

<b>COUNCIL</b>		
<b>Report Title</b>	CONSTITUTIONAL CHANGES	
<b>Key Decision</b>	N/A	
<b>Ward</b>	All	
<b>Contributors</b>	Head of Law	
<b>Class</b>	Part 1	Date 17 September 2014

## 1. Summary

This report proposes changes to the Council's Constitution which are proposed by the Council's Constitution Working Party (CWP). They reflect changes in the law and practical recommendations from CWP.

## 2. Purpose

The purpose of the Constitution is to set out the principles for Council decision making and the procedures governing the conduct of Council business. The purpose of the amendments proposed in this report is to ensure that the Constitution remains up to date and fit for purpose.

## 3. Recommendations

- 3.1 That Council approves the proposed amendments as detailed in Appendix 1 to this report, the most significant of which are summarised in paragraph 6.
- 3.2 Should the Council agree to the change set out at paragraph 6.21 of this report, that the Council consider whether to make any amendment to the membership of the Planning Committees, and if so to appoint to those committees.

## 4. Background

- 4.1 The Council first adopted a Constitution when it moved to a Mayoral model of political governance in 2002. It was then, and it remains, a legal requirement for the Council to adopt a Constitution and keep it up to date. Under Section 9P Local Government Act 2000, the Constitution must contain:-

- a copy of the Council's Standing Orders;
- a copy of the Council's Member Code of Conduct;
- such information as the Secretary of State directs; and
- such other information as the Council considers appropriate.

- 4.2 The Constitution as currently drafted includes all elements required by law and Secretary of State direction, and it is not proposed that the Council diverge from these.
- 4.3 Since the introduction of the Constitution, the Council has amended it on a number of occasions to ensure that it reflects changes in the law and current practice. Amendments have included such matters as:-
- the creation of a Housing Select Committee;
  - the inclusion of a provision that Overview and Scrutiny chairs and vice chairs should reflect the political composition of the Council;
  - the creation of an Audit Panel;
  - the procedure for dealing with Council questions;
  - changes to reflect new law relating to the ethical framework and the abolition of Standards for England;
  - adoption of a new Member Code of Conduct under the Localism Act
  - new provisions introduced in relation to new licensing responsibilities
  - changes to financial regulations
  - incorporation of the Council's duties for public health and the creation of the Health and Wellbeing Board
  - the creation of Local Assemblies and the Positive Ageing Council
  - the introduction of a petition scheme
  - voting arrangements on budget matters.
  - Amendment to notice requirements to reflect new regulations

This is not an exhaustive list.

## **5. CWP**

- 5.1 The Constitution provides that CWP should advise it on the operation of its executive arrangements and make any proposals to the Council for changes to the Constitution it considers necessary. On the 3<sup>rd</sup> September 2014, CWP agreed to recommend to Council amendments to the Constitution as follows:-

### *General update*

- 5.2 CWP considered a report from the Head of Law which recommended the changes summarised in paragraphs 6.1 to 6.19 below. CWP endorsed all of those proposed amendments.

### *CWP recommendations*

- 5.3 Members of the CWP made a number of proposals which were approved. These are set out in paragraph 6.20 to 6.22.

*Business Panel proposals*

- 5.4 CWP also endorsed two proposals which were referred by the Overview and Scrutiny Business Panel. These are summarised at paragraphs 6.23 and 6.24 below.

**6. Proposed amendments to the Constitution**

- 6.1 In 2007 the Council received advice from Leading Counsel that under legislation that existed at that time, the Mayor did not qualify as a member of the Council, save for specific purposes which were defined in regulations. A number of changes were made at that time to reflect this legal advice. The Localism Act 2011 has now changed that legal position, so it is necessary to reflect the current law so that for all purposes the Mayor does qualify as a member of the Council. (see for example the proposed summary at paragraph 2, Article 2.6 and Article 7.4).
- 6.2 The responsibility for overview and scrutiny lead on equalities is duplicated in the terms of reference of both the Sustainable Development and Safer Stronger Select Committees. This is an error, and officers believe it was the intention of the Council that it appear within the Terms of Reference of Safer Stronger Select Committee only. It is proposed to rectify this error. (See Article 6.6, Sustainable Development Select Committee Terms of Reference)
- 6.3 The introduction of the Children and Families Act 2014 imposes duties for the provision of special education needs services up to the age of 25 years. As drafted the responsibilities of the Healthier Communities Select Committee has included overview and scrutiny functions in relation to education and training of all adults over 19 years of age and for people with disabilities. It is proposed that the terms of reference of the Healthier Communities Select Committee not cover those up to 25 years of age who have SEN, and that this function be transferred to CYP Select Committee. (See relevant Terms of Reference at Article 6.6).
- 6.4 At the time the current version of the Constitution was drafted, the Health and Wellbeing Board was yet to be established and the wording reflected that provisions relating to it would come into effect on the transfer of functions. The proposed wording reflects that this has now occurred. (See for example paragraph C32.2.b)
- 6.5 A new slightly modified employee code of conduct was agreed by officers under delegated authority but has not been incorporated into the Constitution as currently drafted. The new Code appearing at Part V of Appendix 1 is up to date.

