

**COMMITTEE TERMS OF REFERENCE AND SCHEMES OF DELEGATION –
GENERAL PROVISIONS**

The following general ~~provisions apply to Committees in exercise of their functions and responsibilities and also Officers acting under the Scheme of Delegation Terms of Reference and Procedural Rules apply to the Finance and Corporate Services, Community Services and Planning and Licensing Committees of the Council, and where relevant also the Area Planning Committees.~~

Conferences

1. ~~Each~~ There shall be delegated to each Committee ~~may power to~~ authorise the attendance, subject to budgetary provision, of a Member at a Conference the subject matter of which falls within the purview of that Committee.

Development Proposals

2. (a) In cases where a Committee proposes to submit an application under the Town and Country Planning General Regulations 1992 for development on behalf of the Council, ~~including or where the Finance and Corporate Services Committee proposes to submit an application~~ for development of land which has been declared surplus to the requirements of the Council, the Committee may resolve that such applications be submitted to the relevant planning authority.

~~(b) Corporate Directors are authorised to make proposals under the 1992 Regulations and to seek any required planning or building control permission in pursuance of any resolution or objection of the Council..~~

~~(b) In cases where the Planning and Licensing Committee recommends refusal of an application for development on behalf of the Council, such recommendation shall appear as a separate item for consideration on the District Council Agenda.~~

~~(c) When a recommendation by the Planning and Licensing Committee for refusal of such an application is considered by the Council the opportunity shall be afforded to the Chairman of the promoting Committee to reply to the debate on such recommendation immediately before the exercise by the Chairman of the Planning and Licensing Committee of his right to reply under Procedure Rule 8 (11).~~

Sealing, Signing and Authentication of Documents

Sealing and Signing of documents

3. A resolution of the Council or of a Committee where that Committee has the power, or an Officer acting under delegated powers relevant, authorising the acceptance of any tender, the purchase, sale, letting, or taking of any property, the issue of any stock, the presentation of any petition, memorial, or address, the making of any rate or contract, or the doing of any other thing, shall be a sufficient authority for sealing any document or for the conclusion of any contract necessary to implement or give effect to the resolution.

4. The Seal shall be attested by any two of the following: a Director, any manager who reports directly to a Director any employed Solicitor, barrister or legal executive. An entry of every sealing of a document shall be made and consecutively numbered in a book kept for the purpose and shall be signed by the two officers who have attested the Seal.
5. A Director, any manager who reports directly to a Director acting within his area of responsibility or any employed solicitor, barrister or legal executive shall be authorised to sign any contracts, notices, or other documents which are not required to be sealed by the Council.

Authentication of documents for legal proceedings

6. Where any document will be a necessary step in legal proceedings on behalf of the Council it shall be signed by the Programmes, Performance and Governance Manager~~Head of Paid Service~~ unless any enactment otherwise requires or authorises, or the Council gives the necessary authority to some other person for the purpose of such proceedings.

Common Responsibility

7. Each Committee shall have regard to the implications of the Maldon Corporate Plan, Workforce Development Plan, the Crime and Disorder Strategy and the IT Strategy.

Contracts

8. There shall be delegated to each Committee power to allocate and manage within approved estimates contracts entered into for the purpose of achieving or furthering the approved programme of the Committee.

Land and Property

- ~~9. Subject to the general asset management functions of the Finance and Corporate Services Committee, every Committee shall keep the operational land and property assets under its control under review and there shall be delegated to each Committee power to declare that any particular piece of land or property under its control is surplus to the requirements of that Committee and to invite the Finance and Corporate Services Committee to consider whether the land or property in question should be retained in the ownership or control of the Council or should in some way be disposed of.~~
- ~~10. Any Committee wishing to acquire for the purpose of the discharge of its functions any land or property not owned by or under the control of the Council shall have no delegated power to effect such acquisition but shall make a recommendation to the Finance and Corporate Services Committee which shall in turn recommend to the Council.~~
- ~~11. The Finance and Corporate Services Committee shall be consulted on the acquisition or disposal of any land or property.~~

