

COUNCIL

18 FEBRUARY 2021

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 14 January 2021, the Leader considered an urgent report entitled [Covid-19 Further Business Support Schemes](#). This report set out details of the latest government schemes to support businesses impacted by Covid-19.
- 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 2 February 2021, 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 individuals in line with the Government's announcement to implement the schemes by 12 October 2020 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 has 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:
- 3.5. The Leader, using urgency powers, agreed to reopen the Additional Restrictions Grant (ARG) scheme in the form previously agreed on 4 December 2020 except to remove the closing date for applications as set out in paragraph 3.3 and Appendix 1 of the report and in doing so agreed to:
- delegate authority to the Chief Finance Officer to consider and determine applications made under this Scheme;
 - delegate authority to the Chief Finance Officer, in consultation with the Leader and the Portfolio for Business Management, to make minor amendments to this Scheme to enable it to adapt to the economic environment;
 - delegate authority to the Chief Finance Officer, in consultation with the Leader and the Portfolio Holder for Business Management, to determine when the scheme should be closed (decision no. 8/2021).
- 3.6. The Leader, using urgency powers, agreed that Medway's funding allocation for the LRSG (Open) scheme of £56,537 and for the second allocation of ARG when this is confirmed (estimated at £2.376million) should be awarded to businesses as direct grants alongside the balance of the first allocation of the ARG (decision no. 9/2021).
- 3.7. The Leader agreed that decisions 8/2021 and 9/2021 are considered urgent and therefore should not be subject to call in (decision no. 10/2021).
- 3.8. On 2 February 2021, the Cabinet considered a report on the [Final 2021/22 Mainstream Schools and Academies Funding Formula](#). 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 Department for Education was 21 January 2021, 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 Education Skills Funding Agency (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.
- 3.9. The Cabinet instructed officers to implement the Final 2021-22 Funding Formula for mainstream schools and academies, as set out in section 3 of the report (decision no. 11/2021).
- 3.10. The Cabinet agreed that decision no. 11/2021 be considered urgent and therefore should not be subject to call-in (decision no. 12/2021).

4. Council (non-executive decisions)

- 4.1. The Chief Executive considered an urgent report on 14 January 2021 entitled report entitled [Covid-19 Further Business Support Schemes](#) (paragraph 3.1 above refers).
- 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 14 January 2021:
- 4.3. The Chief Executive agreed, using urgency powers, to add the following sums:
- 4.4. £76,800 be added to the Council's revenue budget in respect of the Christmas Support Payment for wet-led pubs, as set out in paragraph 2.3 of the report.
- 4.5. £351,212 be added to the Council's revenue budget in respect of the initial allocation for the LRSO (Closed) scheme post 2 December, as set out in paragraph 2.6 of the report.
- 4.6. £56,537 be added to the Council's revenue budget in respect of the initial allocation for the LRSO (Open) scheme post 2 December, as set out in paragraph 2.6 of the report.
- 4.7. £76,500 be added to the Council's revenue budget in respect of the LRSO Admin grant, as set out in paragraph 2.9 of the report.
- 4.8. £47,000 be added to the Council's revenue budget in respect of the Test & Trace Isolation Payments mandatory scheme, as set out in paragraph 2.10 of the report.
- 4.9. £97,767 be added to the Council's revenue budget in respect of the Test & Trace Isolation Payments discretionary scheme, as set out in paragraph 2.10 of the report.
- 4.10. £7,314 be added to the Council's revenue budget in respect of the Test & Trace Isolation Payments new burdens funding, as set out in paragraph 2.10 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. That the report be noted.

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Appendices

None.

Background papers

None.