

CONSTITUTION WORKING PARTY		
Report Title	CONSTITUTIONAL UPDATE	
Key Decision	N/A	
Ward	All	
Contributors	Head of Law	
Class	Part 1	Date 06 Sept 2012

1 Summary

- 1.1 This report proposes amendments to the Council's Constitution to reflect changes to the law brought in by new legislation and seeks the views of the Working party on those proposals.

2 Purpose

- 2.1 The purpose of the report is to ensure that the Council's Constitution complies with the law and enables the effective conduct of Council business.

3 Recommendation

- 3.1 That the Constitution Working Party:-

(1) consider the proposed amendments contained in Appendix 1 and decide whether to approve them for recommendation to full Council.

(2) take a view on whether the Council's Petition Scheme is to remain in place, be amended in some way or be discontinued

(3) note that a report on special responsibility allowances, particularly in relation to the Chairs of Strategic Planning and Standards Committees will be brought to Council on 26th September 2012

(4) note that further constitutional changes are likely as a result of further expected legislation in the near future.

4 Background

- 4.1 Since its introduction in 2002, the Council's Constitution has been under regular review to reflect changes in Council practice and amendments to legislation. However the introduction of the Localism Act 2011 has made significant changes to local government law including new provisions for overview and scrutiny, Council Tax referendums, a new member Code of Conduct and terms of reference for Standards Committee, the community right to challenge and neighbourhood planning, the introduction of an annual pay policy as well as provisions relating to assets of community value.
- 4.2 Some of these changes have already been reported to Council and amendments have been made to the Council's Constitution to reflect them. Others remain to be dealt with as their full impact has only been given expression in regulations very recently published.
- 4.3 Changes to the Constitution are now proposed to reflect the provisions contained within Schedule 2 Localism Act 2011, (which amends the Local Government Act 2000 in relation to governance issues,) and regulations made under those new provisions.
- 4.4 Attached at Appendix 2 is a paper (without its detailed appendices) which was considered at the last meeting of the CWP summarising some of the changes anticipated then to be implemented shortly. That paper also referred to the Health and Social Care Act 2012, the establishment of a Health and Wellbeing Board and the transfer of public health functions to the Council with effect from April 2013. So far as possible the changes on the way in 2013 are anticipated in the draft appearing at Appendix 1 as have all other proposals for change.

5 Proposed amendments

- 5.1 Members are referred to Appendix 1 for the proposed changes in detail. though it is acknowledged that the proposed amended Constitution is a lengthy document so a summary of the main proposals for amendment follows:-

Part I - Summary

- 5.2 References to the Health and Wellbeing Board, (HWB) to the role of the Director of Public Health and to the requirement for an annual pay policy are included

Part II – Articles

- 5.3 Any decision relating to a referendum is reserved to Council – Article 4.2 (y)
- 5.4 The terms of the Healthier Communities Select Committee reflects the anticipated new public health role for the Council and HWB - Article 6.6. References in that article to the Patient Involvement Network have

been replaced by references to Healthwatch.

- 5.5 Referrals to overview and scrutiny by individual members are no longer referred to as “councillor call for action” Art 6.7 (h) and throughout, though in accordance with new regulations, the procedure for dealing with referrals is set out in detail at Part E post.
- 5.6 In the current Constitution, the Mayor is required to give one month’s notice on change of executive members, including the Deputy Mayor, but this is inconsistent with the provision that changes to the Mayoral scheme of delegation (under which the Executive is appointed) which states that changes are effected immediately the Mayor gives notice to the proper officer and the proper officer gives notice to councillors. On election, and at the beginning of a new administration the existing provision – Article 7.6 and 7.7 – is not practical. Amendment is therefore proposed as in the attached draft.
- 5.7 Changes are needed to the terms of reference of the strategic planning committee to give it power to deal with matters relating to local planning in so far as they are not reserved to Council. - Article 9.1
- 5.8 The terms of reference of the Elections Committee currently contain elements that are the personal responsibility of the Electoral Registration Officer and/or the Returning Officer. Those elements should not have been included before and have been removed. The key tasks of reviewing performance is included. Article 9.1
- 5.9 Inclusion of Director of Public Health as statutory officer – Art 14.3
- 5.10 With effect from April 2013, the HWB is to be recognised as a Committee of the Council – Article 9.4 (new). The terms of reference reflect the statutory role of the HWB from April next year.
- 5.11 The Head of Paid Service is to consider dispensations from political restriction. This represents a change in the law – Art 14.4 (f)
- 5.12 There are changes to the role of the Monitoring Officer in relation to complaints of breach of the Member Code – Art 14.5. This provision reflects the approval of the new Member Code and procedure for handling complaints of breach which were before Council in June 2012.
- 5.13 The proposal for the amendment of the value of a contract that is a key decision from £200,000 to £500,000 matches the threshold for other key decisions. - Article 16 c xxiii

Part III – Local Choice – no change save

- 5.14 Decisions relating to Local Area Agreements have been removed from this section because they have been abolished

Part IV – Rules of Procedure and Standing Orders

A Purpose

5.15 No change

B Councillors

5.16 Declaration of interests – a change is proposed to paragraph 12 to reflect the new Member Code of Conduct

C Council Procedure Rules

5.17 Questions by public – At the moment, questions raised by councillors and those raised by the public are handled differently. Though there is a thirty minute limit on both, the procedure for dealing with members' questions was amended so that where a several questions are received from councillors, councillors are asked to prioritise their questions. Then all first preference questions are dealt with before moving on to second preference, all of which are dealt with before moving on to third preferences etc. This ensures that the largest number of members have the opportunity to ask at least one supplementary question and the thirty minutes allocated is not taken over by questions from few people. It is proposed that it would be advisable to rationalise the procedure for members and public questions and therefore a proposed amendment to this effect is contained at para 13.

