

Meeting of:	Cabinet
Date of Meeting:	Thursday, 25 January 2024
Relevant Scrutiny Committee:	All Scrutiny Committees
Report Title:	Use of the Chief Executive's Emergency Powers
Purpose of Report:	To notify Cabinet of the exercising of Emergency Powers by the Chief Executive since the last report on 30th November, 2023.
Report Owner:	Executive Leader and Cabinet Member for Performance and Resources
Responsible Officer:	Rob Thomas, Chief Executive
Elected Member and Officer Consultation:	None required as the Constitution requires that any Emergency Powers approved be reported to Cabinet for information.
Policy Framework:	This is a matter for Executive decision by Cabinet. All actions fall within Paragraph 1 of the Chief Executive's Delegated Powers set out on page 319 of the Council's Constitution.
<p>Executive Summary:</p> <p>To advise Cabinet of the exercising of Emergency Powers by the Chief Executive since the last report of 30th November, 2023.</p> <p>The Council's Constitution at page 319 (delegated powers) states:</p> <p>1. Power to act, after consulting the appropriate Cabinet Member and, in the case only of matters involving the Council in financial commitments, the Leader(s), Section 151 Officer and the appropriate Chief Officer, in respect of any matter which, in his opinion:</p> <p>(a) requires immediate action; and</p> <p>(b) does not justify holding a special meeting of the body which would ordinarily consider the matter or is of such urgency or emergency as not to allow time for such a meeting; use of such delegated powers to be subsequently reported back to the Cabinet or Council as appropriate."</p>	

Recommendation

1. That the use of the Chief Executive's Emergency Powers be noted.

Reason for Recommendation

1. To inform Cabinet.

1. Background

- 1.1 The Emergency Powers Procedure was approved by Minute No. 95, 2012/13.

2. Key Issues for Consideration

- 2.1 To note the following use of the Chief Executive's Emergency Powers since the last report of 30th November, 2023.

(a) Docks Office External Stonework Repairs.

Funding was required to replace identified external balusters, Key stone (voussoir) and stonework following an assessment of the external stonework conducted on the Docks Offices. The cost of the above works was estimated to be £44k.

The use of Emergency Powers was sought so that works could be procured as soon as possible. It was requested within the 2023/24 Capital Programme to vire £30,739 from the All Services Asset Renewal budget to the new scheme. It was requested to vire the remaining budget required of £13,261 from the Central Promenade Café Roof scheme as that scheme was currently uncommitted and works could not be carried out on the scheme with the current budget available.

(Scrutiny – Corporate Performance and Resources)

(b) Wales and West Housing, Rhoose.

Due to the need to complete the construction of the active travel route on Station Road, Rhoose, which was grant funded by Welsh Government and had an expiration date of 31st March, 2024, there was an urgent need to purchase the land identified on Havant Close.

The use of Emergency Powers was sought to progress the urgent land acquisition at Havant Close for the construction of a footway/cycleway. In order to progress the urgent land acquisition there was a need to concurrently sell the surplus land at Heol y Pentir, Rhoose.

(Scrutiny – Environment and Regeneration)

(c) Sustainable Communities for Learning – Procurement of Multi-Disciplinary Consultancy Services for Sustainable Communities for Learning Rolling Programme and other Projects.

The Vale of Glamorgan had successfully delivered 9 new school projects which formed Band B of the Council’s Sustainable Communities for Learning Schools Programme to date. The Band B Programme commenced in 2019 and was to conclude in 2024.

Over the coming months the Council would be developing its new strategic investment programme to deliver the new Rolling Programme which was to be delivered over 9 years split into 3 year increments (Years 1-3, Years 4-6, Years 7-9).

The Council was required to place a commission with a multi-disciplinary team to help deliver the Programme with the Learning and Skills Directorate, as well as supplying the relevant consultancy expertise to other projects identified within the Council's property portfolio as and when required.

The appointed consultancy team would help consider options and assist in option appraisals as well as contribute to the development of the Rolling Programme strategic outline programme (SOP) and individual business cases. The consultancy team would help prepare and deliver the individual projects within it, as done previously with the Band B programme

The use of Emergency Powers was sought:-

- a. To seek approval for the acceptance of the competitive tender of AECOM Ltd for the provision of multi-disciplinary consultancy services.
- b. To have an appropriate contract in place with the successful bidder for the multi-disciplinary consultancy service.
- c. To enable the successful bidder to carry out the consultancy services as and when required under the call-off contract.

