

Committee: **Annual Meeting of the Council**

Date of Meeting: **2nd April, 2020**

Report Subject: **Emergency Governance Arrangements during COVID19 Outbreak**

Portfolio Holder: **Councillor Nigel Daniels, Leader of the Council**

Report Submitted by: **Andrea Jones, Head of Legal & Corporate Compliance (Monitoring Officer)**

Reporting Pathway								
Directorate Management Team	Corporate Leadership Team	Portfolio Holder / Chair	Audit Committee	Democratic Services Committee	Scrutiny Committee	Executive Committee	Council	Other (please state)
	25.03.20						02.04.20	

1. **Purpose of the Report**
  - 1.1 The purpose of the report is to put in place emergency temporary Governance arrangements in order that decisions may continue to be taken to delay and mitigate the spread and impact of Corona Virus within our community whilst protecting our workforce and residents, particularly those who are most vulnerable.
  
2. **Scope and Background**
  - 2.1 Coronaviruses are a family of viruses ranging from the common cold to more severe acute respiratory illnesses such as MERS and SARS. COVID 19 is the illness seen in people infected with a new strain of coronavirus not previously seen in humans.
  - 2.2 On 31<sup>st</sup> December 2019, Chinese authorities notified the WHO of an outbreak of pneumonia in Wuhan City, which was later classified as a new disease, COVID 19. The main symptoms are a cough, high temperature and in severe cases, shortness of breath. As there is no immunity in the population and no vaccine or anti-viral medication, the disease is spreading extensively.
  - 2.3 Indications are that the majority of people who become infected will experience a mild self-limiting illness, like seasonal flu. Some will show no symptoms at all. A proportion of those infected will develop complications and require hospital treatment, most often pneumonia. In a small proportion of these cases, the illness may be severe enough to lead to death.
  - 2.4 The risk of death increases in older people and people with an underlying health risk condition or those who are immuno-compromised. Illness is less common and usually less severe in young people. Children can be affected but illness is rare in people under 20 years of age.
  - 2.5 The UK and Welsh Governments have responded with a number of measures designed to ensure the safety of our communities including vulnerable groups

and ease the pressure on the NHS and social care. The Government has already issued a number of measures and emergency legislative enactments with a view to slowing down the spread of the virus. Enforcement provisions have been enacted and are likely to be extended in other areas, and these measures will provide Government and local government with additional powers during the emergency situation.

The measures taken by this Council to date as part of its emergency response is, amongst other things, to move to the delivery of only critical services, redeploying staff into these services, and ceasing all democratic meetings with immediate effect. It has been agreed to hold a short Council meeting in early April to deal with urgent Council business.

2.6 Decision Making during COVID 19 Emergency:

In terms of decision making powers, this Council has a scheme of delegation in operation which is described in section 13 of the Constitution "Responsibility for Functions". Certain functions, by law, can only be exercised by Full Council and these are described at Paragraph 4.6 of section 4 in the Constitution. Due to restrictions imposed by current statute, these functions are not capable of being delegated either to the Executive or to officers. At the time of writing, the Welsh Lawyers in Local Government Group is working with Welsh Government to place emergency legislation before the Senedd to address these and other issues which have arisen and which require additional powers or postponement in the current circumstances.

- 2.7 In terms of Blaenau Gwent's local scheme of delegation, section 13 of the Constitution already permits a wide range of operational issues to be determined at officer level. However, most policy determinations and major decisions which have a wider impact are reserved to the Executive for decision. Given that all meetings have been cancelled for the foreseeable future, the Council must put in place the necessary temporary emergency steps to effectively respond to the potential impact of COVID 19, and to continue to deliver critical services and protect local communities and our staff. It is impossible to plan for every eventuality, but this report seeks to provide elected members and officers with the flexibility and the delegated powers to respond to this unprecedented situation.

The proposals outlined below seek to enable urgent delegation and consultation provisions whilst still maintaining flexibility in the current circumstances. It is imperative in the circumstances that urgent decisions can be taken without delay and that there is sufficient delegation to alternative senior officers in the event of one or more becoming unexpectedly unavailable. It is proposed that the Managing Director, or her nominated deputy (being any officer comprised of the Corporate Leadership Team) shall have temporary delegated power to make Executive decisions on behalf of the Council. In addition, a temporary Emergency Committee be established in order to consider significant issues which arise and which may fall outside the Council's current agreed policy or budget framework.

The statutory power to permit such delegation is contained within section 15(2) of the Local Government Act 2000, which provisions enable a Council to arrange for functions of the Executive to be discharged by a Committee, or by Officers of the Authority.

