

# Supplementary Committee Agenda



## **Constitution and Members Services Scrutiny Standing Panel Monday, 30th July, 2007**

**Place:** Committee Room 1, Civic Offices, High Street, Epping

**Time:** 7.00 pm

**Committee Secretary:** Zoe Folley, Research and Democratic Services  
Tel: 01992 564532 Email: zfolley@eppingforestdc.gov.uk

---

**6. PROTOCOL ON PARTNERSHIPS AND OTHER EXTERNAL ORGANISATIONS  
(Pages 3 - 18)**

To consider the attached reports.

**7. COUNCIL BUSINESS - ARRANGEMENTS FOR EMERGENCY SITUATIONS  
(Pages 19 - 22)**

To consider the attached report.

This page is intentionally left blank

## **Report to Constitution and Members' Services Standing Scrutiny Panel**

**Date of meeting: 30 July 2007**

**Subject:** Review of Protocol on Outside Organisations

**Officer contact for further information:** I Willett (Ext: 4243)

**Committee Secretary:** Z Folley (Ext: 4532)

---



### **Recommendation:**

#### **To review the attached Protocol on Outside Organisations**

1. The attached protocol was approved by the Council and was designed to regulate the relations between the Council and external partnerships and other outside bodies.
2. Key features of the protocol are:
  - (a) execution of agreements with external bodies to establish the role of Council representatives;
  - (b) clarification of constitutions/trust deeds or other rules under which those organisations operate;
  - (c) institution of reports on an annual basis by Council representatives;
  - (d) advice to Council representatives who may be required to assume responsibilities for those bodies which could conflict with their role as Councillors;
  - (e) advice to Councillors to prevent policy commitments being given inadvertently to such bodies;
  - (f) the use of the protocol to review outside organisations from the point of view of relevance to the Council could be improved;
  - (g) clarification of liability insurance.
3. The protocol has been in operation for 2 years. In summary, the experience has been that:
  - (a) the annual survey of members and organisations has been useful in keeping Council records up to date;
  - (b) annual reporting by members has improved;
  - (c) agreements with outside bodies have been concluded in a number of cases;
  - (d) Councillors have shown greater awareness of possible conflicts of interest with Trusts and similar bodies, in some cases arrangements for representation have been modified;

- (e) provision is made for each Councillor to present oral update reports on outside bodies and this has been utilised on occasions;
  - (f) a mechanism for reviewing and discussing outside bodies has not been fully established;
  - (g) the administration required of the scheme is considerable; and
  - (h) the position on insurance/liabilities of members has been clarified.
4. After two years of operating the protocol, the Panel may wish to review how effective it has been. Further details of the agreements reached, annual report by Councillors and analysis of returns can be provided if the Panel wishes to go into more detail.
  5. Some aspects of the protocol will require amendment in the light of the Council's new code of conduct, including declaration of interests.

**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**Adopted by Epping Forest District  
Council on 13.12.05**

## **PROTOCOL - PARTNERSHIPS AND EXTERNAL ORGANISATIONS**

### **1. Purpose of Protocol**

- 1.1 To provide a framework of advice for the conduct of members and officers when representing the Council on external partnerships and other organisations.
- 1.2 To provide specific guidelines on questions relating to:
  - (a) member and officer liabilities;
  - (b) indemnities;
  - (c) reporting back to the Council;
  - (d) annual reports; and
  - (e) training.
- 1.3 This protocol is limited to appointments made in connection with the Council's powers, duties and general activities. It does not apply to membership of outside organisations held on a personal basis (i.e., independently of the Council). In such cases the member or officer concerned has a personal responsibility to consider issues such as indemnities, potential conflicts of interest and declarations of interest (see paragraphs 6.4 and 6.5 of this protocol).

### **2. Council involvement with External Partnerships and Organisations**

- 2.1 The Council is routinely invited to appoint representatives to external bodies. Such invitations usually arise in one of the following ways:
  - (a) by virtue of a statutory duty or other legal requirement;
  - (b) by virtue of a specific decision or policy adopted by the Council;
  - (c) by virtue of invitations deriving from the Council's community leadership/consultative role; and
  - (d) by virtue of professional contacts among officers or through liaison arrangements delegated to them.
- 2.2 This protocol is intended to regularise the arrangements operating in any such case.

