



Monitoring Officer's Report to Council

24 OCTOBER 2012

REVIEW OF THE COUNCIL'S CONSTITUTION - REVISED PROCEDURE FOR EXECUTIVE MEETINGS AND ACCESS TO INFORMATION

WARDS

All

CONTRIBUTORS:

DoL

Summary

This report is seeking approval to changes to the Constitution resulting from the making of new Regulations relating to private and public meetings of the Executive, and publication of documents and access to them by the public, Councillors and Overview and Scrutiny Committee members.

In addition, minor changes are recommended to officers' Schemes of Delegation and revised titles of posts.

Recommendation

That the Constitution be amended to reflect the changes in section 3 of this report.

1. Introduction

- 1.1 The Council at its meetings on 30 May and 4 July 2012 approved changes to the Constitution for the 2012/13 Municipal Year. Further amendments are now required to reflect the changes resulting from the implementation of the Local Authorities (Executive Arrangements) (Meetings and Access to information) (England) Regulations 2012, which were made on 10 August and came into force on 10 September 2012.

2. Effects of the Regulations

- 2.1. While the Regulations reproduce many of the elements of the current regime, they contain a number of new features designed to make Executive decisions as open and transparent as possible. The main features of the Regulations as they apply to the H&F governance model are as follows:
- Extending public access to meetings and documents where the Executive or an individual Executive member makes a decision. The presumption that Executive meetings must be held in public (except where confidential or exempt information is being considered) is strengthened.
 - No part of an Executive meeting can now be held in private unless 28 days public notice is given. The 28 days notice will allow members of the public to have an opportunity to object to holding of a private meeting and the Council will have to publish their representations and the Council's reply to them.
 - There is no longer a requirement to publish a Forward Plan. This is replaced by a list of Key Decisions, which the Council must publish at least 28 days before the relevant Executive meeting. Similar procedures apply as before to urgent Key Decisions, where timescales do not permit such notice to be given.
 - The recording of decisions and the reason for them, together with details of alternative options considered, is extended from Executive (Cabinet) decisions to decisions made by individual members of the Executive (Cabinet Members Decisions). All Councillors will now receive copies of such a record in relation to Cabinet Members' Decisions and the records will be published in accordance with the requirements of the Regulations.
 - Unpublished background papers used to prepare a Cabinet report or upon which an important part of the report is based must be made available for public inspection alongside the Cabinet report.

- In accordance with the Regulations, all Councillors will receive copies of Cabinet Members' Decision reports (including exempt reports), replacing the present summaries reported to Cabinet. All Councillors already receive open and exempt Cabinet reports.
 - Members of Overview and Scrutiny Committees have additional rights regarding access to documents relating to decisions which Cabinet and Cabinet Members have taken, including relevant exempt documents.
- 2.2 The Regulations apply only to Executive functions and references to reports and documentation specifically exclude draft versions. Existing provisions in respect of non-Executive functions and decisions made by non-Executive bodies such as Overview and Scrutiny, Planning and Licensing are unaffected.

3. Proposed changes to the Constitution

- Access to Information Rules
- 3.1 The new regulatory requirements summarised above require changes to terminology and procedures throughout the Constitution. The main changes are to Article 3 (Citizens and the Council) to incorporate the increased rights of notice and the making of representations in relation to Executive decisions to be made in private; and to the Access to Information Rules which require extensive amendment to incorporate the changes summarised above. The proposed new Access to Information Rules are attached as Appendix 1 to this report.
- Officers' Scheme of Delegation and Titles
- 3.2 Since the last report to the July Council meeting, a number of powers delegated to the Executive Director of Environment, Leisure and Residents Services have been found to be also exercisable by the Executive Director of Transport and Technical Services. These powers are:

Police and Criminal Evidence Act 1984
Criminal Procedures and Investigation Act 1996
Criminal Justice Act 1988
Theft Act 1968
Theft Act 1978
Regulation Of Investigatory Powers Act 2000
Proceeds Of Crime Act 2002

It is recommended that the Schemes of Delegation be amended to enable these powers to be jointly exercisable by the two Executive Directors.

3.3 There have been a number of changes to officers' post titles since the last report to Council and these will need to be reflected in the revised Constitution.

- Regulation of Investigatory Powers Act 2000 (RIPA)

3.4 From 1 November 2012 all applications for directed surveillance and access to communication data under the Regulation of Investigatory Powers Act 2000 (RIPA) must be authorised by Magistrates. Some amendments to the Scheme of Delegation are necessary to ensure that senior officers who have the delegated authority to approve RIPA applications also have delegated authority to authorise officers to make application to the Magistrates Court for judicial approval. The amendments affect the Schemes of Delegation of the Executive Directors of Finance and Corporate Governance, Environment, Leisure and Residents Services, Transport and Technical Services and Housing and Regeneration, making minor amendments to the current text and adding power to authorise officers to make application to the Magistrates court for judicial approval pursuant to Section 223 of the Local Government Act 1972.

- Changes by the Monitoring Officer

3.5 Currently all changes to the Constitution are approved by the full Council at its Annual or another Council meeting. With the infrequent nature of Council meetings and the constant changes to law and legislation this can cause difficulty. This report also seeks approval for the Monitoring Officer in consultation with the Leader, Chief Whip and Opposition Whip from time to time to make changes to constitution when necessary in the following cases:-

- (i) to Part Three (Responsibility for Functions) as may be necessary to reflect any decision made by a person or body with the authority to delegate or sub-delegate powers to exercise executive or non-executive functions;
- (ii) to Article 11.01 and Part 7 (Management Structure) as may be necessary to reflect any changes made in the allocation of functions to officers;
- (iii) such changes as may be necessary to comply with or give effect to any legislative requirements;
- (iv) such other changes of an editorial nature as may seem appropriate to make the Constitution internally consistent, up-to-date and readily understandable.

Any changes made by the Monitoring Officer shall be reported to the next available Council meeting for information. The proposed

changes to Article 14 of the constitution are attached as Appendix 2 to this report.

3.6 The Council is recommended to agree to the amendment of the Constitution to reflect the above changes.

4. Comments of the Executive Director of Finance and Corporate Governance

4.1 There are no direct financial implications for the purposes of this report.

5. Comments of the Director of Law

5.1 These are incorporated within the report.

LOCAL GOVERNMENT ACT 2000
LIST OF BACKGROUND PAPERS

No.	Description of Background Papers	Name/Ext. of Holder of File/Copy	Department/ Location
	None	Kayode Adewumi, Head of Governance and Scrutiny Tel. 020 8753 2499	Finance and Governance