(Scrutiny – Learning and Culture)

(d) Grant of Lease of Corntown Pavilion and Recreation Field.

The proposed transfer of the Facility to Vale United FC was approved in the Cabinet report on Single use sports facilities in February 2023. However, it had since been established that the Council was not the freeholder of the Facility. In fact, the Council only hold a lease on the Facility, that was itself transferred to the Council in 1996 due to Local Government re-organisation. Therefore, to transfer responsibility for the Facility to Vale United FC the Council would need to negotiate a surrender of its current lease which would enable the Freeholder to enter into a new lease with Vale United FC. pitches.

The use of Emergency Powers was sought:-

- To negotiate a surrender of the lease that the Council holds for the Corntown Pavilion (“the Facility”) with the Freeholder (the Picton Turberville trust, or their agent), to allow responsibility for the Facility to pass from the Council to Vale United FC in accordance with the Single Use Sports Facility principles. By

surrendering its lease, the Council would enable Vale United FC to enter into a direct lease arrangement with Picton Turberville and any responsibility the Council has for the land in question would cease.

- To delegate authority to the Monitoring Officer/Head of Legal and Democratic Services/Operational Manager Legal Services to complete all required legal documentation in respect of the surrender of the Council's lease to enable the Picton Turberville estate to enter into a new direct lease with Vale United FC.

(Scrutiny – Healthy Living and Social Care)

(e) Holton Primary School – Reroofing of Infants Block.

Funding was allocated in the Capital Programme for the re-roofing of various blocks at Holton Primary School. Following a tender process, a contractor could now be appointed to undertake the works, which could be delivered within available resources.

In accordance with the requirements of Contracts Procurement Rule 18.15.2 (c)(iii), the use of Emergency Powers was sought to appoint SMK Building & Maintenance Ltd to undertake the work.

(Scrutiny – Learning and Culture)

(f) Waterfront Campus Site and Air Raid Shelter.

The purpose of the request was to seek approval for the Director of Place to urgently secure at the Innovation Quarter:

- a) the Waterfront Campus site; and
- b) an Air Raid Shelter on a Council owned Embankment

The use of Emergency Powers was sought to:-

- i. fund proposed security works from a capital receipt raised from the recent disposal of land (in accordance with Cabinet Minute C511 and C517) by virtue of a lease to DS Properties (aka the Reversionary Lease) of strip of land at the Goodsheds; and
- ii. to amend the Capital Programme for 2023/24 accordingly.

(Scrutiny – Environment and Regeneration)

(g) Grant of Letters of Administration.

On 9th June, 2023 an application was submitted under Oath, by Gaynor Jones OM, Commissioning and Finance, Social Services, on behalf of the Council under s.116 of the Senior Courts Act 1981 for a Grant of Letters of Administration in respect of the estate of LH, deceased.

An application was made by the Council to obtain a Grant of Letters of Administration for the estate in the capacity of a creditor in order to sell the property to recoup outstanding care fees, via an order under s.116 of the Senior Courts Act 1981.

In order to progress the application, which had been referred to the Registrar, a direction had been made requesting a certified copy of the document which gives Gaynor Jones power to act on behalf of the Vale of Glamorgan Council for the application, with reference to the Constitution or nomination form. No current delegation existed.

The use of Emergency Powers was sought to:-

- Provide authority to the Operational Manager Commissioning and Finance to act on behalf of the Council in respect of the s.116 Senior Courts Act 1981, made under oath, to the Probate Registry for a Grant of Letters of Administration in respect of the estate of the late LH.
- Enable the application to be progressed to administer the estate, paying all debts owed and distributing the balance once the debts have been paid, in accordance with the intestacy rules.

(Scrutiny – Healthy Living and Social Care)

(h) Pendoylan Primary Wall Repairs.

A request had been made in the Capital Monitoring Report (Agenda Point 7) at the Cabinet Meeting on 16th November, 2023 to include a new scheme for Pendoylan Primary School Wall Repairs with a budget for £70k in the 2023/24 Capital Programme.

The use of Emergency Powers was sought to increase the Pendoylan Primary Wall Repair scheme by £30k to be funded by the underspend on the Safeguarding and Safety for External Boundaries.

(Scrutiny – Learning and Culture)

(i) Hwb Programme.

Funding allocation for financial year 2023-2024 had been confirmed from Welsh Government through all Wales EdTech Commercial Service for £495k to support the expenditure through the All Wales EdTech Commercial Service. This grant would be retained by Welsh Government; however, the Council could purchase goods up to this value through the catalogue via Caerphilly.

