



Epping Forest District Council

CONSTITUTION WORKING GROUP **Thursday 14th March 2024**

You are invited to attend the next meeting of **Constitution Working Group**, which will be held at:

Virtual Meeting on Microsoft Teams
on **Thursday 14th March 2024 at 7.00 pm**

Georgina Blakemore
Chief Executive

Democratic Services Officer: G, Woodhall
Tel: (01992) 564243
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Members: Councillors A Lion (Chairman), J H Whitehouse (Vice-Chairman), R Bassett, P Bhanot, S Heap, H Kauffman, J McIvor, J Philip and C C Pond

PLEASE NOTE THAT THIS MEETING IS OPEN TO ALL MEMBERS TO ATTEND

1. APOLOGIES FOR ABSENCE

To be announced at the meeting.

To report non-attendance before the meeting, please use the Members Portal webpage https://eppingforestdc-self.achieveservice.com/service/Member_Contact to ensure your query is properly logged.

Alternatively, you can access the Members portal from the front page of the Council's website, at the bottom under 'Contact Us'
<https://www.eppingforestdc.gov.uk/your-council/members-portal/>

2. SUBSTITUTE MEMBERS

To report the appointment of any substitute members for the meeting.

3. NOTES OF PREVIOUS MEETING (Pages 3 - 5)

To agree the notes of the meeting of the Working Group held on 18 January 2024.

4. TERMS OF REFERENCE & WORK PROGRAMME (Pages 6 - 8)

To review the terms of reference and progress with the achievement of the current work programme for the Working Group.

5. CONSTITUTION - REVISIONS & AMENDMENTS

(Monitoring Officer) To note that the Constitution update of 22 January 2024 was reported to the last meeting of the Group.

6. CONSTITUTION REVIEW UPDATE

(Monitoring Officer) To receive a verbal report on progress to date with the Constitution Review project. The Corporate Communications Team Manager will be in attendance to discuss the options for improving the accessibility of the Constitution.

7. REVIEW OF ARTICLE 17 - ACCESS TO INFORMATION (Pages 9 - 26)

(Monitoring Officer) To consider the attached report regarding the review of Article 17 – Access to Information within the Constitution and recommend its submission to Council for approval.

8. DATE OF NEXT MEETING

To note that the next meeting of the Working Group will be held on 11 July 2024 at 7.00pm.

EPPING FOREST DISTRICT COUNCIL CONSTITUTION WORKING GROUP MEETING MINUTES

Thursday 18 January 2024, 7.00 pm - 7.45 pm

Virtual Meeting on Microsoft Teams

Members Present:	Councillors A Lion (Chairman), J H Whitehouse (Vice-Chairman), R Bassett and S Heap
Apologies:	Councillor(s) H Kauffman, J Philip and C C Pond
Officers In Attendance:	Nathalie Boateng (Service Manager / Solicitor - Legal Services (Shared Services)) and Gary Woodhall (Team Manager - Democratic & Electoral Services)

8 SUBSTITUTE MEMBERS

It was noted that there were no substitute members for this meeting.

9 NOTES OF PREVIOUS MEETING

The Vice-Chairman of the Group, Cllr J H Whitehouse, felt that no Supplementary Agenda for a meeting should be published after 5.00pm on the day before the meeting, and proposed that this be considered as an addition to the Constitution as part of the general review being undertaken.

RESOLVED:

- (1) That the notes of the Working Group held on 28 September 2023 be agreed as a correct record.

Action:

- (1) That a formal deadline for the publication of a Supplementary Agenda of no later than 5.00pm on the day before the meeting be considered as an addition to the Constitution as part of the review.

10 TERMS OF REFERENCE & WORK PROGRAMME

(a) Terms of Reference

The Working Group noted its Terms of Reference.

(b) Work Programme

N Boateng explained that for the comprehensive review of the Constitution, the Project Team had selected the most complicated section first, the Scheme of Delegations, and then they would work through the rest of the Constitution in order – starting with Article 1 and finishing with the Rules. It was suggested that the Financial Regulations section could be removed from the Constitution and made a separate document with a link in the Constitution to it. The Constitution would only contain those parts of the Financial Regulations which related to decision thresholds for Portfolio Holders, Cabinet and Council.

The Chairman, Cllr A Lion, suggested that the Work Programme for the Group should be broken down into phases or elements, and the Work Programme should be detailed for several years – not just one year at a time. The Group noted it was unlikely that a paper copy of the Constitution would be available at the Civic Offices for perusal, but this could be re-considered in the future.

The Group noted the PAS review of Planning Services taking place on 26 January 2024. It was highlighted that some of the current Planning Committees did not meet very often, and there perhaps needed to be a review of the Planning Committees. G Woodhall explained that there was likely to be a recommendation from the review regarding the future structure of the Council's Planning Committees. The Group requested a report at its next meeting on any relevant information that came out of the review.

The Work Group noted its Work Programme for the current municipal year.

Action:

- (2) G Woodhall and N Boateng to report back to the Group on any relevant information arising from the PAS review.

