

# TONBRIDGE & MALLING BOROUGH COUNCIL



## EXECUTIVE SERVICES

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### Chief Executive

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**NB - This agenda contains proposals, recommendations and options. These do not represent Council policy or decisions until they have received proper consideration through the full decision making process.**

Contact: Committee Services  
[committee.services@tmhc.co.uk](mailto:committee.services@tmhc.co.uk)

10 November 2017

To: MEMBERS OF THE GENERAL PURPOSES COMMITTEE  
(Copies to all Members of the Council)

Dear Sir/Madam

Your attendance is requested at a meeting of the General Purposes Committee to be held in the Civic Suite, Gibson Building, Kings Hill, West Malling on Monday, 20th November, 2017 commencing at 7.30 pm

Yours faithfully

JULIE BEILBY

Chief Executive

## A G E N D A

### PART 1 - PUBLIC

- |    |                          |       |
|----|--------------------------|-------|
| 1. | Apologies for absence    | 5 - 6 |
| 2. | Declarations of interest | 7 - 8 |

3. Minutes 9 - 14

To confirm as a correct record the Minutes of the meeting of General Purposes Committee held on 26 June 2017

**Matters for Recommendation to the Council**

4. Implications for Tonbridge and Malling Borough Council of the Trade Union Act 2016 15 - 18

**Decisions to be taken under Delegated Powers**

5. General Data Protection Regulation - Implications for Tonbridge and Malling Borough Council 19 - 24

6. Urgent Items 25 - 26

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

**Matters for consideration in Private**

7. Exclusion of Press and Public 27 - 28

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

**PART 2 - PRIVATE**

**Decisions to be taken under Delegated Powers**

8. Establishment Changes 29 - 66

LGA 1972 Sch12A Paragraph 1 – Information relating to an individual

9. Review of the Planning Service 67 - 112

LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual

10. Establishment Changes - Housing Services 113 - 138

LGA 1972 Sch 12A Paragraph 1 – Info relating to an Individual

11. Urgent Items 139 - 140

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

## **MEMBERSHIP**

Cllr O C Baldock (Chairman)  
Cllr L J O'Toole (Vice-Chairman)

Cllr M A C Balfour  
Cllr Mrs S Bell  
Cllr P F Bolt  
Cllr M A Coffin  
Cllr Mrs M F Heslop  
Cllr B J Luker

Cllr D Markham  
Cllr S C Perry  
Cllr R V Roud  
Cllr C P Smith  
Cllr Ms S V Spence  
Cllr M Taylor

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Apologies for absence

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Declarations of interest

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## TONBRIDGE AND MALLING BOROUGH COUNCIL

### GENERAL PURPOSES COMMITTEE

Monday, 26th June, 2017

**Present:** Cllr O C Baldock (Chairman), Cllr L J O'Toole (Vice-Chairman), Cllr P F Bolt, Cllr M A Coffin, Cllr D Markham, Cllr S C Perry, Cllr R V Roud, Cllr C P Smith, Cllr Ms S V Spence and Cllr M Taylor

Councillors Mrs J A Anderson, N J Heslop, D Lettington, Mrs A S Oakley, M R Rhodes, H S Rogers and A K Sullivan were also present pursuant to Council Procedure Rule No 15.21.

Apologies for absence were received from Councillors M A C Balfour, Mrs S Bell and Mrs M F Heslop

### PART 1 - PUBLIC

#### **GP 17/11 DECLARATIONS OF INTEREST**

There were no declarations of interest made in accordance with the Code of Conduct.

#### **GP 17/12 MINUTES**

**RESOLVED:** That the Minutes of the meeting of the General Purposes Committee held on 6 March 2017 be approved as a correct record and signed by the Chairman.

### MATTERS FOR RECOMMENDATION TO THE COUNCIL

#### **GP 17/13 HUMAN RESOURCES STRATEGY UPDATE**

The report of the Director of Central Services presented an updated Human Resources Strategy which provided an overview of the Council's approach to managing its employees. Details were given of progress in achieving the improvement priorities in the Strategy for 2016/17 together with actions to be implemented in the period April 2017 – March 2018 (the Workforce Development Plan). The updated strategy also contained the statutory equality monitoring required by the Equality Act 2010.

