

COUNCIL

16 JULY 2020

USE OF URGENCY PROVISIONS

Report from: Perry Holmes, Chief Legal Officer

Author: Wayne Hemingway, Principal Democratic Services Officer

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

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 2.2 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.

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 1/10th 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 4 May 2020, the Leader considered an urgent report on the Pentagon Centre Tenants and Other Commercial Tenants – Rent Deferral.
- 3.2 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 12 May 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 tenants of its commercial properties in response to the COVID-19 pandemic.
- 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 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.

- 3.4 The Leader made the following decisions:
- 3.4.1 The Leader, using urgency powers, agreed to delegate authority to the Chief Legal Officer in consultation with the Leader and the Portfolio Holder for Resources to agree the delaying of current rent of Pentagon Centre tenants as and when requested on a case by case basis. This agreement should follow professional advice from the Centre Management Team. (decision no. 52/2020 refers).
- 3.4.2 The Leader, using urgency powers, agreed to delegate authority to the Chief Legal Officer, in consultation with the Leader and the Portfolio Holder for Resources to agree the delaying of current rent of other commercial properties within the Council's property portfolio, on a case by case basis, after receipt of details of reduced income and future trading viability (decision no. 53/2020 refers).
- 3.4.3 The Leader agreed that decision numbers 52/2020 and 53/2020 are considered urgent and therefore should not be subject to call-in (decision no. 54/2020).
- 3.5 On 22 May 2020, the Leader considered an urgent report which sought approval for the establishment of a Local Authority Discretionary Grants Fund in response to the Coronavirus pandemic.
- 3.6 The Chairman of the Regeneration, Culture and Environment Overview and Scrutiny Committee agreed that the taking of this decision was urgent and could not be reasonably deferred until the next Cabinet meeting on 9 June 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 businesses in line with the government's announced Local Authority Discretionary Grants Fund in response to the COVID-19 pandemic.
- 3.7 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 has 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.
- 3.8 The Leader made the following decisions:
- 3.8.1 The Leader, using urgency powers, agreed to delegate authority to the Assistant Director, Physical and Cultural Regeneration, in consultation with the Leader and Portfolio Holder for Planning, Economic Growth and Regulation, to consider and determine applications made under the Local Authority Discretionary Grants Scheme, as set out in section 2 of the (urgency) report (decision no. 58/2020 refers).

- 3.8.2 The Leader agreed that decision 58/2020 is considered urgent and therefore should not be subject to call in (decision no. 59/2020 refers).
- 3.9 On 12 June 2020, the Leader considered an urgent report which considered revised arrangements for the Medway Test in light of the Coronavirus pandemic.
- 3.10 The Chairman of the Children and Young People Overview and Scrutiny Committee agreed that the taking of this decision was urgent and could not be reasonably deferred until the next Cabinet meeting on 7 July 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).
- 3.11 The need for an urgent decision was to enable the revised dates and arrangements to be published so that:
- Schools and parents are aware of the changes before the close of the registration on 29 June 2020
 - Pupils have additional time to prepare for the test
 - Schools and test centres are able to plan in advance of the test as changes to arrangements for open days and evenings need to be planned and published, as well as ensuring venues are available on the dates required and any planned events on the sites are postponed
 - Officers can meet the deadlines required in sections of the organisation of the test which are fixed
 - Officers can liaise with other authorities in the organisation of the test to avoid clashing wherever possible
- 3.12 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 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.
- 3.12.1 The Leader, using urgency powers, agreed to the revision of the dates for the Medway test as set out in option 3 at section 3.9 of the (urgency) report (decision no. 70/2020 refers).
- 3.12.2 The Leader agreed that decision 70/2020 is considered urgent and therefore should not be subject to call in (decision no. 71/2020 refers).
- 3.13 On 22 June 2020, the Leader considered an urgent exempt report which dealt with a claim against the Council.
- 3.14 The Chairman of the Business Support Overview and Scrutiny Committee agreed that the taking of these decisions was urgent and could not be reasonably deferred, in accordance with Rule 17 (Special Urgency) of the Access to Information Rules (Part 2 of Chapter 4 in the Constitution). This was because the claimant had issued High Court proceedings against the Council which was subject to strict timescales, therefore, the matter could not be deferred until the next Cabinet

meeting on 7 July 2020.

- 3.15 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 are reasonable in all the circumstances and to them being treated as a matter of urgency and to waive call-in.
- 3.15.1 The Leader, using urgency powers, agreed to authorise the Chief Legal Officer to make a payment pursuant to a part 36 offer, as set out in section 4 of the exempt (urgency) report (decision no. 72/2020 refers).
- 3.15.2 The Leader requested an update report from the Chief Legal Officer to Cabinet about the proceedings before any further steps are taken, beyond that set out in decision no. 72/2020 (decision no. 73/2020 refers).
- 3.15.3 The Leader agreed that decisions 72/2020 and 73/2020 are considered urgent and therefore should not be subject to call in (decision no. 74/2020 refers).

