporary accommodation to high risk groups.

5. Director of Education and Lifelong Learning

Delegated authority to close Council schools as required

subject to, (in all instances detailed in 2. – 5. above), a report being made to Council or the appropriate Committee or Sub-Committee at the first opportunity on any item for which Council or Committee or Sub-Committee approval would normally be necessary.

It is also proposed that the following delegations are approved. These delegations will only be exercised in the event of an emergency and where it is not possible for whatever reason to convene the relevant committee to make the decision:-

Subject to existing officer delegations already in place If, in the reasonable opinion of the Chief Executive, circumstances become such that due to the Covid-19 pandemic it is not possible to continue the business of the Council through all or any part of the interim Committee structure

detailed above, the following additional delegations will apply to the relevant officers or their nominees, as appropriate, as outlined below, subject to a report being made to Council or the appropriate Committee at the first opportunity on any item for which Council or Committee approval would normally be necessary;

1. The Chief Executive

- i. in and for the duration of the time it is not possible to continue the business of the Council through all or any part of the interim Committee structure due to the COVID - 19 pandemic to take or arrange to be taken such action as is required, including the incurring of expenditure :
 - a) to maintain, reduce or increase statutory services
 - b) to support the emergency services and other organisations involved in the immediate response;
 - c) to provide support services for the community and others affected by the COVID -19 pandemic
 - d) to enable the community to recover and return to normality as quickly as possible
 - e) and/or to provide aid to other local authorities

2. The Director of Legal and Democratic Services

- i. to determine any matter on behalf of the Civic Licensing Committee in an emergency and following consultation with the convenor of the Civic Licensing Committee, where this is possible, to determine any licence application including refusing an application and any decision to revoke or suspend a licence and to determine any other matter, which would normally be determined by the Civic Licensing Committee or to initiate action under any statutory procedure related to a function of the Civic Licensing Committee. Any such determination to be notified to members of the relevant committee or sub-committee.

3. The Service Leader Planning and Communities

- i. to determine any matter on behalf of the Development Standards Committee in an emergency and following consultation with the convenor of the Development Standards Committee where this is possible, including to determine any planning application (which will include refusing such application) and to determine any other matter, which would normally be determined by the Development Standards Committee or to initiate action under any statutory procedure related to a function of the Development Standards Committee.
Any such determination to be notified to members of the relevant committee or sub-committee.

4. The Service Leader HR – HR Policies

- i. to approve any urgent new HR Policies to Director of HR, Digital Enablement, IT & Business Support with the provision that relevant consultation has taken place with Chief Executive, Depute Chief Executive, Service Directors and Trade unions.
Any such determination to be notified to members of the relevant committee or sub-committee

5. The Director of Infrastructure,

- i. To expand Common Goods Funds as urgently required subject to agreement by the majority of all local ward members for the Common Good (without the requirements to report to Policy & Resources Committee)
- ii. Where urgently required to
 - a) Negotiate amendments to current council property (non-housing) leases with existing tenants to adjust the lease conditions/grant rental holidays or reductions

to support businesses and communities for both general fund and Common Good Fund Properties.

- b) Postpone rent reviews
 - c) Postpone the pursuit of debt from rent
- iii. Where urgently required the authority to expand general fund budget to sustain current council contractors/suppliers/service provider property related services, after consultation with the Director of Finance.
- iv. Where urgently required the authority to extend the contract period for existing contracts without retendering where the tendering is not feasible

Any such determination to be notified to members of the relevant committee or sub-committee.

All of the above delegations within paragraph 5 of this report if approved shall be deemed to fall part of the current Angus Council Scheme of Delegation to Officers.

6. FINANCIAL IMPLICATIONS

The cost of providing the licences required to allow access to the remote meetings will be met from the Provision for Additional Burdens account and shall be no more £1500. It should be noted that there will be a reduction in the cost of elected members travel expenses over this period.

NOTE: No background papers, as detailed by Section 50D of the Local Government (Scotland) Act 1973 (other than any containing confidential or exempt information) were relied on to a material extent in preparing the above report.

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