**RECOMMENDED:** That the outcomes of the equality monitoring reported in Section 4 of the Human Resources Strategy, as set out in Annex 1 to the report, be noted and the actions listed in Section 5 thereof be commended to the Council.

**\* Referred to Council**

**DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION**

**GP 17/14 AMENDMENTS TO THE FLEXIBLE RETIREMENT POLICY**

The report of the Director of Central Services presented a revised Flexible Retirement Policy containing a number of amendments in the light of recent experience of operating the policy, particularly in circumstances where an employee elected to defer payment of all or part of their pension entitlement.

**RESOLVED:** That the amendments to the Flexible Retirement Policy, set out in the revised Policy at the Annex to the report, be approved.

**MATTERS FOR CONSIDERATION IN PRIVATE**

**GP 17/15 EXCLUSION OF PRESS AND PUBLIC**

The Chairman moved, it was seconded and

**RESOLVED:** That as public discussion would disclose exempt information, the following matters be considered in private.

**PART 2 - PRIVATE**

**MATTERS FOR RECOMMENDATION TO THE COUNCIL**

**GP 17/16 REVENUES AND BENEFITS - SHARED SERVICE**

(LGA 1972 Sch 12A Paragraph 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings)

Further to Decision No D170030CAB, the report of the Management Team advised the Committee of progress with the implementation of the Shared Service for Revenues and Benefits. Details were given of the outcome of discussions of the Project Board, comprising key staff from both Tonbridge and Malling and Gravesham Borough Councils, regarding the hosting of the Service. Reference was also made to representations received from staff and Unison. This resulted in a recommendation that the Service should be located at Kings Hill with Tonbridge and Malling designated as the lead authority. Members were advised that, pending the formulation of the Legal Agreement between the two authorities, there was a working assumption that TUPE would apply for the service model proposed.

It was noted that the Finance, Innovation and Property Advisory Board had recently considered a report focusing on issues relating to IT and digital services.

**RECOMMENDED:** That

- (1) the location of the Service at the Tonbridge and Malling Borough Council offices at Kings Hill be agreed, noting that existing Gravesham Borough Council revenues and benefits staff will relocate to Kings Hill;
- (2) it be agreed that Tonbridge and Malling Borough Council (TMBC) will become the lead authority and, subject to the written confirmation requested from Gravesham Borough Council (GBC), noted that it is GBC's intention to delegate the revenues and benefits function to TMBC which will become the service provider to GBC;
- (3) subject to final confirmation, it be acknowledged that TUPE will apply for the service model that is proposed;
- (4) it be noted that the Legal Agreement between TMBC and GBC for this service will be progressed over the coming months; and
- (5) thanks be recorded to all involved in the considerable amount of work in progressing the Shared Service during the time of dealing with the snap General Election.

**\*Referred to Council**

**DECISIONS TAKEN UNDER DELEGATED POWERS IN ACCORDANCE WITH PARAGRAPH 3, PART 3 OF THE CONSTITUTION**

**GP 17/17 ESTABLISHMENT CHANGES**

(LGA 1972 Sch 12A Paragraph 1 – Information relating to an individual)

The report of the Director of Central Services presented for approval a number of establishment changes arising from the on-going operational management of the Council's services.

A supplementary report by the Director of Planning, Housing and Environmental Health, circulated in advance of the meeting, gave details of a proposed new structure within the Health Team arising from the establishment of the West Kent Preventative Health Partnership between the West Kent district councils and Kent County Council.