The use of Emergency Powers was sought to increase the 2023-24 Capital Programme by £522k to be funded from the £495k allocation from Welsh Government and £27k, revenue contribution from each school's budget.

(Scrutiny – Corporate Performance and Resources)

(j) Low Carbon Heat Grant.

The Council had been awarded a Low Carbon Heat Grant from the Welsh Government Energy Services to retrofit an air source heat pump at Ysgol Bro Morgannwg (primary school). The air source heat pump (ASHP) will replace gas boilers and provide both heat for both the existing heating and domestic hot water services.

The Grant award was set out as below:

Confirmed award Year 1 (2023-24): a maximum of £80,100.00 (90% of the Eligible Costs, whichever was less.

Provisional award Year 2 (2024-25): a maximum of £193,500.00 or 90% of the Eligible Costs, whichever was less. Note that this was an indicative allocation and Year 2 commitments were subject to a confirmed budget allocation within Welsh Government.

The use of Emergency Powers was sought to increase the 2023/24 and 2024/25 Capital Programme by £273.6k, to be funded from the Welsh Government Energy Services Grant and £45.6k from the Project Zero Reserve. If the second year provisional grant award of £193.5k was not awarded then that would be required to be funded from the Education Asset Renewal budget.

(Scrutiny – Learning and Culture)

(k) 3 Cross Common, Dinas Powys.

The costs for renovations had been costed and plans drawn up, with the cost of the contract being between £120k and £130k, allowing for contingencies. The renovations would be fully funded by Safe Accommodation Capital monies received this year.

The use of Emergency Powers was sought:-

- To request exemption from contract procedure rules under 17.4.1 (f) and request delegated authority to accept the tender bid price within the cost plan estimate and for the Head of Legal to execute the JCT contract.
- To enable those urgent works to be completed within the financial year utilising grant capital monies before year end.
- To complete identified renovations at 3 Cross Common, Dinas Powys so it could be used for emergency accommodation for children and young people who needed to be looked after in an emergency.
- To enable savings to be achieved as a priority for the Council.
- To give a direct award to ARC Contracting who could complete works within the financial year.
- To utilise already awarded Safe Accommodation Capital monies within the financial year.
- To include the scheme with a budget of £130k in the Capital Program 2023/24 funded by the above grant.

(Scrutiny – Healthy Living and Social Care)

(l) Cowbridge Leisure Centre - Boiler Renewal.

Leisure Centres were managed by Legacy Leisure through an agreement with the Council under which the Council were responsible for major repairs and renewal of heating plant. Of the original two gas fired heating boilers at Cowbridge Leisure Centre, one had now ceased to function completely, and the other was beyond its planned economic life and was in an extremely poor condition. Regular costly repairs were required to ensure its continued operation which was hampered by the decreasing supply of available spares. The remaining boiler was now breaking down on a very regular basis. The project was to renew the existing boiler plant, control system and all associated pipework.

There was currently £140k approved in the 2023/24 Capital Programme for Cowbridge Leisure Centre Boiler Renewal. The scheme had been tendered and the costs had come in over budget, and a total budget of £203k was required.

The use of Emergency Powers was sought to increase the budget for the Cowbridge Leisure Centre Boiler Renewal scheme by £63k to give a new scheme budget of £203k on the 2023/24 Capital Programme.

(Scrutiny – Healthy Living and Social Care)

(m) Regularising Suez Recycling and Recover UK Contract.

The Council had historically held short-term contracts with Suez Recycling and Recovery UK for the processing of dry commingled recycling material which had reflected the service arrangements in place between 2019 and the inception of the current service in February 2023.

The use of Emergency Powers was sought to regularise the position in relation to the historical unsigned contract[s] as Cabinet previously resolved to enter into. This would enable progression and completion of the existing Contract that remained applicable to current service delivery. This would replace previous versions, resolving the outstanding issues and removing the necessity to sign off previous versions.

(Scrutiny – Environment and Regeneration)

(n) Procurement of Local / Regional Bus Services.

The 'Bus Emergency Scheme' (BES) provided by Welsh Government to help support local bus services throughout Wales came to end in July 2023 and was subsequently replaced by the less generous 'Bus Transition Fund' (BTF) from 25th July, 2023 for the current financial year 2023-24 only. However, the BTF funding provided was not expected to maintain the existing network much beyond January 2024.

