



Constitution Working Party

Report title: Updates to the Council's Constitution

Date: 16 February 2022.

Class: Part 1.

Wards affected: All (none specific)

Contributor: Director of Law, Governance & Elections (Monitoring Officer)

Outline and recommendations

This report asks the working group to recommend to Council that the Scrutiny-Executive Protocol is appended to the Constitution, in line with statutory scrutiny guidance. The report also asks the working group to note the actions taken by the Council's Monitoring Officer removing reference to virtual meetings following the Regulations falling away in May 2021

It is recommended that the working group: -

1. Recommends to Council that the Scrutiny-Executive Protocol is appended to the Constitution;
2. Notes the actions taken by the Council's Monitoring Officer to give the Constitution legal effect.

1. Summary

- 1.1. Statutory scrutiny guidance published in May 2019, which local authorities must have regard to when exercising their functions, recommends developing a scrutiny-executive protocol. A draft protocol has been developed and, in accordance with the guidance, it is suggested that this is formally integrated into the Constitution.
- 1.2. In response to the coronavirus pandemic the Government introduced time limited Regulations which suspended the requirement for local authority meetings to be held in person in order to enable such meetings to be held remotely. The Council agreed amendments to its Constitution to include procedure rules governing remote meetings. The Regulations ceased to apply in May 2021 and the Council's Monitoring Officer has amended the Constitution to ensure it is lawful.

2. Recommendation

- 2.1. It is recommended that the Constitution Working Group (a) recommends to Council that the Scrutiny-Executive Protocol is appended to the Constitution, and (b) notes the actions taken by the Council's Monitoring Officer to give the Constitution legal effect.

3. Policy context

- 3.1. The contents of this report are in accordance with the Council's corporate strategy, which makes an explicit commitment to strong corporate governance.

4. Background

- 4.1. Statutory guidance on overview and scrutiny was published in May 2019, which local authorities must have regard to when exercising their functions, recommends developing a scrutiny-executive protocol. Whilst "having regard to" the guidance does not mean that the guidance has to be followed in every detail, it does mean that it should be followed unless there is a good reason not to in a particular case.
- 4.2. In response to the global coronavirus pandemic the Government introduced the Coronavirus Act 2020. It provided for regulations to be made which enabled local authority meetings to be held remotely. On 4th April 2020 the Local Authorities and Police and Crime Panels (Coronavirus) (Flexibility of Local authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 were introduced, which provided a temporary legal foundation for remote meetings to take place. Attendance by a member at meetings did not have to be in person but could be remote by electronic means provided certain conditions were met. This legislation is no longer in force.
- 4.3. It is a legal requirement under Section 9P Local Government Act 2000 that the Council have and keep up to date a constitution which contains standing orders/rules of procedure.

5. Scrutiny-Executive Protocol

- 5.1 The Overview and Scrutiny Business Panel received an initial report on the development of a scrutiny-executive protocol in June 2021. The protocol was then developed and agreed and the draft document is attached. The protocol is being considered at a meeting of the Overview and Scrutiny Business Panel on 8 February 2022. An update on the outcome of the discussions held will be provided to the Constitution Working Group at its meeting on 16 February 2022.
- 5.2 The protocol helps ensure that: -
- there is a framework in place to ensure that debate happens in a constructive way
 - the outcomes of scrutiny positively benefit the residents of Lewisham
 - scrutiny is effective
 - there is an ethos of mutual respect between the executive and scrutiny
 - all work undertaken by members is aligned in supporting the corporate strategy and improving outcomes.
- 5.3 The protocol covers:
- How scrutiny operates at Lewisham
 - The aims of the protocol
 - Scrutiny's work programme
 - Channels of communication
 - Attendance at formal meetings
 - Ethos/Behaviour
 - Scrutiny referrals and recommendations (and Mayoral responses)
 - Upholding the protocol

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- 5.4 The statutory scrutiny guidance suggests that councils should consider how to adopt a protocol. It is proposed that Lewisham's protocol is formally integrated into the constitution via Council on 2nd March 2022.

