

Meeting of:	Cabinet
Date of Meeting:	Thursday, 17 November 2022
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 8th September, 2022.
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 317 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 8th September, 2022.</p> <p>The Council's Constitution at page 315 (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> <p>* To take effect from 5th May, 2022.</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 8th September, 2022.

(a) Transitional Accommodation Capital Programme – Eagleswell School, Llantwit Major.

The Council had the opportunity to access Transitional Accommodation Capital Programme (TACP) from Welsh Government, in order to provide more appropriate temporary accommodation for Ukrainian refugees whom the Council had a statutory duty to rehouse.

Working in collaboration with Cardiff Council's OJEU compliant contractor, the Wates Group, it was proposed that a scheme of 98 units of accommodation be delivered at the former Eagleswell Primary School, Llantwit Major.

The use of Emergency Powers was required due to the summer Cabinet recess, to allow a decision to be made to appoint and enter into a contract with the Wates Group for the delivery of the scheme, to ensure that a significant proportion of the project is delivered by the end of March 2022.

(Scrutiny – Homes and Safe Communities)

(b) Barry Secondary Learning Community – Whitmore High School and Ysgol Bro Morgannwg Contract Increases.

On 15 July, 2019 Cabinet agreed to appoint ISG Construction for the Stage II Construction contract for the refurbishment and expansion of Ysgol Bro Morgannwg and on 29 July, 2019 Cabinet agreed to appoint Morgan Sindall to the Stage II construction contract to develop Whitmore High School.

The Stage II contract sum for both projects had increased over the course of the schemes. Those changes related to increases on the elements of the projects attributed with provisional costs.

The use of Emergency Powers was sought to

- increase the Stage II Contract value for Whitmore High School to £27,586,300.70.
- increase the Stage II Contract value for Ysgol Bro Morgannwg to £19,549,056.00.

(Scrutiny – Learning and Culture)

(c) Housing Upgrade to Internal Communal Areas (Lot1).

The Housing and Building Services Team had requested emergency powers to accept the most advantageous tender bid received from ASW Property Services Ltd. and enter into a JCT intermediate contract as soon as possible to ensure we did not incur any further price increases due to the turbulent market.

The use of Emergency Powers was sought to

- Award the Housing Upgrade to Internal Communal Areas (Lot1) contract to ASW Property Services Ltd. at the value of £1,695,527.89. The works would be funded from the HRA, Common Parts capital budget which contained a £2.539m budget. It should be noted that this was a 56-week contract running into the next financial year 2023/24.
- Delegate authority to the Director of Environment and Housing to accept the most advantageous tender bid and the Head of Legal Services to execute the JCT Intermediate Contract 2016 to deliver the scheme.

(Scrutiny – Homes and Safe Communities)

(d) Increase to Cosmeston Gateway - Brilliant Basics Scheme.

The Council received an award of funding from Visit Wales, Brilliant Basics fund grant in 2021/2022 in the sum of £122,124.00. The grant award covered 80% of the project and 20% match funding was required of £30,531, giving a total project cost of £152,655.00.

The use of Emergency Powers was sought to increase the Council's 2022/23 £45k budget programme by £7k to £52k, to be funded from the Regeneration and Planning reserve.

(Scrutiny – Environment and Regeneration)

(e) Capital Funding grant to support the rollout of Universal Primary - Free School Meals 2022/23 allocation.

The Council had been awarded an additional grant for 2022/23 from Welsh Government through Sustainable Communities for Learning funding in the sum of £1.593m. The funding related to capital expenditure on the school meal infrastructure during the period 1st April, 2022 to 31st March, 2023.

The Council anticipated spending the full grant in 2022/23, however, only £993k will be able to be spent on supporting the roll out of free school meals this financial year.

Therefore, it was required to displace £600k into 2023/24 Capital Programme, to support the rollout of free school meals. The £600k displaced funds would be put into a specific reserve at the end of the financial year.

The use of Emergency Powers was sought to increase the Council's 2022/23 Capital Programme by £993k and the 2023/24 Capital programme by £600k.

(Scrutiny – Learning and Culture)

(f) Mayors Grant Fund Applications Award Increase.

Due to the impact of the cost of living crisis, including fuel increases, on small charities and community groups the use of Emergency Powers was sought to increase the maximum award able to be applied for under the Mayors Foundation Grant fund be increased from £100 to a maximum of £400.

(Scrutiny – Corporate Performance and Resources)

(g) Caerau Ely Football Club.

Caerau Ely Football Club had secured funding from the FAW for a new training area. In order to accept the grant, the Club needed to have confirmation that the Council was willing to renew their lease at Cwrt Yr Ala.

The use of Emergency Powers was sought to provide confirmation that the Council was willing to renew the lease at Cwrt Yr Ala for Caerau Ely Football Club to be able to accept the offer of FAW funding.

