

To: Chief Executive
Date: 31 March 2020
Report of: Head of Law and Governance
Title of Report: Use of the emergency powers delegated to the Head of Paid Service (Chief Executive) to adopt a temporary “business continuity” version of the Oxford City Council Constitution

Summary and recommendations	
Purpose of report:	To recommend the use of the Chief Executive’s emergency powers to adopt a “business continuity” version of the Council’s Constitution whilst business continuity measures are invoked during the Covid 19 pandemic.
Key decision:	No
Cabinet Member:	Councillor Susan Brown, Leader of the Council.
Recommendation(s): That the Chief Executive resolves to:	
<p>1. Adopt for a temporary period while business continuity measures are invoked during the Covid 19 pandemic a revised version of the Oxford City Council Constitution using the emergency powers delegated in Part 9.3(c) of the Constitution, based on the revisions to the Constitution adopted by Council on 27 January 2020 set out in Appendix 1 that:</p> <ul style="list-style-type: none"> i. Authorise the Chief Executive to cancel and to call meetings of Council without consultation (Parts 11.5 and 11.6). ii. Authorise the Head of Law and Governance to cancel and to call meetings of non-executive committees and sub-committees without consultation, including cancelling meetings where there would be sufficient business for a meeting to take place (Parts 13.4 & 14.6). iii. Clarify the arrangements for single Cabinet Member decision making, should the Leader choose to delegate any executive decisions currently reserved to Cabinet to individual Cabinet Members. iv. Authorise the Head of Planning Services to determine planning applications normally reserved to area planning committees (Part 5.3) in accordance with a protocol (Appendix 2), until such a time as meetings can be convened. 	

- v. Suspend the call in procedures (Part 17) for all executive and planning decisions until such a time as meetings can be convened.
 - vi. Authorise the Head of Regulatory Services and Community Safety to determine all licensing applications (Parts 5.6 and 5.7) with the exception of any applications that require a hearing and cannot be delegated in law, until such a time as meetings can be convened.
2. **Delegate** authority to the Head of Law and Governance to make minor textual changes to the proposed wording of the revised business continuity version of the Constitution set out in Appendix 1 and to make any other consequential amendments that may be required.
 3. **Instruct** the Head of Law and Governance to publish the revised business continuity version of the Constitution (as amended) on the Council website.
 4. **Delegate** authority to the Head of Law and Governance to amend the business continuity version of the Constitution as required in response to events or following the implementation of regulations brought forward under the Coronavirus Act 2020 or changes to such regulations, for example to facilitate virtual meetings or to reinstate normal constitutional arrangements where physical meetings can be legally and safely convened, and, if necessary, to revert back to the arrangements set out in Appendix 1 if restrictions on public gatherings are re-imposed in future.

Appendices	
Appendix 1	Proposed revisions to the Constitution for business continuity
Appendix 2	Business Continuity Planning Protocol

Introduction and background

1. The Council is advised to temporarily adopt some revised constitutional governance arrangements in order to ensure continuity of decision making during the COVID-19 novel coronavirus pandemic.
2. The Government announcement on 23 March 2020 that public gatherings of more than two people from different households are banned for a period that will be reviewed after three weeks (13 April) means that it is not possible for meetings to be held until such a time as the restrictions are lifted or remote meetings are enabled in regulations and suitable technology is in place to support this.
3. The restrictions on public gatherings mean that Council is unable to meet to agree changes to its Constitution in order to ensure that member-level decisions can continue to be taken. Part 9.3(c) of the Constitution, as adopted at a meeting of Council on 27 January 2020, before the pandemic was declared, delegates authority to the Head of Paid Service (Chief Executive) to:

authorise any emergency action required on any matter which shall include incurring expenditure, including those falling within the jurisdiction of a Committee or the Cabinet. The Head of Paid Service, in so acting, will be guided by the budget and policy framework, will consult the other Statutory Officers before acting and will

report, in writing, as soon as practicable to the body which would otherwise have been required to give the necessary authority to act.