### **3. Appointments - Members of the Council**

- 3.1 Member appointments are usually consolidated in May each year at the Annual Council meeting. Other Council meetings sometimes deal with appointments, usually in relation to casual vacancies or new bodies. All bodies will be reviewed annually.
- 3.2 Member appointments are subject to separate protocols in the Council's Constitution covering:
  - (a) allocation of places between the political groups; and
  - (b) allocation of places on outside organisations to Portfolio Holders where Cabinet functions are directly involved.
- 3.3 Reference to those separate rules is necessary on all questions of appointment procedure. No appointment of a member to an outside body or partnership can be

made without a Council decision. In deciding to make any appointments, the Council will satisfy itself that this involvement is relevant for the power and duties of the Council or is otherwise desirable.

#### **4. Appointments - Officers of the Council**

4.1 Officers serve on outside bodies in 3 main capacities:

- (a) when appointed by the Council, in lieu of a member representative or where both a member and an officer is desirable;

These appointments under 4.1 (a) above are subject to the same rules as applied to members.

- (b) by virtue of the post occupied or professional background/development requirements;

These are agreed by Heads of Service. For more junior positions, Heads of Service give approval, except where consultation with members or Management Board is desirable.

- (c) by virtue of a special invitation outside the normal terms of an officer's employment.

These appointments require approval by the Management Board and the Council in the case of Senior Officers. Junior staff are dealt with by Heads of Service. The Council's staffing policies stipulate the correct method of making these appointments.

#### **5. Representatives on Outside Partnerships and Organisations - Policy Aspects**

5.1 Where any external organisations are involved in any matter which directly or indirectly affects the policies, responsibilities and powers of the Council, representatives must be aware at all times that the Council's policy is paramount. No undertakings should be given which in any way compromise the legal requirements applying to Council operations or which compromise the policy of the Authority.

5.2 Representatives should report back to the Council on any matters affecting the Council and seek information with which to advise an external organisation or partnership. In reporting back, a representative may wish to request the relevant decision maker (e.g. the Cabinet or a Portfolio Holder) to consider any recommendations from the organisation concerned. No undertakings should be given on the outcome.

5.3 Some external partnerships have a basis in statutory powers whereby a number of partner bodies work together to achieve joint objectives. Although representatives are already able to participate in the proceedings of such partnerships, they should bear in mind at all times:

- (a) that the Council may have established policies and procedures which may be affected by those decisions; and
- (b) that implementation of partnership objectives may still require decisions by the Council in terms of staffing, finance and other resourcing matters.

## **6. Representatives on Outside Organisations and Partnerships - Insurance and Indemnities**

6.1 Local Authorities are unable to provide all embracing indemnities or incur costs for all activities on all outside bodies. The Council's insurers can provide an indemnity to individual members and employees in limited circumstances only.

6.2 The circumstances in which the Council's insurers (currently Zurich) advise an indemnity can be provided are:

- (a) where an individual acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers;
- (b) where the individual acts solely in an advisory capacity in connection with the local authority's functions;
- (c) where the individual occupies an observer role on the board or committee of an outside organisation, representing the local authority's interests (rather than in a decision-making capacity);
- (d) where the individual acts on behalf of a joint committee established by two or more local authorities.

6.3 The authority is not able to provide an indemnity in respect of those activities where the individual acts:

- (a) solely on behalf of an outside body; or
- (b) outside his or her delegated powers; or
- (c) outside the authority's statutory powers.

6.4 Members and officers of the Council can therefore participate on outside organisations as observers or facilitators in the exchange of views or information as an extension of their position as local authority Councillors, but they may not make any decisions which are binding on the local authority.

6.5 Members are also not indemnified if they serve in an executive capacity on an outside body. A Member's status as a local authority councillor does not prevent the Member serving on an outside body in a personal capacity (i.e. not as a Council representative), provided that this does not create a conflict with his or her duties as a local authority member. Outside bodies must provide cover in either of these situations and local authority Members and employees should ensure that adequate cover for them is in place before agreeing to being appointed.

