

COUNCIL

20 JULY 2023

USE OF URGENCY PROVISIONS

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Summary

This report provides details of recent usage of urgency provisions contained within the Constitution.

1. Budget and policy framework

1.1. The Council's Constitution provides for a report to be submitted to Council following the usage of urgency provisions contained within the Constitution.

2. Background

2.1. Rule 17 (special urgency) of the Council's Access to Information rules, as set out in the Constitution, permits the Cabinet to make decisions when compliance with Rule 15 (The Forward Plan of Key Decisions) and Rule 16 (General Exception) is not possible.

2.2. On such occasions, a report to Council on the Cabinet decisions taken in the circumstances set out in Rule 17 (Special Urgency) will be submitted, in accordance with paragraph 18.3 of the Access to Information rules.

2.3. Paragraph 3.2 of the Responsibility for Cabinet Functions permits the Leader of the Council to make urgent decisions (which would ordinarily be a matter for Cabinet) subject to compliance with the Council's Access to Information rules, as referenced in paragraph 2.2 above. As such, all reports (unless exempt) and decisions (as well as an entry on the Forward Plan) are published on the Council's website on the day any urgency decision is made.

2.4. Leader and Cabinet – urgency. Paragraph 15.11 (call-in and urgency) of the Overview and Scrutiny rules, as set out in the Council's Constitution, states that a decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The chair (or in their absence the vice-chair) of the relevant Overview and Scrutiny Committee

must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency.

- 2.5. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.
- 2.6. Council – urgent action. Paragraph 4.1 of the Employee Delegation Scheme states that in relation to Council responsibilities, subject to consultation with the Leaders of all the groups which comprise at least 1/10th of the membership of the Council (or their nominees), and the provisions for urgent decisions which are contrary to any plan or strategy which has been approved or adopted by the Council or which are contrary to or not wholly in accordance with the budget approved by the Council (set out in Chapter 4, Part 3 of the Constitution), the Chief Executive and Directors shall have the power to act on behalf of the Council in cases of urgency only where the urgent matter is of such a nature that it may be against the Council's interest to delay and where it is not practicable to obtain the approval of the Council.
- 2.7. Following the decision, the decision taker will provide a full report to the next available Council meeting explaining the decision, the reasons for it and why the decision was treated as a matter of urgency.
- 2.8. A summary of the recent use of these provisions is set out in the following section.

3. Leader/Cabinet (executive decisions)

- 3.1. On 3 May 2023, the previous Leader of the Council, Councillor Jarrett, considered a fully exempt report in relation to an [Overage Payment at Chatham Waterfront](#).
- 3.2. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee had agreed that the taking of these decisions was urgent and could not be reasonably deferred until the next Cabinet meeting on 13 June 2023, in accordance with Section 11 (Cases of special urgency) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 and Rule 17 (Special Urgency) of the Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This was for the reasons set out in the exempt report.
- 3.3. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee had agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 3.4. The Leader agreed the recommendation as set out at paragraph 10.1 of the exempt report.

- 3.5. The Leader agreed that recommendation 10.1 [as set out in paragraph 3.3 above] was considered urgent and therefore should not be subject to call in.
- 3.6. On 28 June 2023, the newly elected Leader of the Council, Councillor Maple, considered an urgent report entitled [Potential VAT Shortfall at the Healthy Living Centre, Chatham](#). The report asked the Leader to agree, using urgency powers, a formal undertaking to the NHS that should the HM Revenue and Customs (HMRC) finally declare that the payments made, via the Integrated Care Board (ICB) of the NHS to Medway Council (MC) for the capital works to construct the Healthy Living Centre (HLC) include non-recoverable VAT, then Medway Council would make up the potential shortfall of £2,015,933 on the proviso that the total NHS build cost remained at £14,099,266.
- 3.7. The Chairman of the Business Support Overview and Scrutiny Committee had agreed that the taking of these decisions was urgent and could not be reasonably deferred until the next Cabinet meeting on 11 July 2023, in accordance with Section 11 (Cases of special urgency) of the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 and Rule 17 (Special Urgency) of the Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This was because delaying the approval of this financial commitment to the Cabinet meeting on 11 July 2023 would delay the submission by the ICB of their Outline Business Case.
- 3.8. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in can be waived where any delay likely to be caused by the call-in process would seriously prejudice the Council's or the Public's interests. The Chairman of the Business Support Overview and Scrutiny Committee had agreed that the decisions proposed were reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 3.9. The Leader agreed an undertaking to the Integrated Care Board that the Council would underwrite any VAT shortfall not exceeding £2,015,933 (as set out at paragraph 3.3 of the report) on the proviso that the total NHS build cost remains at £14,099,266.
- 3.10. The Leader agreed that recommendation 10.1 [as set out in paragraph 3.9 above] was considered urgent and therefore should not be subject to call in.

4. Council (non-executive decisions)

- 4.1. On 28 June 2023, the previous Chief Executive, Neil Davies, considered an urgent report entitled [Potential VAT Shortfall at the Healthy Living Centre, Chatham](#), as set out in paragraph 3.6 above.
- 4.2. The Chief Executive was requested to use the urgency provisions as set out in paragraph 4.1 of the Employee Delegation Scheme (including consultation with the Leader of the Council and the Leader of the Conservative Group) to agree the capital virement recommended in paragraph 10.1 of the report.

- 4.3. Leaders of the two political groups comprising at least 10% of the Members of the Council were consulted in advance of the decision having been made.
- 4.4. The Chief Executive agreed, using urgency powers, to vire £2,015,933 from the Disabled Facilities Grant to fund any potential shortfall (as set out at paragraph 8.2.2 of the report).
5. Financial, legal and risk management implications
 - 5.1. The requirement to report decisions taken under the various urgency provisions is set out within the Constitution. Details of the financial, legal and risk implications are set out in full within the relevant report.
6. Recommendation
 - 6.1. The Council is asked to note the use of urgency provisions as set out in sections 3 and 4 of the report.

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Appendices

None

Background papers

None