11 CONSTITUTION - REVISIONS & AMENDMENTS

G Woodhall outlined the revisions proposed for the next Constitutional update, which would be progressed in the next week. There had been a drafting error in the Scheme of Delegations for Member call-in of planning applications, and this needed correcting. Members had previously only been able to call-in an application if it was recommended for refusal, not approval. The Planning Service Manager would email all Councillors next week to inform them of the updated delegation and there would be an article in the Bulletin.

The Group noted the Constitutional update for January 2024.

12 CONSTITUTION REVIEW UPDATE

The Council's Monitoring Officer, N Boateng, presented a report summarising the progress made with the Constitution Review project, including the work undertaken on the Scheme of Delegations. The intention was to streamline the Scheme of Delegations section of the Constitution and make it easier to follow, rather than add or remove actual delegations. The accessibility of the Constitution, including its possible change from a PDF document to an HTML document, was now part of the Work Programme. The Group felt that it would be useful for the Corporate Communications Manager, T Carne, to attend the next meeting of the Group to discuss improved accessibility for the Constitution.

The Group noted the update provided by N Boateng.

Action:

- (3) That the Corporate Communications Team Manager, T Carne, be invited to the next meeting of the Group to discuss the options for improving the accessibility of the Constitution.

13 DATE OF NEXT MEETING

It was noted that the next meeting of the Working Group would be held on 14 March 2024 at 7.00pm.

CHAIRMAN

Agenda Item 4

CONSTITUTION WORKING GROUP

TERMS OF REFERENCE

Title: Constitution Working Group

Status: Working Group

Terms of Reference:

- (1) To review any aspect of the authority's constitutional arrangements as requested by the Council;
- (2) To undertake general reviews of specific elements of the Constitution in order to ensure that the authority's constitutional arrangements complement current legislative requirements and decisions made by the Council; and
- (3) To consider any proposals of the Monitoring Officer for necessary revision to any element of the Constitution.

Reporting:

The Working Group shall report directly to the Council in connection with its Terms of Reference and the achievement of its work programme.

Chairman: Cllr A Lion

**Constitution Working Group
(Chair – Councillor A Lion)
Work Programme 2023/24**

Item	Progress	Timescale	Officer / owner
1) Constitution generally	To consider the ongoing review of the Constitution to ensure alignment with the Council's management structure.	Ongoing	N Boateng
<p>To streamline and review the entire Constitution so it is fit for purpose by 2025, by: -</p> <ul style="list-style-type: none"> • Updating and amending the Constitution to make it shorter, easier to understand, easier to find references within it, create a more user-friendly document, accessible to stake holders and the public, streamlining the document. • Remove unnecessary references to legislation. • Remove references to named officers and only refer to job titles. removing the need for frequent updates if an officer leaves or changes jobs. • Consider the accessibility criteria when making changes to the layout of the Constitution. • Review and consider how the Constitution should be displayed on the Council's website, ensure 	<p>The Officer project team consists - Nathalie Boateng (MO), Lynne Ridley, Corporate and DPO, Vivienne Messenger, Democratic Services Officer, Matthew Picking Democratic Services Officer, Louise Mascall, Solicitor Apprentice.</p> <p>The team have compared and reviewed over twenty other Constitutions to establish good practice.</p> <p>The team have started reviewing the Scheme of Delegation which was seen as the most problematic and complex section.</p> <p>The Scheme of Delegation has been re-written and will be sent to stakeholders for comments and feedback. First stake holders to review were the CWG, then SLT/WLT and managers/officers across the Council who will be affected.</p>	<p>Project phases</p> <p>Phase one</p> <p>1) Complete the review and rewriting of the Part 3 of the Constitution - Scheme of Delegation, consult on changes through SLT and WLT, report back to the CWG with final draft for approval on 11 July 2024. When agreed by CWG refer this section to the next Council meeting for approval.</p> <p>Phase two</p> <p>2) Review and amend Part 2 of the Constitution consult on changes through SLT and WLT, to report back to CWG with final draft for approval on 14 November 2024. When agreed by CWG refer this section to the next Council meeting for approval.</p> <p>Phase three</p> <p>3) Review and amend Parts 4, 5 and 6 consult on changes through SLT and WLT, to</p>	N Boateng/ V Messenger

<p>accessibility, with clear search functions. This will involve liaising and working with IT and Comms. The Planning department had a PAS review of their processes and procedures on 26 January, the project team will take on board comments from the PAS review and implement as appropriate.</p>	<p>Once the Scheme of delegation is finalised and agreed by all stakeholders the project team will then move to consideration of the rest of the Constitution, taking the document from front to end.</p> <p>The project team will report progress to each CWG with examples of the changes made for comment, suggestions, and endorsement from CWG.</p>	<p>report back to the CWG on with final draft for approval on 13 March 2025. When agreed by CWG refer this section to the next Council meeting or approval.</p> <p>The Councillor Code of Conduct in part 5 of the Constitution will also need to be agreed by the Standards Committee.</p> <p>Ensure Constitution is displayed on website in an accessible way with clear search functions.</p> <p>Estimated Project Completion date April or May 2025.</p>	
<p>3) Section 106 Agreements</p>	<p>Discussion on policy and procedures.</p>	<p>TBC</p>	<p>N Richardson</p>

Report to the Council

Title: Proposed update of the Constitution, Article 17 – Access to Information

Committee: Constitution Working Group (Councillor A Lion)

Date: 9 April 2024

(1) That the updated version of Article 17 (as Appendix A) be approved.