5.18 Motions – There is a procedural inconsistency in paragraph 16.11 as currently drafted so an amendment is proposed to delete the words “upon which any further amendment may be moved” from the end of the paragraph. The Appendix reflects the amended wording.

D Executive Procedure Rules

5.19 Conflicts of interest – the amendment at para 9 reflects the provisions of the new Code of Conduct

5.20 Quorum – This is dealt with at paragraph 12. It currently states the quorum is 3 for executive meetings, unless the Mayor and Deputy Mayor are not present, when the quorum is 5. Officers believe that the current wording is less than clear and does not adequately express what was the Council's intention, namely that the quorum should be 5 unless either the Mayor or Deputy Mayor are present. The amended wording reflects this.

E Overview and Scrutiny Procedure Rules

- 5.21 This part has been rewritten to reflect new regulations applying to overview and scrutiny referrals by members and the duties of executive /council/partners to respond. CWP should pay particular attention to these paragraphs. There is no change to proposals for call in or for policy development or for holding officers to account. The rules relating to overview and scrutiny of crime and disorder matters are set out more specifically. The overview and scrutiny of health remains with the Healthier Communities Select Committee, with a section devoted to it.
- 5.22 There is currently a consultation paper on proposed changes to the scrutiny of health which may result in further changes to the Constitution if the law in that respect changes. In the meantime the existing law prevails.
- 5.23 Co-option – the Localism Act provides for Councils to be able to choose to have voting co-optees on overview and scrutiny bodies, provided that it has first adopted a co-option scheme. Lewisham currently does not have voting co-optees on overview and scrutiny bodies. Those education representatives on the Children and Young People Select Committee and Education Business Panel are there as of right by law and Lewisham is bound to appoint them. Paragraph 4 provides that Lewisham will not appoint any other voting co-optees without a co-option scheme in place.
- 5.24 A new paragraph has been inserted to provide that voting co-optees and the education representatives on Education Business Panel and CYP Select Committee or other body may not chair those bodies.

F Budget and Policy Framework Rules

- 5.25 The only changes proposed reflect the need to hold a referendum if the Council proposes a budget which does not comply with the Secretary of State's principles – para 3(j).

G Access to information Procedure Rules

- 5.26 No changes are proposed at this stage. Enquiries of the Department for Communities and Local Government confirm that new regulations are to be issued shortly. If they have any impact on the Council then the Council will need to consider changes to this section when they are received.

H Employment Procedure Rules

- 5.27 No changes are proposed – these are current statutory provisions though the Secretary of State has regulation making powers, for example in relation to political assistants.

I Contract Procedure Rules

- 5.28 There are a number of changes proposed. They are largely technical. Key changes include the following.
- 5.29 The community right to challenge is provided for at para 4.1, 4.2 and 4.3.
- 5.30 The contents of the Contracts Register are dealt with at para 7.
- 5.31 The provisions relating to the use of frameworks and public sector consortia contracts are refined at paragraph 9.1.2.
- 5.32 Concession contracts are dealt with at paragraph 9.2
- 5.33 The requirement to obtain a quotation from a local contractor for certain contracts is dealt with at 9.3
- 5.34 Practical difficulties arising from electronic auctions are dealt with by an amendment to paragraph 14.1.3

J Committee General Rules

- 5.35 The only changes proposed currently are removal of references to special provisions relating to Standards Committee e.g. at paras 1,4,5 and 7 as the legal basis for those provisions has been abolished.
- 5.36 Paragraph 8 is amended to acknowledge that members may attend meetings under Standing Orders unless they have a disclosable pecuniary interest.
- 5.37 The Chair of Standards Committee is proposed to be exempt from the prohibition on members holding more than one chair.
- 5.38 Members should note that it is likely that the proceedings of the HWB, even though to be a committee of the Council from April 2013, may well have special exemptions from the rules applying to the general conduct of committee business. That may need attention in future.

K Financial regulations

- 5.39 No change proposed at this stage.

Part V - Ethics

- 5.40 The terms of reference of Standards Committee were agreed at the June Council meeting as was the Member Code of Conduct. They will be included here with the current employee code of conduct in the report to Council.

