

 <p>Brent</p>	<p align="center">Full Council 21 November 2016</p> <p>Report from the Chief Legal Officer</p>
<p>For Action Wards Affected: ALL</p>	
<p>Changes to the Constitution</p>	

1.0 Summary

- 1.1 This report proposes a number of changes to the Council's Constitution including Full Council meetings; more flexible arrangements for substitutes for the Alcohol and Entertainment Licensing Sub-Committees; clarifying the rules on petitions; recorded votes procedure; updating the officer scheme of delegation in relation to grants and technical changes to Contract Standing Orders.

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

Full Council Meetings

- 3.1 Two changes are proposed to Standing Orders relating to Full Council meetings.
- 3.2 First, it is proposed that Standing Order 40 be amended, as set out below, to bring forward the lead in times for the submission of questions from Opposition and Non-Cabinet Members to the Cabinet so that answers can be published with the meeting Summons.

“40. Questions from the Opposition and Non Cabinet Members

- (a) Not in use.
- (b) Non Cabinet members (except the Mayor and Deputy Mayor) will be permitted to put a maximum of 9 questions to the Cabinet on any matter which is the responsibility of the Cabinet. Each non-Cabinet member may only put one matter to the Cabinet in any one question time session. The 9 questions are to be divided as follows: 1 from each of the two opposition groups, 1 from an opposition member who is not a member of a group, and 6 from the administration group. Such questions ~~to~~**must** be provided in writing to the Head of Executive and Member Services not less than **510 clear working** days before the date of the meeting and the answers ~~circulated prior to the start of~~ published with the meeting **Summons**.
- (c) The party groups shall decide which of their members shall put the questions to the Cabinet.
- (d) Each non Cabinet member shall have up to 1 minute within which to put their supplementary question.
- (e) A member of the Cabinet shall have up to 2 minutes to respond to the supplementary question.”

3.3 Second, it is proposed that Standing Orders be amended so that Full Council meetings can receive a report from the Audit Committee in the same way that Standing Orders allow Scrutiny Committee reports to be presented. Affording a constitutional right to the Audit Committee to report matters of interest to Full Council strengthens the Council’s corporate governance arrangements and is considered to be good practice.

3.4 It is proposed that after Standing Order 41 which relates to Scrutiny Committee reports, the following Standing Order is added:

“41A. Report from the Audit Committee

- (a) The Vice-Chair of the Audit Committee may present reports on any matter reported to the Committee or in respect of which the Committee has reviewed or considered and shall be permitted to speak for up to 5 minutes thereon.
- (b) In the absence of the Vice-Chair, the report may be presented by another member of the Committee selected for that purpose by the Vice-Chair or, if no person has been selected by the Vice-Chair, a person selected for that purpose by the Mayor or other person presiding at the meeting of Full Council.”

More flexible arrangements for substitutes for the Alcohol and Entertainment Licensing Sub-Committees

- 3.5 It is proposed that Standing Orders be amended to permit the Alcohol and Entertainment Licensing Committee to appoint a larger pool of substitutes for each of its 3 sub-committees from which any Member may be selected as and when the need arises.
- 3.6 The Licensing Act 2003 requires the Council to hold hearings as and when the need arises to determine contested matters such as applications for the grant, variation or review of premises licences or club premises certificates as well as personal licences and Temporary Event Notices (TENs). These hearings require 3 Members.
- 3.7 The Council's Alcohol and Entertainment Licensing Committee (which has 15 Members) has appointed 3 Sub-Committees (A), (B) and (C) with 3 Members of the main Committee appointed to each Sub-Committee. In addition, 5 Members of the main Committee have been appointed as substitute Members for each Sub-Committee.
- 3.8 The lead in times for hearings is prescribed by law. For most hearings, this will be 20 working days. For others, however, it is much shorter. For example, for TENs it is 7 working days; for summary review hearings it is 48 hours.
- 3.9 Arranging Sub-Committee hearings at short notice or ad hoc is proving to be difficult. It is understandable why Members with work and other commitments are unable to make themselves available in such circumstances to attend hearings. That being the case, in order to ensure the Council can hold hearings within prescribed time limits and, as efficiently as possible, it is proposed that standing orders be amended so that all other 12 Members of the main Committee can be appointed to each Sub-Committee as substitutes.
- 3.10 This will mean that there is a bigger pool of substitute Members to draw from. It will also mean that more Members can be involved in licensing hearings. If the change is approved, the Alcohol and Entertainment Licensing Committee at its next meeting will have the opportunity to adopt the more flexible arrangements.
- 3.11 The proposed changes to Standing Order 55 are set out below:

“55. Appointment of and Changes to Substitute Members

- (a) The Council may appoint a pool of substitute members from which a member may be selected to speak and vote in the absence of a member of the committee provided that the substitute member is not already a member of the committee. Each pool shall number up to the number of members comprising membership of the committee and be divided according to the political balance on the committee, save that where a group has only one member on the committee up to two members may be appointed to the pool. A member of a committee (or the appropriate Group Whip) shall notify

the Head of Executive and Member Services at least two hours before a meeting that a substitute member will be attending in their place.

