

Committee	Constitution Working Party		Item No	3
Report Title	Proposed amendments to the Constitution Constitution Working Party 15 th March 2007			
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1. Summary

This report reviews the Constitution and makes proposals for keeping it up to date. There are proposals particularly relating to questions and motions on which the Constitution Working Party have asked for an officer report. This report sets out options and asks the Working Party to make recommendations to Council.

2. Purpose

The purpose of this report is to ensure that the Constitution supports efficient decision making in the Council and facilitates accountability.

3. Recommendations

3.1 To decide whether to recommend to Council that the Constitution be amended in relation to

- members' questions (including questions of the Mayor)
- public questions,
- motions and amendments to them and
- the chairing of Committees

as discussed in this report or otherwise, and if so

3.2 to decide which if any of the recommendations set out in paragraphs 5.13, 6.2, 7.3, 8.5, and 9.3 should be adopted

4. Background

4.1 The Constitution was introduced to comply with the legal requirement to adopt a Constitution which arose when new political management arrangements were put in place under the Local Government Act 2000. The Constitution Working Party was established to keep the Constitution under review and to make recommendations to Council for any necessary amendments.

4.2 Members of this Working Party have asked officers for a report setting out options for

(a) dealing with member questions

- (b) dealing with questions from the public
- (c) revisiting the prohibition on the Chair of this working party chairing any other body
- (d) motions and amendments to them

5. Member Questions

The current position

- 5.1 Questions may be put by Members at Council meetings so long as the question is relevant to the general work or procedures of the Council. (Part C14 of the Council's constitution – see Appendix A). The Constitution provides for written notice of the question to be given in writing to the proper officer by 10 a.m on the Monday in the week preceding the meeting. Copies are sent to the Chair, all members of the Mayor and Cabinet, the Chair of Overview and Scrutiny and the Chair of any relevant committee. A question may not be asked without notice unless the Chair consents that it is a matter of urgency, in which case the question must be given in writing to the Chair at least three hours before the meeting.
- 5.2 There are provisions in the Constitution for a member's question to be disallowed if:-
- It does not relate to a matter for which the Council has powers or duties unless it is a matter which affects the interests of local people
 - It is defamatory, frivolous or offensive
 - It is substantially the same as a question which has been put and answered at a Council meeting in the last 3 months
 - It requires the disclosure of confidential or exempt information
 - That responding to the question would entail disproportionate cost
 - That the question relates to the circumstances of an individual case
- 5.3 Questions are printed and answers published at the relevant meeting. Questions and answers are kept as an annex to the record of the meeting.
- 5.4 The Constitution provides that questions which are about the work of the Mayor and Cabinet may be answered by the member of the Mayor and Cabinet to whom they are addressed, or otherwise by the Mayor or relevant portfolio holder. Other questions are to be answered by the Chair of Council or by the relevant committee Chair to whom they are addressed. There is provision for joint replies to be given. There is a great deal of flexibility built into this provision, but in practice many questions are addressed to and answered by the relevant Cabinet member.
- 5.5 The form of the answer is at the discretion of the Chair of Council, Mayor, Cabinet member or Committee Chair who may decline to answer if a reply would involve inordinate cost.
- 5.6 One supplementary question may be asked at the discretion of the Chair, but this must arise directly from the original question or the reply to it.

Current experience

5.7 Since the May 2006 elections the number of members' questions has grown. The table below shows the extent of this growth over 2005/6

<u>2005</u>		
26 January	11	30
9 February	-	14
2 March	1	21
18 May	1	21
29 June	18	45
20 July	9	17
14 September	13	34
26 October	14	29
16 November	21	24
14 December	7	24
<u>2006</u>		
25 January	27	31
1 March	24	24
14 June	2	60
26 July	14	58
20 September	17	52
1 November	5	69
22 November	11	62

5.8 Given the change in the political composition of the Council, it is perhaps unsurprising that the number of questions put by members has grown so sharply. However, this increase, and the fact that they appear on the Council agenda at the end of business, has meant that there have been occasions when the Council has agreed to deal with questions by formally acknowledging the responses because of the time pressure at the Council meeting. It also involves much more effort by officers in the short period between receipt of the question and the Council meeting to ensure that comprehensive accurate responses are given.

The nature of members' questions

5.9 Some members' questions relate to questions of fact and the responses do not elicit supplementary question. Once the relevant information has been provided the member is satisfied and does not seek to raise further question by way of supplementary. On other occasions however, the questioner may wish

to receive an oral answer to a supplementary question, and may know before the initial response is received that they will wish to raise a supplementary question, particularly where the subject of the enquiry relates to a controversial matter.

The need for change

- 5.10 Members of the Constitution Working Party have asked officers to bring forward options for the Council to deal with questions in a different way so as to be effective and to facilitate the need for accountability and open debate.