6. Financial implications

- 6.1. There are no new financial implications arising from the implementation of the recommendation in this report.

7. Legal implications

- 7.1. The legal implications pertaining to the two governance issues covered by this report are set out in the body of the report.

- 7.2. Members are reminded of the Council's duties under the Equality Act 2010

- 7.3. The Equality Act 2010 (the Act) introduced a public sector equality duty (the equality gender reassignment, marriage and civil partnership, pregnancy and maternity, race, duty or the duty). It covers the following protected characteristics: age, disability, 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. It is not an absolute requirement to eliminate unlawful discrimination, harassment, victimisation or other prohibited conduct, or to promote equality of opportunity or foster good relations between persons who share a protected characteristic and those who do not. It is a duty to have due regard to the need to achieve the goals listed in the paragraph above.

- 7.6. The weight to be attached to the duty will be dependent on the nature of the decision and the circumstances in which it is made. This is a matter for the Mayor, bearing in mind the issues of relevance and proportionality. The Mayor must understand the impact or likely impact of the decision on those with protected characteristics who are potentially affected by the decision. The extent of the duty will necessarily vary from case to case and due regard is such regard as is appropriate in all the circumstances

- 7.7. The Equality and Human Rights Commission has 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-codes-practice>

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<https://www.equalityhumanrights.com/en/advice-and-guidance/equality-act-technical-guidance>

7.8. 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: A guide for public authorities](#)
- [Objectives and the equality duty. A guide for public authorities](#)
- [Equality Information and the Equality Duty: A Guide for Public Authorities](#)

7.9. 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:

<https://www.equalityhumanrights.com/en/advice-and-guidance/public-sector-equality-duty-guidance#h1>

8. Equalities implications

8.1. There are no further equalities implications arising as a result of the implementation of the recommendations in this report.

9. Climate change and environmental implications

9.1. There are no specific climate change and environmental implications arising as a result of the implementation of the recommendation in this report.

10. Health and wellbeing implications

10.1. There are no specific implications arising from the implementation of the recommendations in this report.

11. Background papers

11.1. [Link to the page hosting the Constitution on the Council website](#)

11.2. [Report to Council on 15 July 2020 amending the constitution](#)

11.3. [Report to OSBP on 8 February 2022 the Scrutiny-Executive Protocol](#)

11.4. [Statutory Scrutiny Guidance, May 2019](#)

12. Appendices

Draft Scrutiny-Executive Protocol

13. Glossary

Term	Definition
Constitution	The rules which govern how council business is done.

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Term	Definition
Overview & Scrutiny	Overview and scrutiny is the way in which Mayor and Cabinet (the 'Executive'), officers and external organisations are held to account for the decisions that they make. It is led by councillors who are not members of the Executive. They also influence policy development and investigate issues of local concern, making recommendations for improvement.
Overview & Scrutiny Business Panel (OSBP)	<p>Lewisham has two Business Panels (sub-committees of the Overview and Scrutiny Committee).</p> <p>OS Business Panel is made up of the chair and vice-chair of the Overview and Scrutiny Committee, the chair of each of the Select Committees, and two other non-Executive councillors.</p> <p>The main functions of Business Panel are reviewing key decisions once they have been taken (potentially "calling in" key decisions that have been made but not yet implemented); coordinating and approving the overall scrutiny work programme; and allocating scrutiny work in the event that it crosses the remit of more than one scrutiny body.</p>
Scrutiny-Executive Protocol	A document that helps ensure that there is a framework in place to ensure that debate interaction between scrutiny and the executive happens in a constructive way and there is an ethos of mutual respect between the executive and scrutiny; that the outcomes of scrutiny positively benefit residents; that scrutiny is effective; and that all work undertaken by members is aligned in supporting the corporate strategy and improving outcomes.

14. Report author and contact

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