Devolution of Functions

- ~~12. Each Committee shall consider and report to the Council from time to time on any devolution of functions from or to the Essex County Council under partnership arrangements and any proposed devolution of District Council functions or concurrent functions to Town and Parish Councils.~~

Promotion and Statutory Information

13. ~~Each Committee shall provide information regarding the Maldon District Council and its functions, policies and activities.~~

Membership of Outside Organisations

14. Appointments to Outside Organisations shall be made by the Council, normally at its Annual Meeting. Casual vacancies shall be considered by the next ordinary meeting of the Council.
15. ~~The foregoing does not apply to the Committee establishment of an ad hoc panel or joint working group which is wholly within its Terms of Reference.~~

Responsibilities and Functions~~Terms of Reference~~

16. ~~All proposals for amending the terms of reference of Committees and the Scheme of Delegation will be considered by the Performance, Governance and Audit Committee and recommended to the Council.~~ ~~ny Committee may make proposals to the Council for amending its Terms of Reference.~~

Conflicts between Committees

17. All conflicts between Committees shall be determined by the Council.

Inspection of Documents

18. A Member of the Council may on application to the Programmes, Performance and Governance Manager~~Head of Paid Service~~ inspect any document which has been considered by a Committee, or by the Council, and if copies are available shall on request be supplied for the like purposes with a copy of such a document.

A Member shall not knowingly inspect and shall not call for a copy of any document relating to a matter in which he is professionally interested or in which he has a ~~disclosable personal~~prejudicial interest in the terms of the Local Code of Conduct~~Government Act 2000~~.

This shall not preclude ~~any Director~~the Head of Paid Service or the Council's legal advisor~~the Solicitor to the Council~~ from declining to allow inspection of any document that is, or in the event of legal proceedings, would be protected by privilege arising from the relationship of solicitor and client.

19. All reports made or Minutes kept by any Committee shall, as soon as the Committee has concluded action on the matter to which such reports or Minutes relate, be open for the inspection of any Member of the Council.
20. On the request of any Member attending a meeting of a Committee of which he not a Member, he shall be be given access~~supplied with to~~ any documents which have been provided to the Committee at that meeting.

Inspection of Lands, Premises etc.

21. Unless specifically authorised to do so by the Council, or a Committee, a Member of the Council shall not issue any order for any works which are being carried out by or on behalf of the Council or claim by virtue of his membership of the Council any right to inspect or to enter upon any lands or premises which the Council has the power or duty to inspect or enter.

MALDON DISTRICT COUNCIL

PUBLIC QUESTION TIME AND PARTICIPATION AT COUNCIL AND COMMITTEE MEETINGS

The Scheme and How it Operates

~~In 2009, the Council agreed to the principle of introducing a public question time facility at meetings of the Council. Implementation has awaited the separate introduction and review of a public participation facility at meetings of the Area Planning Committees, and more recently its extension to meetings of the Planning and Licensing Committee.~~

At Council meetings

A period of 10 minutes will be set aside at an early point on the agenda for meetings of the Council only for public questions. Questions can be asked generally of the Leader of the Council or through the Leader to Chairmen of Committees. Prior notice is required of questions – in writing and to be received by the Programmes, Performance and Governance ~~Legal and Democratic Services~~ Manager (email: committee.clerk@maldon.gov.uk) no later than Noon two clear working days before the day of the Council meeting. In addition -

questions must -

- relate to a matter within the local authority's responsibility or which affects the District;

- not be defamatory, frivolous, vexatious or offensive;

- not be the same or substantially the same as another question to the same meeting or anything so put in the last six months;

- not involve the disclosure of confidential or exempt information.

a formal and public record of requests to ask questions will be kept. Requests rejected, and the reasons for rejection will also be recorded. Questions to be received will be published and circulated at the meeting.

a period of two minutes will be allowed for the reading of each question (by the questioner if present) and the response.

there will be no discussion on questions put unless it is formally moved and agreed that the subject matter should be referred to a Committee, again without discussion.

