

**ENVIRONMENT, CULTURE AND COMMUNITIES OVERVIEW AND SCRUTINY PANEL
18 DECEMBER 2008**

**ATTENDANCE OF EXECUTIVE MEMBERS AT OVERVIEW AND SCRUTINY MEETINGS
(Director of Corporate Services – Legal)**

1 INTRODUCTION

- 1.1 The Commission and its Panels have frequently found the attendance of Executive Members to be of assistance. By the same token, Executive Members have found attendance at such meetings beneficial. This report proposes a mechanism that will allow Executive Members to continue to attend Commission and Panel meetings without there being placed in jeopardy of complaints that they are in breach of the Code of Conduct for Members.

2 RECOMMENDATION

- 2.1 That the Panel require each Executive Member to attend its meetings whenever the agenda of the meeting includes a matter which falls within the relevant portfolio of the Executive Member, unless the Chairman shall have confirmed that there are no matters which require the Executive Member's attendance.**

3 SUPPORTING INFORMATION

- 3.1 Paragraph 11 of the Code of Conduct for Members is in the following terms:-

“You also have a prejudicial interest in any business before an overview and scrutiny committee of your authority (or of a sub-committee of such a committee) where

- (a) that business relates to a decision made (whether implemented or not) or action taken by your authority's executive or another of your authority's committees, sub-committees, joint committees or joint sub-committees, and
- (b) at the time the decision was made or action was taken, you were a member of the executive, committee, sub-committee, joint committee or joint sub-committee mentioned in paragraph (a) and you were present when that decision was made or action was taken.”

Paragraph 12 of the Code requires (subject to an exception which is not relevant for present purposes) that where a Member has a prejudicial interest in a matter they must withdraw from the Council Chamber.

- 3.2 Read literally, a combination of paragraphs 11 and 12 preclude Executive Members from remaining in the Council Chamber when the Commission (or one of the Panels) considers an Executive decision which they made or which was made at a meeting of the Executive which they attended. Whether or not those responsible for drafting the Code intended that to be the effect is a moot point but in any event it appears that they overlooked a provision in the Local Government Act 2000. Section 21(13) of the 2000 Act provides that an Overview and Scrutiny Committee (or a sub-Committee) “must require Members of the Executive.....to attend before it to answer

questions". It can be seen that there is a conflict between the Code and the Act. In these circumstances the Act prevails.

- 3.3 In order to allow Executive Members to attend Overview & Scrutiny meetings it is proposed that the Commission (and each of the Panels) should issue a standing direction to Executive Members to attend whenever a matter concerning their portfolio is to be considered. The Executive Members will then be able to attend and answer questions but would not participate in the debate of the Committee. Obviously, there may be occasions when Executive Members could not attend and in those circumstances the Committee would receive the apologies of the Executive Member.

Background Papers

None

Contact for Further Information

Alex Jack, Borough Solicitor (01344 355679)
Alex.jack@bracknell-forest.gov.uk

Doc Ref

Aj/f/reports/Overview and Scrutiny Commission – 20.11.08