**RESOLVED:** That the proposals and establishment adjustments set out in the report be endorsed as follows:

- (1) the post of DC Admin Support Team Leader (DJ0124), 30 hours per week, grade M8 and the post of DC Admin Support Deputy Team Leader (DJ0125), 37 hours per week, scale 5/6 be re-designated Technical Manager and Senior Technical Officer respectively with effect from 3 July 2017;
- (2) the posts of Planning Technicians, Appeals & Enforcement Officer and Planning Clerks (DJ0114, DJ0116, DJ0117, DJ0119, DJ0121, DJ0128, DJ0129, DJ0139, DJ0142, DJ0143) be deleted with effect from 2 July 2017;
- (3) ten new posts be created of Planning Technical Officer, six at 37 hours per week, one at 33.5 hours per week, one at 27 hours per week, one at 24 hours per week and one at 22 hours per week, with effect from 3 July 2017;
- (4) the post of Planning Clerk (DJ0141), 22 hours per week, be deleted with effect from 2 July 2017, on that date the employment contract of Samantha Cox be terminated on the grounds of redundancy and her redundancy payment be calculated in accordance with the Council's Reorganisation, Redundancy and Redeployment Procedure;
- (5) the hours of the post of Housing Technical Officer (DV0904) be reduced from 37 to 22.2 per week with effect from 1 June 2017;
- (6) a sum of £16,392 accruing from the reduction in hours of post DV0904 be ring-fenced pending a review of the Housing Team;
- (7) the hours of the post of Head of Waste and Street Scene (DG0006) be reduced from 37 to 22.2 per week with effect from 1 June 2017;
- (8) the post of Street Scene Manager (DG2001), 37 hours per week, be re-graded from M8 to M7 with effect from 1 June 2017;
- (9) the posts of Health Improvement Manager (DV0201), Health Improvement Co-ordinator (DV0202), Health Improvement Assistant (DV0203) and Health Improvement Administrative Assistant (DV0299) be deleted from the establishment with effect from 30 September 2017 and new posts of Health Team Leader (grade Senior Officer), and One You Advisors (Scale 5) (x 2) be established with effect from 1 October 2017; and
- (10) any further amendments arising from staff consultation on the proposals at (9) above and the evaluation of the Partnership Administrator post be delegated to the Director of Planning, Housing and Environmental Health, in consultation with the

Director of Central Services, the final structure of the future Health Team to be reported to the next meeting of the General Purposes Committee for information.

The meeting ended at 8.12 pm

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### GENERAL PURPOSES COMMITTEE

20 November 2017

#### Report of the Director of Central Services

#### Part 1- Public

#### Matters for Recommendation to Council

#### **1 IMPLICATIONS FOR TONBRIDGE & MALLING BOROUGH COUNCIL OF THE TRADE UNION ACT 2016**

**This report advises Members of the actions that the Council is required to take in response to the Trade Union Act 2016, and recommends that the statutory tables reporting on Trade Union “Facility Time” are incorporated in future “HR Strategy Update” reports.**

#### **1.1 Introduction**

1.1.1 The Trade Union Act 2016 amends the Trade Union and Labour Relations (Consolidation) Act 1992. The amendments increase ballot thresholds, introduce new information and timing requirements in relation to industrial action and impose legal requirements on unions for the supervision of picketing. In relation to the public sector, the Act introduces a requirement for unions to make a reasonable payment to employers for deducting union subscriptions from salaries and making them over to unions (referred to as DOCAS – deduction of contributions at source). The Act also requires the Council to publish certain information relating to time taken off by trade union officials employed by the Council for trade union duties and activities (referred to as Facility Time).

1.1.2 This report advises Members of the arrangements that the Council intends to put in place in response to the new requirements for DOCAS and Facility Time.

#### **1.2 DOCAS**

1.2.1 The legislation enables the Council to continue operating a check off system providing arrangements have been made for the union to make a reasonable payment to the employer in respect of its operation of the check off system.

1.2.2 The Council is currently in negotiation with Unison concerning the level of payment, and is confident that it will have reached agreement by 10 March 2018 when the Trade Union (Deduction of Union Subscriptions from Wages in the Public Sector) Regulations 2017 are due to come into force.

- 1.2.3 The anticipated payment received for DOCAS will generate a small income of approximately £300 per year.