At Planning Committee meetings

~~The Council wishes to extend public involvement in the planning process, and M~~members of the public ~~now~~ have the opportunity to put their views on a planning application direct to meetings of the District Planning Committee and the Planning and Licensing Committee and the three Area Planning Committees ~~and also to extraordinary meetings of the Council convened to consider planning applications.~~

This will apply only to those applications that are to be determined by ~~those Area Planning Committees, and~~ includes all applications for planning permission under Part III of the Town and Country Planning Act 1990 (as amended) and related legislation, and for Listed Building and Conservation Area Consent under the Planning (Listed Buildings and Conservation Areas) Act 1990.

The opportunity will be open to applicants and their agents, supporters, objectors, and also appointed representatives of Parish / Town Councils. Where consideration of an application is deferred for any reason public speaking will be allowed again when the Committee resumes its consideration prior to a decision.

This is intended to supplement rather than replace representations in writing. All representations on planning applications must first be made in writing and will continue to be taken into account with equal weight in the decision-making process.

Planning Services will communicate with applicants / agents, Parish and Town Councils, and all persons who have submitted written representations to advise them of the relevant arrangements.

All requests to speak must be notified to a Committee Clerk or Planning Officer between 7.00pm and 7.20pm prior to the start of the meeting.

The opportunity to speak will occur as part of the consideration of each planning application, and the normal way of proceeding will be as follows:

- a) The Planning Officer to present the application to the Committee and update as necessary.
- b) The Chairman to announce details of those who wish to speak.
- c) Participants will be called in the following order:
 - Objector;
 - Supporter;
 - Representative of Parish / Town Council;
 - Applicant / Agent (or supporter in their absence).
- d) Where there are several people wishing to express substantially the same, they will be invited to appoint a single spokesperson who may be able to cover all the points and will be asked to announce who it is he or she represents. In the absence of agreement over this, and in the interests of the proper and efficient conduct of the meeting, the Chairman may decide to allow no participation at all.
- e) Each participant will be allowed no more than two minutes to make a statement.
- f) Participants may not ask questions directly of individual Members or Officers.
- g) There will be no discussion between participants and the Committee Members. The Chairman may however find it necessary on occasions to seek clarification from participants in relation to what they have said.
- h) Participants will not be allowed to distribute or display papers, plans, photographs or other material to accompany their submissions.
- i) Where an application for planning permission is followed on the agenda by a related application for listed building consent or conservation area consent, an opportunity to speak will be allowed provided participants confine their comments to the particular issues raised by that related application. The opportunity to speak will occur only once in relation to duplicate (often referred to as “twin track”) applications.
- j) All contributions will be conducted strictly through the Chairman whose ruling on any point of procedure will be final. The Chairman will indicate when the opportunity for public speaking on an application has finished, following which the Committee will continue with its deliberations without further public involvement.
- k) Where planning applications ~~are referred to the District Planning Committee by to be determined by the Planning and Licensing Committee are also considered~~ by an Area Planning Committee, the opportunity for public speaking will occur at both Committees.

Advice for participants

Please think about what you propose to say, and try to keep your statement brief and to the point. The Chairman will not allow comments he/she considers to be abusive, defamatory, discriminatory or otherwise inappropriate.

It will help the Committee to receive views that are relevant to planning issues such as –

- Impact on the character of the area;
- External design, appearance and layout;
- Impact on neighbouring properties;
- Highway safety;
- Planning policy and Government guidance.

It will be unhelpful to the Committee to receive views on such issues as –

- Business competition;
- Boundary disputes or private rights;
- Speculation/developers' motives;
- Moral arguments;
- Matters dealt with under separate legislation.

