

OVERVIEW & SCRUTINY COMMITTEE: Monitoring Information – Decisions taken under Urgency Procedures

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1. Background

1.1 The Council's Constitution requires that notice of all key decisions due to be taken by the Council must be provided on the list of Key Decisions.

A key decision is defined as a proposal:

- that involves expenditure/savings of £250,000 or above – this includes proposals phased over more than one year and match/grant aided funding with a total of £250,000 or above; and/or
- which has significant impact on the local community in one or more wards

1.2 In exceptional or urgent cases, if it is not possible to meet this requirement, there are 2 procedures that can be followed to enable the decision to still be taken. These are referred to within the Constitution as the Rule 15 and Rule 16 procedures.

1.3 Under both procedures the Chair (or in his/her absence Vice-Chair) of Overview & Scrutiny Committee is required to either be informed or approve the reasons for urgency. Given the key role of the Chair/Vice-Chair a monitoring process has been established to enable Overview & Scrutiny Committee to keep the use of these procedures under review.

1.4 This process was established in November 2003 and it was agreed that regular monitoring updates should continue to be provided on a 6 monthly basis. The last monitoring report was provided for Overview & Scrutiny Committee in April 2013 (covering the period September 2012 – March 2013). The next monitoring report is now therefore due and this details use of the procedures between April and December 2013. Details on use of the procedures in the next quarter (January – March 2014 will be provided as part of the next meeting update.

1.5 A basic explanation of both procedures is provided (as background information) in Section 2 of this report.

2. Outline of Rule 15 & 16 Urgency Procedures and involvement of Overview & Scrutiny Committee

2.1 Rule 15 (General Exception) Procedure

2.1.1 This procedure is used in cases when:

- a proposed key decision has not been included in the Key Decision List; and

- it is not possible to defer the decision until the next Key Decision List has been published; but
- it is possible to provide a minimum of 5 working days notice prior to the decision being taken;

2.1.2 Under this procedure the decision taker is required to **notify** the Chairman of the Overview and Scrutiny Committee in writing of the key decision, when it is due to be taken and reasons why it was not possible to include it on the Key Decision List. Notice of the reasons for urgency must then be provided.

2.1.3 Once the decision has been taken by the appropriate Director, Cabinet Member or Cabinet itself, it would still be subject to the normal call-in requirements.

2.2 **Rule 16 (Special Urgency) Procedure**

2.2.1 This procedure is used in cases when:

- a proposed key decision has not been included in the Key Decision List; and
- it is not possible to defer the decision until the next Key Decision List has been published; and
- it is not possible to provide a minimum of 5 working days notice prior to the decision needing to be taken;

2.2.2 The procedure should only be used in exceptional or urgent circumstances. Under the procedure the decision can only be taken if the decision taker has **obtained the formal approval** (in writing) of the Chair (or in his/her absence Vice-Chair) from Overview & Scrutiny Committee to the reasons for urgency and why the decision cannot reasonably be deferred, and notice of these have been published.

2.2.3 It is important to note that under this procedure the Chair of Overview & Scrutiny Committee is only being asked to agree to the decision being taken without the required public notice having been given. The actual key executive decision still needs to be approved by the appropriate decision taker.

2.2.4 A key difference between this and the Rule 15 procedure is that decisions taken under the Rule 16 procedure are also (due to their urgent nature) not subject to call-in.

2.2.5 All decisions taken under Rule 16 are reported to full Council on a quarterly basis for information. In addition the leaders of both opposition groups are now also informed after any decision is approved for implementation under the Rule 16 procedure. Decision takers are advised that the urgency procedure should not be used simply because a report has not been prepared in time. There must be clear reasons for urgency, which are endorsed by the Monitoring Officer before being

referred onto the Chairman of Overview & Scrutiny Committee for consideration.