(Scrutiny – Healthy Living and Social Care)

(h) Penarth Marina Slope Stabilisation Works.

There had been a number of recent major landslips affecting the escarpment at Penarth Marina and impacting safety within the existing boatyard and car parks.

Given the risk of further landslides as identified in the most recent Mott McDonald report, it was considered necessary to progress the implementation of the long-term stabilisation measures as a matter of urgency which would require detailed ground investigation followed by detailed design.

The use of Emergency Powers was sought to appoint Alun Griffiths contractors to undertake the necessary detailed design and ground investigations to determine a suitable netting design. The costs of these design works quoted at £107k would be funded from the Neighbourhood Services & Transport Reserve.

(Scrutiny – Environment and Regeneration)

(i) Leasing of eleven homes from the MOD in St Athan, to provide accommodation for Afghan families resettled via the Afghan Relocations and Assistance Policy (ARAP) scheme.

There was an opportunity to acquire eleven family homes in St Athan on a long lease from the Ministry of Defence (MOD) to rehouse Afghan nationals via the Afghan Relocations and Assistance Policy (ARAP) scheme.

The use of Emergency Powers was sought so:-

- the Authority could bring forward its existing accommodation pledges over the next three years, to assist eleven Afghan families within the current financial year via the ARAP resettlement scheme, in MOD properties at St Athan.
- the Director of Environment and Housing Services could be authorised to enter regional discussions with Cardiff Council to extend the regional support arrangements for a further three years.
- the Head of Finance could be authorised to negotiate lease arrangements with the MOD for the Council to manage and maintain the eleven homes.
- the Head of Legal and Democratic Services could be authorised to sign the lease agreements.

(Scrutiny – Environment and Regeneration)

(j) Water Automatic Meter Reading Installation.

A request was submitted and approved by the Project Zero board on 7th July, 2022 for capital funding to progress the installation of automatic water meter reading devices. The funding requested allowed all water meters within the Council to be remotely read, allowing automatic alarms to be set and swifter response times to water leaks reducing the water, CO2 and financial waste.

The use of Emergency Powers was sought to increase the Council's 2022/23 Capital Programme by £70k. The capital cost would be met from the Project Zero reserve and rolling revenue cost from the CRC revenue budget.

(Scrutiny – Environment and Regeneration)

(k) St Illtyd – Roof Renewal – Phase One.

As part of the flat roof renewal works currently on site at St Illtyd Primary School, further renewal work to the associated high level windows had been identified, in the sum of approximately £40k. Currently there was budget of £40k in the Capital Programme for St Illtyd Primary Doors which was no longer required as those works had been undertaken as part of another contract.

The use of Emergency Powers was sought to vire the total budget of £40k from the St Illtyd Primary Doors scheme to the St Illtyd Roof Renewal Phase One scheme, therefore giving a total budget of £380k to cover the works required.

(Scrutiny – Learning and Culture)

(l) Elections New Burdens Funding.

The Electoral Registration team wished to enter into a 4-year contractual agreement with Modern Democracy for the supply of modern polling and all equipment associated with it. The total cost quoted for the 4-year contract was £91,350, which was a discounted rate.

The use of Emergency Powers was sought to enter into a 4-year contractual agreement with Modern Democracy at the discounted cost of £91,350.

(Scrutiny – Corporate Performance and Resources)

(m) Housing Airey Properties Refurbishment Scheme.

The Housing and Building Services Team have been working to refurbish the Aireys (Non-Trad) properties located at 1,2 and 5 Castle Green since 2019.

The Housing & Building Services team had created a package of works to refurbish 1,2 & 5 Castle Green, with a cost estimate of between £806K & £1.1m. The works would bring the properties up to a lettable standard to generate income again. The properties would comply with the Welsh Housing Quality Standard and would be energy efficient incorporating renewable technologies.

In order to decrease the timeframe for completion of the works to allow one family to move back into their lifelong home as soon as reasonable possible, the Housing & Building Services team requested approval for an exemption from contracts procedure rules and therefore go direct to a minimum of two contractors with a history of undertaking similar type of works for the Council and award a JCT Intermediate contract to the most advantageous bid.

The use of Emergency Powers was sought to :-

- Agree for an exemption from contracts procedure rules using 17.4.2 (f).
- Delegate authority to the Director of Environment and Housing to accept the most advantageous tender bid and the Head of Legal Services to execute the JCT Intermediate Contract to deliver the project.

(Scrutiny – Homes and Safe Communities)

(n) Kymin Wind and Water Repair Works.

The approved budget in the 2022/23 Capital Programme for the wind and water repair works at the Kymin was £72k. Further works had been identified whilst the scheme has been underway which needed to be addressed in relation to health and safety risks. Quotes had been returned and the total cost of the additional works was £16,500 making a total scheme budget required of £88,500.

