

COUNCIL

23 SEPTEMBER 2020

UPDATE TO THE CONSTITUTION

REPORT OF THE ASSISTANT DIRECTOR OF LAW AND GOVERNANCE

1.0 BACKGROUND

- 1.1 At its meeting on 25 March 2020, Council agreed additional delegations to officers, in view of the situation with the COVID-19 pandemic. These delegations were confirmed by Council at its meeting in June, and it was determined that they would be further reviewed no later than at the September meeting.
- 1.2 In addition to reviewing those delegations, this report recommends that a further amendment be made to the Delegation Scheme to confirm the Chief Officer with responsibility for matters relating to pavement licensing and that a minor amendment is made to the Overview and Scrutiny Procedure Rules. Council is also requested to note the arrangements put in place for the Sunderland Local Outbreak Board.

2. DELEGATIONS TO OFFICERS

- 2.1 At its meeting on 25 March, Council agreed an amendment to the delegations to the Chief Executive, to enable decisions to be made in cases of urgency, in order to protect the health, safety or welfare of individuals or the safety of property, or where it was not reasonably practicable for a Council, Cabinet or Committee meeting to be convened to deal with the particular matter. The full terms of the delegation are set out in the appendix to this report. Urgency provisions of this nature appear in many local authority constitutions and ensure that in the exceptional circumstances described, urgent decisions may continue to be taken, and the risk of a successful challenge being made on the basis that decisions are unauthorised, is reduced. It is therefore recommended that this provision should remain.
- 2.2 Provision was also made, on a temporary basis, for chief officers, in consultation with the relevant Chair, to take decisions which ordinarily would have fallen within the remit of a Council Committee, whether or not such decisions were of an urgent nature. This was intended, in particular, to enable decision making to continue in respect of regulatory matters, such as planning and licensing, within appropriate timescales.

Such decisions are now regularly being taken in Committee meetings, held remotely, and it is therefore proposed that the temporary arrangements should formally be discontinued with immediate effect.

- 2.3 As referred to in the report to Council on 10 June, where planning matters are considered by Committee, ordinarily there is the opportunity for those who have submitted written representations in respect of an application to also have the opportunity to make verbal representations. This procedure does not apply in respect of applications determined by the Chief Officer. While meetings have been held remotely, arrangements have been made for the officer to read out submissions received. It is now proposed that where reasonably practicable, where a person wishes to make verbal representations themselves, the officer will seek to make arrangements for them to do so. This may not be practicable in all cases, for example, because the person or individual has difficulty connecting to the meeting remotely, or, if meetings in person are able to take place, there may be issues accommodating the request within prevailing Government guidelines and safe working practices. If that is the case, or the person or organisation concerned is content for the officer to read their submission, the officer will continue to do so.
- 2.4 The report to the March Council meeting also confirmed that where legislation gives authority to officers to take specific action when they have been appointed or authorised to do so by the Council, the Chief Executive and/or other relevant Chief Officer with managerial responsibility for the function concerned, may authorise or appoint individual officers to undertake the action referred to in the legislation. This can be of particular relevance in the enforcement arena, where legislation occasionally requires certain functions to be undertaken by officers in their own name, rather than in the name of the Chief Officer.

For the avoidance of doubt, in view of the importance of the ability to designate individual officers to undertake statutory functions, particularly in the current pandemic situation, this provision should remain in effect.

- 2.5 Since the June Council meeting, the Government has introduced a system of pavement licensing, which is intended to provide a cheaper, more streamlined process for businesses such as cafés and bars to place furniture on the highway adjacent to their premises. The arrangements are to support them with operating safely, while physical distancing measures remain in place. Under the terms of the Council's current delegation scheme, this function would fall within the remit of the Executive Director of City Development. It is however a function that is considered to sit better with the licensing function, and as such, to fall within the remit of the Executive Director of Neighbourhoods. It is therefore recommended that the delegation scheme be amended to include an express authorisation to the Executive Director of Neighbourhoods "to exercise the Council's powers and functions under the Business and Planning Act 2020 in relation to Pavement Licences" and that the delegations to the Executive Director of City Development are amended to clarify that this particular function sits with the Executive Director of Neighbourhoods.