3. Monitoring Information on the use of Rule 15 & 16 urgency procedures (April – December 2013)

3.1 The Rule 15 & 16 urgency procedures have been in operation, under the Council's Constitution, since June 2002.

3.2 Set out below is a quarterly breakdown on the number of Rule 15 and 16 decisions, which have been taken over the last 9 month monitoring period between April and December 2013:

	Rule 15	Rule 16
April – June 2013	2	1
July – September 2013	1	0
October – December 2013	0	1

3.3 The number of Rule 15 decisions taken over this period totalled 3 (compared to 9 over the previous 9 month period). The number of Rule 16 decisions totalled 2 (compared to 4 over the previous 9 month period), these would have required approval by the Chair of Overview & Scrutiny Committee.

3.4 Attached as **Appendix 1** is a breakdown of the use of both procedures by Departments.

3.5 Attached as **Appendix 2** is a breakdown of the individual decisions for which the procedures have been used and who was responsible for them.

3.6 Attached as **Appendix 3** are two graphs showing the overall trend in numbers of Rule 15 and Rule 16 decisions since the urgency process was adopted in 2003. There have been few uses of the Rule 16 process recently with only three in the last year. The trend in use of Rule 15 decisions was falling steadily but after a slight rise in the last reporting period has now continued to fall; these decisions are subject to the usual call-in requirements and account for only a small percentage of all decisions being made. Officers will continue to keep the trend in use of both processes under review.

4. Monitoring information on the Waiver of Call-In procedure

4.1 In addition to the Rule 15 & 16 procedure the Council's Constitution also contains a provision allowing call-in to be waived on decisions classified as urgent. The 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 interest.

4.2 Again the Chairman of Overview & 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 i.e. call-in being waived to allow its immediate

implementation. If the Chairman does not approve, then the decision would still be subject to the normal call-in process.

- 4.3 Overview & Scrutiny Committee has also agreed to monitor the use of this procedure. Members are asked to note that between April – December 2013 there were **no** requests to waive call-in on the grounds of urgency under this process (details in Appendix 4). This compares to one during the previous 6 month period.
- 4.4 The use of this procedure is only recommended in exceptional circumstances and again officers must provide clear reasons for urgency, which have to be endorsed by the Monitoring Officer before being referred onto the Chairman of Overview & Scrutiny Committee for consideration.
- 4.5 Details of any decisions approved under this procedure are also reported to full Council and the leaders of the opposition groups.

5. Action taken in response to the Monitoring Information

- 5.1 Regular monitoring updates continue to be provided for Overview & Scrutiny Committee to enable members to identify and monitor any trends in the use of these procedures.
- 5.2 The latest monitoring update shows a decrease overall in the use of the urgency procedures.
- 5.3 It is also important to recognise that the percentage of decisions being taken under the urgency procedures is small compared to the overall number of decisions being taken over the same period:
 - For the period April – June 2013, 60 decisions were published and of these 3 (5%) were approved under the urgency procedures.
 - For the period July – September 2013, 76 decisions were published and of these 1 (1.2%) was approved under the urgency procedures.
 - For the period October – December 2013, 80 decisions were published and of these 1 (1.25%) was approved under the urgency procedures.
- 5.4 The reduction in the use of these procedures has been assisted by the change in Executive Meeting Regulations, which has allowed the necessary 28 day notice of key decisions to be published whenever required, rather than waiting for publication on a monthly Forward Plan.
- 5.5 Members are asked to note that the next regular series of Constitution briefings are planned for later in 2014. The Governance Team is continuing to work with individual Departments, offering targeted constitution briefings for key staff and also to plan for the implementation of major decisions. The opportunity is being taken at all of these briefings to remind officers of the need to ensure that relevant decisions are included on the Key Decision List and that these urgency

procedures are only used in exceptional circumstances. It is felt this activity has helped to keep use of these procedures at a low level through increasing awareness around the Key decisions and the decision-making process.

6. Recommendations

Overview & Scrutiny Committee is asked to note the monitoring information provided on use of the urgency procedures and identify any possible trends/issues requiring further monitoring/action.