6.6 The same principles apply to officers as are set out in paragraph 6.4 above.

## **7. Written Agreements**

7.1 The Local Government Association, in conjunction with the National Council for Voluntary Organisations, has produced a Code of Practice, a key recommendation of which is a formal written agreement between external organisations and the Council. This protocol therefore requires such an agreement to be compiled in each case covering the following:



- (a) the relationship between the local authority and the organisation e.g. funder, partner;
- (b) the formal role and responsibilities of the authority, employee or Member, e.g. director, trustee, adviser, observer;
- (c) a general statement regarding what is expected from the local authority Member or employee;
- (d) the responsibilities and liabilities of members where board membership of the outside organisation is involved in terms of legislation, regulation and accounting standards;
- (e) confirmation that, where the outside organisation is a charity, a Member or employee who is acting as a trustee must act in the interests of the charity rather than the authority when serving in that capacity;
- (f) the role of observers, including receipt or withholding of confidential papers, attendance or exclusion from meetings and any speaking or voting rights;
- (g) the arrangements made by the outside organisation to indemnify their members against the risk of personal liability where board or trustee membership is involved; and
- (h) the arrangements made by the authority to cover their Members and employees whilst serving on outside organisations.

7.2 The Council will maintain up-to-date records of the approved involvement of the authority and its members and employees who serve on outside organisations including:

- (a) regular reviews of all placements and categorisations;
- (b) the establishment of a register to be used as the basis for central record;
- (c) specific terms of reference being given to each individual involved with an outside body;
- (d) confirmation of the extent to which the authority's indemnity does apply, emphasising the consequences for the individual if his or her terms of reference are exceeded;
- (e) a clear statement that the authority's indemnity will not be available where the individual is:
  - a director on the board of a limited company; or
  - a trustee of a trust or charity; or
  - a voting member of the management committee of an unincorporated association;

and is not exercising a local authority function;

- (f) the position of an individual member on the Board or Committee of a grant-aided organisation to be amended to observer only; and
- (g) written confirmation to all Members and employees that personal or social memberships (i.e. those not connected with the Council) are not covered by the authority's indemnity.

7.3 A form of agreement document is attached as Appendix 2.

## **8. Representatives on External Organisations/Partnerships - Directorships**

8.1 Memberships of some organisations confer executive responsibilities on Council representatives. Cases in point are trustees of charities, directorships and membership of other statutory authorities.

8.2 There is a general presumption against such positions being held by representatives of this Council. This reflects conflicts of interest which can arise between the aims and objectives of the Council and those of the organisation concerned.

8.3 In cases where representatives hold such positions they must ensure:

- (a) that they have been duly appointed by the Council (in the case of members) or the Management Board (in the case of officers);
- (b) that their duties on behalf of the organisation do not conflict with their role as Councillor or officer; and
- (c) that they maintain a clear distinction of responsibilities by declaring interests and not participating in Council meetings or discussions where there is a direct conflict of interest.

8.4 Representatives must seek timely advice on their position under the Code of Conduct for Members and Officers and any advice issued by the Standards Board for England and the Epping Forest District Standards Committee.

## **9. Reporting Arrangements - Members of the Council**

9.1 A prime responsibility for members and officers who serve on outside organisations and partnerships is to keep the Authority informed of the work of those bodies. Such reports can also provide useful information by which the Council can judge whether continued involvement is of benefit to the Council. The Council will seek to receive copies of minutes of organisations but the reports by the representative may still be required.

9.2 Such reports should cover:

- (a) reports to the Cabinet on specific matters actually or potentially affecting the Council or on urgent matters; and
- (b) annual reports (even if these are produced separately by the organisation concerned).

9.3 Reports under 9.2(b) should be made in cases where an organisation does not produce its own annual report. A prescribed format (attached Appendix 3) will be

used. A relevant timescale will be prescribed for this leading to the Annual Council meeting each year.

