

COUNCIL

22 APRIL 2021

USE OF URGENCY PROVISIONS

Report from: Perry Holmes, Chief Legal Officer
Author: Wayne Hemingway, Head of Democratic Services

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 18 February 2021, the Leader considered an urgent report entitled [Holiday Activities and Food Programme](#). This report set out details of the programme, which was funded by the Department for Education (DfE) and aimed to provide Free School Meal (FSM) eligible children with food and activities over the 2021 Spring, Summer, and Winter holidays.
- 3.2. The Chairman of the Health and Adult Social Care Overview and Scrutiny Committee agreed that the taking of these decisions was urgent and could not be reasonably deferred until the next Cabinet meeting on 2 March 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).
- 3.3. The reason for urgency was because it was imperative that the Council took urgent action to support individuals and families in Medway in line with the Government's announcement to implement 'The Holiday Activities and Food (HAF) Programme' by 1 of April 2021 in response to the COVID-19 Pandemic. A number of actions had to take place ahead of 1 April 2021 for this service to be in place by the deadline, including fully developing the local response, recruitment, procurement and engagement. This had to commence before the next scheduled Cabinet meeting.

- 3.4. 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 Health and Adult Social Care 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.
- 3.5. The Leader made the following decisions:
- 3.6. The Leader, using urgency powers, agreed the proposals set out in section 3 and Appendix 1 to the report as the Council's approach to delivering the HAF funding and agreed to delegate authority to the Director of Public Health, in consultation with the Leader and the Portfolio Holder for Adults' Services, to finalise and implement these proposals.
- 3.7. The Leader, using urgency powers, agreed to delegate authority to the Director of Public Health in consultation with the Leader and the Portfolio Holder for Adults' Services, to make minor amendments to the proposals to enable them to continue to support vulnerable children and their families in Medway, including where further Government advice is provided.
- 3.8. The Leader agreed that decisions 30/2021 and 31/2021 [as set out in paragraphs 3.6 and 3.7 above] were considered urgent and therefore should not be subject to call in.
- 3.9. On 30 March 2021, the Cabinet considered a report on the [Monitoring Officer Service to be provided to Kent and Medway Fire and Rescue Authority](#). 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 it was proposed that the call-in period be waived as the agreement for Medway Council's Chief Legal Officer (CLO) to be at the disposal of the Kent and Medway Fire and Rescue Authority to assume the role of Monitoring Officer (MO) at KMFRA, was due to come into effect on 1 April 2021.
- 3.10. 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.
- 3.11. The Cabinet authorised the making of an agreement with Kent and Medway Fire and Rescue Authority (KMFRA) to place Medway Council's Chief Legal Officer at the disposal of KMFRA for the purpose of his designation as that authority's Monitoring Officer.
- 3.12. The Cabinet agreed that decision number 45/2021 [as set out in paragraph 3.11 above] be considered urgent and therefore should not be subject to call-in.

4. Council (non-executive decisions)

- 4.1. The Chief Executive considered an urgent report on 18 February 2021 entitled [Holiday Activities and Food Programme](#) (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 18 February 2021:
- 4.3. The Chief Executive agreed, using urgency powers, to add £112,140 to the Council's revenue budget for 2020/21 to fund the Holiday Activities and Food Programme as set out in section 3 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.

Lead officer contact

Wayne Hemingway, Head of Democratic Services, T: 01634 332509,
E: wayne.hemingway@medway.gov.uk

Appendices

None.

Background papers

None.