The use of Emergency Powers was sought to increase the 2022/23 Capital Programme by £16,500k which was to be funded with £11,500k from Council Building Fund and £5k from a revenue contribution from Facilities budget (Scrutiny – Environment and Regeneration)

(o) Ysgol Y Deri Expansion Project – Professional Services Contract Increase.

Ysgol Y Deri Expansion is a project within the Sustainable Communities for Learning Band B Programme. On 11th April, 2022 Cabinet approved the appointment of ISG Ltd. to deliver the professional services contract for the project, with the agreed cost of £235,386.51.

Since ISG had progressed the planning application for the proposal, additional surveys totalling £12,093.21 had been required to support the planning application. These included:

- Badger Survey,
- Topographical Survey,
- Road Safety Audit,
- Traffic Speed Survey,
- Location Survey for Dwr Cymru Welsh Water (DCWW) apparatus.

The outcome of the surveys also resulted in further design work required for the proposal which increased the cost by £126,799.13.

Finally, due to the delay in the delivery of the project the programme had been reviewed to identify any potential time savings. It was proposed RIBA Stage 5 (Construction) design fees were included in the professional services contract to allow ISG to undertake the construction design work earlier on in the process. This meant that the £60,000 safeguarded for the Stage 2 design fees within the project budget would be brought forward.

Accounting for all the cost increases the professional services contract would increase by £198,892.34 and the new professional service contract would total £434,278.85. It was proposed the additional costs of £138,892.34 be taken from the project contingency, leaving £811,107.66 within the contingency to cover costs which arose during construction.

The use of Emergency Powers was sought to increase the professional services contract value for Ysgol Y Deri Expansion Project to £434,278.85.

(Scrutiny – Learning and Culture)

(p) The C19 Inquiry Draft Retention Policy and Retention / Preservation Notice.

In order to give immediate effect to the requirements of the Covid-19 Inquiry for all bodies exercising public functions to retain all materials of potential relevance to the Inquiry.

The use of Emergency Powers was sought to ensure that all relevant parties were notified of the Covid-19 Inquiry's requirements regarding the retention of potentially relevant materials. Ensuring that all information was retained and not altered or destroyed with immediate effect.

(Scrutiny – Corporate Performance and Resources)

(q) Land North of the Docks Offices.

An opportunity had arisen to fund the acquisition of land to the north of the Barry Docks Station and the Docks Offices, required to deliver a proposed Park and Ride scheme that would form the second stage of the Barry Docks Station Interchange project. A grant for the sum of £515,000 was available by virtue of the Welsh Local Government's Local Transport Fund Grant.

The deadline for securing the grant was possible if the Council could agree Heads of Terms with the landowner by the end of October 2022 in order to claim the grant funding by 15th November, 2022.

The use of Emergency Powers was sought to claim the Welsh Government grant of £515,000 on 15th November, 2022.

(Scrutiny – Environment and Regeneration)

(r) Capital Funding Grant in Relation to Childcare and Early Years – Small Grants Scheme.

The Council had been awarded a grant for 2022/23 from Welsh Government for funding in relation to Childcare and Early Years Capital funding for Small Grants Scheme in the sum of £396k. The funding related to capital expenditure on Small Grant Schemes during the period 1st April, 2022 to 31st March, 2023.

The use of Emergency Powers was sought to increase the Council's 2022/23 Capital Programme by £396k to be funded from Welsh Government Grant.

(Scrutiny – Learning and Culture)

(s) St Joseph's RC Primary School Windows and Doors.

St Joseph's RC Primary School were undertaking works to windows and doors in the Year 4 classroom with a cost of £17k, partly funded by an 85% grant from the Archdiocese of Cardiff.

The use of Emergency Powers was sought to include the new scheme in the 2022/23 Capital Programme with a budget of £17k, to be funded by £14k grant and £3k from a revenue contribution from the school.

(Scrutiny – Learning and Culture)

(t) Extension of Comingled Recycling Agreement.

The Council had a contract with Suez Recycling and Recovery UK (Suez) which was extended for 6 months up until 31st October, 2022 to allow for a procurement exercise to seek an interim arrangement before the Council transitioned to the Council's new Waste Transfer Station (WTS).

The procurement exercise was completed during April 2022 however, the appointments were held off until it was established when and whether the new Waste Transfer Station could be operational, and part utilised. Subsequently, the service area received additional funding (£2.2m) from Welsh Government (WG) to complete phase 2 of the WTS which had extended the construction time of the site.

Therefore, to obtain best market value for the short interim time that was required and until the Council completed the transition to source separated recycling, authority was being sought to extend the current arrangement for up to 3-months so another procurement process could be arranged. There were no financial impacts in relation to the contract in 2022/23.

The use of Emergency Powers was sought to extend the current contract by a further 3 months to 31st March, 2023.

(Scrutiny – Environment and Regeneration)

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.