- 6.6 Although a Housing Select Committee has been established , with responsibility for the overview and scrutiny of all housing functions, the remit for housing was not deleted from the Sustainable Development Select Committee. It is now proposed that it should be. (See relevant Terms of Reference at Article 6.6)
- 6.7 Members will note that the requirement for a recorded vote on budget matters, previously agreed by Council, is incorporated in the proposed latest version of the Constitution. (See part F3 (o) and (p))
- 6.8 Recording of Council meetings – Regulations which have been recently enacted change the right of the press and public in relation to the recording of Council proceedings with effect from 31<sup>st</sup> July. From that date, the public will be able to film or otherwise record public business at Council meetings for immediate or later transmission. Officers have drafted a protocol and inserted a requirement into the proposed amended constitution that recording of proceedings will be allowed in accordance with that protocol, which, it is suggested be included in the Constitution at Appendix 3 to that document. Members of CWP asked that this protocol be kept under review and if necessary amendments be brought forward so far as the law permits if any element of it proves to be impractical. (See paragraph C27)
- 6.9 So that all overview and scrutiny functions required by law are dealt with in the Constitution, a catch-all phrase is proposed for the terms of reference of the full Overview and Scrutiny Committee to the effect that any overview and scrutiny function not delegated elsewhere shall be the responsibility of the full Overview and Scrutiny Committee. (See Article 6.2)
- 6.10 It is proposed that the budget and policy framework rules be updated as set out in Part F of Appendix 1 to reflect the changes brought about to the budget process by the Localism Act 2011 and to replace now outdated statutory provisions.
- 6.11 Transparency provisions relating to the making of officer decisions have been amended by regulation and these are reflected at G32 in Appendix 1.
- 6.12 It is proposed that a new paragraph 16 be included at the end of part H which deals with employment, to the effect that the Council will prepare an annual pay policy statement as required by Section 38 Localism Act 2011.
- 6.13 The Executive Director for Resources and Regeneration has proposed changes to Financial Regulations. In summary these reflect changes in law and job title and are reflected in the proposed Part K in Appendix 1.

- 6.14 The Guidance Code for Members on Outside Bodies, attached to the Member Code of Conduct at Part V Ethics, has been updated to reflect current legislation e.g. changes to charitable purposes set out in the Charities Act 2011.
- 6.15 The current Members' Allowances Scheme has been included, though it is noteworthy that the Chief Executive has approached Sir Rodney Brooke to consider the local situation in Lewisham and to advise on the scale of Members' Allowances here. His report may be available for the September meeting of full Council and if changes are proposed and agreed, any newly approved scheme will be included in the Constitution and publicised.
- 6.16 An up to date chart of the Council's management structure has been included. (See Part VII)
- 6.17 Council is asked to note that the Mayor has agreed amendments to his scheme of delegation to reflect current law and the transfer of functions between directorates. These are included in Part VIII of Appendix 1 and Council is asked to note them. The scheme of delegation also reflects that decisions relating to public realm works over £100,000 are reserved to members.
- 6.18 Council is also asked to note the changes to the non-executive scheme of delegation which, like the Mayoral scheme is proposed to be amended only to reflect current law and transfer of functions across directorates. The Schemes of delegation appear at Part VIII to the draft amended Constitution which now appears at Appendix 1 to this report.
- 6.19 Out of date statutory references have been removed and where appropriate replaced with the law which has superseded them.
- 6.20 CWP members asked for a clause to be inserted in the Constitution that the delegation of powers to an Overview and Scrutiny Select Committee does not prevent that power being exercised by the full Overview and Scrutiny Committee. (See proposed paragraph 6.3 final sentence)
- 6.21 CWP members agreed that the provision that members of Strategic Planning Committee be drawn from membership of the other planning committees should be withdrawn, and that instead membership of Strategic Planning Committee should be open to all members of the Council. If this provision is agreed, the Council is asked to consider whether to make any changes to the membership of the Planning Committees, and if so to appoint in accordance with the wishes of the political groups. (See Article 9, Committees)
- 6.22 Currently the non-executive scheme of delegation in relation to planning matters does not require that matters be referred for member consideration whenever a member raises an objection to an

application. CWP agreed that officers should not have delegated authority to determine any application where a member makes an objection, and this should be specifically set out in the scheme of delegation. (See matters reserved to Planning Committee A, B & C and Strategic Planning Committee)

