

**EPPING FOREST DISTRICT COUNCIL
NOTES OF A MEETING OF CONSTITUTION AND MEMBERS SERVICES SCRUTINY
STANDING PANEL
HELD ON TUESDAY, 4 DECEMBER 2012
IN COMMITTEE ROOM 1
AT 7.05 - 8.25 PM**

Members Present: Mrs M Sartin (Chairman), A Watts (Vice-Chairman), R Cohen, Mrs M McEwen, J Philip, D Stallan, Mrs J H Whitehouse and G Waller

Other members present:

Apologies for Absence: J Markham, R Morgan and B Rolfe

Officers Present I Willett (Assistant to the Chief Executive) and M Jenkins (Democratic Services Assistant)

20. NOTES OF THE LAST MEETING

RESOLVED:

That the notes of the last meeting of the Panel held on 25 September 2012 be agreed.

21. SUBSTITUTE MEMBERS (COUNCIL MINUTE 39 - 23.7.02)

There were no substitutions made for the meeting.

22. DECLARATION OF INTERESTS

There were no declarations made pursuant to the Member's Code of Conduct.

23. TERMS OF REFERENCE / WORK PROGRAMME

(a) Terms of Reference

The Panels' Terms of Reference were noted.

(b) Work Programme

The Panel received updates to the Work Programme as follows:

(i) Item 13 Employment Procedure Rules - Revision

It was advised that this item was being deferred to the June 29013 Panel meeting as discussions were still on-going with the Council's barrister.

(ii) Item 20 Housing Appeals and Review Panel – Terms of Reference

This item should be brought forward to an earlier meeting of the Panel so that the new Housing Appeals and Review Panel Terms of Reference were finalised as soon

as possible after the April 2013 Cabinet meeting at which the housing register changes were made.

24. QUESTIONS - PERIODS OF NOTICE

The Panel received a report from the Assistant to the Chief Executive regarding the Periods of Notice for Questions at the Cabinet and Council meetings.

The District Council's Management Board had requested that consideration should be given to amending the deadlines for submission of questions by the public and Councillors at the Cabinet and Council meetings. The request was made because it had become increasingly difficult to compile answers for Portfolio Holders in the time available.

The following deadlines had applied to questions under notice:

(a) Council Procedure Rules (Paragraph 11.3)

The deadline for public questions was midday, seven working days before the relevant Council meeting.

(b) Council Procedure Rules (Paragraph 12.3)

The deadline for submission of questions by members under notice was seven working days before the relevant Council meeting.

(c) Executive Procedure Rules (Paragraph 2.2(9))

The deadline for submission of public questions was 4.00p.m. on the day of the Cabinet meeting.

Replies were given orally at the meeting concerned, in the case of Council meetings a copy of the reply was supplied shortly before the meeting to the questioner and tabled for other Councillors at the meeting. In the case of public questions, the reply was given orally and then communicated in writing to the questioner(s). Questions and replies were recorded in the minutes, the same procedure was used at the Cabinet.

RECOMMENDED:

- (1) That questions under notice from Councillors at Council meetings be made at least 4 working days before the date of the Council meeting in question;
- (2) That questions under notice from members of the public at Council meetings be made at least 4 working days before the date of the Council meeting in question;
- (3) That questions under notice from members of the Cabinet meetings be made at least 3 working days before the date of the Cabinet meeting in question and the restriction on the number of speakers per subject be deleted;
- (4) That if the questioner is not present at the meeting, the Portfolio Holder answer is sent to them;

- (5) That the same deadlines for the submission of motions at Council meetings remain;
- (6) That the Periods of Notice for Questions at the Cabinet and Council meetings be reviewed by this Panel in 12 months' time;
- (7) That a report be submitted to the Overview and Scrutiny Committee and the Council seeking adoption of these proposals;
- (8) That a revised order of questions at Council meetings be proposed, namely:
 - (a) Public Questions;
 - (b) Member questions under notice;
 - (c) Questions on Portfolio Holder reports; and
 - (d) Questions to Portfolio Holders without notice
- (9) That the practice of tabling all questions and replies at Council meetings be discontinued.

25. AUDIT AND GOVERNANCE COMMITTEE (AGC) - PORTFOLIO HOLDER ASSISTANTS

The Panel received a report from the Assistant to the Chief Executive regarding Portfolio Holder Assistants on the Audit and Governance Committee (AGC).

At the Council meeting on 13 December 2011, the Overview and Scrutiny Committee reported on proposals to amend Article 11 of the Constitution which set out the terms of reference of the AGC. The amendments were regarding whether a Portfolio Holder Assistant should serve as one of the councillor members of the committee, or whether this was not desirable because of conflicts of interest.

The Council adopted those proposals from the Overview and Scrutiny Committee whereby Portfolio Holder Assistants, provided that were not involved in Portfolios dealing with the Council's finances, could be eligible for appointment to the AGC. The Council directed that this arrangement should be reviewed after one year.

One Portfolio Holder Assistant served on the AGC until the Annual Council meeting in May 2012, but subsequently the Leader of the Council decided not to create such positions for the current Council year. The AGC members had been consulted about their concerns with this arrangement. Two members commented, both stated that there had not been any difficulties prior to May 2012. There had been no adverse comments on this issue from officers and it was suggested that in view of current policy, there were no grounds for changing the current arrangements.

