

COUNCIL

20 APRIL 2023

USE OF URGENCY PROVISIONS AND CHANGE TO THE CONSTITUTION

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Summary

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

The report also sets out a proposal to update the Council's Employee Delegation Scheme with regards to the Assistant Director Legal and Governance's delegated authority.

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.
- 1.2. Article 14 of the Council's Constitution states that changes to the Constitution are a matter for Full Council, except in the case of minor changes, which is a matter for the Monitoring Officer.

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 7 February 2023, the Cabinet considered a report on the [Final Funding Formula for Mainstream Schools and Academies 2023 - 2024](#). 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 and Skills Funding Agency (ESFA) was 20 January 2023, it was therefore proposed that call-in be waived to prevent any further delay in confirming the Cabinet's decision to the ESFA and to allow the authority to implement the funding formula changes in accordance with the regulations.
 - 3.2. The Chairman of the Children and Young People 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.

- 3.3. The Cabinet instructed officers to implement the Final 2023-24 Funding Formula for mainstream schools and academies, as set out in section 3 of the Cabinet report.
- 3.4. The Cabinet agreed that decision number 8/2022 [as set out in paragraph 3.3 above] be considered urgent and therefore should not be subject to call-in.
- 3.5. On 7 February 2023, the Cabinet considered a report in relation to [Adult Social Care – Fair Cost of Care](#). 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, there was an urgent need to publish the Cost of Care Exercise reports on the Council's website to meet Department for Health and Social Care requirements. On this occasion it was proposed that call-in be waived to prevent any further delay in publishing the reports.
- 3.6. Whilst this item had been included on the Cabinet Forward Plan as an open report in compliance of the regulations, it is noted that the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England) Regulations 2012 also requires 28 clear days' notice of a Cabinet meeting to be held in private.
- 3.7. The report set out that it had not been possible to provide this 28 clear days' notice of the inclusion of the exempt information included as an appendix to the report. 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.
- 3.8. The Cabinet approved the publication of the Cost of Care Exercise Reports, as set out at Appendix 2 and Appendix 3 to the report.
- 3.9. The Cabinet agreed in principle the publication and submission to the Department of Health and Social Care of the Market Sustainability Plan, as set out in the Exempt Appendix of the report and agreed to delegate authority to the Director of People - Children and Adults, in consultation with the Portfolio Holder for Adults' Services, to finalise the Market Sustainability Plan following receipt of feedback from the Department for Health and Social Care.
- 3.10. The Cabinet agreed that decision No. 29/2023 [as set out in paragraph 3.8 above] was considered urgent and therefore should not be subject to call-in.
- 3.11. On 7 March 2023, the Cabinet considered a report on the [CCTV Partnership Agreement 2021 – 2024](#). The report provided the Cabinet with details of the CCTV Partnership Agreement between Medway Council (Host Authority) and Gravesham Borough Council (Partner Authority). The Cabinet was asked to approve the Partnership agreement.
- 3.12. Whilst this item had been included on the Cabinet Forward Plan as an open report in compliance with the regulations, it is noted that the Local Authorities (Executive Arrangements)(Meetings and Access to Information)(England)

Regulations 2012 also requires 28 clear days' notice of a Cabinet meeting to be held in private.

- 3.13. The report set out that it had not been possible to provide this 28 clear days' notice nor 5 clear days' notice of the inclusion of the exempt information within the exempt appendix to the report. 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.
- 3.14. The Cabinet made the following decisions:
- 3.15. The Cabinet noted the report and approved the CCTV Partnership Agreement, as set out at Appendix 1 to the report.
- 3.16. On 7 March 2023, the Cabinet considered a confidential item – Judicial Review National Transfer Scheme. This fully exempt report asked the Council to agree a course of action.
- 3.17. The report set out that it had not been possible to provide this 28 clear days' notice nor 5 clear days' notice of the inclusion of the exempt report on the Cabinet agenda. 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.
- 3.18. The Chairman of the Children and Young People 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 for the reasons set out in paragraph 1.4 of the Exempt report.
- 3.19. The Cabinet agreed the recommendations as set out in section 8 of the Exempt report. This included agreement to the waiving of call-in.

4. Council (non-executive decisions)

- 4.1. On 24 March 2023, the Chief Executive made an urgent decision to withdraw all Medway Council's grounds of objection on planning appeals in respect the following two matters, case numbers 310119 and 3311965 - Land North of Moor Street and Land at East of Seymour Road.
- 4.2. Part 3 of the Medway Council constitution contains a scheme of delegations for officers. Part 4.1 of that scheme permits the Chief Executive to take urgent decisions in respect of Council responsibilities subject to consultation with the leaders of all of the groups on the Council which comprise at least 10% of the membership of the Council.
- 4.3. Leaders of the two political groups comprising at least 10% of the Members of the council were consulted by email on Friday 24 March 2023, on behalf of the Chief Executive, by the Assistant Director for Legal and Governance.

4.4. The Assistant Director Legal and Governance currently has delegated authority in respect of legal proceedings for executive functions. It is proposed that this be extended to cover non-executive functions, i.e., those that are the responsibility of the Council, for example, planning matters. This is set out as a tracked change in Appendix 1 to 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. Recommendations

6.1. The Council is asked to note the use of urgency provisions as set out in sections 3 and 4 of the report.

6.2. The Council is asked to approve the update to the Employee Delegation Scheme as set out in Appendix 1 to the report.

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Appendices

Appendix 1 – Employee Delegation Scheme (extract)

Background papers

None