### **1.3 Facility Time**

- 1.3.1 The Trade Union (Facility Time Publication Requirements) Regulations 2017 came into force on 1 April 2017 and require the Council to publish certain information for the 12 month period beginning 1 April 2017.
- 1.3.2 Facility time is time that is taken off by a trade union official to carry out a range of trade union activities including, the duties of a learning representative, accompanying a worker to a disciplinary, capability or grievance hearing, and carrying out the duties of a safety representative.
- 1.3.3 The information must be published in the form of tables. Table 1 – “Relevant union officials” will specify the number of employees who were union officials during the relevant reporting period, with a full time equivalent employee number also provided. Table 2 – “Percentage of time spent on facility time” will specify the percentage of their working hours spent by employees who were union officials on facility time in multiples of 0%, 1 – 50%, 51 – 99% and 100%. Table 3 – “Percentage of pay bill spent on facility time” requires the Council to provide the figures for the total cost of facility time, and, its total pay bill. Table 4 – will stipulate “the number of hours spent by union officials on paid trade union activities as a percentage of total paid facility time hours”.
- 1.3.4 It is **RECOMMENDED** that the tables containing the statutory information are included in the annual HR Strategy update report, which will next be considered by the June 2018 meeting of this Committee. This will allow sufficient time for the information to be published on the Council’s website before the required date of 31 July 2018. The information must also be included in the annual report.

### **1.4 Legal Implications**

- 1.4.1 The steps outlined above will ensure that the Council is compliant with the Trade Union Act 2016, the Trade Union Act 2016 (Commencement No 3 and Transitional) Regulations 2017, and the Trade Union (Deduction of Union subscriptions from Wages in the Public Sector) Regulations 2017.

### **1.5 Financial and Value for Money Considerations**

- 1.5.1 The Council is seeking to reach a check off arrangement whereby the cost of deducting union subscriptions is in the region of 2.5% of union deductions, which would be in line with the industry standard for such payments.

### **1.6 Risk Assessment**

- 1.6.1 The Council is seeking to mitigate risk by complying with the relevant legislation.

### **1.7 Equality Impact Assessment**



1.7.1 The recommendation in Section 1:3:2 of this report has no relevance to the substance of the Equality Act 2010.

## **1.8 Policy Considerations**

1.8.1 HR

## **1.9 Recommendations**

1.9.1 The Committee is commended to note the implications of the Trade Union Act 2016, and to recommend to Council the inclusion of the Facility Time Monitoring Tables in the annual HR Strategy Update.

Background papers:

contact: Delia Gordon

Nil

Adrian Stanfield  
Director of Central Services

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## TONBRIDGE & MALLING BOROUGH COUNCIL

### GENERAL PURPOSES COMMITTEE

20 November 2017

#### Report of the Director of Central Services & Monitoring Officer

#### Part 1 - Public

#### Delegated

### 1 GENERAL DATA PROTECTION REGULATION – IMPLICATIONS FOR TONBRIDGE & MALLING BOROUGH COUNCIL

#### Summary

**This report updates Members on the General Data Protection Regulation, highlighting the changes in data protection law that it brings about and sets out the actions being taken to ensure future compliance**

#### 1.1 Introduction

- 1.1.1 It has been nearly 20 years now since standards were set in the UK for data protection by the Data Protection Act 1998. Since then there has been a revolution in data and how it shapes our lives. The General Data Protection Regulation ('GDPR'), coming from the EU, is intended to address that revolution and will officially come into force on 25th May 2018. The government has confirmed that the UK's decision to leave the EU will not affect the commencement of the GDPR.
- 1.1.2 According to the European Commission the aim of the GDPR is "...to reinforce data protection rights of individuals, facilitate the free flow of personal data in the digital single market including through reduction of administrative burden."
- 1.1.3 The GDPR will apply to Tonbridge & Malling Borough Council and other public authorities. Our "Supervisory Authority" will remain the Information Commissioner's Office (ICO). For breaches of the GDPR the ICO will have the power to audit, issue warnings, impose temporary or permanent bans and in the case of more serious data breaches impose a fine up to 4% of a company's annual turnover or 20 million Euros whichever is the greater.
- 1.1.4 The core rules of data protection will remain broadly the same. However, there are new obligations under the GDPR and the requirements of the new regime will be stricter. It will be not only important to comply with the GDPR but we will also have to be able to demonstrate clearly how we comply.