Report:

- 1.1 The Cabinet [Forward Plan](#) has recently been restyled and for reasons of public transparency it has been decided that it is referred to in the Constitution as the Forward Plan, in preference to the Key Decision List.
- 1.2 Currently both names are used which may cause confusion to the public, Members and officers that the Forward Plan is the same document as the Key Decision List.
- 1.3 The proposed updates to Article 17 are attached as Appendix A. For information: additional text is highlighted in yellow, while red strikethroughs refer to text that will be deleted.
- 1.4 Therefore, it is recommended to Council that the amended version of Article 17 – Access to Information (as Appendix A), be approved.

ARTICLE 17 - ACCESS TO INFORMATION

(Please note: **yellow highlighted** text = additions & **red text strikethroughs** = deletions)

Scope

1. This Article applies to all meetings of the Council, the Overview and Scrutiny Committee, all committees and regulatory committees and other public meetings of decision-making bodies. Access to information provisions specific to the Cabinet are set out separately within this Article.

Additional Rights to Information

2. These rules do not affect any more specific rights to information contained elsewhere in the Constitution or the law.

Right to Attend Meetings

3. Members of the public may attend all meetings subject only to the exceptions set out in this Article.
4. Any meeting of a decision-making body will be held in public, and the public may only be excluded in the following circumstances:
 - (a) if any part of the meeting is likely to disclose confidential or exempt information; or
 - (b) if a lawful power of exclusion is used to maintain orderly conduct or prevent misbehaviour.
5. Definitions of confidential and exempt information are set out within the glossary to the Constitution. The categories of exempt information are detailed in Appendix 1 to this Article.
6. Any person attending a meeting for the purpose of reporting the proceedings, will be afforded reasonable facilities for the purpose. The Council has a protocol for filming and photographing meetings and complies with the requirements of the Openness of Local Government Bodies Regulations 2014 in this regard.

Notice of Meeting

7. The Council will give at least five clear **working** days' notice of any meeting by ~~posting details of the meeting at the Civic Offices, High Street, Epping, Essex CM16 4BZ and publishing details~~ **publishing details** on its website.

Access to Agenda and Reports before a Meeting

8. The Council will make copies of all agenda and reports for meetings that are open to the public available ~~for inspection at the Civic Offices and its information centres~~ at least five clear days before the meeting **on its website**. If an item is added to an agenda later, such supplementary agenda will be ~~open to inspection~~ available from the time that the item was added to the agenda **on its website**.

9. Agenda (and supplementary agenda) will be sent to members of the Council by electronic means. ~~or to their designated postal address.~~ Physical copies of agenda will only be issued **on request** to those councillors appointed to ~~membership~~ the Chairmanship of each ~~decision-making body~~ **committee**.

Supply of Copies

10. The Council will supply copies of the following to any other person, subject (where necessary) to the payment of appropriate costs in respect of copying and postage etc.:
- (a) any agenda and reports which are open to public inspection;
 - (b) any further statements or particulars necessary to indicate the nature of the items in an agenda; and
 - (c) if the Monitoring Officer thinks fit, copies of any other document(s) supplied to councillors in connection with an item in an agenda.

Access to Minutes and Decisions after a Meeting

11. The Council will make copies of the following available for six years after a meeting:
- (a) the minutes of the meeting and/or records of decisions taken, together with reasons, for all meetings, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
 - (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
 - (c) the agenda for the meeting; and
 - (d) reports relating to items considered when the meeting was open to the public.

Background Papers

12. The Council will set out in every report a list of those documents (called background papers) relating to the subject matter of the report, which in his or her opinion:
- (a) disclose any facts or matters on which the report or an important part of the report is based; and
 - (b) which have been relied on to a material extent in preparing the report but does not include published works or those which disclose exempt or confidential information and, in respect of Cabinet reports, the advice of any political advisor.
13. The definition of a political advisor is set out within the glossary to the Constitution.
14. The Council will make available for public inspection for four years after the date of the meeting one copy of each of the documents on the list of background papers.

Exclusion of Access to Meetings by the Public

15. The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings, that confidential information would be disclosed.
16. The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.
17. Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of Schedule 1 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in that Schedule.

Exclusion of Access to Reports by the Public

18. If the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which the meeting is likely not to be open to the public. Such reports will be marked 'Not for publication' together with the category of exempt information likely to be disclosed.

Additional Rules Applicable to the Cabinet

19. The following rules apply to the Cabinet, its Committees, individual Cabinet members and officers (where appropriate). These rules summarise the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
20. Members of the Cabinet or its committees will be entitled to receive five clear working days' notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency. Notice and papers will be sent to all other members of the Council.

