Amendments to the Constitution: Provisions to provide clarity and accountability in emergency scenarios

Proposed amendments to the Council’s Constitution to provide clarity and improve provision for the Council to continue functioning in any future emergency situation.

Report Author
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Corporate Priority: Administrative
Decision type: Administrative
Wards: All Wards

Reviewed by: Shahin Ismail, Director of Law and Governance 30 April 2020
Approved by: Karen Bradford, Chief Executive 5 May 2020
Signed off by: Councillor Kelham Cooke, the Leader of the Council 5 May 2020
Councillor Linda Wootten, Chairman of the Constitution Committee

Recommendation (s) to the decision maker (s)
1. It is recommended that the Council approves the following additions to its Constitution
   a) Powers of the Chief Executive
      Add at Article 16, Functions of the Chief Executive:
Emergency powers

In an emergency, the Chief Executive (and any officer(s) authorised by the Chief Executive) is authorised to take any and all action(s) he/she considers appropriate to protect and/or further the best interests of the Council, the district of South Kesteven and/or the public, subject to:

i) Consultation with the Leader of the Council or in his/her absence the Deputy Leader and any appropriate member of the Cabinet

ii) A report of the action taken and the reasons behind it being presented to the next meeting of the Cabinet, the Council or the relevant Committee

This includes exercising the Council’s powers under Section 138 of the Local Government Act 1972 to incur expenditure (regardless of whether the value would equate to a key decision) and to suspend aspects of business as usual to enable the Council to comply with its duties under the Civil Contingencies Act.

If the Chief Executive is unwell, unobtainable or unable to act or where there is no Chief Executive in post, a Strategic Director may act in their absence.

b) Contingency arrangements in the absence of the Leader of the Council

To add a new section at Article 8.3:

(c) Deputy Leader

The Deputy Leader will be a Councillor who is appointed to the position by the Leader of the Council.

- Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his or her place
- If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader will act in his or her place until a new Leader can be elected by Council
- If for any reason the Leader is unable to act or the office of Leader is vacant, and the Deputy Leader is unable to act or the office of Deputy Leader is vacant, the Cabinet must act in the Leader’s place, or arrange for a Cabinet Member to act in his or her place until a new Leader can be elected

c) Postponement of meetings

To be added at Article 4 of the Constitution between Article 4.43 (Extraordinary meetings) and Article 4.5 (Appointment of Substitute Members of Committees and Sub-Committees)

Postponement of meetings (full Council)

Where exceptional circumstances apply and the Chairman of the Council, following consultation with the Vice-Chairman of the Council and the Chief Executive and the Leaders of the political groups, considers that attendance at a convened meeting of the full Council would involve health and safety issues (e.g. pandemic, civil emergency, inclement weather, etc) the Chairman of the Council may postpone the meeting. Following postponement, notification must immediately be given to all members of the Council and to the press and notice of the postponement must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as required by law) shall be given of the new date for the meeting.
To be added at each committee article:

**Postponement of meetings (committees)**

Where exceptional circumstances apply and the Chairman of the Committee, following consultation with the Vice-Chairman of the Committee and the Chief Executive, or any officer so nominated by them, considers that attendance at a convened meeting of the Committee would involve health and safety issues (e.g. pandemic, civil emergency, inclement weather, etc.) the Chairman of that Committee may postpone the meeting. Following postponement, notification must immediately be given to all members of the Council and to the press and notice of the postponement must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as required by law) shall be given of the new date for the meeting.

1 **The Background to the Report**

1.1 In March 2020 restrictions associated with the Coronavirus pandemic affected the way in which the Council was able to make decisions. Social distancing and restrictions on movement meant that meetings were not able to go ahead in the normal way. At the start of the pandemic there was no provision within legislation to enable remote meetings.

1.2 To ensure that Executive decision-making could continue, the Leader of the Council reviewed his Scheme of Delegation. This change saw Cabinet Members retain responsibility for their remits and non-key decisions but reserved the making of Key Decisions to the Leader of the Council, rather than Cabinet Members sitting as a collective. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 includes provisions that enable Executive decisions to be taken as a matter of urgency.

1.3 As the situation progressed, the Council considered the guidance provided by professional bodies regarding arrangements that could be put in place to allow decision-making to continue. It became clear that the Council’s Constitution was silent on emergency provisions as well as some contingency arrangements.

1.4 The extent of the powers of the Chief Executive are not clearly stipulated in the Council’s Constitution.

1.5 There is no provision of law to cancel meetings once the summons has been issued but it is an acceptable practice to postpone them. When the COVID-19 restrictions came into effect, the summons had been issued for meetings of the Employment Committee and the Governance and Audit Committee. These meetings were postponed but there is no clear direction in the Council’s Constitution about the process that should be followed and who should be consulted. Adding a provision setting out arrangements for the postponement of meetings would also provide clarity around a process that could be followed during period of severe, inclement weather when travel is not safe.

1.6 The pandemic also raised questions around contingencies including who could act if the Leader was unable to act. In some circumstances it may be possible to control this through the Leader’s Scheme of Delegation, however, should the Leader become suddenly indisposed these issues could not be addressed.
2 Consultation and Feedback Received, Including Overview and Scrutiny

2.1 The Chairman of the Constitution Committee has been consulted in the preparation of this report and is supportive of the proposals.

