

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

**Date of meeting: 30 July 2007**

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

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## **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.**

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## **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.