(a) Private Meetings of the Cabinet

21. A 'private' meeting of the Cabinet or its Committees is any meeting, either wholly or in part, where a decision will be made in private session as a result of the consideration of exempt information.
22. Notice of the Cabinet's intention to hold a private meeting (whether a whole meeting or a part) shall be given at least twenty-eight days in advance on the Council's website. The notice must give reasons for holding the meeting (whether wholly or in part) in private.
23. Further notice, in the form of the agenda for the meeting, must be given of a private meeting at least five clear days before the meeting ~~at the Civic Offices and~~ on the Council's website, giving the reasons for holding the meeting in private and any representations received from the public about why it should be held in public.
24. Where the date of a meeting is such that it is impracticable to comply with the above requirements, a meeting may only be held in private where:
 - (a) the approval of the Chairman of Overview and Scrutiny Committee has been obtained or, in his or her absence, that of the Chairman of the Council; or

- (b) a notice has been published ~~at the Civic Offices and~~ on the Council's website indicating the reasons as to urgency and why the meeting cannot reasonably be deferred.

(b) Attendance at Private Meetings of the Cabinet

- 25. All members of the Cabinet will be served notice of all private meetings of committees of the Cabinet, whether or not they are members of that committee. All members of the Cabinet are entitled to attend a private meeting of any committee of the Cabinet.
- 26. Notice of private meetings (as defined by the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012) of the Cabinet and its committees will be served on the Chairman of the Overview and Scrutiny Committee at the same time as notice is served on members of the Cabinet. If the Chairman of the Overview and Scrutiny Committee is unable to act, the notice will be served on all the members of the committee.
- 27. The Head of Paid Service, the ~~Chief Finance Officer~~ **Section 151 Officer** and the Monitoring Officer (or their nominees) are entitled to attend any meeting of the Cabinet and its committees. The Cabinet may not meet unless the Proper Officer has been given reasonable notice that a meeting is to take place. A private Cabinet meeting may only take place in the presence of the Proper Officer or his or her nominee with responsibility for recording and publicising the decisions.
- 28. The provisions of this Article relating to the recording and publicising of decisions will apply to all private meetings of the Cabinet.

(c) Procedures prior to Public Meetings of the Cabinet

- 29. Public meetings of the Cabinet may only be held where:
 - (a) the time and place of the meeting has been published ~~at the Civic Offices and~~ on the Council's website at least five clear days before the meeting; or
 - (b) if the meeting is convened at shorter notice, the time and place of the meeting has been published ~~at the Civic Offices and~~ on the Council's website from the time at which it is convened; and
 - (c) a copy of the agenda (or part thereof) has been available for inspection by the public at least five clear days before the meeting (or at such shorter notice as indicated above).

(d) Access to Cabinet Agenda and Reports for Public Meetings

- 30. There is no requirement for a copy of the agenda, item or report to be available for inspection by the public until a copy is available to members of the decision-making body concerned.

Key Decisions

- 31. The definition of a key decision is set out within the glossary to the Constitution.

(a) Publicity for Key Decisions

32. Where the Cabinet intends to make a key decision, it may not be made until a public notice to that effect has been available ~~at the Civic Offices and~~ on the Council's website for at least twenty-eight days beforehand. **A schedule of the key decisions is published as the Cabinet Forward Plan and** ~~The notice~~ **it** must include:
- (a) the subject matter;
 - (b) the name of the decision-maker;
 - (c) the date on or period during which the decision will be made;
 - (d) a list of documents submitted to the decision taker for consideration in connection with the decision; **and**
 - ~~(e) the address where copies can be obtained (subject to any redacted content); and~~
 - (e) any other documents to be provided to the decision taker and how details may be requested.
33. The ~~notice~~ **Forward Plan** must not disclose any exempt or confidential information but must, otherwise, give particulars of the subject matter.
- (b) Period of the Key Decision List Forward Plan**
34. The ~~Key Decision List~~ **Forward Plan** will be prepared by the Leader of the Council to cover a period of four months. ~~beginning with the first day of any month. The Key Decision List~~ **It** will be ~~prepared~~ updated on a monthly ~~basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.~~ rolling programme to coincide with the requirements of the of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. ~~The Key Decision List will be published at least 14 days before the start of the period covered.~~
- (c) Contents of the Key Decision List Forward Plan**
35. The ~~Key Decision List~~ **Forward Plan** will contain matters which the Leader has reason to believe will be **the** subject of a key decision to be taken by the Cabinet, a committee of the Cabinet, individual members of the Cabinet, officers (if specifically delegated), area committees or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. The ~~Key Decision List~~ **Forward Plan** will incorporate details of proposed private decisions and describe the following particulars in so far as the information is available or might reasonably be obtained:
- (a) the matter in respect of which a decision is to be made;
 - (b) where the decision taker is an individual, his or her name and title, if any and where the decision taker is a body, its name and details of membership;
 - (c) the date on which, or the period within which, the decision will be taken;
 - (d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;
 - (e) the means by which any such consultation is proposed to be undertaken;

- (f) the steps any person might take who wishes to make representations to the Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
 - (g) a list of the documents submitted to the decision taker for consideration in relation to the matter.
36. Exempt information need not be included in the ~~Key Decision List~~ Forward Plan. Confidential information cannot be included in the ~~Key Decision List~~ Forward Plan.