3 Available Options Considered

3.1 The Council could choose not to amend its Constitution however this would not provide the clarity that would assist at the time of an emergency incident.

4 Preferred Option

Powers of the Chief Executive

4.1 The extent of the powers of the Chief Executive would benefit from being made more explicit. It is therefore proposed the following addition to Article 16 of the Council’s Constitution under the functions of the Chief Executive:

**Emergency powers**

*In an emergency, the Chief Executive (and any officer(s) authorised by the Chief Executive) is authorised to take any and / all action(s) he/she considers appropriate to protect and / or further the best interests of the Council, the district of South Kesteven and / or the public, subject to:*

   a) *Consultation with the Leader of the Council or in his / her absence the Deputy Leader and any appropriate member of the Cabinet*

   b) *A report of the action taken and the reasons behind it being presented to the next meeting of the Cabinet, the Council or the relevant Committee*

   This includes exercising the Council’s powers under Section 138 of the Local Government Act 1972 to incur expenditure (regardless of whether the value would equate to a key decision) and to suspend aspects of business as usual to enable the Council to comply with its duties under the Civil Contingencies Act.

   If the Chief Executive is unwell, unobtainable or unable to act or where there is no Chief Executive in post, a Strategic Director may act in their absence. In the absence of a Strategic Director, any Director may act.

Contingency arrangements in the absence of the Leader of the Council

4.2 The Leader of the Council has appointed a Deputy Leader, who is able to act in his absence or where he is unable to act. As the Deputy Leader of the Council derives their authority from the Leader, the line of succession is not clear should the Leader cease to hold office. It is therefore proposed a new section is added at Article 8.3:

   (c) **Deputy Leader**

   *The Deputy Leader will be a Councillor who is appointed to the position by the Leader of the Council.*

   o *Where a vacancy occurs in the office of Deputy Leader, the Leader must appoint another person in his or her place*

   o *If for any reason the Leader is unable to act or the office of Leader is vacant, the Deputy Leader will act in his or her place until a new Leader can be elected by Council*

   o *If for any reason the Leader is unable to act or the office of Leader is vacant, and the Deputy Leader is unable to act or the office of Deputy Leader is vacant,*
the Cabinet must act in the Leader’s place, or arrange for a Cabinet Member to act in his or her place until a new Leader can be elected.

**Postponement of meetings**

4.3 There is no clear direction in the Constitution about the postponement of meetings in the event of an emergency. To provide some structure it is therefore proposed that the following should be added:

**Postponement of meetings (full Council)** [to be added at Article 4 of the Constitution between Article 4.43 (Extraordinary meetings) and Article 4.5 (Appointment of Substitute Members of Committees and Sub-Committees)]

Where exceptional circumstances apply and the Chairman of the Council, following consultation with the Vice-Chairman of the Council and the Chief Executive and the Leaders of the political groups, considers that attendance at a convened meeting of the full Council would involve health and safety issues (e.g. pandemic, civil emergency, inclement weather, etc) the Chairman of the Council may postpone the meeting. Following postponement, notification must immediately be given to all members of the Council and to the press and notice of the postponement must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as required by law) shall be given of the new date for the meeting.

**Postponement of meetings (committees)** [to be added at each committee article]

Where exceptional circumstances apply and the Chairman of the Committee, following consultation with the Vice-Chairman of the Committee and the Chief Executive, or any officer so nominated by them, considers that attendance at a convened meeting of the Committee would involve health and safety issues (e.g. pandemic, civil emergency, inclement weather, etc.) the Chairman of that Committee may postpone the meeting. Following postponement, notification must immediately be given to all members of the Council and to the press and notice of the postponement must be posted at the Council Offices and on the Council’s website. Where a meeting is postponed, no less than five clear working days’ notice (or such other period as required by law) shall be given of the new date for the meeting.

5 **Reasons for the Recommendation (s)**

5.1 The proposed amendments are based on provisions that exist in the constitutions of other local authorities, including South Holland, Rutland, North Kesteven, Cherwell and South Northants, Mansfield, Nottinghamshire, Camden, Wandsworth, Manchester and Nottingham) and adapted to suit the existing working arrangements used by the Council. To add them to South Kesteven’s Constitution would provide clarity around who has authority to act and improve the response time following an emergency to reach a position where a range of decisions could be made. Specific constitutional provision would also assist transparency for decision-makers, the wider membership of the Council and members of the public about who may do what under such circumstances.

6 **Next Steps – Communication and Implementation of the Decision**

6.1 If agreed, the new provisions will be added to the Council’s Constitution.
7 Financial Implications
7.1 There are no specific financial comments arising from this report.
Financial Implications reviewed by: Richard Wyles, Interim Director of Finance

8 Legal and Governance Implications
8.1 There are no further legal and governance implications to those raised within the report.
Legal Implications reviewed by: Jo Toomey, Head of Governance

9 Equality and Safeguarding Implications
9.1 There are no equality and safeguarding implications arising from this report.

10 Risk and Mitigation
10.1 Risk has been considered in the preparation of the report. The proposals included within it are designed to ensure that the Council can continue to function in the event of an emergency.

11 Community Safety Implications
11.1 There are no community safety implications arising as a result of this report.

12 How will the recommendations support South Kesteven District Council’s declaration of a climate emergency?
12.1 This report has no carbon impact.

Report Timeline:

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<th>Report Timeline:</th>
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