## **10. Reporting Arrangements - Officers of the Council**

- 10.1 Officers serving on outside organisations or partnerships as representatives of the Council shall keep their line manager(s) or Head of Service informed about the work of the body concerned. Heads of Service shall determine whether any information should be referred to the Management Board/Portfolio Holder.

## **11. Review of Protocol**

- 11.1 The protocol shall be subject to review on a regular basis or according to specific circumstances.

# LIST OF APPENDICES

- Appendix 1 - Statement of Indemnities/Insurance in respect of outside bodies**
- Appendix 2 - Agreement Document**
- Appendix 3 - Annual Report Format**

**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**APPENDIX 1**

**INSURANCE AND INDEMNITY STATEMENT**

**1. Circumstances in which indemnities that can be provided by the Council's Insurers in respect of member or officer involvement in external partnerships and organisations:**

- (a) Where an individual acts solely on behalf of his or her authority, within the terms of reference laid down by the authority, and solely in pursuance of the local authority's statutory powers;
- (b) Where the individual acts solely in an advisory capacity in connection with the local authority's functions;
- (c) Where the individual occupies an observer role on the board or committee of an outside organisation, representing the local authority's interests (rather than in a decision-making capacity);
- (d) Where the individual acts on behalf of a joint committee established by two or more local authorities.

**2. Activities for which the Council is unable to provide indemnities**

Activities where the individual member or officer acts:

- (a) solely on behalf of an outside body; or
- (b) outside his or her delegated powers; or
- (c) outside the authority's statutory powers.

**Notes:**

- 1. This statement derives from the indemnity provisions and exclusions from the Council's Public Liability Policy held with Zurich Municipal.
- 2. This statement will be reproduced as part of the agreement with each outside organisation. (See Appendix 2)

**PROTOCOL ON PARTNERSHIPS  
AND OTHER EXTERNAL ORGANISATIONS**

**APPENDIX 2**

**STANDARD FORM OF AGREEMENT  
BETWEEN EPPING FOREST DISTRICT COUNCIL AND \_\_\_\_\_**

**A. STATEMENT OF PARTICULARS \_\_\_\_\_**

|  |  |
|--|--|
| NAME OF ORGANISATION/<br>PARTNERSHIP<br>(1)  |  |
| ADDRESS FOR<br>CORRESPONDENCE<br>(2)   |  |
| E-Mail<br>(3)  |  |
| Telephone No<br>(4)  |  |
| Fax No<br>(5)  |  |
| AIMS AND OBJECTIVES OF<br>ORGANISATION (Supply<br>copy of Constitution,<br>governing instrument or trust<br>deed)<br>(6)   |  |
| MEETING/AGENDA<br>ARRANGEMENTS (Please<br>describe)<br>(7)   |  |
| WHAT STATUS/ROLE WILL<br>THE COUNCIL<br>REPRESENTATIVE FULFIL?<br>(viz observer, voting<br>committee member, trustee,<br>director etc)<br><br>(Please state any restrictions<br>including any on confidential<br>information)<br>(8) |  |

|   |  |
|---|--|
| DOES PUBLIC LIABILITY INSURANCE EXIST FOR THE WORK OF THE ORGANISATION? (Give name of insurer and policy number)<br>(9) |  |
| IS THE ORGANISATION A REGISTERED CHARITY? (Give registration number)<br>(10)  |  |

**B. FINANCIAL INFORMATION**

|   |  |
|---|--|
| Does this organisation receive grant aid or similar financial support from Epping Forest District Council? (Give details)<br>(11) |  |
|---|--|

**C. STATEMENT OF PARTICULARS - EPPING FOREST DISTRICT COUNCIL**

|   |  |
|---|--|
| REPRESENTATIVES OF EPPING FOREST DISTRICT COUNCIL         |  |
| STATUS (OFFICER/MEMBER)<br>(12)                           |  |
| TERM OF APPOINTMENT<br>(13)                               |  |
| CONTACT DETAILS (Address, telephone, fax, e-mail)<br>(14) |  |

#### **D. TERMS OF AGREEMENT - [Organisation]**

The \_\_\_\_\_ agrees to:

- (a) provide details of all relevant documentation and access to all meetings to the representatives of Epping Forest District Council;
- (b) provide details of meeting venues, times of meetings;
- (c) acknowledge that no Council representative may make decisions or give commitment on behalf of the Council in respect of any matter affecting the organisation;
- (d) acknowledge that no Council representative may commit the Council to any action or policy affecting the organisation;
- (e) acknowledge that a Council representative may be required to declare a personal interest in terms of his or her representation on the organisation and in some circumstances, may have a prejudicial interest which will require withdrawal from any District Council body considering a matter concerning that organisation;
- (f) note that Council representatives will only be indemnified as set out in the enclosed statement;
- (g) assist the Council representative in submitting regular reports to Epping Forest District Council on matters affecting the organisation;
- (h) agrees to provide separate copies of agenda, minutes, reports, statements of accounts, annual reports to Epping Forest District Council in addition to those provided under 1(a) above;
- (i) where appropriate, agrees to the attendance at meetings of nominated deputies when the representative is absent.

#### **E. TERMS OF AGREEMENT - EPPING FOREST DISTRICT COUNCIL**

The Epping Forest District Council agrees as follows:

- (a) to appoint representatives and deputy representatives in accordance with the organisation's requirements;
- (b) to keep the organisation informed of relevant Council decisions via its representative(s);
- (c) to indemnify its representatives but only in accordance with the statement attached;
- (d) that it expects Council representatives to attend meetings and participate in any training deemed necessary by the organisation;
- (e) to advise representatives on any matters relating to interests as they arise.

#### **F. SIGNATURES**

- (a) For \_\_\_\_\_ [Organisation]

On behalf of the above-named organisation, I agree to the conditions attaching to the appointment of representative(s) by Epping Forest District Council



Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

(b) For Epping Forest District Council

On behalf of Epping Forest District Council, I confirm the conditions and undertakings attaching to Council representation on the above-named organisation.

Signed \_\_\_\_\_  
Name \_\_\_\_\_  
Position \_\_\_\_\_  
Date \_\_\_\_\_

This page is intentionally left blank

## **Report to Constitution and Members' Services Standing Scrutiny Panel**

**Date of meeting: 30 July 2007**

**Subject:** Council decision-making in emergency situations

**Officer contact for further information:** I Willett (Ext: 4243)

**Committee Secretary:** Z Folley (Ext: 4532)

---



### **Recommendation:**

**To give preliminary consideration to changes to the Constitution to cover emergency situations where a large proportion of the Cabinet, Regulatory Committees or the Council itself are unable to take part in decision-making by virtue of illness, death or other extreme circumstances.**

---

### **Report:**

1. This report derives from an Emergency Planning exercise held earlier in the year to test how the Council would respond to a major epidemic such as pandemic influenza. One aspect of the seminar related to the ability of the Council to make essential decisions if large numbers of councillors were disabled from taking part by reason of death or illness.
2. This report is concerned with how the Constitution might be adjusted to meet such exceptional situations. There are three main areas where attention needs to be given:
  - (a) the Cabinet;
  - (b) the regulatory committees (Licensing Committee, Area Plans Subs, District Development Control Committee, Complaints Panel, Staff Appeals Panel and Housing Appeals Panel); and
  - (c) the Council itself.
3. This report is designed to facilitate a scoping exercise on the kind of situations which might arise and how the Council would respond.

### **The Cabinet**

4. The Council Constitution already makes provision to protect the Cabinet quorum in circumstances where Cabinet members have resigned and decisions are required in the immediate period prior to an election. However, the Constitution does not deal with the kind of emergency situations which were discussed at the Emergency Planning exercise. Among the issues that would need to be covered are as follows:

(a) Absence of the Leader and Deputy Leader of the Council

If the Leader of the Council were unavailable the Deputy Leader would automatically assume all those responsibilities. If the Leader and Deputy Leader of the Council were both unavailable, arrangements would be required for those delegated powers to be discharged by other members of the Cabinet who were unaffected.

The remaining members of the Cabinet could collectively decide who was to carry out the functions of Leader and Deputy Leader for the interim period. In accordance with statutory requirements those Cabinet members are required to take advice from the Head of Paid Service, the Monitoring Officer and the Chief Financial Officer as appropriate.