(d) General Exception

37. If a matter which is likely to be a key decision has not been included in the ~~Key Decision List~~ Forward Plan, subject to the Special Urgency provisions below, the decision may still be taken if:
- (a) the decision must be taken by such a date that it is impracticable to defer the decision until it has been included in the next ~~Key Decision List~~ Forward Plan and until the start of the first month to which the next forward list relates;
 - (b) the Proper Officer has informed the Chairman of the Overview and Scrutiny Committee or, if the Chairman of the Committee is unable to act, each member of the committee in writing, by notice, of the matter to which the decision is to be made;
 - (c) the Proper Officer has made copies of that notice available to the public ~~at the offices of the Council~~ on the Council's website; and
 - (d) at least five clear days have elapsed since the Proper Officer complied with (a) and (b) above. Where such a decision is taken collectively, it must be taken in public.

(e) Special Urgency

38. If by virtue of the date by which a decision must be taken, General Exception procedure above cannot be followed, the decision may only be taken if the decision-taker (if an individual) or the chairman of the body making the decision, obtains the agreement of the Chairman of the Overview and Scrutiny Committee that the taking of the decision cannot be reasonably deferred. If the Chairman of the Committee is unable to act, the agreement of the Chairman of the Council, or in his or her absence the Vice-Chairman of the Council, will suffice.

(f) Reports to the Council Where Key Decision Procedures Not Followed

39. If the Overview and Scrutiny Committee considers that a key decision has been taken which was not:
- (a) included in the ~~Key Decision List~~ Forward Plan; or
 - (b) the subject of the general exception procedure; or
 - (c) the subject of an agreement with the Chairman of the Overview and Scrutiny Committee, or the Chairman/Vice-Chairman of the Council under the procedures set out above:

the Committee may require the Cabinet to submit a report to the Council within such reasonable time as the committee specifies. The power to require a report rests with the Committee, but is also delegated to the Proper Officer, who shall require such a report on behalf of the committee when so requested by the chairman or any five members. Alternatively, the requirement may be raised by resolution passed at a meeting of the Overview and Scrutiny Committee.

(g) Cabinet Report to Council

40. The Cabinet will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of the receipt of a notice requiring the Cabinet to submit a report to the Council, or a resolution of the Overview and Scrutiny Committee, the report may be submitted to the meeting after that. The report to Council will set out particulars of the decision, the individual or body making the decision, and if the Leader is of the opinion that it was not a key decision the reasons for that opinion.

(h) Reports on Special Urgency Decisions

41. The Leader will submit a report to the Council on any Cabinet decision taken in the circumstances set out in the Special Urgency provisions above. The report will include a summary of the matter in respect of which such decision was taken.

(i) Recording of Cabinet Decisions at Meetings and by Individuals

42. After any meeting of the Cabinet or any of its committees, whether held in public or private, the Chief Executive or, where no officer was present, the person presiding at the meeting, will produce a record of every decision taken at that meeting. All Cabinet decisions (including those of individual Portfolio Holders) must be recorded by means of a written statement, which must be produced within twenty working days after the decision is made. The written statement must include the following:

- (a) a record of the decision and the date on which it was made;
- (b) the reasons for the decision;
- (c) alternative options considered and rejected;
- (d) any conflict of interest declared; and
- (e) any dispensation granted by the Monitoring Officer.

43. These requirements apply to decisions made by the Cabinet, a Cabinet Committee, Portfolio Holders and officers acting under specific delegations approved by the Cabinet at a meeting or by a Portfolio Holder. The requirement to record executive decisions made by officers does not extend to the management of services or the exercise of delegated authorities for service provision as recorded in the section of the Constitution setting out responsibility for functions.

(j) Inspection of Documents and Background Papers following Cabinet Decisions

44. The provisions of this Article in relation to the inspection of documents and background papers shall apply to all recorded Cabinet decisions.

(k) Additional Rights of Access to Documents by Councillors

45. Any document in the possession of the Cabinet and which contains material relating to business at a public meeting, must be available for inspection by any Councillor at least five clear days before any relevant meeting. Where a meeting is convened or an item is added to an agenda at shorter notice, relevant documents must be available when the meeting is convened or the item added.
46. Documents relating to decisions at private meetings by Portfolio Holders or by an officer, must be available no later than 24 hours after the meeting concludes or the decision is made.
47. Documents disclosing exempt information are not required to be available for inspection. Documents disclosing Category 3 exempt information shall only be available in so far as they relate to any terms for a contract with the Council or any contract negotiations.
48. A member of the Overview and Scrutiny Committee is entitled to a copy of any document:
 - (a) under the control of the Cabinet; and/or
 - (b) containing material relating to business transacted at a public meeting or a decision of a Portfolio Holder or officer.
49. When requested the document must be provided by the Proper Officer no later than ten clear days after the request is received. There is no entitlement to a copy of any such document if it contains exempt or confidential information unless:
 - (a) it is relevant to a review or scrutiny of a decision with which that member is carrying out; or
 - (b) it is relevant to a review being conducted by the Overview and Scrutiny Committee or any other Scrutiny Committee or Task and Finish Panel and which is contained in their programme of work.
50. If the Cabinet determines that there is no entitlement to any such document, a written statement must be provided to the Overview and Scrutiny Committee by the Proper Officer.

