

<b>Committee</b>	<b>Constitution Working Party</b>		<b>Item No</b>	<b>6</b>
<b>Title</b>	<b>PROPOSED AMENDMENTS TO THE CONSTITUTION</b>			
<b>Wards</b>	<b>All</b>			
<b>Contributors</b>	<b>Head of Law</b>			
<b>Class</b>	<b>Part 1</b>	<b>Date</b>	<b>19 March 2009</b>	

### **Reason for Urgency**

This report needs to be submitted to this meeting because it needs to be referred to the Council on 1 April 2009 and there are no other scheduled meetings before that date.

### **1 Summary**

This paper considers whether any amendments are necessary to the Council's constitution in the light of the changing legislative context, particularly in relation to overview and scrutiny, as well as recommendations of the Sustainable Development Committee, and the views of officers. The wording of the proposed amendments appear in Appendix 1

### **2 Purpose**

The purpose of this report is to review whether any changes are necessary to the Constitution with a view to ensuring that it remains fit for purpose and, if appropriate, to make recommendations for consideration by the full Council

### **3 Policy context**

The Council is committed to the highest standards of decision-making. The Constitution sets out the framework through which the Council operates. It is a legal requirement to have a constitution, to keep it under review and to make it available for public inspection. The purpose of the Council's decision-making rules of procedure is to ensure transparency, efficiency and accountability in the way it does business.

### **4 Recommendation**

To consider this report and decide whether to recommend the proposed amendments appearing at Appendix 1 to the Council.

## **5 Background**

5.1 There is a legal requirement to have a Constitution by virtue of section 37 Local Government Act 2000 and for it to be publicly available. The Council initially adopted a Constitution to reflect the Mayor and Cabinet model of local governance in 2002. Since then, the contents of the Constitution have been reviewed on several occasions at full Council. For example the allocation of Chairs and Vice Chairs of Overview and Select Committees was amended, changes were made to the Member Code of Conduct, and the handling of questions and motions at Council was reviewed.

5.2 The matters to be dealt with in the Council's Constitution are determined by Direction from the Secretary of State and the Council's current arrangements are compliant with the legal requirements.

5.3 However, the time is ripe for a review of the existing arrangements for a number of reasons:-

- There is a requirement within the Council's Constitution under Article 18 for the Monitoring Officer to review the operation of the Constitution and make recommendations as to whether it ought to be amended;
- The Sustainable Development Committee requested that consideration be given to amending the way in which information is distributed to members. This was referred to Mayor and Cabinet on 8<sup>th</sup> October 2008, who in turn referred the issue to this Working Party.
- There is a need for clarification in relation to an aspect of the Member Code of Conduct;
- The Local Government and Public Involvement in Health Act 2007 contains provisions which have come into effect recently or are coming into effect on 1<sup>st</sup> April 2009 which require amendment to our Constitution to give effect to changing law.

5.4 The role of the CWP is to advise the Council about the operation of the Constitution and whether any amendments are necessary. It is for this reason that recommendations are sought in relation to those matters listed above.