Public participation at other Committee meetings

A period of ten minutes will be set aside at an early point on the agenda for meetings of the Strategy and Resources, Performance, Governance and Audit, Licensing and Community Services, Planning and Licensing, the Finance and Corporate Services and Overview and Scrutiny (including meetings of the Crime and Disorder Committee) Committees during which members of the public, for no more than two minutes each, may express views on matters of business due to be considered. ~~Public participation at meetings of the Overview and Scrutiny Committee, including meetings of the Crime and Disorder Committee, is being trialled from 8 January 2016 for a period of 12 months. For further details please see overleaf.~~

All requests to speak will be taken on a 'first come, first served' basis and notified to the Committee Clerk between 7.00pm and 7.20pm prior to the start of the meeting.

It should be noted that participants will not be allowed to distribute or display papers, plans, photographs or other material.

The ultimate management of all public participation facilities, including time limits, will be entirely at the discretion of the Council or Committee Chairman.

For further information please contact Committee Services on **01621 875791 or 876232** or via email committee.clerk@maldon.gov.uk.

Overview and Scrutiny Committee Trial Public Participation:

~~That a maximum of 10 minutes per meeting is set aside for public participation and that individual speakers have two minutes each relevant to a specific agenda item, the time slots to be allocated on a “first come first served” basis. Participation may take the form of a statement, or alternatively a question to be addressed to the Chairman. There will be no discussion on questions put unless it is formally moved. In line with the current scheme applied to other Committees, the questions must:~~

~~not be defamatory, frivolous, vexatious or offensive;~~

~~not be the same or substantially the same as another question to the same meeting or anything so put in the last six months;~~

~~not involve the disclosure of confidential or exempt information.~~

SCHEME OF DELEGATION

Principles of Delegation

1. Section 101 of the Local Government Act 1972 provides that:

A Council may delegate its powers (except those incapable of delegation) to a committee or an officer

A Committee may delegate its powers to a sub-committee

A Committee may delegate its powers to an officer

Powers which have been delegated may be exercised by the delegating body.

2. Any delegation to a Committee or a Director/Senior Officer shall be exercised in compliance with the Council's Constitution, any other policies or conditions imposed by the Council and with the law.

3. In making any decision regard shall be had to the Council's Corporate Priorities and also the principles of decision-making as set out in **Article 11 of the Constitution**.

4. Save in the cases of statutory appointments, a function delegated to a Director or other senior Officer shall be validly exercised if carried out on behalf of that Officer and in that Officer's name by staff authorised by him or her in writing for that purpose. Any Officer so authorised shall not extend that authorisation to another Officer. The exercise of a function in the name of a Director or other senior Officer will not be invalidated by the absence of that Officer at the time when the function was exercised.

5. In the absence of Director or other authorised Officer, or in the event of their inability to act in the exercise of a delegated power or function, another Director may exercise that power or function should the need arise.

Statutory Officer and Other Designations

Monitoring Officer

1. Pursuant to Section 5 of the Local Government and Housing Act 1989, the person appointed by the Appointments Committee (See Procedure Rule 16 (5) & (6) shall be Monitoring Officer for the Maldon District Council.

Head of Paid Service

2. Pursuant to Section 4 of the Local Government and Housing Act 1989, the person appointed by the Appointments Committee **and confirmed by the Council** (See Procedure Rule 16 (5) & (6) shall be the Head of the Paid Service for the Maldon District Council.

Section 151 Officer (Chief Financial Officer)

3. Pursuant to Section 151 of the Local Government Act, 1972, the person appointed by the Appointments Committee (See Procedure Rule 16 (5) & (6) shall be the Section 151 Officer for the Maldon District Council.

Registration of Electors

4. Pursuant to Section 8 of the Representation of the People Act 1983, Ms Emma Foy, Director of Resources, shall be Registration Officer for the Maldon District.

Returning Officer at Local Government Elections

5. Pursuant to Section 35 of the Representation of the People Act 1983, Ms Emma Foy, Director of Resources, is Returning Officer for the election of Councillors of the Maldon District and of Councillors of parishes and communities within the Maldon District. Ms Foy is also Returning Officer for the conduct of Parish Polls within the Maldon District.