(l) Cabinet Meetings Relating to Matters Which are not Key Decisions

51. The Cabinet will decide whether meetings relating to matters, which are not key decisions, will be held in public or private.

(m) Decisions by Individual Members of the Cabinet

52. As soon as reasonably practicable after a Cabinet decision has been taken by an individual member of the Cabinet or a key decision has been taken by an officer, he or she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected.
~~The record of the decision will utilise the pro-forma decision sheet maintained by Democratic Services.~~
53. The provisions of this Article relating to the inspection of documents after meetings will also apply to the making of decisions by individual members of the Cabinet. Details

of all decisions taken will be published in the Council Bulletin to facilitate the commencement of the period for call-in.

(n) Overview and Scrutiny Committee - Access to Documents

54. The Overview and Scrutiny Committee (including any other Scrutiny Committees or Task and Finish Panels) will be entitled to a copy of any document which is in the possession or control of the Cabinet or its committees and which contains material relating to:

(a) any business transacted at a public or private meeting of the Cabinet or its committees; or

(b) any decision taken by an individual member of the Cabinet.

55. The Overview and Scrutiny Committee will not be entitled to:

(a) any document that is in draft form; or

(b) any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise.

(o) Additional Rights of Access for Members

56. All members will be entitled to inspect any document which is in the possession or under the control of the Cabinet or its committees and contains material relating to any business previously transacted at a private meeting unless it contains exempt information falling within the categories of exempt information.

57. All members of the Council will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet or its committees which relates to any key decision unless paragraph 24.1 (a) or (b) above applies.

58. These rights of a member are additional to any other right he or she may have.

Conventions on the Relationships between Political Groups and Councillors with Officers

59. The formal business of the Council is regulated by the Constitution and supplementary guidance. The conventions set out in Appendix 2 to this Article are for the guidance of members of the Council and Directors and are aimed at supplementing such rules and guidance.

APPENDIX 1 (ARTICLE 17)

EXEMPT INFORMATION

1. EXEMPT INFORMATION

1.1 Exempt information is any information falling within the seven categories applied by Part 1 of Schedule 12A of the Local Government Act 1972, as amended by the Local Government (Access to Information) (Variation) Order 2006.

- (1) information relating to any individual;
- (2) information which is likely to reveal the identity of an individual;
- (3) information relating to the financial or business affairs of any particular person (including the authority holding that information);
- (4) information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority;
- (5) information in respect of which a claim to legal professional privilege could be maintained in legal proceedings;
- (6) information which reveals that the authority proposes:
 - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
 - (b) to make an order or direction under any enactment; and
- (7) information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

2. QUALIFICATIONS

2.1 Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under:

- (a) the Companies Act 1985;
- (b) the Friendly Societies Act 1974;
- (c) the Friendly Societies Act 1992;
- (d) the Industrial and Provident Societies Act 1965 to 1978;
- (e) the Building Societies Act 1986; or
- (f) the Charities Act 1993.

2.2 Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 1992.

2.3 Information which:

- (a) falls within any of paragraphs 1 to 7 above; and
- (b) is not prevented from being exempt by virtue of paragraph 10.5 (sub paragraphs 1 or 2) above;

is exempt information if and so long, as in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.

APPENDIX 2 (ARTICLE 17)

CONVENTIONS ON THE RELATIONSHIPS BETWEEN POLITICAL GROUPS & COUNCILLORS WITH OFFICERS

Entitlement to Information

1. Any member of the Council may ask the appropriate Service Director for written factual information about a Directorate (or part thereof) or service. Such requests will be met, subject to any legal requirements (including the Freedom of Information and Data Protection Acts).
2. A Councillor may require the Service Director to treat the request for information as confidential and this confidentiality will be respected unless it is agreed with the Councillor concerned that request no longer needs to be treated in that way.
3. All such requests shall be made to the appropriate Service Director or a level 2 Officer if nominated by them.
4. Where a Service Director on his own initiative provides information to any political group, the information will also be supplied to the other Groups unless it is of a routine or minor nature.

Briefing Meetings

5. Formal briefings may be arranged for meetings to discuss business to be transacted at meetings. Briefings will only be attended by the Chairman and Vice-Chairman concerned.
6. Briefing meetings will deal only with procedural matters and the up-dating of information contained in agenda items by officers. All briefings will be held at a mutually convenient time, usually on the day of the meeting in question.
7. Group Leaders and independent members may attend the briefing for Council meetings.

