



Full Council
19 November 2012

**Report from Director of Legal and
Procurement**

For Action

Wards affected
All

Changes to Constitution

1.0 Summary

- 1.1 There are changes to the Constitution brought about the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 and other miscellaneous amendments relating to director functions, Executive Committee structures and contract standing orders.

2.0 Recommendations

- 2.1 Members are advised to:

- 2.1.1 Agree the changes to the Constitution shown in Appendix 1 relating to meetings and access to information
- 2.1.2 Agree the changes shown in Appendix 2 relating to the re-distribution of Director's functions
- 2.1.3 Agree the changes to the Constitution regarding the Barham Park Trust Committee shown as Appendix 3
- 2.1.4 Agree the changes to the Contracts Standing Orders shown at Appendix 4

3.0 Details

The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012

- 3.1 These Regulations came into effect on 10 September 2012 and the previous Regulations governing such matters are repealed. The Regulations were introduced at short notice and interpretation of some of the provisions is likely to be the subject of further guidance by the Department for Communities and Local Government. There may therefore be further amendments to the Constitution in due course. The Regulations concern the conduct of the

Executive meetings, Executive decisions taken by officers and public and members' access to reports and other documents relevant to executive decision making. There are a large number of similarities between the previous and new regulations. The main differences are described below. The changes (including those that are minor or incidental) are set out in **Appendix 1** and shown as track changes.

- 3.2 There is a presumption under the new Regulations that Executive meetings will be held in public. There are however some exceptions, namely where confidential or exempt information would be disclosed to the public. Where this is anticipated, the reports containing such information are marked 'not for publication' and the reasons, by reference to descriptions set out in Schedule 12A of the Local Government Act 1972, are set out on the report or part of the report to which they apply. The Regulations require that not less than 28 days notice be given where the Council proposes that the item or part of it be held in private. This provides an opportunity for representations to be made, and the Council must, at least 5 days before the meeting, publish a further notice setting out its reasons, the details of any representations made, and the Council's response to this. The law regarding non disclosure of exempt material is not new. However, the notice period is a change from previous arrangements. The notice of exempt or confidential items will be included on the Forward Plan.
- 3.3 The legal definition of 'Key Decision' remains the same. In Brent the definition is drafted more broadly to include any decision taken by the Executive. Previously the Council was required to include all Key Decisions on a Forward Plan which had to be published fortnightly and the Council was required to include various details regarding consultation etc. This is no longer the case. Under the new regulations the Council is required to publish details of a Key Decision to be taken by the Executive or an officer at least 28 days before the decision is taken. In Brent the document setting out the Key Decisions will still be referred to as the 'Forward Plan'. As previously, where the timescales cannot be complied with, special arrangements are in place namely notice to the Chair of One Council Overview and Scrutiny Committee, or in case of special urgency, agreement of the Chair of One Council Overview and Scrutiny Committee. As previously, public notice is required, and a new obligation is placed on the Council to provide reasons for urgency.
- 3.4 There are, as previously, specific requirements regarding the recording of decisions made at Executive meetings. There are now provisions regarding Executive Decisions taken by officers. The Regulations require that officers provide details of Executive decisions that they have taken. Accordingly, in addition to recording and publishing officer Key Decisions a record will also be published of any decision delegated to an officer by the Executive.
- 3.5 A copy of the background papers listed on Executive reports must be published on the website. This does not include documents which are already published, nor exempt or confidential material.
- 3.6 Where the Council has previously been required to make various papers available at the Council offices, the Council is now also required to provide a large number of documents, notices etc. on its website.

Allocations of Functions to Directors

- 3.7 The Constitution currently still records the post of Director of Housing and Community Care. This post no longer exists and the functions are divided between the Director of Major Projects and Regeneration and the Director of Adult Social Services. The arrangements have been in place for some time but the Constitution has not been amended. Members are advised to agree the changes set out in **Appendix 2**.

Barham Park Trust

- 3.8 The Executive is to consider the governance arrangements for Barham Park Trust at its meeting on 12 November 2012. In the event that the Executive decides to create a committee to deal with Trust issues, there will be constitutional changes required to reflect the new arrangements. In the event that the Executive decides to create a committee with the terms of reference recommended, members are asked to agree the changes set out in **Appendix 3**.

Contract Standing Orders

- 3.9 Members are asked to agree to amend the Constitution to incorporate the changes to Contract Standing Orders as shown at **Appendix 4**. The Changes relate to minor changes to standing orders with regard to e-tendering and e-auctions and also changes relating to the establishment and operation of an Online Market Place as an alternative method of procurement.
- 3.10 Changes are proposed to Standing Order 101 and to the Definitions in Standing Order 82 regarding e-tendering and e-auctions. The changes are limited and are required to reflect minor changes to the way in which e-tendering and e-auctions are to be conducted. The changes also update Standing Order 101 to reflect revised job titles as a result of departmental restructures.
- 3.11 Additionally changes are proposed to Standing Orders to allow procurement through an Online Market Place of pre-approved suppliers as an exception to the full tendering requirements of Contract Standing Orders.
- 3.12 The proposal detailed in Standing Order 97(e) and (f) is to establish an Online Market Place that will allow council officers to access a range of online catalogues. The proposed catalogues have been established either through procurements to which Brent Council has been a party or else by third party organisations procuring a framework that Brent Council is entitled to call-off. Before any catalogue is added to the Online Market Place, it is proposed that the Director of Legal and Procurement confirm that participation in the Framework Agreement is legally permissible, which will involve confirmation that the catalogue has been procured in accordance with EU Procurement Regulations. Once the Director of Legal and Procurement confirms that participation in the Framework Agreement and inclusion on the Online Market Place is legally permissible, officers would be entitled to place orders, without further recourse to the Director of Legal and Procurement, provided the call off is approved by the relevant Chief Officer, to include confirmation that there is sufficient budgetary provision as detailed in Standing Order 86(d)(iii).

- 3.13 Typical catalogues available via the proposed Online Market Place tend to cover high volume low value items such as stationery, protective equipment, educational supplies and cleaning/catering materials. By using the proposed Online Market Place council officers would be able to access all catalogues in a single repository. This would save time and enable officers to take advantage of pre-agreed pricing that has already been subject to competition.

4.0 Financial Implications

None

5.0 Legal Implications

- 5.1 The legal implications are set out in the report.

6.0 Diversity Implications

- 6.1 None

Background Papers:

Brent Council Constitution
Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

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