4. Council (Non-Executive decisions)

- 4.1 The Chief Executive considered an urgent report on 21 April 2020 on the Extension of the Use of Temporary Accommodation Provision for Homeless Households and Rough Sleepers (Appendix 1).
- 4.2 The Leader of the Council and the Leader of the Labour and Co-operative Group were consulted on the proposals and the Chief Executive made the following decision on 21 April 2020:
 - 4.2.1 The Chief Executive agreed, using urgency powers, that those measures set out in paragraph 3.1 (of the report) should continue in place with necessary implementation funding until further guidance is received from the government confirming that the current social distancing requirements have ceased, with regards to the temporary change of policy and budgetary impact.
- 4.3 The Chief Executive considered an urgent report on 21 April 2020 on the Temporary Suspension of Treasury Management Counterparty Limits (Appendix 2).
- 4.4 The Leader of the Council and the Leader of the Labour and Co-operative Group were consulted on the proposals and the Chief Executive made the following decision on 21 April 2020.
 - 4.4.1 The Chief Executive agreed, using urgency powers, to temporarily lift the counterparty limits within the Treasury Strategy, with effect from 27 March 2020 for a period of three months, to enable the Council to place funds in the counterparty which; is the most economically advantageous, enables fast access to funds, and in which funds can be placed and removed in a manner that can be operated with council and institution staff working remotely and securely.

- 4.5 The Chief Executive considered an urgent report on 21 April 2020 on Car Mileage Rates for Electric Cars (Appendix 3).
- 4.6 The Leader of the Council and the Leader of the Labour and Co-operative Group were consulted on the proposals and the Chief Executive made the following decision on 21 April 2020.
- 4.6.1 The Chief Executive agreed, using urgency powers, that Option A (as set out in the urgent report) is the agreed rates for the Council for reimbursing staff in the use of Electric Cars.
- 4.7 The Chief Executive considered an urgent report on 4 May 2020 (paragraph 3.1 above refers) on the Pentagon Centre Tenants and Other Commercial Tenants – Rent Deferral, with particular regards to the potential budgetary implications of the Leader’s decisions on the matters.
- 4.8 The Leader of the Council and the Leader of the Labour and Co-operative Group were consulted on the proposals and the Chief Executive made the following decision on 4 May 2020:
- 4.8.1 The Chief Executive agreed, using urgency powers, to the potential budgetary impact of recommendations 6.1 and 6.2 of the report (see paragraphs 3.8.1 and 3.8.2 above).
- 4.9 The Chief Executive considered an urgent report on 13 May 2020 on an Addition to the Revenue Budget (Appendix 4).
- 4.10 The Leader of the Council and the Leader of the Labour and Co-operative Group were consulted on the proposals and the Chief Executive made the following decision on 13 May 2020:
- 4.10.1 The Chief Executive (using urgency powers (in place of referring this matter to Full Council)) agreed to add £7,648,146 to help the Council to deal with the impacts of coronavirus, funded from grant provided by Central Government, to the 2020/21 revenue budget.
- 4.11 The Chief Executive considered an urgent report on 30 June 2020 on additions to the revenue budget and the temporary suspension of treasury management counterparty limits (Appendix 5).
- 4.12 The Leader of the Council and the Leader of the Labour and Co-operative Group were consulted on the proposals and the Chief Executive made the following decision on 30 June 2020:
- 4.12.1 That the Chief Executive (using urgency powers (in place of referring this matter to Full Council)) agreed to add the following sums:
- £242,500 added to the Council’s revenue budget in respect of phase 1 Emergency Active Travel;
 - £246,396 added to the Council’s revenue budget in respect of Reopening High Streets Safely;

- £2,091,910 added to the Council's revenue budget in respect of Adult Social Care Infection Control;
- £1,592,918 added to the Council's revenue budget in respect of the Test, Track and Trace Service;
- £2,056,371 added to the Council's revenue budget in respect of the Council Tax Hardship Fund.

4.12.2 The Chief Executive agreed, using urgency powers, to extend the temporary lifting of the counterparty limits within the Treasury Strategy, with effect from 30 June 2020 for a further period of three months. While arrangements are made to use additional counterparties in line with the Treasury Strategy, this will enable the Council to continue to place funds in the counterparty which; is the most economically advantageous, enables fast access to funds, and in which funds can be placed and removed in a manner that can be operated with council and institution staff working remotely and securely.

5. Financial, legal and risk 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 reports.

6. Recommendation

6.1 That the report be noted.

Lead officer contact

Wayne Hemingway, Principal Democratic Services Officer

T: 01634 332509

E: wayne.hemingway@medway.gov.uk

Appendices

Appendix 1 – Chief Executive urgent decision 21 April 2020

Appendix 2 – Chief Executive urgent decision 21 April 2020

Appendix 3 – Chief Executive urgent decision 21 April 2020

Appendix 4 – Chief Executive urgent decision 13 May 2020

Appendix 5 – Chief Executive urgent decision 30 June 2020

Background papers

[Leader urgent decision 4 May 2020 - Pentagon Centre Tenants and Other Commercial Tenants - Rent Deferral](#)

[Leader urgent decision 22 May 2020 - Local Authority Discretionary Grants Fund](#)

[Leader urgent decision 12 June 2020 – Revised Arrangements for the Medway Test](#)

[Leader urgent decision 22 June 2020 – Claim Against the Council \(exempt report\)](#)