Legal Proceedings

- ~~6. The Head of Paid Service, in consultation with the appropriate Director, Legal Advisor, Chairman of the relevant Committee (or Vice Chairman in his or her absence) and Leader of the Council, be authorised to institute or defend legal proceedings on any criminal offence or civil proceedings not otherwise provided for in Officer delegation arrangements elsewhere in this document, subject to subsequent report to the next meeting of the relevant Committee. The exercise of this authorisation shall, for the avoidance of any doubt, include responding to legal representations on behalf of the other party, any directions of the Court, and the pursuance and settlement of disputes by means other than litigation.~~

"Proper Officers"

The Council has approved and adopted the appointment of the following officers as proper officers, as described in the following specified sections of the relevant Acts of Parliament or regulations. Proper Officer is defined for most legislation by s.270(3) Local Government Act 1972 as an officer appointed for that purpose by that body or for that area, as the case may be.

67.

<u>The Local Government Act 1972</u>		
Section of Act	Functions	Proper Officer
83(1) to (4)	Witness and receipt of declaration of acceptance of office	<u>Programmes, Performance and Governance Manager Head of Paid Service</u>
84	Receipt of declaration of resignation of office	<u>Programmes, Performance and Governance Manager Head of Paid Service</u>
88(2)	Convening of meeting of Council to fill casual vacancy in the office of Chairman	<u>Programmes, Performance and Governance Manager Head of Paid Service</u>
89(1)(b)	Receipt of notice of casual vacancy from two local government electors	<u>Director of Resources Head of Paid Service</u>
100 B(2)	Circulation of Reports and Agendas	<u>Programmes, Performance and Governance Manager Legal and Democratic Services Manager</u>
100 B(7)(c)	Supply of Papers to the Press	<u>Programmes, Performance and Governance Manager Legal and Democratic Services Manager</u>
100 C(2)	Summaries of Minutes	<u>Programmes, Performance and Governance Manager Legal and Democratic Services Manager</u>
100 D(1)(a)	Compilation of lists of background papers	<u>Programmes, Performance and Governance</u>

APPENDIX C

		<u>Manager Head of Paid Service</u>
100 D(5)(a)	Identification of background papers	In joint reports a Director and in all other cases the <u>Programmes, Performance and Governance Manager Head of Paid Service</u>
100 F(2)	Papers not open to Members	Head of Paid Service and in his absence a Director of <u>Strategy, Performance and Governance/ Legal and Democratic Services Manager</u>
115(2)	Receipt of money due from Officers	Director of Resources
117	Record of notices given by Officers of personal interests in contracts	Monitoring Officer
146(1)(a) & (b)	Declarations and certificates with regard to securities	Director of Resources
151	Responsibility for proper administration of the Council's financial affairs.	Person appointed by Appointments Committee (see Procedure Rule 16)
191	Functions with respect to ordnance survey	Director of <u>Service Delivery</u> strategy, Performance and Governance

Section of Act	Functions	Proper Officer
215	Registrar of Local Land Charges	Director of <u>Service Delivery</u> strategy, <u>Performance and Governance</u>
225(1)	Deposit of documents	<u>Programmes, Performance and Governance</u> Manager <u>Legal and Democratic Services Manager</u>
229(5)	Certification of photographic copies of documents	<u>Programmes, Performance and Governance</u> Manager <u>Legal and Democratic Services Manager</u>
234(1) & (2)	Authentication of documents	<u>Programmes, Performance and Governance</u> Manager <u>Legal and Democratic Services Manager</u>
236(9)(i)	To send copies of byelaws for parish records	<u>Lead Legal Specialist</u> Legal and Democratic Services Manager
236(10)(ii)	To send copies of byelaws to the County Council	<u>Lead Legal Specialist</u> Legal and Democratic Services Manager
238	Certification of byelaws	<u>Lead Legal Specialist</u> Legal and Democratic Services Manager

Data Protection Act 1998

Section of Act	Functions	Proper Officer
	Data Protection Officer	<u>Senior Specialist (Legal)</u> Legal and Democratic Services Manager

