

 <p><b>Brent</b></p>	<p align="center"><b>Full Council</b></p> <p align="center">22 February 2016</p> <p align="center"><b>Report from the Chief Legal Officer</b></p>
<p>For Action <span style="float: right;">Wards Affected: ALL</span></p>	
<p><b>Changes to the Constitution</b></p>	

## 1.0 Summary

- 1.1 This report discusses a number of proposals to change the Council's Constitution including clarifying and amending the requirements of the Council's Forward Plan procedures; extending the right of call-in beyond key decisions; increasing contract values and the delegated powers of officers and renaming the Brent Connects Kilburn and Kensal area consultative forum.

## 2.0 Recommendations

- 2.1 That Full Council approves the changes to the Constitution proposed in this report and authorises the Chief Legal Officer to amend the Constitution accordingly.

## 3.0 Detail

### ***The Forward Plan – the publication of decisions to be taken by Cabinet and others***

- 3.1 In outline, it is proposed that the Constitution be amended to clarify that all key decisions (irrespective of the decision maker), and non-key decisions to be taken by Cabinet or a committee of the executive, be published in advance on the Council's Forward Plan but that the Chief Executive be authorised to allow non-key decisions to be taken urgently if giving 28 clear days notice is impracticable.

- 3.2 According to the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012 the Council has to generally give at least five clear days notice of public meetings of the Cabinet or its committees and has to make agendas and reports available for inspection by the public at least five clear days before the meeting.
- 3.3 Different and stricter rules apply to private meetings or key decision meetings or key decisions taken by individuals such as Cabinet Members or officers. The general rule is that 28 clear days notice must be given of these decisions. Shorter notice periods apply in cases of urgency or special urgency but subject to the Chair of Scrutiny being informed or agreeing depending on what the 2012 Regulations stipulate.
- 3.4 A key decision is a decision which is likely to result in the Council incurring expenditure which is, or the making of savings which are, significant having regard to the budget for the service or function the decision relates to. Or is significant in terms of its effect on communities living or working in two or more wards of the borough.
- 3.5 To give effect to these requirements, the Council publishes a Forward Plan, usually 28 days before each meeting of the Cabinet, to give advance notification of key and other decisions.
- 3.6 Whereas the Council's legal requirements are clear, the references in the Constitution in relation to the content of Forward Plans are not.
- 3.7 On the one hand, the Constitution sets out the Council's statutory obligation to publish key decisions and explains that this is the purpose of the Forward Plan.
- 3.8 On the other hand, the Constitution also variously refers to "any decision to be taken by the Cabinet" and "a decision to be taken by the Cabinet or a committee of the Cabinet" being included in the Forward Plan (i.e. not just key decisions).
- 3.9 References in the Constitution to the advance publication of the intention to make executive decisions are inconsistent and confusing. It is suggested that the requirement to give 28 days notice of all executive decisions, without flexible urgency procedures, would be an unusual, unhelpful and unnecessarily rigid requirement for the Council to impose upon itself.
- 3.10 It is proposed therefore that the Constitution is amended to clarify the Council's statutory obligations and actual practice. Namely, including in Forward Plans all key executive decisions (irrespective of the decision maker) and non-key decisions to be taken at a meeting of the Cabinet or a committee of the executive. The Forward will also include other decisions which the Council is required to give advance notice of such as decisions to be taken at private meetings.
- 3.11 However, it is proposed that there are separate urgency provisions for key and non-key decisions.

- 3.12 The urgency procedure for key procedures is statutory and would remain unchanged.
- 3.13 In contrast, there is no statutory requirement to give 28 clear days notice for non-key decisions and therefore a more proportionate and flexible approach is needed. Which is why it is proposed that the Chief Executive be authorised to allow non-key decisions to be taken urgently if giving 28 clear days notice is impracticable. This is the same as the statutory test for key decisions.

### ***Call-in***

- 3.14 Standing Order 20 (Part 3 of the Constitution) explains the Council's 'call-in' arrangements. Currently, call-in is restricted to key decisions (as defined in paragraph 3.4 above). It is proposed that as part of the re-structuring of the Council's scrutiny function, the right of call-in be extended to other executive decisions taken by Cabinet or a committee of the executive.