Briefing of Political Groups

8. The Chief Executive, Strategic Directors and Service Directors of the Council shall attend meetings of political groups only if this is for the purpose of assisting Council business. Where a political group invites an officer to attend a meeting, such invitations should be accepted only if the same opportunity is afforded to all political groups. Where officers have doubts about the appropriateness of accepting such an invitation, the Chief Executive will make a final decision.
9. Where an officer considers that it would assist Council business to attend a political group meeting for the purpose of briefing and makes a proposal that he or she should attend, the officer concerned shall be careful to extend that offer to all political groups.
10. Meetings of Group Leaders may be held. Such meetings will have no executive powers but will be authorised to meet with the Chief Executive on an informal basis to discuss business to be considered by the Council. Group Leaders' meetings shall be chaired by the Leader of the largest political group present.

Relations with the Media

11. Official media statements will be issued on behalf of the Council, a Portfolio Holder, ~~an~~ or the Chairman of the Overview and Scrutiny or other Committee. Such statements may be prepared in consultation with appropriate Directors but must be approved by the quoted Members before issue. Quoted members will also be consulted on statements issued within the broader context of ~~a~~ proactive media releases and in response ~~to~~ media enquiries. Statements issued through the Corporate Communications Team (Including quoted comments by members) must reflect the nature of decisions or Council policy and exclude 'political' comment.
12. Members may speak directly to the media on any given issue (subject to legal constraints such as the Data Protection Act 1998) in order to express personal or political points of view.
13. Political Groups may issue their own press releases either through group leaders or group representatives. These will be solely the province of the political group concerned and will not involve officer input except in so far as a group wish to check factual information. Press statements arising from Council business and issued in a party capacity by a Leader or Group Representative must be careful to differentiate between the Council's policy and the views of the group concerned.
14. Political groups and individual councillors should bear in mind the special rules which apply to Council publicity during election periods and shall bear in mind the guidance set out as an annex to this Appendix.

Officer Support Arrangements

15. The Overview and Scrutiny Agenda Planning Group will manage the business submitted to the Cabinet and Overview and Scrutiny. The Chief Executive will be the lead officer for the Cabinet with chief officers attending when required. The Chief Executive will appoint a senior officer to be the lead officer for the Overview and Scrutiny Committee.
16. Democratic Services will support both the Cabinet and non-Executive sides of the Council and Agenda Planning Groups will be held for ~~the~~ the Cabinet and the Overview and Scrutiny Committee. The Agenda Planning Group for the Cabinet will be chaired by the Chief Executive whilst the Overview and Scrutiny Committee Agenda Planning Group will be chaired by the officer nominated above. These arrangements may change from time to time.
17. Draft minutes for all meetings will be cleared with the relevant Chairman.

Review of Conventions

18. The Chief Executive may initiate a special review at any time if required by a change in the political balance on the Council or on the request of any of the political groups.

ANNEX TO APPENDIX 2 (ARTICLE 17)

RELATIONS WITH POLITICAL GROUPS ETC AT THE ELECTION PERIOD AND AT OTHER TIMES

FREQUENTLY ASKED QUESTIONS

1. What is the Election Period?

The Election Period is the period of time from when the Returning Officer issues a notice of an election until after the election is held. It is sometimes referred to as the “Purdah” period, although this description is not regarded as appropriate to the subject matter. This period usually lasts 25 days. Ordinary local government elections in England are held on the first Thursday in May every year unless changed by Order of the Secretary of State (Section 37 of the Representation of People Act 1983).

2. What does the Law state about the Election Period?

It is a statutory duty to have regard to the Code of Recommended Practice on Local Authority Publicity. The Code of Recommended Practice on Local Authority Publicity, 2011, which applies to all local authorities in England states: “The period between the notice of an election and the election itself should preclude proactive publicity (in all forms) of candidates and other politicians involved directly in the election.”

3. What are the implications of the Election Period for the Council?

The Government Code explains that Directors should not deal with controversial issues or report views, proposals or recommendations in such a way that identifies them within individual members or groups of members. During this period, there is a ban in place on publicising the views of political parties, issuing press releases or promoting initiatives with quotes and photos which would favour a particular candidate.

4. What are the implications of the Election Period for individual Service Directors?

The basic principle is that any activity which could call into question a Service Director’s impartiality or could give rise to the criticism that public resources are being used for party political purposes, must be suspended during the Election Period.

5. How do I find out who the candidates are?

The Returning Officer will have details of all candidates standing in any election (Parliamentary, District, Parish and Police Commissioner) within the Epping Forest District once the notice of the election is published **and is also available on the Council’s website.**

6. What kind of information can I supply to candidates?

A Director can only supply factual information to candidates if asked and must not offer views and opinions during the Election Period as this will compromise rules of impartiality.

7. If I am approached by more than one political party to supply information to candidates, what should I do?

Service Directors must undertake an ‘even-handed’ approach to the supply of information to political parties and independent candidates so as not compromise their impartiality of

politics. All political parties and independent candidates should be regarded as having equal rights when requests are received.