- 6.23 A request was received from the Overview and Scrutiny Business Panel that the Council be asked to amend the Constitution so that the number of members on the Business Panel be reduced to 10, from 11. This would reflect actual practice over recent years when one seat on Business Panel has been left vacant. This has been incorporated in the proposed amended constitution at Article 6.3.
- 6.24 A proposal was recommended that the overview and scrutiny of libraries transfer from Healthier Communities Select Committee to Safer Stronger Communities Select Committee. This was deemed appropriate given the likelihood that the need for scrutiny of health matters will be heavier in future in the light of integration of health and social care. (See Article 6.6 Healthier Communities Select Committee, paragraph (i) and 6.6 Safer Stronger Communities Select Committee, paragraph (j))

## **7. Legal implications**

- 7.1 The body of the report refers to new legal requirements in relation to filming and transparency. It also refers to the statutory basis for the Constitution. Amendments to the Constitution are a matter for full Council decision.
- 7.2 The Council is under a duty to have the Constitution available for public inspection at its offices and to provide a copy to anyone who requests it on payment of a reasonable fee. In practice a copy of the Constitution is made available on the Council's website.
- 7.3 The Openness of Local Government Bodies Regulations 2014 make provision for the recording, reporting and filming of Council meetings and for the recording and publication of certain officer decisions. These are reflected in the proposed amended protocol. The regulations do not allow recording etc of meetings from which the public have been excluded.
- 7.3 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty). It covers the following nine protected characteristics: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.
- 7.4 In summary, the Council must, in the exercise of its functions, have due regard to the need to:

- eliminate unlawful discrimination, harassment and victimisation and other conduct prohibited by the Act.
- advance equality of opportunity between people who share a protected characteristic and those who do not.
- foster good relations between people who share a protected characteristic and those who do not.

7.5 The duty continues to be a “have regard duty”, and the weight to be attached to it is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. It is not an absolute requirement to eliminate unlawful discrimination, advance equality of opportunity or foster good relations.

7.6 The Equality and Human Rights Commission has recently issued Technical Guidance on the Public Sector Equality Duty and statutory guidance entitled “Equality Act 2010 Services, Public Functions & Associations Statutory Code of Practice”. The Council must have regard to the statutory code in so far as it relates to the duty and attention is drawn to Chapter 11 which deals particularly with the equality duty. The Technical Guidance also covers what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guidance does not have statutory force but nonetheless regard should be had to it, as failure to do so without compelling reason would be of evidential value. The statutory code and the technical guidance can be found at: <http://www.equalityhumanrights.com/legal-and-policy/equality-act/equality-act-codes-of-practice-and-technical-guidance/>

7.7 The Equality and Human Rights Commission (EHRC) has previously issued five guides for public authorities in England giving advice on the equality duty:

- The essential guide to the public sector equality duty
- Meeting the equality duty in policy and decision-making
- Engagement and the equality duty
- Equality objectives and the equality duty
- Equality information and the equality duty

7.8 The essential guide provides an overview of the equality duty requirements including the general equality duty, the specific duties and who they apply to. It covers what public authorities should do to meet the duty including steps that are legally required, as well as recommended actions. The other four documents provide more detailed guidance on key areas and advice on good practice. Further information and resources are available at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-equality-duty/guidance-on-the-equality-duty/>

7.9 Members are reminded of the duty to secure best value under the Local Government Act 1999. The whole purpose of the amendments is

to secure continuous improvement in the administration of the Council's business.

**8. Crime & Disorder**

The Constitution is designed to embody sound decision making principles and a robust ethical framework to reduce the prospect of any potential wrong doing and to promote public confidence in local government.

**9. Equalities Implications**

There are no specific equalities implications

**10. Financial Implications**

There are no financial implications arising from this report except to note that it is proposed that the financial regulations set out in the Constitution be amended to reflect up to date law and best practice.

**BACKGROUND PAPERS**

Appendix 1 The proposed Constitution can be viewed at:

<http://councilmeetings.lewisham.gov.uk/ieListDocuments.aspx?CIId=138&MIId=3290>

For further details please contact Kath Nicholson: 020 8314 7648