

## CONSTITUTION WORKING PARTY

<b>Report Title</b>	<b>REVIEW OF CONSTITUTION</b>		
<b>Key Decision</b>	<b>No</b>		<b>Item No. 4</b>
<b>Ward</b>			
<b>Contributors</b>	<b>Head of Law</b>		
<b>Class</b>	<b>Part 1</b>	<b>Date: 10 APRIL 2008</b>	

### **1 Summary**

This reports seeks the recommendation of the Constitution Working Party (CWP) to the Council to approve minor amendments to the Constitution as shown at Appendix 1 (copies circulated separately). The proposed amendments which are clear from Appendix 1, are required to tidy up the drafting of the Constitution where clarity could be improved and to reflect changes occasioned by the Local Government and Public Involvement in Health Act 2007.

### **2 Policy Context**

The Council is under a legal duty to keep its Constitution up to date, and the Council's own constitutional requirements set out that the provisions of the Constitution should be reviewed at least once in every 2 years. In practice this review is a continuing process with a series of amendments having been recommended by the CWP and accepted by the Council.

### **3 Recommendation**

The CWP is asked to endorse the amendments set out at Appendix 1 for approval by the Council.

### **4 Background**

4.1 The Council adopted its Constitution in accordance with the provisions of the LGA 2000 to take effect from May 2002. Shortly after, it established the CWP to make recommendations to the Council about the operation of the Constitution and to make any proposals for amendment. It has done so on a number of occasions.

4.2 In October 2007, the Local Government and Public Involvement in Health Act 2007 was given Royal Assent. Its provisions are being brought in piecemeal, so the Act does not yet have full impact in Lewisham.

- 4.3 However, two of the provisions which are now in force, will impact on the Lewisham Constitution and require amendments to be made. The first relates to the operation of the Standards Committee.

#### *Standards committee*

- 4.4 Attached at Appendix 2 is a briefing that was considered by the Standards Committee in Lewisham in November 2007. It shows that the ethical framework in local government is to operate on a local level with the Standards Committee being the first point of reference for all complaints of breach of the Member Code of Conduct. Complaints will be assessed locally as to whether they fall within the remit of the Code of Conduct at all, and if so whether they should be investigated. If so, subject to a right of appeal, the Standards Committee will determine the complaint, unless it is one which is appropriate for referral to the Standards Board for England.
- 4.5 The criteria for such referrals are yet to be established by the Secretary of State, and the regulations about the conduct of business locally by the Standards Committee have at the time of writing yet to be made. Notwithstanding the lateness of the regulations and guidance, DCLG still intend that the new regime will be operative from 1<sup>st</sup> May 2008. To enable the Standards Committee to operate in this new role, the terms of reference of the Committee should be amended to reflect its proposed new activities.
- 4.6 In addition the LGPIHA 2007 provides that applications for exemption from the political restriction provisions in the Local Government and Housing Act 1989 should in future be for the Standards Committee to determine. Previously, these were dealt with by an independent adjudicator, but their role is being abolished by the Act. Proposals to include this role in the Standards Committee Terms of Reference are also included at Appendix 1.

#### *Local Area Agreements*

- 4.7 Under the LGPIHA 2007, the regime associated with Local Area Agreements is given a statutory basis for the first time. London Boroughs are amongst those authorities defined as “responsible authorities” for the LAA. “Partner authorities” include agencies such as the police, PCTs, fire authorities, TFL, NHS trusts, Arts Council, HSE etc.
- 4.8 Responsible and partner authorities are under a statutory duty to co-operate in the drafting of a local area agreement for approval by the Secretary of State. The draft must specify local improvement targets and state to which authority they relate. In drawing up the plan, the authority must have regard to the community strategy and in exercising functions the Council must have regard to its local improvement targets.

- 4.9 Targets may be designated by the Secretary of State. Where this happens, the target may not be changed save with the approval of the Secretary of State. Other local improvement targets may be changed following consultation with the partners to whom it relates.
- 4.10 The Secretary of State has the power to issue directions in relation to the drafting of LAAs, and such a direction was issued on 5<sup>th</sup> March 2008. It requires authorities to submit the draft LAA to the Secretary of State by 31<sup>st</sup> May this year. The direction also informs authorities that new regulations have been issued (SI 2008/516) effective from 31<sup>st</sup> March 2008 that the functions relating to the preparations, submission and modification of the LAA is a local choice function.
- 4.11 In legal terms this means that they become functions which may be (but need not be) the responsibility of the Executive. This means that full Council has to decide whether it is to be for the full Council to adopt the draft LAA prior to submission to the Secretary of State, or whether this should be a matter for the Mayor. Once this decision has been made, it will be included in the Council's Constitution and will remain in force unless and until it is amended.

#### *Implications of delegation options*

- 4.12 The LAA is a detailed document, concerned with % improvements as targets, heavily numbers based and steeped in detail. It is not the stuff of debate for the Council Chamber. It is suggested that if the power to approve the draft plan for submission to the Secretary of State is reserved to full Council, the preparation of the draft plan and the proposal of it to Council is delegated to the Mayor
- 4.13 The LAA and targets in it are often the subject of intense, delicate, negotiation between the Council and its partners through the LSP. Though the Council is the lead partner in the development of the plan, the legal requirement is to do so in co-operation and consultation with other agencies. The scope for the Council to move outside a position agreed between the parties whilst possible is extremely limited in practice.
- 4.14 As Chair of the LSP, the Mayor is in an ideal position to ensure that the Council's position is reflected in negotiations with the LSP partners
- 4.15 Timescales are extremely tight for sign off of the draft plan for submission to the Secretary of State, requiring submission to a Council meeting (particularly if the Mayor is to make a subsequent recommendation to the Council for approval.)
- 4.16 It might be said that sign off by full Council would demonstrate commitment by the Council as a whole to the draft LAA, despite the limited scope for the Council to amend it against the partners' wishes.

**5 Financial implications**

There are none arising

**6 Legal Implications**

These are largely dealt with in the body of the report. Only Council may make amendments to the Constitution which must then in its amended form be available for public inspection.

**7 Human Rights/Equalities/Environmental/ Crime and Disorder implications**

There are no specific implications arising