The Vale of Glamorgan Council had publicised an open tender on Sell2Wales for Services 88, 89A/B (305), 93, 100, 303, 304, 320, 321, B1/B2, B3 and X2. Timetables tendered had been based on current timetables for Services 89A/B, 93, 100, 303, B1/B2 and X2; revised timetables from 8th January for Services 304, 320, 321, B3 and 305 (i.e., a streamlined 89A/B); and former timetable for Service 88 that was cancelled post-BES.

The use of Emergency Powers was sought to progress the procurement exercise for local/regional public bus services and to:-

- a. Agree to the tender process being undertaken and officers evaluating submissions and providing information to colleagues with the Cardiff Capital Region (CCR) in order to ascertain what the new South East Wales bus network would look like.
- b. Provide authority for the Head of Neighbourhood Services and Transport, in conjunction with the Cabinet Member for Sustainable Places, to make decisions on a regional basis on which bus services are funded from 1st April, 2023 within available funds (Council budget, Bus Service Support Grant, additional Welsh Government funding), following the tender exercise.
- c. Provide authority for the Head of Legal and Democratic Services to progress and complete the necessary legal agreements required.

(Scrutiny – Environment and Regeneration)

(o) Cap on Safe and Legal Routes.

The Illegal Migration Act placed a duty on the Secretary of State for the Home Department to introduce an annual cap on the number of entrants using safe and legal routes to the UK. The cap provided a considered approach to the way the UK's safe and legal routes would function in the coming years.

The cap would be set on an annual basis, to be determined after consultation with representatives of Local Authorities. It would be amendable for example in the event of humanitarian crises. An annual limit on the number of entrants would ensure the UK accepted through safe and legal routes no more people than could be accommodated and supported effectively.

The UK Government was consulting with Local Authorities who provided housing or support to resettled individuals in the UK to establish how many entrants they would be able to receive and support to resettle into their areas.

The cap on safe and legal routes which included UK Resettlement Scheme (UKRS), the Afghan Citizens Resettlement Scheme (ACRS) Pathways 2 and 3 (stage 2), and Community Sponsorship.

The use of Emergency Powers was sought:-

- To approve the Vale of Glamorgan Council's participation in the resettlement of vulnerable refugees through safe and legal routes.
- To agree to enable the resettlement of up to four families in the Vale of Glamorgan during the first year, conditional upon the availability of resources, specifically school places and affordable (not social), sustainable accommodation.
- Subject to Recommendations 1 and 2 above, that delegated authority be granted to the Director of Environment and Housing Services, in consultation with the Cabinet Member for Public Sector Housing and Tenant Engagement, to progress the arrangements for the delivery of resettlement through safe and legal routes.

(Scrutiny – Homes and Safe Communities)

(p) Extension of the existing 'Supply and Fit of Tyres' contract for 4 months to Mobile Tyre Services (MTS) to allow time to tender and award a new contract.

The current contract to Mobile Tyre Services (MTS) came to an end on 31st December, 2023. Due to a turnover of staff, the tender exercise for a new contract had been delayed. Unfortunately, due to the size of the contract (£200,000 per annum), there was insufficient time to tender and award a new contract to the successful contractor before the current contract came to an end.

The use of Emergency Powers was sought to extend the existing contract until 30th April, 2024. This would enable Cabinet to be advised of the proposal to tender the contract and award a new contract to the successful supplier.

(Scrutiny – Environment and Regeneration)

(q) SuDS Approval Body (SAB) Enforcement Action - Danygraig, Graig Penllyn, CF71 7RT - Erection of three residential dwellings.

The construction of three residential buildings at Danygraig, Graig Penllyn had commenced prior to the developer obtaining the necessary SAB approvals.

Following the receipt of an application in March 2023 discussions had been ongoing with the scheme designers regarding the proposed drainage strategy. Development on site had progressed to the stage where two of the properties could soon become occupied and construction was commencing on the third property, which was more likely to result in detrimental flood impacts on an adjoining property due to the construction of a soakaway on land higher than and adjacent to an existing property. During a recent site visit to discuss potential engineering solutions additional concerns were identified relating to the access to part of the site and risk of offsite detriment being caused by the proposed development. The SAB case officer had identified concerns regarding the use of soakaways in close proximity to retaining structures, existing buildings and the adopted highway. The SAB was likely to reject the current application on or before 15th December, 2023, with any further extensions to the determination period no longer deemed appropriate. Given the current advanced state of development on site it was considered unlikely that the developer would voluntarily pause construction for several months whilst alternative design options, most likely requiring further ground investigation and infiltration testing, were developed and the necessary SAB approvals obtained.

