

COUNCIL

22 JULY 2021

USE OF URGENCY PROVISIONS AND CONSTITUTIONAL MATTER

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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 11 May 2021, the Leader considered an urgent report entitled [Revised Arrangements for the Medway Test 2021](#). This report set out that as a result of the COVID-19 pandemic, pupils had received less time in face-to-face education and would have learnt at differing levels and pace. Therefore, officers had strived to take measures to make the Medway Test process as fair to all pupils as possible.
- 3.2. The report set out that the topics of work scrutinised during the academic review process, that formed part of the Medway Test process, may be seen as restrictive and therefore, in consultation with Headteachers, it was recommended that the additional subjects of humanities/topic work and reading be included as evidence considered during the Medway Test review process.
- 3.3. The Chairman of the Children and Young People 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 8 June 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 the Medway Test arrangements were due to be published on 19 May 2021.

- 3.4. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in could 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 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, to the addition of the subjects of humanities/topic work and reading to the Medway Test academic review process, as set out in option 2 at section 3.1 of the report.
- 3.7. The Leader agreed that decision 50/2021 [as set out in paragraph 3.6 above] was considered urgent and therefore should not be subject to call in.
- 3.8. On 13 May 2021, the Leader considered a report in relation to [Gun Wharf – Letting of Parts](#). The report sought delegated authority to officers to grant leases of accommodation at Gun Wharf. This would be achieved in association with a more blended hybrid approach to working and had been subject to consultation through a survey conducted with Council staff on current working arrangements and expectations for the future.
- 3.9. The Chairman of the Regeneration, Culture and Environment 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 8 June 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 important that the Council took urgent action to support partner organisations which would otherwise move out of the Medway area at the same time as generating a substantial income for the Council.
- 3.10. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in could 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 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 Leader made the following decisions:
- 3.12. The Leader, using urgency powers, agreed to delegate authority to the Director of Place and Deputy Chief Executive, in consultation with the Portfolio

Holder for Resources, to grant leases of accommodation at Gun Wharf on the best terms reasonably obtainable.

- 3.13. The Leader agreed that decision 52/2021 [as set out in paragraph 3.12 above] was considered urgent and therefore should not be subject to call in.
- 3.14. On 28 June 2021, the Leader considered a report in relation to a proposal to use the [COVID Local Support Grant extension \(CLSG\)](#) allocation for Medway Council to support families with children, other vulnerable households and individuals from 21 June 2021 to 30 September 2021. The report recommended that £600,000 of the grant allocation be awarded to the purchasing of a weekly £10 voucher for each of the 10,000 Free School Meals (FSM) eligible children for each of the 6 weeks in half term.
- 3.15. The Chairman of the Health and Adult Social Care 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 13 July 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 and families in Medway in line with the Government's announcement to implement the COVID Local Support Grant extension allocation as soon as possible in response to the COVID-19 pandemic.
- 3.16. Additionally, and in line with rule 15.11 of Chapter 4, Part 5 of the Constitution, call-in could 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 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.
- 3.17. The Leader made the following decisions:
- 3.18. The Leader, using urgency powers, agreed the proposals set out in section 3 of this report as the Council's approach to delivering the COVID Local Support Grant and 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.
- 3.19. 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 households in Medway, including establishing any discretionary eligibility criteria where discussions remain ongoing and where further Government advice is provided.

- 3.20. The Leader agreed, using urgency powers, 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 any suitable proposals for the remaining sum of the Covid Local Support Grant, as outlined in paragraph 5.1 of the report.
- 3.21. The Leader agreed that decisions 73/2021, 74/2021 and 75/2021 [as set out in paragraphs 3.18 to 3.20 above] was considered urgent and therefore should not be subject to call in.

4. Council (non-executive decisions)

- 4.1. On 8 June 2021, the Cabinet had considered a report in relation to the Re:fit programme; a building retrofit and energy generation programme which would provide considerable revenue savings and deliver on the Council's Climate Emergency Declaration. This would be achieved by an 'invest to save' model where the Re:fit Framework contractor (Scottish and Southern Energy - SSE) would guarantee the savings.
- 4.2. The Cabinet made the following decisions:
- 4.3. 59/2021 - The Cabinet approved the Re:fit programme, including the business case for phase 1 of the programme as set out at Exempt Appendix 1 and Appendix 2 of the report.
- 4.4. 60/2021 -The Cabinet agreed to delegate authority to the Director of Place and Deputy Chief Executive, in consultation with the Portfolio Holder for Resources, to deliver the Re:fit programme, including the submission of bids for grant funding if and where necessary.
- 4.5. 61/2021 - The Cabinet agreed to delegate authority to the Chief Finance Officer, in consultation with the Leader of the Council, to approve the business case for each further phase of the Re:fit programme (phases 2-4) and agree to release the required funding.
- 4.6. 62/2021 - The Cabinet agreed to recommend that the Chief Executive, using urgency powers (in place of referring this matter to full Council), agrees to add up to £3.5m to the Council's Capital Programme, funded from Prudential Borrowing to deliver the first phase only of the Re:fit programme.
- 4.7. 63/2021 - The Cabinet agreed to recommend to full Council on 22 July 2021 to agree the addition of up to £8.5 million to the Council's Capital Programme, funded from Prudential Borrowing to deliver phases 2 to 4 of the Re:fit programme [Council 22 July 2021 agenda item number 13 refers].

- 4.8. In relation to Cabinet decision No. 62/2021, the Chief Executive considered a report that requested his agreement to add the requested £3.5m to the Council's Capital Programme (Appendix 1)
- 4.9. 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 12 July 2021:
- 4.10. The Chief Executive agreed, using urgency powers (in place of referring this matter to full Council), to add up to £3.5m to the Council's Capital Programme, funded from Prudential Borrowing to deliver the first phase only of the Re:fit programme.

5. Constitutional matter

- 5.1. Members will be advised that at the meeting of the Full Council on 16 July 2020, a motion was debated on the issue of Medway residents being relocated outside of the area. This motion was agreed at the meeting and the follow up work, in particular, writing to the Secretary of State for Housing, Communities and Local Government requesting an urgent review of the temporary accommodation process, with specific focus on out of borough placements, was actioned with a letter being sent to the Secretary of State on 24 July 2020. The response was circulated to all Members on 9 December 2020.
- 5.2. Unfortunately, the minutes recorded this motion as being lost (minute no. 101E/2020 refers). This was compounded by Members agreeing the minutes of the meeting as accurate (at the next Full Council meeting on 8 October 2020). Once the minutes have been agreed and signed as accurate, there is no further opportunity to correct them. Therefore, this matter is being brought to Members' attention to ensure that it is reported that the motion was actually agreed at the meeting on 16 July 2020.

6. Financial, legal and risk management 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. Recommendations

- 7.1. The Council is asked to note the report with regards to the use of urgency provisions set out in the report.
- 7.2. The Council is asked to note that minute no. 101E/2020 (Full Council 16 July 2020) was recorded incorrectly and that it should have indicated that the motion was agreed.

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Appendices

Appendix 1 – Chief Executive Urgent Decision 12 July 2021

Background papers

None.