Examples of practice elsewhere

Southwark

- 5.11 In summary, members' questions may be put to the Chair of Council, an executive member or the chair of a relevant committee. Each member is limited to one question per meeting. Questions may have up to three related composite parts. Questions may not relate to planning or licensing applications or particular matters. Questions may not be asked at AGM or Council Tax setting or extraordinary meetings. There is a time limit of 30 minutes, and questions of any particular member may not exceed 15 minutes. Questions are answered by the member to whom they are addressed. Written answers are circulated one hour before the meeting. There is a right to one supplementary question. No question may be asked about a Standards Board/Standards Committee or Adjudication Panel investigation, complete or unfinished. Questions are rotated so that they are taken in turn from political groups and independent members for so long as there are questions remaining.

Newham

- 5.12 Questions can be addressed to the Mayor, Cabinet member or Chairs of Committees. Written notice must be given indicating whether the questioner wants only a written response. The member to whom the question is addressed may delegate the answering to another member if appropriate. There are provisions allowing urgent questions to be put provided the Chair consents and notice of the question is received by noon on the day of the meeting. Questions are limited to two per member, with one supplementary, unless the questioner indicates that they seek only a written answer. The time limit for supplementary question and response is two minutes, with a 40 minute time limit in total for all members' questions. The Chief Executive in consultation with the Chair may apportion the time available for questions of the Mayor and may introduce a rota for responses from members if the number of questions warrants it.

5.13 Options

- 1) Questions could be classified by the member asking the question, as requiring only a written answer without the need for a supplementary

question, or requiring a written answer and reserving the right to ask a supplementary. Members would need to indicate on submission of their question whether they wish to reserve the right to ask a supplementary. If they do not do so, a written answer will generally be circulated at the Council meeting, and both the question and the response will be recorded and kept with the minutes of the meeting. This may cut down the time taken in dealing with questions at the Council meeting. However it may be that many members will wish to reserve their right until they have seen the response, and the measure if implemented, may not therefore alter current practice significantly

- 2) The time for considering members' questions at Council could be limited to say 20 minutes, with no more supplementary questions to be asked after that time. This could require questions to be responded to in the order received as now, or give priority to questions from group leaders, and would give certainty on the time to be spent dealing with them. The downside would be that those submitting questions latest (or not holding group leadership positions) would not be able to ask a supplementary question if the guillotine came down before their question was reached.
 - 3) The number of questions could be limited to a finite number per group (say two). Depending on the number chosen this might make the running of Council meetings more efficient. However, a decision would be required on the number to be allocated to each group, and officers would advise that it is not appropriate to allocate questions in Council on a proportionality basis as the prime purpose of questions is to ensure that those making decisions give account for them. Those members not in a party group would each need to be able to ask the same number of questions, for the sake of equity.
 - 4) The number of questions which a member of the Council may ask at any one meeting might be limited to say two. In the past, a limit appeared in the Council's Standing Orders, but it does not appear in the Constitution. It would be possible if option (1) above were accepted, to treat those questions requiring only a written answer and no supplementary in a different way, so that the ability to ask questions without supplementary could have a higher limit, or none at all. This would allow members to ask questions but still enhance the smooth running of the Council meeting.
 - 5) Officers also recommend that there should be a constitutional provision disallowing any question on a planning or licensing application or particular matter and on any referral to the Standards Board, Standards Committee or Adjudication Panel.
- 5.14 The Working Party is now asked to consider whether it wishes to make recommendations to the Council in relation to members' questions and if so which if any of the options set out at (1) to (5), above (or any other) it wishes to recommend.

6. Questions of the Mayor

- 6.1 At its last meeting the Working Party asked officers to clarify the position in relation to asking questions of the Mayor directly so that the response came from the Mayor rather than another Cabinet member. The position is clearly set out in paragraph 14.4 – see Appendix 1. Should the Working Party wish to alter this provision in any way, it would need to recommend that change to Council. It would be possible for the Constitution to be amended to require that questions be answered by the person to whom the question is addressed, provided that the question relates to an issue in their remit. However for detailed questions within the particular portfolio of a cabinet member it may not be possible for the Mayor to answer a supplementary question without research, given the breadth of his remit for executive functions. Members attention is drawn to practice elsewhere as set out above.
- 6.2 Members of the Working Party are asked to consider whether they wish to recommend any change to Paragraph 14.4 in relation to the procedure for members' questions being answered.

7. Public questions

- 7.1 The procedure for dealing with public questions is set out in Part IV C 13 of the Council's Constitution which appears in full at Appendix 1. At its last meeting the Working Party asked officers to bring forward a proposal that the deadline for the submission of public questions should be earlier. They also asked that officers ensure that a standard acknowledgement be given to all questioners explaining that their question will be given a written answer at the Council meeting and that if they wish, they may attend the meeting to attend the meeting and ask a supplementary question.
- 7.2 Currently, the limit for submission of public questions is 10 days before the meeting, and in order to give time for comprehensive answers to be prepared, it is proposed that this be amended to 14 days. The Head of Law has already requested Governance Support to ensure that the practice of full acknowledgement with guidance on the procedure be implemented as set out above.
- 7.3 Members of the Working Party are asked to agree a deadline for the submission of public questions of 14 days prior to the Council meeting and that paragraph 14.4 of Part IV C 13 be amended accordingly.

8. Motions

Current position

- 8.1 The Constitutional position in relation to the debating of motions is set out at Paragraphs 15 – 19 of Part IV c of the Constitution which appears at Appendix 2.

