

SPECIAL URGENCY IN DECISION MAKING

Constitutional Review Committee	28 May 2024
Report Author	Ingrid Brown, Head of Legal and Democracy and Monitoring Officer
Cabinet Portfolio Holder	Councillor Rob Yates
Classification:	Unrestricted
Key Decision	No
Ward:	No direct impact on wards

Purpose of the Report

This report proposes an amendment to the Council's Constitution in respect of the provisions for decision making where special urgency is required.

Recommendation(s):

It is recommended that Council approve the following amendments to the Constitution:

1. Under Part 3, Delegation Scheme, Part A, Section D amend 2.2 so that it reads as follows:

With the exception of key decisions that are covered by the special urgency provisions set out under Part 3, B, 2 and in Part 4, all key decisions must be agreed by the Cabinet.

2. Under Part 3, Delegations Scheme, Section E, Part B, insert a part 2 to read as follows:

Delegation to the Chief Executive:

- i, to undertake all action related to the role of the Head of Paid Service
- ii, To exercise any power whether specified in this Scheme or otherwise delegated to any other officer with the exception of the Monitoring Officer and unless expressly prohibited by law.
- iii, In a situation they consider to be an emergency, to undertake all action they consider necessary, including:

- (a) Incurring expenditure from working balances and/or reserves,
- (b) to determine whether to take, defend and/or settle any legal proceedings
- (c) to make a final determination whether to acquire land and/or dispose of a building and/or land,

subject to consultation with the Section 151 Officer to the extent that they consider it appropriate and feasible and to notifying any emergency action as soon as

reasonable to the Leader. For the purposes of exercising this power, all restrictions in the Financial Regulations including the contract procedure Rules are deemed waived and any decision may be made regardless of whether it is a Key Decision. In the event of an urgent key decision the procedure rules in Part 4 of this constitution must be followed.

3. Amend paragraph (q) of section 15 (Call-in) of the overview and scrutiny procedure rules in Part 4 of the Constitution to read as follows:

The Chair of the Council must agree both that the decision proposed is reasonable in all of the circumstances and to it being treated as a matter of urgency. In the absence of the Chair, the Vice-Chair's consent shall be required. In the absence of both, the consent of the Chair of the Overview and Scrutiny shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Council, together with the reasons for urgency.

1. Summary of Reasons

- 1.1 Within the Council's constitution there are procedural provisions for the making of urgent key decisions. However, the scheme of delegation in Part 3 of the constitution currently only provides for cabinet to make key decisions. Urgent key decisions should only be made in the most exceptional of circumstances and where the case for urgency is clear. In such circumstances however it is important that the provisions of the constitution allow for urgent decision making and accordingly these amendments are proposed.
- 1.2 The proposal to amend the procedure rules as indicated at three above is because currently the rules provide that in the absence of the Chair or Vice Chair, the Head of Paid Service who is currently the Chief Executive, should consent that the matter is urgent. Now that it is proposed that the Chief Executive take any urgent decision, they cannot also provide the necessary consent in relation to urgency.

2. Background

- 2.1 This is set out in the summary of reasons above. The Constitution currently only allows for key decision to be made by cabinet. There is a procedure for urgent key decisions to be made by the delegation to the chief executive needs to be agreed.

3. Relevant Issues

- 3.1 As above, the decision being sought seeks to amend the Council's constitution so that there is proper provision for urgent key decisions to be made by the Chief Executive.

4. Alternative Options

- 4.1 The decision may be approved in its current form or an alternative suggested. One alternative would be the Leader to take all Urgent Key decisions. Whilst there are merits to this there are also some disadvantages in that the Leader is not so close to operational decision making as the Chief Executive and it is likely to be more practical

for the Chief Executive to make these decisions, where possible in consultation with the Leader. It would also be possible to include the requirement in the recommendation for formal consultation with the Leader. This is not recommended for practical reasons. Whilst such consultation is desirable there may be occasions when it will not be possible and it is important that urgent decisions can be taken promptly and that there are few formal and procedural barriers to this. The procedure rules require in any event that the Chair of the Council must agree that the decision is an urgent one.

- 4.3 The preferred option is to amend as per the recommendations in this report. The preferred option will ensure not only consistency but will include the greatest level of transparency in respect of decisions that are non-key and are also sensitive in nature or might otherwise have been decided by cabinet.

5. Consultation

- 5.1 There is no formal legal duty to consult in relation to this decision. There has however been discussion and informal consultation with Democratic Services.

6. Corporate Implications

6.1 Finance and Resources

- 6.1.1 There are no financial or resource implications arising from this decision.

6.2 Legal and Constitutional

The Local Government Act 2000 makes provision for the discharge of functions by local authorities with executive arrangement.

The Constitutional procedures around call-in and urgency are set out in part 4 of the constitution. The amendments proposed in this decision report are consistent with the procedures set out in part 4 of the Constitution.

6.3 Council Policies and Priorities

- 6.3.1 The decision sought in this report accords with the Council's priority to work efficiently.

6.4 Risk

- 6.4.1 In the event that the Council fails to record executive non- key decisions, it will not be compliant with regulations and there is a risk that it will be found failing in this regard.

6.5 Climate Change and Biodiversity

This decision will not have any impact on climate change or biodiversity, either positively or negatively.

7. Equality, Equity and Diversity Implications

7.1 An equalities screening tool has been completed. There are no particular equalities implications arising from the decision sought in this report.

8. Crime and Disorder Implications and Community impact

8.1 There are no crime and disorder implications arising from this report and the decision, if approved, will not have a significant impact on the community.

Subject History

This matter will first be considered by the Constitutional Review Committee and will then go on to be considered by Full Council.

Appendices

There are no appendices

Background Papers

Report Author(s) Contact: Ingrid Brown, Head of Legal and Democracy and Monitoring Officer

telephone:

email: Ingrid.brown@thanet.gov.uk

Report Sign Off:

Legal Ingrid Brown-Head of Legal and Democracy and Monitoring Officer

Finance Chris Blundell (Director of Corporate Services - Section 151)

