

## **COUNCIL**

**23 APRIL 2020**

### **USE OF URGENCY PROVISIONS**

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#### **Summary**

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

The report also provides an overview of decision making arrangements in response to the COVID-19 pandemic.

#### **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**

##### **Leader/Cabinet – special urgency**

- 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 2.1 above.

##### **Leader/Cabinet – call-in and urgency**

- 2.4 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.

### **Council – urgent action**

- 2.6 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 1/10<sup>th</sup> 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. Cabinet (Executive decisions)**

- 3.1 On 4 February 2020, the Cabinet considered a report on the Final 2020/21 Mainstream Schools and Academies Funding Formula.
- 3.2 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. In this case, the deadline for the submission of the final funding formula to the Education Skills Funding Agency (ESFA) was 21 January 2020, which meant that the Council submitted the final formula in draft form subject to final approval by the Cabinet. On this occasion it was proposed that the call in period be waived to prevent any further delay confirming the Cabinet's decision to the ESFA and to allow the authority to implement the funding formula changes in accordance with the regulations. The Chairman of the Children and Young People Overview and Scrutiny Committee agreed that the decisions proposed are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.

- 3.3 The Cabinet made the following decisions:
- 3.3.1 The Cabinet instructed officers to implement the Final 2020-21 Funding Formula for mainstream schools and academies, as set out in section 3 of the (Cabinet) report (decision no. 16/2020 refers).
- 3.3.2 The Cabinet agreed that decision number 16/2020 is considered urgent and therefore should not be subject to call-in (decision no. 17/2020).
- 3.4 On 27 March 2020, the Leader considered an urgent report which provided details of a number of Government measures in relation to Council Tax and Business Rates Relief which are in place to respond to the COVID-19 pandemic.
- 3.5 The Chairman of the Business Support Overview and Scrutiny Committee agreed that the taking of these decisions were urgent and could not be reasonably deferred until the next Cabinet meeting on 7 April 2020, 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 it was imperative that the Council took urgent action to support both individuals and businesses in line with the Government's announcements on a range of measures in respect of Council Tax and Business Rates Relief in response to the COVID-19 pandemic.
- 3.6 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 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.
- 3.7 The Leader made the following decisions:
- 3.7.1 The Leader, using urgency powers, agreed the proposals in respect of Council Tax and Business Rates Relief as set out in section 2 of the report and to delegate authority to the Chief Finance Officer, in consultation with the Leader and the Portfolio Holder for Business Management, to finalise and implement these proposals where further Government advice is awaited (decision no. 44/2020 refers).
- 3.7.2 The Leader, using urgency powers, agreed to delegate authority to Chief Finance Officer, in consultation with the Leader and Portfolio Holder for Business Management, to implement any further measures introduced by the Government to provide relief for Council Tax and Business Rate payers in response to the COVID-19 pandemic insofar as these measures are 100% funded by Government, including the measures referred to in paragraph 2.10 of the report (decision no. 45/2020 refers).
- 3.7.3 The Leader agreed that decisions 44/2020 and 45/2020 are considered urgent and therefore should not be subject to call in (decision no.

46/2020 refers).

#### **4. Council (Non-Executive decisions)**

- 4.1 The Chief Executive considered an urgent report (Appendix 1) to approve the addition of the COVID-19 government grant funding, made available by the MHCLG, to the Council's revenue budget. This consisted of £39.7 million for support for business rates payers and £6,628,475 of COVID-19 emergency funding for the Local Authority. The report also stated that the Chief Finance Officer had already added £2,056,371 for support for Council Tax payers to the revenue budget under delegated authority.
- 4.2 The Leader of the Council and the Leader of the Labour Group were consulted on this proposal on 27 March 2020 and the Chief Executive made the following decision on 1 April 2020:
- 4.2.1 That the Chief Executive (using urgency powers (in place of referring this matter to Full Council)) agrees to the following additions to the revenue budget, both of which are to be funded from grant provided by Central Government:
- £39,712,000 to fund the provision of small business grants to eligible businesses in Medway;
  - £6,628,475 to fund expenditure incurred by the Council in responding to the COVID-19 emergency.