## 1.2 Key changes

1.2.1 The use of “personal data” must comply with six data protection principles which are as follows –

(1) Data collection must be fair, for a legal purpose and be open and transparent about how the data will be used;

(2) It can only be collected for a specific purpose;

(3) The data collected must be necessary and not excessive for its purpose;

(4) It must be accurate and kept up to date;

(5) Data should not be stored any longer than necessary: and

(6) Data must be kept safe and secure.

1.2.2 Sensitive data will include genetic and biometric information.

1.2.3 Conducting criminal record checks on employees must be justified by law.

1.2.4 The GDPR sets out stricter and more detailed conditions for the use of consent. Under the new rules consent must be freely given, specific, informed and unambiguous. The onus will be on the Council to show that the data subject gave consent and if given by means of a written declaration, the request must be made in a manner that is clearly distinguishable from other aspects of the document. In addition, a data subject will have the right to withdraw their consent at any time.

1.2.5 A new right of “erasure” or “right to be forgotten” will allow someone to request that their online data is removed.

1.2.6 A new “right of data portability” will allow someone to request that their data is sent from one provider to another.

1.2.7 People must give their explicit consent for their data to be transferred outside the European Economic Area.

1.2.8 Larger companies and public authorities will be required to appoint a Data Protection Officer (DPO). The GDPR does not specify the precise credentials a data protection officer is expected to have, but it does require that this person be appointed on the basis of professional qualities and, in particular, knowledge of data protection law and practices, and the ability to fulfil the tasks set out in the Regulation i.e

To inform and advise the data controller (i.e. the Borough Council) and employees processing personal data of their obligations under the GDPR;

- To monitor compliance with the GDPR;

- To provide advice and monitor performance;
- To co-operate with the ICO; and
- To act as the contact point for the ICO on issues related to the processing of personal data.

1.2.9 The GDPR also requires that

- The DPO reports to the highest management level of the organisation;
- The DPO operates independently and is not dismissed or penalised for performing their task; and
- Adequate resources are provided to enable DPOs to meet their GDPR obligations

1.2.10 The DPO may be a staff member, or a contractor. Public bodies may have a single DPO for several such authorities, taking account of their organisational structure and size.

1.2.11 High risk data projects will require a privacy impact assessment and consultation with the supervisory authority.

### 1.3 Preparing for the GDPR

1.3.1 Many of the GDPR's main concepts and principles are much the same as those in the Data Protection Act 1998 so provided we are complying with the DPA then our approach to data compliance should remain valid under the GDPR. However, there are new elements and enhancements under the new regime so we will need to ensure our approach to GDPR is compliant in advance of May 2018.

1.3.2 In order to prepare for the GDPR the ICO has highlighted 12 steps that the Council can take now to prepare itself. These are as follows

- (1) **Awareness** – Ensure that the key people at TMBC are aware of the changes being brought about by the GDPR and the impact this is likely to have (staff will need adequate and up to date training on data protection and GDPR changes);
- (2) **Information held by TMBC** – We should document what personal data we hold, where it came from and with whom we share it. We should review the contracts and other arrangements we have in place when sharing data with other organisations. We may need to organise an information audit;
- (3) **Communicating Privacy Information** – We should review our current privacy notices and put a plan in place for making any changes in time for GDPR implementation;