RECOMMENDED:

That no change be made regarding Portfolio Holder Assistants pending Government proposals for statutory Audit Committee, at which time the matter be reviewed again.

26. ACCESS TO INFORMATION RULES

The Panel received a report from the Assistant to the Chief Executive regarding Access to Information Rules.

On 10 September 2012, the Government brought into force new regulations concerning access to information and meetings for Local Authority Executives.

The 2012 regulations made the following key changes:

- (a) Executives were required to give 28 days' notice of an intention to make a decision in private session, along with the 28 day notice period, the public had an opportunity to make representations to the Council if they did not consider that a decision involved in private session was appropriate, and should be dealt with in public;
- (b) The existing notice period for Executive meetings and providing copies of relevant agenda and reports was reaffirmed, but this must be accompanied with a statement of whether representations were received at the 28 day stage concerning any report dealt with in public session;
- (c) The present requirements for excluding the public were reaffirmed;
- (d) There was a new category under which an executive could exclude the public from a meeting to maintain orderly conduct or prevent misbehaviour;
- (e) When giving 28 days' notice of private meetings of the Executive, a statement of why the meeting was being held in private must be made available at the Council offices and on its website;
- (f) the current arrangements for five clear days' notice of their availability was reaffirmed and the regulations re-stated the rule that there was no entitlement for an agenda, item or report to be available for inspection by the public before a copy was available to councillors;
- (g) The new regulations specified publicity requirements in connection with key decisions and were in effect the same notice as would notify the public as to whether any item was dealt with in private session;
- (h) General exceptions from the key decision notification requirement and the 28 days' notice period were reaffirmed, namely a general exception and special urgency. In both cases the proper officer must consult the Chairman of the Overview and Scrutiny Committee to allow the item to proceed, such decisions being subject to a separate notice which must be published as and when the approval was given;
- (i) Provisions relating to the inspection, by the public, of documents and background papers were included as was the supply of such documents to the press;
- (j) Additional rights were set out for access to documents by members of local authorities although there were some exclusions in terms of exempt and confidential business which permitted the Executive to refuse to supply the information and additional rights of access to documents for members of the Overview and Scrutiny Committee were also included in the regulations but the latter were not entitled to a document containing certain kinds of exempt or confidential information unless that member was reviewing or scrutinising the decision or the review of the decision was part of the programme of work of the Overview and Scrutiny Committee or a Panel,

the Executive must provide a statement to the committee if supply of a document had been refused.

Response to the Regulations

The Panel was advised that most of the provisions were currently followed already. Officers had already been briefed on the importance of attaching to the 28 day period of notice in respect of decision in private, which if not adhered to and not covered by the general exception or special urgency provisions, may be liable to challenge. It was planned to give the 28 days' notice of the private meetings through the existing forward plan, officers had also been reminded of the need for diligence in listing background papers and having copies readily to hand and on the website for review by members of the public and councillors.

Executive Decisions Made by Officers

The most novel aspect of these regulations was that they required all officer decisions, made under the Executive, to be recorded in the same way as a portfolio holder decision. This had attracted much criticism from many parts of local Government in that it covered day-to-day management and administrative decisions within the responsibilities of Directors. The regulations implied that routine delegated authorities of the kind set out in Part III of the Constitution would need recording in some way. These concerns had been directed to the Government, ministerial advice had been received indicating that the purpose of the regulations was to concentrate on key decisions made by officers on behalf of the Executive rather than ensuring written records of every decision. Therefore a new section had been added to the rules stating that the executive decisions of officers recorded must be those which derived directly from a decision by the Cabinet, a Cabinet Committee or a Portfolio Holder to delegate a task to a director.

Thus, the decision of the Cabinet to delegate the function would be subject to call-in and the delegated authority would only be exercised by the officer once the call-in period had expired. The action of the officer concerned would be strictly limited to the terms of the delegation and if there was any change in the situation the officer would have to report back to the Cabinet for a revised authority.

Appointment of Proper Officer

In the Schedule of Delegation within the Constitution, the Assistant to the Chief Executive was currently designated for the purpose of Access to Information under the Local Government Act 1972, it was recommended that additionally he be authorised to be proper Officer for the 2012 regulations for the avoidance of doubt.

RECOMMENDED:

- (1) That the proposed revisions to the Access to Information Rules be recommended to the Overview and Scrutiny Committee and the Council that the proposed amendments be approved and the Constitution amended accordingly; and
- (2) That the Overview and Scrutiny Committee and the Council be recommended to appoint the Assistant to the Chief Executive as Proper Officer in respect of the Local Authorities (Executive Arrangement) (Meetings and Access to Information) (England) Regulations 2012 in conjunction with his existing delegation in respect of the Access to Information Act 1985.

27. FUTURE MEETINGS

The next Panel meeting was scheduled for Monday 7 January 2013 at 7.00p.m. in Committee Room 1, and thereafter on:

- (a) Wednesday 27 February at 7.00p.m. in Committee Room 1; and
- (b) Tuesday 26 March at 7.00p.m. in Committee Room 1.

28. REPORTS TO BE MADE TO THE NEXT MEETING OF THE OVERVIEW AND SCRUTINY COMMITTEE

That the following reports be recommended to the Overview and Scrutiny Committee:

- (a) Questions – Periods of Notice;
- (b) Audit and Governance Committee (AGC) – Portfolio Holder Assistants; and
- (c) Access to Information Rules