## **6 Recommendations of the Sustainable Development Committee (SDC)**

- 6.1 With a view to eliminating as much production of paper as possible, the SDC noted that the most members responding to survey are keen to receive more information electronically, with a stipulation that members be able to opt for their preferred method of communication. Many expressed a wish that agendas and papers for meetings be sent electronically with hard copies available at the meeting. They also preferred that weekly calendar sheets and Homesearch information should be sent electronically. It was these issues, with others, which were referred to the Mayor and Cabinet on 8<sup>th</sup> October who asked for the matter to be considered by the CWP.
- 6.2 There are a number of legal considerations which must be borne in mind in considering these requests. Requirements in relation to the service of papers for meetings of the Council, Mayor and Cabinet and the Council's committees and sub-committees date back to the Local Government Act 1972. Though they have been slightly amended to reflect changing political governance arrangements, the rules relating to service of documents and access to information have not fundamentally changed since then.
- 6.3 The Local Government Act 1972 contains provisions relating to two preliminaries for Council meetings. They are the giving of public notice and the service of a summons to members of the relevant decision making body (e.g. full Council, Mayor and Cabinet or Committee).
- 6.4 The requirement to give public notice is contained in Section 100A(6) LGA 1972 as amended. This requires that public notice must be given of the time and place of the meeting by posting it at the offices of the Council at least 5 days before the meeting takes place.
- 6.5 Schedule 12 of the LGA 1972 provides that a summons to attend a Council meeting must specify the business to be transacted at the meeting, be signed by the proper officer of the Council and must be left at or sent by post to the usual place of residence of every member of the Council. However, if a member gives notice in writing to the proper officer of the Council that s/he desires summonses to attend meetings of the Council to be sent to him/her at some address specified in the notice other than his/her place of residence, any summons addressed to him/her and left or sent by post to that address shall be deemed sufficient service of the summons.
- 6.6 Failure to comply with the statutory requirements as to notice and summons will mean that the meeting itself may not be properly convened and the business transacted of no effect.
- 6.7 Although there is a provision in Schedule 12 which states that want of service of a summons on any member shall not affect the validity of a meeting of the Council, this provision is designed to meet circumstances

where, for example, an error has occurred, to prevent such slips undermining the validity of entire proceedings. However the Head of Law advises that care must be taken to ensure that there is no defect of service. The Courts could be expected to construe this provision strictly and want of service on a substantial number of councillors, or wilful failure or neglect to summon members could affect the validity of the meeting. It is recognised that implementing any request from a member that s/he does not wish to receive a summons over a specified period would almost certainly give good grounds for challenge to a decision made.

- 6.8 As yet in law, there is no provision that service of a notice or the summons may be effected by electronic means, even at the request of the member concerned, and so the Head of Law strongly advises that the legal requirements relating to the service of the notice and summons (including agenda) continue as now in accordance with the law – with service on members of the decision making body by post or delivery at their home or other stipulated address, and that notice continue to be given by posting at the Council’s offices as the legislation requires, with copies of papers available for public inspection in hard copy for the period of 5 days prior to the meeting, and hard copies available at the meeting.
- 6.9 Provision made for electronic versions to be available must be in addition to the legal requirements and not instead of them. For this reason, in response to the recommendations of the Sustainable Development Select Committee, it is not recommended that any change to the Constitution is necessary or possible, as in its current form it reflects existing law.
- 6.10 However, to the extent that information is sent to members other than under statutory provision, there is a choice available to the Council as to how communications are effected. By law, documents such as the weekly calendar sheet and Homesearch may be sent to members electronically, but these are administrative, managerial and not constitutional issues, so no amendment is proposed to the Council’s Constitution in respect of this.

## **7 The Member Code of Conduct**

- 7.1 As members may recall, the Member Code of Conduct was amended recently to allow a member with a personal prejudicial interest, having declared that interest, nonetheless to remain and make representations, ask questions or give evidence provided that members of the public are admitted to the meeting for the same purpose. This reflects a relaxation in the law for circumstances in which a member with a prejudicial interest would previously not have been able to speak.
- 7.2 However, the current law provides that a member with a prejudicial interest may now speak if a member of the public would be allowed to do

so, but they must leave the room immediately after making representations, or earlier if so requested by the meeting. The member may not stay and hear the debate, even if the public are allowed to stay. In addition the member must not seek improperly to influence the decision.

- 7.3 An issue arose recently in relation to a member who sought to make representations to a Planning Committee in relation to their own planning application. By definition, the member had a personal prejudicial interest. It was unclear to the member whether he could address the Committee under Standing Orders as he sought, and then remain for the entire debate, once his representations had been made. He was unsure whether the requirement to leave applied in such circumstances.
- 7.4 In the opinion of the Head of Law, the requirement to leave once the member has addressed the Committee would clearly arise in these circumstances though this is not explicit in the Protocol on Planning and Lobbying appended to the Council's Code of Conduct. An amendment is proposed to clarify. The proposed wording appears at Appendix 1.