(b) Absence of a Cabinet Quorum

In extreme circumstances it is possible that so many members of the Cabinet would be unavailable that there would be no Cabinet quorum. Those remaining Cabinet members could then constitute a quorum for Cabinet business and be authorised either collectively or individually to take executive decisions until such time as a Cabinet quorum could be restored.

(c) No Cabinet members are able to act

The most extreme situation might be that all Cabinet members were unable to take decisions through illness or death. In those circumstances the Head of Paid Service or the Monitoring Officer or the Chief Financial Officer might consult with and advise the Chairman of the Council on a process for carrying out executive functions until such time as Cabinet members are able to act. This could involve arrangements to appoint new Cabinet members sufficient to carry out the task and including suspension of various provisions in the Constitution to facilitate this.

(d) Arrangements for Reaching Executive Decisions in Emergency Situations

In the case of pandemic flu and similar epidemics, there may be restrictions on the ability of Cabinet members to meet in the same room to make decisions. Therefore, under the arrangements outlined in preceding sections of this paragraph, there may be need for Cabinet business to be transacted by means of paper, telephone or electronic communications depending which is the most appropriate based on the health advice being given nationally. It is important however that those decisions are properly recorded and communicated to the public, other Councillors and officials who have to carry them out. Statutory requirements would have to be observed in all cases.

### **Absence of Key Officers**

5. Certain roles for officers are set out in the Constitution in some detail. These include the Head of Paid Service (HOPS), the Monitoring Officer (MO) the Chief Financial Officer (CFO) and the Chief Officers (COs). It is also clear that executive members are under a statutory duty to take account of their advice. In an emergency situation the HOPS, MO and CFO may need to act in each other's stead and also to have nominated deputies or substitutes available to fulfil their role if they are unable to act. At the moment there is only a Deputy Monitoring Officer. In the case of Heads of Service, management structures indicate which Assistant Heads could be available to substitute.

## **Regulatory Committees**

6. It is suggested that in terms of each of the regulatory committees of the Council where decision-making may be required during an emergency situation, similar arrangements as to those outlined for the Cabinet above, would need to be reflected in the relevant Article of the Constitution. The main attention at the Emergency Planning exercise was focused on the Cabinet but there may be circumstances where other decisions outside the Cabinet's remit would need to be made and some "fallback" provision may be desirable to cover those situations.

## **The Council**

7. Certain decisions require the approval of the full Council. These might include restoring a Cabinet quorum, the appointment of a Leader and other decisions required by the Constitution. There are powers for key officers to make decisions in emergency situations and to report these back. Equally, because there are 58 Councillors the probability of a Council quorum being lost is considerably less than it would be for smaller bodies like the regulatory committees and the Cabinet.

## **Other Possibilities - Government Intervention**

8. If the situation were so serious it is possible that central Government would itself prescribe procedures by which local authorities can continue to act. In those circumstances, Government orders would supersede any arrangements in the Council's own Constitution. However, some provisions regarding emergency situations are probably advisable in case they are peculiar to the Epping Forest District and not part of the national scene.

## **Other Possibilities - Emergency Committee(s)**

9. Another option for dealing with emergencies might be to suspend the operation of the Constitution and function through an Emergency Committee to be constituted of key members of the Council who would make the decisions required in the emergency, suspending temporarily the remainder of the Constitution until the emergency had ended, when the Constitution would be reapplied.
10. Other local authorities may have such bodies already and this could be researched if members would like to pursue the idea.

## **Other Possibilities - A New Executive Constitution**

11. The new Local Government Act is likely to result in a new form of executive constitution with more delegation to the Leader or the Mayor. This might make arrangements for decision-making more resilient.

## **Re-drafting of the Constitution**

12. Members will see that this report does not submit detailed wording for the Constitution. There is a need for wider consultation with councillors and officers on amendments to the Constitution to ensure that all possible circumstances are covered. However members may like to use this scoping report as a means of starting a discussion about how the Council would respond in emergency situations.

This page is intentionally left blank