#### **5. The Council's response to the COVID-19 Pandemic**

- 5.1 Working alongside partners across the Kent Resilience Forum, Medway Council has implemented the Strategic and Tactical command and control methodology to manage the Council's response to the Covid-19 Pandemic. Subject to the provisions in the scheme of employee delegations and formal decision making rules as set out in the Council's Constitution, strategic direction and decisions are made by the Gold Command with Tactical, operational matters and decisions made by the Silver Command. To support the Silver Command, the Council has established a network of specialist 'Cells' which lead on functional elements of the Council's response including those tasked with co-ordinating the response for vulnerable adults through Adult Social Care, Schools and Education and Housing, and those responsible with ensuring the Council's core functions continue to operate 'business as usual' wherever possible including Finance, HR and Customer Contact.
- 5.2 Each 'Cell' lead is responsible for maintaining a risk register detailing the impacts of Covid-19 on their area of responsibility, following the Council's Risk Management Strategy. Cell leads are responsible for managing risks scored below CII – significant likelihood, crucial impact (as such risks would routinely be managed on service/operational risk registers) while issues arising from risks scored at CII or above are escalated to Silver, and Gold command as necessary (as such risks would routinely be managed through the Council's Strategic Risk Register). In addition, financial thresholds have been agreed to ensure that where a decision being made would commit the Council to new expenditure or result in the loss of income, appropriate financial

authorisation is in place.

5.3 The decisions made and logged to date can broadly be categorised as:

- Closure of facilities/buildings and services on a temporary basis, in response to government advice (and later government instructions),
- Cancellation of events and bookings across cultural and leisure facilities, and Medway Adult Education,
- Delays/temporary cessation of debt recovery activity across services including cessation of enforcement agent work and court action,
- Relaxation / postponement of normal assessment arrangements to test eligibility around adult social care, homelessness and support to residents and businesses through local taxation systems to ensure those in financial difficulty receive support promptly,
- Refocussing of parking enforcement activity focussing on road safety and supporting key workers,
- Temporary relaxation of a range of Human Resources policies to enable staff to work flexibly and effectively support the Council's response activities,
- Temporary extensions to contracts/arrangements to ensure sufficient capacity to deliver critical functions including Adult Social Care providers,
- Continuation of payments to suppliers, arrangements to make faster payments to suppliers and supporting some suppliers experiencing financial difficulties in line with Cabinet Office procurement advice.

5.4 A Governance cell within the network is working to ensure the impacts of decisions made have been considered appropriately to ensure all decisions taken are sound and are in line with the councils' governance mechanisms. This Cell includes officers from Democratic Services, Legal Services, Category Management, and Finance including Audit & Counter Fraud and the Council's Equalities Lead. This group has arrangements in place to collate and review all action proposed or taken through the Cell risk registers, and has access to all Cell leads to make recommendations to ensure that decisions:

- are made in accordance with appropriate Member and Officer decision making powers, according to the law and in line with the Council's constitution,
- comply with relevant legislation and regulations,
- are made within the Council's financial rules and are within the approved budget,
- do not significantly weaken the Council's control environment or pose a significant fraud risk, and
- do not create adverse impacts for people with protected characteristics under the Equality Act.

## **6. Financial, legal and risk implications**

6.1 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 reports.

## **7. Recommendation**

7.1 That the report be noted.

### **Lead officer contact**

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### **Background papers**

Cabinet 4 February 2020 - Final Funding Formula for Mainstream Schools and Academies 2020/2021

<https://democracy.medway.gov.uk/mglIssueHistoryHome.aspx?IId=26947>

Leader urgent decision 27 March 2020 - Council Tax and Business Rates Relief

<https://democracy.medway.gov.uk/ieListDocuments.aspx?CId=115&MId=4845&Ver=4>

### **Appendices**

Appendix 1 – Chief Executive urgent decision 1 April 2020 (report dated 31 March 2020 and decision made on 1 April 2020)