Part VI – Members’ Allowances’

- 5.41 The current scheme including the amendment for carers’ allowance was agreed at the last Council meeting.
- 5.42 It has been noted that the Chair of the Strategic Planning Committee does not receive an SRA under the scheme. In practice this has not raised any problem as the Chair of the Strategic Planning Committee has been the Chair of one of the other Planning Committees or a Select Committee, and there is a prohibition on members being paid more than one special responsibility allowance. However it is proposed that this be rectified, as were this not to be the case, there would be no legal basis to pay an SRA to the Chair of Strategic Planning. This was clearly not the intention.
- 5.43 Until June this year the Chair of the Standards Committee was an independent member. At this time the law changed prohibiting this. As an independent chair, the former Chair of the Standards Committee received a co-optee’s allowance. The Chair now is an elected member and if he is to receive an allowance for this special responsibility it must be included in the Council’s Scheme for Members’ Allowances.
- 5.44 Members would need to decide whether to pay those special allowances and if so how much they should be. This will be a matter before them at Council on 26th September.
- 5.45 If Council agrees changes in respect of those allowances, they need to be included in the Scheme which ought to be advertised and appended to the amended Constitution at Part VI.

Part VII – Council Structure Chart

- 5.46 An up to date structure chart will be included here for the report to Council

Part VIII Schemes of Delegation

- 5.47 There are some proposals to change both the Council and Mayoral Scheme of Delegation. The change to the Council scheme of delegation relates to local planning and reserves to members all non-executive functions in relation to neighbourhood planning i.e. officers would not have delegated powers in this area unless the Strategic Planning Committee specifically gives them such powers. – See matters reserved to planning committees.
- 5.48 Parallel delegations will be suggested to the Mayor but these are a matter to be decided by him directly.

Petition scheme

5.49 Attached to the Constitution is the Council's Petition Scheme. The requirement to have such a scheme which was contained in the Local Democracy, Economic Development and Construction Act 2009 has been repealed by the Localism Act. Members may wish to decide whether they wish to keep the scheme at all, amended or in its current form. It has so far not been called in to use. Under the scheme, a Council debate can be triggered by 8000 signatures and officers can be called to give evidence if 4000 signatures are received. Members may wish to consider whether there are already ways in which the Council can deal with petitions without this scheme particularly in the light of the new proposals in relation to overview and scrutiny references, which appear more detailed than has previously been the case.

6 Legal implications

6.1 As set out in the report the changes proposed in the attached Appendix 1 reflect the amendments to the LGA 2000 introduced by the Localism Act 2011 and a range of regulations made under the amended legislation. They also reflect the Health and Social Care Act 2012 and its new role for Councils in relation to public health and health scrutiny taking effect from April 2013.

6.2 It is also clear that there are more regulations on the way, not least in respect of health scrutiny and assets of community value. It is likely therefore that there will be more changes to the Constitution needed to keep pace with those changes in due course. Since the drafting of the proposed changes appearing in Appendix 1 new regulations relating to access to information have been received from CLG. These are the subject of a separate report on the agenda where changes to part G of the Constitution will also be proposed for full Council.

6.3 Constitutions must contain those matters set out in the LGA 2000 as amended and Directions issued by the Secretary of State. The Head of Law advises that the constitution, if amended as proposed would cover all the necessary elements.

6.4 In deciding on the contents of the Constitution, members must have regard to the requirement for transparency and efficiency and accountability in decision making.

6.5 Changes to the Constitution can only be effected by full Council and once agreed the Constitution must be available for public inspection. The existing Constitution provides for the Constitution Working Party to advise the Council on amendments to the Constitution. The draft appearing at Appendix 1 is being considered by the CWP on 6th September and will, subject to their comments be submitted to the Council for approval.

6.6 There are no specific human rights implications arising.

- 6.7 The Equality Act 2010 (the Act) introduced a new public sector equality duty (the equality duty or the duty), replacing the separate duties relating to race, disability and gender equality with effect from 6 April 2011. The new duty 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.
- 6.8 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.
- 6.9 As was the case for the original separate duties, the new 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.
- 6.10 The Equality and Human Rights Commission issued guides in January 2011 providing an overview of the new equality duty, including the general equality duty, the specific duties and who they apply to. The guides cover what public authorities should do to meet the duty. This includes steps that are legally required, as well as recommended actions. The guides were based on the then draft specific duties so are no longer fully up-to-date, although regard may still be had to them until the revised guides are produced. The guides do not have legal standing unlike the statutory Code of Practice on the public sector equality duty, However, that Code has not yet been published. The guides can be found at: <http://www.equalityhumanrights.com/advice-and-guidance/public-sector-duties/new-public-sector-equality-duty-guidance/>

7 Financial implications

There are no financial implications arising from this report.

8 Equalities implications

The amended constitution contains provisions for the overview and scrutiny of equalities issues as now, and for all reports to contain an analysis of relevant considerations including equalities as appropriate

9 Crime and Disorder implications

Members' attention is drawn to the specific provisions in Appendix 1 which set out more clearly the process for the overview and scrutiny of crime and disorder issues.

10 Background papers

Localism Act 2011 and regulations made under it
Report to Constitution Working Party 6th June 2012.

For further details contact Kath Nicholson 0208 314 7648