### **3. Options for Recommendation**

#### **3.1 Option 1: (Preferred option)**

In respect of the exercise of Executive Functions as outlined in the Council's Constitution, it is recommended that the Council temporarily delegates power and responsibility for exercising Executive functions (which have not already been delegated by virtue of existing arrangements within the Council's Constitution) to the Managing Director (and in her absence or incapacity to any of her nominated deputies being any officer of the Corporate Leadership Team) to make decisions and undertake any actions required to ensure critical services continue to operate based on business continuity plans, in order to ensure the Council and its residents are protected.

In order to ensure there is appropriate involvement of Elected Members, there will be established (without further report) an Emergency Committee of Elected Members comprising the Leader of the Council, the Leader of the Labour Group, two Independent Elected Members and one Labour Elected Member, who will be consulted on decisions which may fall outside the Council's current budget or policy framework. Any urgent decisions which are required to be taken which are outside the Council's current policy and budgetary framework, must be taken in accordance with the existing provisions of Paragraph 15.5 of the Council's Constitution, with the additional proviso that the Emergency Committee must be consulted prior to any such decision being taken.

In addition, the Managing Director (or her nominated deputy) shall make all reasonable efforts to contact the Leader and/or other members of the Emergency Committee to inform him/her of the circumstances and of her/his decisions as soon as reasonably practicable.

In the event that a Member of the Emergency Committee becomes unavailable, they may nominate a substitute. The Emergency Committee may conduct its business by email, telephone or using any digital means at their disposal. It is not intended that there be a minimum "quorum" for this Committee. The details of the communication arrangements may be agreed between the Managing Director and the Leader of the Council or their nominated substitutes. The arrangements will continue until further notice.

In terms of existing delegated powers i.e. those which are delegated in the Constitution to named Directors/Senior Officers, for the avoidance of doubt, the Managing Director shall be entitled to exercise any functions otherwise delegated to a Chief Officer in the event of that officer's absence or inability to exercise specific delegated powers, or in an emergency.

All decisions taken as a result of this temporary delegation shall be recorded on a "Decision Notice" and (unless deemed "Exempt Information" by the

Council's Monitoring Officer) displayed for public access purposes on the Council's website, as soon as is reasonably practicable.

3.2 **Option 2:**

That the current scheme of delegation remains unaltered and any decisions which may lawfully only be taken by the Executive may remain extant until such time as normal business may resume. This may have an adverse impact on critical services and vulnerable service users and residents.

4. **Evidence of how does this topic supports the achievement of the Corporate Plan / Statutory Responsibilities / Blaenau Gwent Well-being Plan**

5. **Implications Against Each Option**

5.1 ***Impact on Budget (short and long term impact)***

At this juncture, the extent of the overall possible impact arising from the Pandemic upon the Council's budgetary provision is not known. Further reports will follow in this respect. In terms of the narrower issue of whether the emergency arrangements will impact on current budget, it is not anticipated that the proposals outlined in this report will have a significant impact.

5.2 ***Risk including Mitigating Actions***

**Option 1:**

There is a risk that some or all of the Corporate Leadership Team may become ill and be unable to fulfil the requirements. Likewise, there is a risk that some or all of the Elected Member Emergency Committee will be unable to participate, but these risks have been mitigated by permitting substitutions and nominated deputies.

**Option 2:**

There is a risk that key decisions will not be taken and this could have an impact upon service delivery, existing and future priorities and responses to the emergency could also be affected. This risk cannot be effectively mitigated. This may have an adverse impact on critical services and vulnerable service users and residents.

5.3 ***Legal***

Section 15 of the Local Government Act 2000 makes specific provision to permit delegation to officers. Council decision making is always an area which carries a risk of Judicial challenge and when arrangements are altered this risk is heightened. If the Council can demonstrate it has attempted to adhere to the principles of reasonableness, democratic fairness and natural justice then it is in a better position to defending any challenge. Accurate record keeping and in particular the use of Decision Records will also assist the Council to minimise risk of challenge. It is also likely that the exceptional circumstances facing all UK public authorities will be taken into account in any subsequent judicial examination.

5.4 ***Human Resources***

There are staffing issues as a consequence of the Pandemic but that is not the subject of this report.

6. **Supporting Evidence**

6.1 ***Performance Information and Data***

This is a rapidly evolving and unprecedented situation and as such no historical data is available.

6.2 ***Expected outcome for the public***

This report is intended to put into place emergency provisions to ensure the continuity of Council business and response in an emergency situation, therefore it is in the interests of the public that such provisions are implemented.

6.3 ***Collaboration / partnership working***

It should be noted that most other Councils in Wales are adopting similar emergency measures in terms of temporarily increasing delegated powers to senior officers.