- (4) **Individuals' rights** – We should check our procedures to ensure they cover all the rights individuals have, including how we would delete personal data or provide data electronically and in a commonly used format;
- (5) **Subject access requests** – we should update our procedures and plan how we will handle requests within the new timescales and provide any additional information (we currently have 40 days to process a subject access request. Under the GDPR we will have to process the request within a month. We will no longer be able to charge £10 for the request);
- (6) **Legal basis for processing personal data** – we should look at the various types of data processing we carry out, identify our legal basis for carrying it out and document it;
- (7) **Consent** – we should review how we are seeking, obtaining and recording consent and whether we need to make any changes;
- (8) **Children** – we should start thinking now about putting systems in place to verify individuals' ages and to gather parental or guardian consent for the data processing activity;
- (9) **Data breaches** – We should make sure we have the right procedures in place to detect, report and investigate a personal data breach;
- (10) **Data Protection by Design and Data Protection Impact Assessments** – We should familiarise ourselves with the ICO guidance on Privacy Impact Assessments and work out how and when to implement them;
- (11) **Data Protection Officer** – We need to formally designate a Data Protection Officer who will take responsibility for data protection compliance and who will report directly to the highest levels of management within TMBC. At the moment this role is fulfilled on a day to day basis by the Director of Central Services & Monitoring Officer. If this post is to continue to perform the role in relation to the GDPR then a formal designation will need to be made;
- (12) **International** – this applies if TMBC operates internationally and then we should determine which data protection supervisory authority we come under (not really applicable as we fall under the ICO).

## 1.4 The role of the Information Commissioner's Office (ICO)

- 1.4.1 The ICO has stated that it wants to help organisations understand the new legal framework in the EU. It will continue to issue guidance on aspects of the GDPR as we approach implementation.

1.4.2 The ICO is committed to assisting businesses and public bodies to prepare to meet the requirements of the GDPR ahead of May 2018 and beyond. They acknowledge that there may still be questions about how the GDPR would apply in the UK on leaving the EU, but this should not distract from the important task of compliance with the GDPR. With so many businesses and services operating across borders, international consistency around data protection laws and rights is crucial both to businesses and organisations, and to individuals. The ICO's role has always involved working closely with regulators in other countries, and that will continue to be the case. Having clear laws with safeguards in place is more important than ever given the growing digital economy, and the ICO will work with government to stay at the centre of these conversations about the long term future of UK data protection law and to provide advice where appropriate.

## **1.5 Recommendations**

1.5.1 The work required to prepare for the GDPR (including the '12 steps' set out in paragraph 1.3.2) is being taken forward by the Information Governance Officer Steering Group, with input from appropriate colleagues from across the Council. For example, in reviewing our procedures for obtaining the consent of data subjects to the processing of their personal data, input has been obtained from several services across the Council.

1.5.2 Face to face training has already been provided to senior officers, with online training for all staff to be rolled out in advance of next May. It is intended that training will also be provided to all Councillors.

1.5.3 It is recommended that Members formally designate the Director of Central Services & Monitoring Officer as the Council's Data Protection Officer. In order to provide resilience it is further recommended that the Principal Solicitor and Principal Solicitor (Litigation) are both appointed as Deputy Data Protection Officers, so that they are able to perform the duties of the Data Protection Officer in the event that the Director of Central Services is unable to act in a particular case.

## **1.6 Financial and Value for Money Considerations**

1.6.1 The financial considerations are set out above.

## **1.7 Legal Considerations**

1.7.1 The legal considerations are set out above.

## **1.8 Risk Assessment**

1.8.1 Compliance with the requirements of the GDPR is mandatory, so the Council needs to ensure it is fully prepared in advance of May 2018. The risks of non-compliance are set out in paragraph 1.1.3 above.

## **1.9 Equality Impact Assessment**

1.9.1 None arising from this report.

## **1.10 Recommendation**

1.10.1 It is **RECOMMENDED** that Members

(1) Note the contents of this report

(2) Appoint

- a. the Director of Central Services & Monitoring Officer as the Council's Data Protection Officer;
- b. the Principal Solicitor and Principal Solicitor (Litigation) as Deputy Data Protection Officers

contact: Adrian Stanfield

Background Papers:  
None



# Agenda Item 6

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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# Agenda Item 7

The Chairman to move that the press and public be excluded from the remainder of the meeting during consideration of any items the publication of which would disclose exempt information.

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# Agenda Item 11

Any other items which the Chairman decides are urgent due to special circumstances and of which notice has been given to the Chief Executive.

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