### ***Contract values and the delegated powers of officers***

- 3.15 Currently Cabinet authority is required in relation to contracts for services and supplies valued at £250k and over and for contracts for works valued at £500k and over. This level is lower than some other London authorities and given recent Cabinet approval to move towards a shared procurement service with Harrow, it would seem timely to increase levels to those currently operated by Harrow. This would only require Cabinet to consider reports for contracts for services, supplies and works of £500k and over.
- 3.16 It is believed this would materially limit the number of procurement reports relating to services and supplies and therefore time Cabinet has to spend considering such reports, allowing it to concentrate on the more significant Council procurements.
- 3.17 It is not proposed at this stage to increase the limit for contracts for works.

### ***Joint procurement framework agreements***

- 3.18 It is proposed that the Council's Contract Standing Orders be amended as follows.

- 3.19 Currently SO 86(e) states:

“ (e) Subject to the proviso below, no formal tendering procedures apply where contracts are called off under:

(i) a Framework Agreement established pursuant to these Standing Orders; or

(ii) a Framework Agreement established by another contracting authority , where call off under the Framework Agreement is approved by the relevant Chief Officer to include confirmation that there is budgetary provision for the proposed call-off contract PROVIDED that

the Chief Legal Officer has advised that participation in the Framework Agreement is legally permissible. Advice from the Chief Legal Officer must be obtained each and every time a call off under another contracting authority's Framework Agreement is recommended by the relevant Chief Officer."

3.20 The proposal is to amend SO 86(e)(i) so it reads (see addition in bold):

"a Framework Agreement established pursuant to these Standing Orders **or otherwise established pursuant to a joint procurement involving the Council**".

3.21 The Council is increasingly involved in collaborative procurements of framework agreements involving a number of different authorities. Where the Council is not leading on the collaborative procurement, it is nonetheless generally involved in drafting the specification and other contract documents, agreeing evaluation criteria and evaluating bids. Once bids have been evaluated, the council leading the collaborative procurement will enter into the framework agreement using its own Contract Standing Orders, with Brent Council and the other collaborating councils permitted to call-off from the framework agreement.

3.22 Under the Council's Standing Orders as currently drafted, advice from the Chief Legal Officer that participation in the framework agreement is legally permissible must be obtained each and every time a call off under a framework agreement let by another contracting authority is recommended by the relevant Chief Officer.

3.23 Given that the Council will have been involved in the procurement of such framework agreements and able to satisfy itself that participation in the framework is legally permissible during the procurement, amendment to Standing Order 86 (e)(i) is proposed to apply the same requirements to call-offs from collaboratively procured framework agreements as apply to call-offs from framework agreements directly procured by Brent. This will therefore remove the procedural and time consuming requirement to obtain Chief Legal Officer confirmation of legal permissibility for each and every call-off.

#### ***Name change for the Kilburn & Kensal consultative forum***

3.24 Part 2, Article 10 of the Constitution lists the Council's five area consultative fora. The "Brent Connects Kilburn and Kensal" forum is stated to cover Brondesbury Park, Kilburn, Mapesbury and Queen's Park. The "Brent Connects Harlesden" forum includes Harlesden, Stonebridge and Kensal Green. The reference to "Kensal" in the Kilburn forum is confusing.

3.25 It is therefore suggested that the name of the Brent Connects Kilburn & Kensal forum be changed to "Brent Connects Kilburn" to more clearly distinguish it from the Harlesden forum.

## **4.0 Financial Implications**

4.1 None.

## **5.0 Legal Implications**

5.1 These are addressed in the body of the report.

## **6.0 Diversity Implications**

6.1 None.

### **Background Papers**

None

### **Contact Officers**

Fiona Alderman, Chief Legal Officer, Resources Department, Brent Council, Brent Civic Centre, Engineers Way, Wembley HA9 0FTJ

Tel: 020 8937 4101

Looqman Desai, Senior Solicitor (Governance), Resources Department, Brent Council, Brent Civic Centre, Engineers Way, Wembley HA9 0FTJ

Tel: 020 8937 1366