Given the above the following officer delegations were requested to enable the use of enforcement powers available under The Sustainable Drainage (Enforcement) (Wales) Order 2018, including temporary stop notices, enforcement notices and stop notices, as deemed appropriate in relation to the above development. A request to update the respective officer delegations in the Council Constitution to allow effective and timely enforcement action to be undertaken in future would be submitted at the next opportunity.

The use of Emergency Powers was sought as follows:-

HEAD OF NEIGHBOURHOOD SERVICES AND TRANSPORT AND OPERATIONAL MANAGER – ENGINEERING

- In consultation with the Head of Legal and Democratic Services, to authorise the preparation of Enforcement and Stop Notices under the Flood Water management Act 2010 and The Sustainable Drainage (Enforcement)(Wales) Order 2018, and to instruct the Head of Legal and Democratic Services to issue such notices, if appropriate, and to pursue a prosecution in respect of any failure to comply with the terms of the Notice issued.
- In consultation with the Head of Legal and Democratic Services, to authorise the variation or withdrawal of a previously issued Enforcement Notice or Stop Notice to correct a defect or error or make such other minor variation as deemed necessary and to instruct the Head of Legal and Democratic Services to issue such amended notices, if appropriate.
- In consultation with the Head of Legal and Democratic Services, to authorise the preparation of Temporary Stop Notices under the Flood Water management Act 2010 and The Sustainable Drainage (Enforcement)(Wales) Order 2018 and to instruct the Head of Legal Services to issue such notices, if appropriate. Also, to exercise the Council's powers of enforcement and to instruct Legal Services to pursue a prosecution in respect of any failure to comply with the terms of a Temporary Stop Notice issued.

HEAD OF LEGAL AND DEMOCRATIC SERVICES AND OPERATIONAL MANAGER (LEGAL SERVICES)

- Issue Enforcement Notices and Stop Notices under the Flood Water management Act 2010 and The Sustainable Drainage (Enforcement)(Wales) Order 2018 upon the instruction of the Head of Neighbourhood Services, or Operational Manager – Engineering or Engineering Manager - Environment.
- Upon the instruction of the Head of Neighbourhood Services, or Operational Manager – Engineering or Engineering Manager - Environment, to give notice of the variation or withdrawal of a previously issued Enforcement Notice or Stop Notice to correct a defect or error or make such other minor variation as deemed necessary.

(Scrutiny – Environment and Regeneration)

(r) Authority to Submit an Expression of Interest to Develop Land at Upper Cosmeston Farm, Penarth.

The use of Emergency Powers was sought in order to meet the deadline to submit an Expression of Interest to develop land at Upper Cosmeston Farm, Penarth by 12:00 on 29th January, 2024.

(Scrutiny – Homes and Safe Communities)

3. How do proposals evidence the Five Ways of Working and contribute to our Well-being Objectives?

- 3.1** The use of the Chief Executive's Emergency Powers is required on occasions when the urgency means that there is no time for the issue to be considered by the relevant Committee.
- 3.2** The purpose of presenting the report for information is to ensure that all Emergency Powers that have been approved are notified to Cabinet and / or Council as appropriate.
- 3.3** The Well-being of Future Generations (Wales) Act sets out effective transparency as a key part of improving the delivery of public bodies.
- 3.4** The Act requires public bodies to communicate and explain the processes of selecting its well-being objectives and why these objectives have been chosen, how decisions are taken in line with these objectives and what difference these objectives have made.
- 3.5** The importance of presenting the report to Cabinet is to ensure that transparency has taken place and to inform the Cabinet of the Emergency Powers that have been undertaken for the relevant reasons contained within the reports.

4. Climate Change and Nature Implications

- 4.1** There are no direct climate and nature implications associated with the report.

5. Resources and Legal Considerations

Financial

- 5.1** The procedure requires that these be taken into account by the Committee / Departments originating the requests for the use of Emergency Powers.

Employment

- 5.2** The procedure requires that these be taken into account by the Committee / Departments originating the requests for the use of Emergency Powers.

Legal (Including Equalities)

- 5.3** The Council's Constitution states:

1. Power to act, after consulting the appropriate Cabinet Member and, in the case only of matters involving the Council in financial commitments, the Leader, Section 151 Officer and the appropriate Chief Officer, in respect of any matter which, in his opinion:

(a) Requires immediate action; and

(b) Does not justify holding a special meeting of the body which would ordinarily consider the matter or is of such urgency or emergency as not to allow time for such a meeting; use of such delegated powers to be subsequently reported back to the Cabinet or Council as appropriate.

6. Background Papers

Relevant Emergency Powers proformas.