Local Government Finance Act 1988

Section of Act	Functions	Proper Officer
S116	Notification to auditor of the date, time and place of a proposed meeting to consider a	<u>Mr Richard Holmes, Head of Paid Service or</u>

	report under Section 114 and of any decision made at the meeting.	Director of Resources
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Crime and Disorder Act 1998

Section of Act	Functions	Proper Officer
	For all matters relating to the Act	Director of Service Delivery

Local Government Act 2000

Section of Act	Functions	Proper Officer
S81	Maintenance of Register of Interests of Members	Monitoring Officer

Localism Act 2011

Section of Act	Functions	Proper Officer
S29	Maintenance of Register of Interests of Members	Monitoring Officer

Local Government and Housing Act 1989

Section of Act	Functions	Proper Officer
S3A (Amended by Localism Act 2011)	Grant of exemptions from politically restricted posts.	Head of Paid Service
S4	Head of Paid Service	Person appointed by Appointments Committee (See Procedure Rule 16)

The Openness of Local Government Bodies Regulations 2014

Regulation	Functions	Proper Officer
9	Disclosure of confidential information	<u>Director of Strategy, Performance and Governance</u> <u>Legal and Democratic Services Manager</u>

Public Health (Control of Disease) Act 1984 and related legislation

<u>Section</u>	<u>Functions</u>	<u>Proper Officer</u>
<u>48</u>	<u>Issue certificates relative to the removal of bodies to mortuaries or for immediate burial</u>	<u>Named Officers of the Health Protection Agency appointed by the Lead</u>

		<u>Specialist - Community</u>
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- (i) In the event of any other notices being required to be served under any other Section of the Local Government Act 1972 or any other enactment, and not otherwise specified in the Council's Scheme of Delegation, the Director of Strategy, Performance and Governance~~Head of Paid Service~~ is designated the "Proper Officer".
- (ii) The Programmes, Performance and Governance Manager ~~Legal and Democratic Services Manager~~ is recognised as the Officer responsible for giving public notice of the time and place of meetings pursuant to Section 100 A(6)(a).
- (iii) The Programmes, Performance and Governance Manager ~~Legal and Democratic Services Manager~~ in consultation with the "Proper Officer" as appropriate, is recognised as the officer responsible for provision of the Agendas and Reports for public inspection pursuant to Sections 100 B(1) and 100 E(1) of the Act.

Delegation to Officers - General

- ~~8. Save in the cases of statutory appointments, a function delegated to a Director or other senior Officer shall be validly exercised if carried out on behalf of that Officer and in that Officer's name by staff authorised by him or her in writing for that purpose. The exercise of a function in the name of a Director or other senior Officer will not be invalidated by the absence of that Officer at the time when the function was exercised.~~
79. To renew Council membership of bodies or organisations, subject to the costs of any particular subscription renewal falling within the Council's estimates guideline figure.
81. The authorisation of directed surveillance under the provisions of the **Regulatory and Investigatory Powers Act 2000** to the undermentioned Officers:
 Director of Strategy, Performance and Governance
 Director of Resources
129. **Emergency Action** – ~~Any Director~~The Head of Paid Service is authorised to act in emergencies, and where time permits in consultation with the Leader of the Council and Chairman or Chairmen of appropriate Committee(s)
130. **Consultations** – ~~A The Head of Paid Service or a~~ Director, in liaison with the relevant Lead Member (Committee Chairman or Leader of the Council), is authorised to respond to consultation documents where the period during which a response is required does not allow the matter to be reported to the relevant committee or where the consultation is of a predominantly technical nature.

11. Legal Proceedings

A Director in consultation with a Legal Advisor, Chairman of the relevant Committee (or Vice-Chairman in his or her absence) and Leader of the Council, be authorised to institute or defend legal proceedings on any criminal offence or civil proceedings not otherwise provided for in Officer delegation arrangements elsewhere in this document, subject to subsequent

report to the next meeting of the relevant Committee. The exercise of this authorisation shall, for the avoidance of any doubt, include responding to legal representations on behalf of the other party, any directions of the Court, and the pursuance and settlement of disputes by means other than litigation.