3. OVERVIEW AND SCRUTINY PROCEDURE RULES

- 3.1 Under the current Overview and Scrutiny Procedure Rules, all councillors other than Cabinet Members, Deputy Cabinet Members, Area Committee Chairs and Vice Chairs, are eligible for membership of a Scrutiny Committee. While legislation prohibits members of a Council's executive from sitting on Scrutiny Committees, there is no such prohibition on the Chairs or Vice Chairs of Area Committees. Likewise, the statutory guidance on Scrutiny Committees reminds local authorities that members of the executive may not be members of Scrutiny Committees, however it makes no recommendation in respect of Area Committee Chairs and Vice Chairs. It is therefore proposed that the Rules be amended to align with the legislative provisions and statutory guidance and that only Cabinet Members and Deputy Cabinet Members should be ineligible for membership of Scrutiny Committees.

4. LOCAL OUTBREAK CONTROL BOARD

- 4.1 The Government's COVID-19 recovery strategy requires local authorities to work with partners to put in place measures to identify and contain outbreaks and protect the public's health. Building on existing processes, relationships and structures, a Local Outbreak Control Board has been established as a Sub- group of the Health and Wellbeing Board.
- 4.2 Such Boards are also referred to as Engagement Boards (see guidance document - 'Public Health Leadership, Multi-Agency Capability: Guiding Principles for Effective Management of COVID-19 at a Local Level' [Guiding Principles for Making Outbreak Management Work](#)). The Board is expected to provide political oversight and lead communication and engagement with communities and stakeholders. Its decisions are advisory and it will, as appropriate, recommend any action to be taken to the appropriate body or organisation and, as with other sub-groups, report on its activities to the Health and Wellbeing Board. All members of the Health and Wellbeing Board are members of the Local Outbreak Control Board, plus the Leader and Deputy Leader of the Council.
- 4.3 Council is asked to note the establishment of this Sub-group of the Health and Wellbeing Board.

5. RECOMMENDATIONS

- 5.1 Council is recommended to:-
- 5.1.1 approve the arrangements for delegations to officers set out in Section 2 of the Report
- 5.1.2 approve the changes to the Overview and Scrutiny Procedure Rules set out in Section 3 of the Report

- 5.1.3 note the establishment of the Sunderland Local Outbreak Board as a Sub-group of the Health and Wellbeing Board
- 5.1.4 authorise the Assistant Director of Law and Governance to make the associated changes to the Council's Constitution, including the Scheme of Delegation to Officers.

BACKGROUND PAPERS

Council 25 March 2020: Report of Assistant Director of Law and Governance, Update to Constitution – Changes to Committee Structure and Officer Delegation Scheme

Report to Council 10 June 2020: Report of Assistant Director of Law and Governance, Review of Temporary Delegations to Officers

1 Delegations to the Chief Executive

Matters of Urgency

- 1.1 *To authorise any action reasonably necessary to protect the health, safety or welfare of individuals or the safety of property.*
- 1.2 *Where it is necessary for any function to be discharged and it is impracticable or impossible by reason of urgency for the matter to be considered by the Cabinet (or by a relevant Portfolio Holder to whom decision – making functions have been delegated), to take such action as they consider appropriate, in consultation, so far as practicable, with the Leader and relevant Portfolio Holder(s); and where there is no Leader and Cabinet all executive functions shall vest in the Chief Executive who shall be able to exercise all executive functions or authorise officers to exercise such functions.*
- 1.3 *Where it is necessary for any function of the Council or one of its committees to be discharged and it is impracticable or impossible, by reason of urgency, for the matter to be considered by the Council or such committee, to take such action as they consider appropriate, in consultation, so far as practicable, with the Mayor and Group Leaders in respect of a Council function or the relevant committee chair in respect of a matter within the terms of reference of a Council committee.*
- 1.4 *Where action is taken under the above, the Chief Executive shall submit a report to the next Cabinet, Council or Committee meeting, recording the urgent circumstances which made the action necessary and detailing the action taken.*