## **8 Local Government and Public Involvement in Health Act 2007**

- 8.1 The Local Government and Public Involvement in Health Act 2007 (LGPIHA) is a very large statute covering a wide range of issues. Those with most effect on Lewisham include:-
- Part 2 – Changes to electoral arrangements including the possibility of single member wards, and the process for renaming Council areas
  - Part 3 – Changes to permissible executive arrangements, allowing only Mayor and cabinet or strong leader and cabinet; extending the time limit between referenda to 10 years
  - Part 4 - Provisions relating to parishes, their power and the prospect of community governance review
  - Part 5 - A duty on local Councils to co-operate with partners; designated and local improvement targets to be included in Local Area Agreement which becomes a local choice function; provision for health and social care strategic needs assessments; the councillor call for action; joint overview and scrutiny committees; amendments to the Police and Justice Act 2006 re crime and disorder issues and Overview and Scrutiny
  - Part 6 – Local Byelaws and fixed penalties
  - Part 7 – Abolition of Best Value Reviews and guidance re best value duty
  - Part 10 – Changes to Ethical Standards = repairing defects in previous national Code of Conduct and introducing local

investigations; changing role of Standards Committees and the Standards Board

- Part 11 - Proposals for joint waste authorities in England
- Part 12 Changes to the control of local authority participation in companies, to be extended to “entities” controlled by Councils and the Secretary of State to have wide regulation making power.
- Part 14 - Patient and Public Involvement in Health and Social Care – a duty to involve users of health services and abolition of patient, with establishment of patient involvement network under contractual arrangements
- Part 16 – exercise of functions by local councillors and amendments to the capital finance and accounting practice

8.2 A number of provisions in the LGPIHA have had an impact or will impact on the Council’s constitutional provisions shortly. For example, there have already been wholesale changes to the ethical framework in Lewisham to reflect the significant changes the 2007 Act has introduced. Agreement to the LAA, a local choice function, has been reserved to Council.

8.3 However there are a number of matters which call for constitutional amendment now. These include:-

- A reference to extended overview and scrutiny powers, including the powers of joint overview and scrutiny committees and powers to require certain documents from partner authorities particularly under the local area agreement. The requirement for partner authorities to have regard to overview and Scrutiny reports and recommendations.
- The councillor call for action - a provision for any member (subject to matters excluded by law) to put on the Overview and Scrutiny committee any local government issue in their ward.
- the possibility of delegation of decision-making by the Mayor (for executive functions) and the Council (for non-executive functions) to individual ward councillors within their ward
- The power of Local Involvement Networks to refer social care matters to a relevant overview and scrutiny committee.
- The requirement of the Executive or Council as appropriate to respond to Overview and Scrutiny reports/recommendations within 2 months

## **9 Extended overview and scrutiny powers**

The powers of overview and scrutiny committees are extended by the LGPIHA in relation to local improvement targets. The overview and scrutiny committee/select committee may require a relevant partner authority to have regard to a report/recommendation made by the overview and scrutiny committee/select committee in relation to that target in exercising their functions. There are certain exemptions: e.g. police, NHS Trust, Primary Care Trusts, for which there are, or are to be, separate provisions.

## **10 The Councillor Call for Action**

- 10.1 Section 119 of the LGPIHA amends section 21 of the Local Government Act 2000 to require that every Council's executive arrangements must include provision which:
- a. "enables any member of an overview and scrutiny committee of the authority to refer to the committee any matter which is relevant to functions of the committee
  - b. enables any member of a sub-committee of such a committee to refer to the sub-committee any matter which is relevant to the functions of the sub-committee and,
  - c. in the case of a local authority in England enables any member of the authority to refer to an overview and scrutiny committee of the authority of which he is not a member any local government matter which is relevant to the functions of the committee."
- 10.2 In Lewisham the Constitution reflects (a) and (b) above already. However the power of any member to make a reference to an overview and scrutiny committee, even if they are not a member of that committee is an extension of our current arrangements and so amendments are proposed to reflect this new legal requirement in Appendix 1.
- 10.3 For the purposes of (c) above a "local government matter" means a matter which relates to a Council function, affects all or part of the ward for which the member is elected or any person who lives or works in the ward, and is not an excluded matter. It is this new provision which is referred to as the Councillor Call for Action. It is not to be confused with the proposed Community Call for Action which relates to a proposal that communities have the power to ensure that a matter be considered by the use of a petition, on which more briefing will happen if and when the proposals become law.

