

# CHESHIRE EAST COUNCIL

## Constitution Committee

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<b>Date of Meeting:</b>	15 <sup>th</sup> September 2016
<b>Report of:</b>	Director of Legal Services/Head of Governance and Democratic Services
<b>Subject/Title:</b>	Urgent Decision Procedures

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### **1.0 Report Summary**

- 1.1 This report invites the Committee to consider amendments to the procedures for taking urgent decisions as set out in the Constitution. The current procedures were introduced in 2011 and are considered deficient in certain respects as explained in the report.

### **2.0 Recommendations**

- 2.1 That Council be recommended that the procedures for taking urgent decisions as set out in Appendix 4 to the Procedure Rules within the Constitution be amended as set out in this report.

### **3.0 Reasons for Recommendations**

- 3.1 The urgency procedures in their current form are considered unlawful in part and impracticable for the purpose of taking urgent decisions.

### **4.0 Background and Options**

- 4.1 Where a decision is urgent and cannot await the next meeting, or a special meeting, of the relevant decision-making body, the Council's procedure rules set out how such decisions should be taken.
- 4.2 In the early days of Cheshire East Council, the procedure rules provided that urgent decisions would be taken by the Council's Chief Executive or his/her nominee in consultation with the relevant committee chairman or Cabinet member, the relevant scrutiny chairman and group leaders. Such decisions could involve significant amounts of expenditure and/or have a significant effect on a local community. In 2011, the then Head of Legal Services took the view that such decisions should properly be made by councillors and not officers. The urgency procedures were therefore amended by Council to provide that councillors and not officers would in future be responsible for urgent decisions. The urgency procedures approved by Council in 2011 are set out in Appendix 4 to the Procedure Rules within the Council's Constitution.
- 4.3 There are three different urgency procedures depending on whether the decision would normally have been taken by full Council, a committee or

sub-committee of the Council or the Cabinet. All three urgency procedures are set out in Appendix 4 to the Procedure Rules. The Appendix includes a definition of an urgent decision as follows:

*“A decision will be urgent if any delay likely to be caused by following the usual procedures would seriously prejudice the Council’s or the Public’s interests. If a decision is deemed an urgent decision caused by a failure to plan appropriately or work without due regard to timeliness, the circumstances giving rise to the need for an urgent decision should be reported to the Audit and Governance Committee on a quarterly basis.”*

- 4.4 The Director of Legal Services has reviewed the urgency procedures. He is of the view that the current provisions appear to have legal issues and may be less practical than is ideal for the purpose of taking urgent decisions. Each urgency procedure is discussed below. The deficiencies or weaknesses of each procedure are highlighted and an alternative approach is recommended in each case.

#### **Urgent Regulatory Decisions (Committee and Sub-Committee Procedure Rule 25)**

- 4.5 This procedure relates to decisions which would normally be taken by a regulatory committee such as a licensing committee or sub-committee. It provides as follows:

*“The Chairman and Vice-Chairman (or, in their absence, their nominees) of the relevant committee or sub-committee, in consultation with the appropriate Director or Head of Service, have delegated authority to take any non-executive decision subject to the following requirements being met:-*

- *The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the decision-making body, or urgently convened meeting;*
- *The decision is reported for information to the next available meeting of the decision-making body;*
- *The provisions of legislation are complied with;*
- *Advice has been taken from the Council’s Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.”*

- 4.6 Section 101 of the Local Government Act 1972 provides that a decision may be delegated to a committee, a sub-committee or an officer. It does not allow decisions to be delegated to individual members or groups of members who are not constituted as a formal committee or sub-committee (or who are not members of the Council’s executive body). Therefore, this urgency procedure in its current form is unlawful and any decisions taken under it would be invalid.

**Recommended:** That the procedure be amended to the following:

*“The Chief Executive or relevant Chief Officer (or in their absence their nominees) in consultation with the Chairman and/or Vice-Chairman of the relevant committee or sub-committee have delegated authority to take any non-executive decision subject to the following requirements being met: (requirements as before).”*

**Urgent Decisions: Council (Council Procedure Rule 18)**

- 4.7 This procedure relates to decisions which would normally be taken by full Council. It provides as follows:

*“If a decision would normally be required to be made by full Council the decision may be made by an urgency sub-committee which shall comprise 5 Members of the Council (ratio 3:1:1) and the Mayor (or in his absence the Deputy Mayor) as a non-voting member subject to the following requirements being met:-*

- *The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Council, or an urgently convened Council meeting ;*
- *The decision is reported for information to the next available meeting of the Council;*
- *The provisions of legislation are complied with;*
- *Advice has been taken from the Chief Executive, Council's Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.”*

- 4.8 An urgency committee convened for the purpose of taking an urgent decision would be subject to the Access to Information provisions, normally requiring five clear working days' notice before the meeting could take place. It would also be necessary to find five members at short notice to make up the committee, presumably in consultation with the group leaders or whips (plus the Mayor or Deputy Mayor). This would be a protracted process for taking an urgent decision requiring immediate action and would therefore seem impracticable.