4. In the circumstances it is considered necessary and appropriate that this power be used to revise the Council's constitutional arrangements in order to enable the Council to continue to conduct its business and take decisions effectively.
5. The Council ordinarily wishes to ensure a high degree of member and public oversight of and engagement in its decision making processes but these considerations must be balanced against the risk to health and life posed by the pandemic and the restrictions on public gatherings which may be enforced by the police.

The cancellation and arrangement of meetings

6. The Coronavirus Act 2020 passed through the parliamentary process and was given Royal Assent on 25 March 2020. Section 78 of the Act specifically allows the Secretary of State to make regulations in respect of local authority meetings. Whilst the timing and content of any such regulations remains uncertain, it is expected that any such regulations would allow local authority meetings to be conducted without members needing to be present in person to join, speak at, vote in or otherwise participate in a meeting.
7. In the meantime, to enable the Council to conduct its business and take decisions effectively in response to changing advice from Government, potential changes to restrictions on public gatherings and the possible unavailability of key individuals with constitutional roles (e.g. committee chairs), it is recommended that the relevant officers are authorised to cancel and reschedule meetings as may be required. For Council meetings this is the Chief Executive and for other non-executive meetings it is the Head of Law and Governance. If these officers were unable to act this authorisation would pass to other officers nominated by them in a scheme of authorisation, providing resilience as well as flexibility.

Executive decision making

8. The Local Government Act 2000 governs how executive decision making can be operated by a local authority. The preference of successive administrations of this Council has been for major decisions to be made collectively by Cabinet (formerly City Executive Board) and this is reflected in the Council's constitutional arrangements for Cabinet decision making. The Leader is able to amend the executive scheme of delegation set out in Part 4 of the Constitution and could choose to delegate executive decisions, including those currently reserved to Cabinet (Part 4.5), to individual Cabinet Members in order to provide for continuity of decision making and greater flexibility.
9. As the Council has no established practice of operating single Cabinet Member decisions it is considered prudent to include in the business continuity version of the Constitution the process for how any such decisions would be taken, including a requirement that decisions are informed by written reports, timescales and provisions for openness and conflict of interests.
10. It is recommended that the call in procedure for executive decisions is temporarily suspended while it is not possible to convene a meeting to hear a call in. This applies to Cabinet-level decisions, key decisions delegated to officers and ward member spend. Any call in of an executive decision while meetings cannot be

convened would serve to delay the implementation of the decision for an indefinite period which may have detrimental impacts on the Council and communities in the city. It is envisaged that member visibility of ward member spend would continue through weekly emails to all members albeit without the ability for members to call in particular allocations.

Planning

11. To enable the determination of planning applications until such a time as meetings can be convened it is recommended that all planning decisions currently reserved to area planning committee be temporarily delegated to the Head of Planning Services. In determining such applications the Head of Planning Services would follow a protocol (attached as Appendix 2) which makes provisions for public information packs, consultation with a committee chair or vice chair as a minimum and a mechanism for members to submit comments within strict deadlines.
12. It is also recommended that there will temporarily be no call-in, either of applications from the weekly planning list to area planning committees, or of decisions of area committees to the Planning Review Committee, until such a time as meetings can be convened. It is not possible to operate an effective call in or review process where there is no higher body that could independently review the decisions of the Head of Planning Services.

Licensing

13. To enable the determination of licensing applications until such a time as meetings can be convened it is recommended that all licensing decisions currently reserved to licensing committees and sub-committees be delegated to the Head of Regulatory Services and Community Safety. This includes taxi and private hire vehicle licensing and the licensing of alcohol, entertainment and late night refreshments, sex establishments and gambling.
14. The exception would be the determination of any premises license application under the Licensing Act 2003 where a hearing is required in law and cannot be delegated. Ordinarily such hearings tend to be infrequent and would only proceed if the matter could not be resolved informally. Any such hearings would take place once restrictions have been lifted or remote meetings enabled.

Financial implications

15. There are no financial implications arising directly from the recommendations in this report.

Legal issues

16. The legal issues related to local authority meetings and decision making are discussed in this report.

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Background Papers: None