- 8.2 Members of the Working Party at its last meeting on 27th February were of the view that there needs to be a better balance between the conduct of the Council's general business and the debating of motions on the floor of the Chamber. Several members were of the view that an inordinate amount of time in the Chamber is taken up by the debate of motions and the Working Party asked officers to bring forward proposals to regulate the number and/or time taken up with debating motions at Council meetings.

Practice elsewhere

Southwark

- 8.3 Motions are limited to one per member who may also second one motion to a meeting. Except for motions that can be moved without notice, motions must be delivered to the monitoring officer at least 13 clear working days before the date of the meeting. Notice of any member's amendment to a motion must be delivered at least one clear working day before the day of the meeting and members are limited to one proposal for amendment and seconding one amendment per item of business.. Amendments will be placed on the agenda in order of receipt. Any changes to the above can only be agreed with the consent of the meeting.

Newham

- 8.4 Motions are limited to 2 per member and 6 clear days written notice must be given. The Chair of Council may refuse to admit a motion if he is advised that it is scurrilous or illegal, facetious etc. Urgent motions may only be taken with the Chair's consent and there must be at least one clear day's notice of a proposed urgent motion to enable advice to be taken on legality, financial and service implications. Exceptionally, amendments which are unforeseen and urgent can be taken at the meeting only if it is in writing. If the Chair, on advice, consents,, a vote may be taken on whether an unforeseen and urgent amendment should be debated. If the Council votes in favour, the amendment may be moved without notice.

Proposed amendment

- 8.5 The Council needs a clear and, so far as possible, simple procedure for dealing with motions effectively both to promote lively debate in the Chamber and to ensure that there is sufficient time for dealing with proposed amendments. To improve practice, it is recommended that
- (1) a limit on the number of motions that can be moved or seconded by any member at any council meeting be limited to two. Members of the Working Party did ask officers to advise on whether it would be possible to allocated motions on a party political basis, and whilst this would be possible, officers advise that it would create practical difficulties, and would prevent cross party motions being submitted.

- (2) any amendments to motions should be received in writing at least 24 hours before the meeting to allow for advice to be given to the Council meeting on the implications (financial, legal and service) to be made available to the Council. If the nature of the amendment requires a detailed consideration of such matters that cannot be achieved in the 24 hour period, the Chair may rule that the amendment should not be put to the meeting.
- (3) usually only one motion should be debated at a time, but the Chair might rule that more than one motion be debated (but not voted on) at the same time, if in his/her view it is likely to mean that Council business is conducted more efficiently.
- (4) usually only one amendment to any motion should be debated at the same time and there will be no further amendment proposed until a decision has been made in respect of the first amendment. However it is similarly proposed that if he is satisfied that to do so would make the conduct of Council business more effective, the Chair may rule that two or more amendments may be debated (but not voted on together).
- (5) In the case of both (4) and (5), if adopted, the votes should be taken in the order in which the motions/proposed amendments were received.

9. Provisions relating to the Constitution Working Party

Current position

- 9.1 The Constitution Working Party is not a decision making body. It was established to advise the Council on constitutional matters and to ensure that the Constitution is regularly reviewed and kept up to date. It comprises of one representative of each political group and six (or the smallest number higher) of councillors required to ensure that the political composition of the Council is reflected.
- 9.2 Article 9.3 of the Council's Constitution applies the general rules applying to meetings of the Council's committees to the Working Party. Those rules provide at J11 that the chair and vice chair of a standing committee or sub-committee and all executive members may not chair any other standing committee (save that the chair of any committee may also chair a sub committee of that main committee or the Strategic Planning Committee). Despite an element of ambiguity in the interpretation of this paragraph, the provision probably means that the Chair of the Constitution Working Party cannot chair any other Council body, subject of course to the exceptions to the rule set out above.
- 9.3 Members of the Working Party are asked to consider whether this prohibition was intended to apply to the Chair of this Working Party or not as the wording of Article 9.3 applies the committee rules only to "meetings", and not more generally. As the interpretation of this clause is a little ambiguous, members are asked whether:-

- (a) the wording of Paragraph J11 should be clarified to exclude the Chair of this Working party from its remit or not, or
- (b) to make alternative provision that, given the role of the Chair of Council as guardian of constitutional matters, in future, the Chair of Council should be should be the Chair of this Working Party, as has been previous practice. This would require the provisions relating to the membership of the Committee to be amended at full Council to ensure that the Chair is a member which is not the case currently.

10. Legal Implications

- 10.1 The main legal implications are contained in the body of the report. Changes to the constitution are a matter for full Council and the role of this Working Party is to advise it about any proposed amendments. The Council must take into account the effect on transparency, accountability and efficient decision making in considering any proposed amendment to the Council's Constitution and all of the options contained in this paper are proposed having regard to those issues.
- 10.2 Should the Working Party reach a conclusion on proposed amendments, the Head of Law will draft the specific provisions for submission to full Council at its annual General meeting.

11. Financial implications

There are no specific implications

12. Equalities, Crime and Disorder, Human Rights implications

There are no specific implications

Background papers

None