**Recommended:** That the procedure be amended to the following:

*“If a decision would normally be required to be made by full Council the decision may be made by the Chief Executive or in his/her absence the Deputy Chief Executive (or in their absence their nominee) in consultation with Group Leaders and the Mayor (or in his/her absence the Deputy Mayor) subject to the following requirements being met: (requirements as before).”*

- 4.9 In the case of both amendments above, it is proposed that the decision-making role revert to officers. This is to avoid both legal complications and

the impracticalities of trying to arrange an urgent member body at short notice. However, in both cases, the procedure will require that all relevant members are formally consulted and a record of such consultation will be made as part of the decision notice.

#### **Urgent Decisions: Cabinet / Executive Matters (Cabinet Procedure Rule 53)**

- 4.10 This procedure relates to decisions which would normally be taken by Cabinet. It provides as follows:

*“The Leader of the Council, the Deputy Leader of the Council and the relevant portfolio holder (or, in their absence, their nominees), have delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met:-*

- *The decision-makers are satisfied that the matter is urgent and cannot await the next meeting of the Cabinet, or an urgently convened Cabinet meeting;*
- *The decision is reported for information to the next available meeting of the Cabinet;*
- *The provisions of legislation are complied with;*
- *The relevant overview and scrutiny committee Chairman has been notified of the matter and has been invited to make representations;*
- *The Leaders of all Opposition Groups have been notified of the matter and have been invited to make representations;*
- *Advice has been taken from the Council’s Director of Legal Services and Section 151 Officer;*
- *All Members of the Council are notified of the decision taken by electronic means.*

*In addition the following provisions shall apply:-*

- *Rules 13, 14 and 15 of Access to Information Procedure Rules shall be adhered to, relating to the content of the Forward Plan, general exceptions to the requirement to list decisions on the Forward Plan, and circumstances of special urgency*
- *Rule 54 of the Executive Procedure Rules shall be adhered to, relating to the Forward Plan and Key Decisions*
- *Overview and Scrutiny Procedure Rules in relation to Call-in (Rule 12) shall not apply to urgent executive decisions taken under this procedure (see Rule 13).*
- *Rule 4 of the Budget and Policy Framework Procedure Rules shall be adhered to in relation to urgent executive decisions taken under this procedure.*
- *Overview and scrutiny committees can review the reasons for the urgency of a decision and the process adopted.”*

- 4.11 This procedure depends on the Leader, Deputy Leader and relevant Portfolio Holder all being available to take an urgent decision jointly. Sometimes, one or more of these individuals is absent when the need for an urgent decision arises. It is also doubtful that a decision taken by a group of executive members not formally constituted as a committee of the Cabinet would be lawful. Any formally constituted body would of course be subject to the Access to Information requirements as regards notice of the meeting, etc. and could compromise the Council's interests in the case of an urgent decision. Finally, only the Leader of the Council may nominate another member of the Cabinet to act in his/her absence or the absence of another member of the Cabinet. Neither the Deputy Leader nor any other member of the Cabinet may nominate a substitute.
- 4.12 The proposed amended procedure recommended below sets out a formal scheme of delegation to individual Cabinet members with regard to the taking of urgent executive decisions and will therefore require the approval of the Leader of the Council before it can be incorporated into the Constitution.

**Recommended:** That subject to the approval of the Leader of the Council, the procedure for taking urgent executive decisions be amended to the following:

*“The Leader of the Council, or in his/her absence the Deputy Leader of the Council, or in his/her absence the relevant portfolio holder has delegated authority to take any executive decision in consultation with the Chief Executive subject to the following requirements being met: (requirements as before).”*

*Note: for the purposes of this urgency provision, the limit placed on the decision-making powers of individual Portfolio Holders in relation to decisions involving expenditure or savings of £1M or more would not apply.”*

## **5. Wards Affected and Local Ward Members**

- 5.1. There are no direct impacts upon individual Wards.

## **6. Implications of Recommendation**

### **6.1. Policy Implications**

- 6.1.1. Any changes to the Constitution, which arise from this report, will form the constitutional policy of the Council, and must be followed in the future work and operation of the Council.

## **6.2. Legal Implications**

6.2.1. As discussed in this report, the current procedures for dealing with urgent decisions other than by a formally-constituted decision-making body are in places unlawful. The proposed amendments will place the procedures on a sound legal footing.

## **6.3. Financial Implications**

6.3.1. There are no specific financial implications.

## **6.4. Human Resources Implications**

6.4.1. There are no human resources implications.

## **6.5. Equality Implications**

6.5.1. There are no direct equality implications.

## **6.6. Rural Community Implications**

6.6.1. There are no direct implications for the Borough's rural communities.

## **6.7. Public Health Implications**

6.7.1. There are no direct public health implications.

## **7. Risk Management**

7.1. The proposals in this report would, if implemented, appear not to result in any risks for the Council; rather they would mitigate any existing risks.

## **8. Background Papers**

8.1. In writing this report, the report author has had regard to the Council's Constitution.

## **9.0 Access to Information**

The background papers relating to this report can be inspected by contacting the report author:

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