8. What information can I supply to Members of the Council who are not standing for election?

Requests for information by Members of the Council who are not standing for election must also be treated with care. Service Directors might tactfully ask whether the Member is using the information for their Ward or to assist a candidate in an election. If the latter is implied, Service Directors must only offer factual information to the Member that does not compromise impartiality (see 6 above). Normal briefings on agenda for Chairmen, Vice-Chairmen, and Cabinet members will continue throughout the Election Period.

9. What material can I publish during the Election Period to members of the public?

Service Directors can issue official press statements about the District Council's decisions on a factual basis for public information purposes without naming individual members, except where there is a genuine need for a Council comment or response at member level.

Political material should not be posted on official notice boards (or the website) for public consumption. This includes publicity issued by, or on behalf of, a trade union, as any such information would compromise officers in that it could be seen as giving support to a political party using Council facilities.

10. Am I allowed to give professional advice during a Council meeting in the Election Period?

Service Directors and other officers attend scheduled meetings of the Council and other bodies as arranged at the start of the Council year and must give advice on Council business as normal. Officers should be careful only to offer professional advice and factual information to Members in such circumstances and avoid expressing any views or opinions about political campaigns that could compromise their impartiality.

11. I have been invited by a candidate to attend a political meeting or election meetings, what should I do?

Service Directors and other officers are strictly forbidden to attend any political meeting of any sort in the Election Period.

12. Can I meet with a candidate?

Service Directors should be open to meeting with candidates for election if asked. In such meetings, they must not be drawn into discussing political views and opinions or campaign issues with candidates. Directors can only provide candidates with factual information during such meetings.

13. Can I canvass or campaign for a candidate or political party?

Senior positions with the Council like the Chief Executive, Strategic Directors, Services Directors and some other posts are subject to a legal restriction which prevents their involvement. These are known as politically restricted posts. Some other more junior staff may also occupy such restricted posts such as those who brief the media or are involved in giving advice to Councillors. If your post is politically-restricted, canvassing or campaigning

for a political party in any capacity is strictly forbidden. Those in such posts must not undertake work with a public political profile.

Staff who are not in a politically restricted post should check with their line-manager if they would like to become involved. If you are unsure whether you hold a politically-restricted post information is available in your job description, contract of employment, or from Human Resources.

14. Can normal Council decision-making continue during the Election Period?

In a landmark Court of Appeal judgement (“the Redcar Case”), the Courts found that decision making however controversial this might be should continue provided it is part of a process which was set in train before the election period started. However, what is ruled out is any manipulation of an ongoing process of decision for political purposes.

For instance, it would not be proper for a decision which might give advantage to one candidate or party to be brought forward so that it was taken during the election period to give an advantage at the polls. Likewise, it is not proper to ask officers to defer decisions from the election period for political reasons.

It is quite possible that the schedule of decisions to be taken during the Election Period could be changed for other reasons, but it must not be changed for political reasons.

15. Does the Redcar Case mean that the Council can still make controversial decisions during the Election Period?

Yes. The Council can take such decisions if there is a requirement to make them at that time. (e.g. planning decisions). However, officers should be wary of requests to manipulate such decision timetables for campaign reasons as explained in section 14.

16. What should I do if I receive a request for a decision to be brought forward or to be deferred?

All requests for earlier action or postponement by individual members (particularly from those who are candidates or thought to be assisting in an election campaign), should be treated with caution. Service Directors should seek further information and advice from the Monitoring Officer.

17. What should I do in an emergency situation?

If there is an emergency request brought forward to Service Directors that does not compromise impartiality, then Service Directors must react. In an emergency or where there is a genuine need for a Director-level response to an important event outside the Council's control, Service Directors should be able to comment, take action or seek member decisions if such a situation arises.

18. Can Council premises be used for political meetings?

During the Election Period there should be a presumption against political meetings being held on Council premises. Particular care needs to be taken in regard to venues such as public halls, elderly persons' accommodation and sports centres where there may be restrictions governing the operation of such premises which preclude political activity.

If a request is made and it is not clear whether it relates to a political meeting, further information should be sought regarding the purpose of the event and the organiser. This

may assist in deciding whether approval to the use of the accommodation is appropriate. In the event of any doubt, advice should be sought in accordance with section 19 below. If any premises are to be made available, they should be offered on an even-handed basis to all political parties.

19. What happens during the rest of the Council Year?

Staff should be clear that for the rest of the year, outside the Election Period, officers are still required to maintain a strict impartiality in dealing with political groups, the Council and individual members. This requirement is set out in the Council's constitution in a special protocol regarding the management of relations with political groups and in the officers' Code of Conduct which applies to all staff.

The same requirements are set out in the Code of Conduct for elected members, in which all Councillors are advised not to seek to compromise the impartiality of officers or their advice. If a member of staff is concerned that what they are being asked to do breaches the rules of impartiality, they must draw this to the attention of their line manager.

20. Where Can I Obtain Advice?

Please speak with your line manager in the first instance. Further advice is available from the Monitoring Officer.