10.4 There are some excluded matters – these are local crime and disorder matters and any matters excluded by Order of the Secretary of State.

10.5 By Statutory Instrument 2008 No.3621, the Secretary of State has excluded:

- matters relating to planning and licensing decisions;
- matters relating to an individual or entity in respect of which that individual/entity has a right of recourse to a review or a right of appeal under any enactment, and
- any matter which is vexatious, discriminatory or not reasonable to be included in the agenda for, or to be discussed at a meeting of the overview and scrutiny committee or its sub-committee.

However, an allegation of systematic failure of an authority to discharge any function may be referred to an overview and scrutiny committee, notwithstanding the fact that it relates to matters which would otherwise be excluded.

10.6 When a Councillor Call for Action is made to an overview and scrutiny committee or sub committee, then the overview and scrutiny committee or sub committee may exercise any of the usual powers available to it in relation to reviewing and scrutinising decisions made and/or making reports or recommendations to the Council in relation to the matter. However, in deciding whether to do so, it must have regard to any representation made by the referring member as to why it would be appropriate for the committee/select committee to use its powers. It must also have regard to any powers which have been delegated under Section 236 LGPIHA to the ward member to take decisions within their ward

10.7 If the overview and scrutiny committee/select committee decides not to exercise its powers in relation to the Councillor Call for Action, then it must give the ward member reasons for its decision and, where it does make recommendations/report to the Council or the Executive, it must give a copy to the member who made the referral.

10.8 Once the overview and scrutiny committee/select committee has made a report or recommendations to the Council or executive, it may publish its report/recommendations and must require the Council/executive to consider the report/recommendations and respond to the overview and scrutiny committee indicating what if any action the Council/Executive proposes to take.

- 10.9 If the overview and scrutiny committee/select committee has published its report, the Council/Executive must publish its response and a copy should be given to the member who made the initial referral. This does not apply to reports relating to crime and disorder matters which are to be the subject of separate provisions.

## **11 Delegation to individual ward members**

Part 16, at Section 236 LGPIHA allows arrangements to be made for individual ward members to exercise executive and/or non-executive functions within their ward. The delegation would either be made by the Mayor, in relation to executive functions, or the Council, in relation to non-executive functions. Currently the Mayor does not delegate any functions to any other members, save Mayor and Cabinet (Contracts) to whom he has delegated decisions relating to grants and contracts. Regulations are to be made relating to the keeping of written records of decisions by individual ward members and to them being available for public inspection. Officers recommend that if any decisions are, in future, to be delegated to individual ward members, then the same principles apply to that decision making as apply to every other decision made by the Council and that this should be reflected in an amended Constitution. The same provisions about access to information, written reports, officer advice, record keeping should apply and it is proposed that the Constitution be amended accordingly.

## **12 Local Involvement Networks**

- 12.1 There are provisions in the LGPIHA requiring the Council to establish local involvement networks to promote and support the involvement of people in the commissioning, provision and scrutiny of local care services.
- 12.2 The network may refer a matter relating to Social Care Services to an appropriate overview and scrutiny committee which then decides whether to exercise its powers in relation to the matter referred. This has been reflected in the amended Constitution appearing at Appendix 1.

## **13 Miscellaneous proposed amendments**

There are a number of minor changes proposed to update references to legislation which has been updated since the Constitution was last reviewed.

## **14 Legal implications**

Most are contained in the body of the report. Changes to the Constitution are for full Council, with CWP having an advisory capacity. Changes to the

Constitution to reflect the councillor call for action, and the extended overview and scrutiny remit must be in place from 1<sup>st</sup> April 2009. There are no specific crime and disorder, human rights or equalities implications at this stage.

**15 Financial implications**

None arising at this stage.