- (b) A parent committee may appoint a pool of substitute members to its sub-committees in the same manner as is described in (a). However, the Alcohol and Entertainment Licensing Committee may appoint all remaining Committee members to each of its Sub-Committees and select any member from this pool.
- (c) No member is able to act as a substitute for more than one primary member of the committee at any one time.
- (d) Any member acting as a substitute shall notify the meeting as soon as he or she arrives, and once the meeting has received such notification, that member shall be duly appointed for the remainder of the meeting (which, for the avoidance of doubt, includes a meeting adjourned to continue on a subsequent day) to the exclusion of the member for whom he or she is substituting.

Clarifying the rules on petitions

- 3.12 The proposal is to amend Standing Orders to make it clear that petitions do not require Cabinet or Council Committees etc. to re-consider or review specific decisions they have already taken.
- 3.13 Standing Order 68 sets out the Council's rules on petitions. Petitions allow the public to engage with the Council as part of its decision making processes and have the potential to influence outcomes, inform policy making or even set the agenda. Amongst other things, the rules make provision for petitions not concerning specific decisions which the Council is planning to make to be referred to the relevant decision maker. This gives the relevant decision maker the opportunity to consider the subject matter of the petition for the first time and decide what action, if any, to take.
- 3.14 The proposed change to standing order 68(e)(iii) (see below) makes it clear that there is no requirement for a petition relating to a specific decision which has already been taken to be referred to the relevant decision maker for it to effectively re-consider or review its own decision. It was not intended that decision makers be required to review their own decisions. That would create unnecessary delay and uncertainty and would result in additional costs being incurred. It could also be futile if the decision has already been implemented because only a valid call-in of a decision which relates to an executive function of the Council could defer the implementation of a decision.

“68. Petitions

- (e) (iii) Petitions not concerning specific decisions planned to be made shall be referred to the Cabinet or to the Council committee or sub-committee (if any) within whose terms of reference the subject matter of the petition falls as

determined by the Chief Legal Officer or Head of Executive and Member Services. If it concerns a decision that may be taken at a meeting on some future date then it shall be considered at that future meeting. In all other cases it shall be considered at the next convenient meeting. This paragraph does not apply to specific decisions which have already been made. There is no requirement for specific decisions which have already been made to be re-considered or reviewed.

Recorded votes procedure

- 3.15 It is proposed that a procedure for recording votes at Full Council meetings be incorporated into Standing Orders.
- 3.16 Standing Order 47 makes provision for voting at Full Council meetings to be recorded. It does not, however, state how this will be done. It is proposed that the following procedure for recording votes be incorporated into Standing Order 47.

“47. Voting

- (a) Prior to voting on a Motion there shall be put to the vote any amendments to that Motion that have been moved.
- (b) Amendments to Motions shall be taken in the order in which they were moved and shall be voted upon in succession unless, subject to the advice of the Chief Legal Officer or the Chief Executive, it is agreed by the meeting that the amendments shall be taken en bloc.
- (c) The mode of voting at meetings of Full Council shall be by show of hands and, on the requisition of the leader of a political group, or of any member of the Council supported by 14 other members of the Council raising their hands, made before the vote is called, the voting on any question shall be recorded in the minutes of the meeting so as to show whether each member present gave their vote for or against that question or abstained from voting.
- (d) If a vote is to be recorded, the Chief Executive (or an officer acting on behalf of the Chief Executive) will acknowledge the request, confirm to the meeting that the vote is to be recorded and will read aloud the name of each Member present and record who cast a vote for the decision or against the decision or who abstained from voting. No discussion shall take place while the vote is being taken and recorded.
- (e) Immediately after any vote is taken at a budget decision meeting of an authority on the budget or council tax there must be recorded in the minutes of the proceedings of that meeting the

names of the persons who cast a vote for the decision or against the decision or who abstained from voting.

- (f) Where immediately after a vote is taken any member so requires, there shall be recorded in the minutes whether that person voted for the question or against the question or abstained.
- (g) Except in the case of a vote taken under any provision of Standing Orders 48 (Guillotine) 49 (Minutes) or 50 (Disorderly Conduct), at least one full minute before a vote is taken at a meeting of Full Council, the Mayor shall by way of announcement draw members' attention to the impending vote.
- (h) For the purpose of voting and for recording votes at meetings of Full Council, members shall be present and seated in their places.
- (i) In the case of an equality of votes the person presiding at the meeting shall have a second or casting vote.
- (j) Once a vote has been taken on any matter, the matter shall not be reconsidered by the meeting other than to clarify any points or if the matter is a procedural matter only."

3.17 If this proposal is approved, a similar procedure for recording votes at Committee and Sub-Committee meetings will be incorporated into Standing Order 65.

Grants: updating the officer scheme of delegation

3.18 The proposal is to update the officer scheme of delegation to reflect Cabinet decisions on grant awards.

3.19 Part 4 of the Constitution sets out the Council's officer scheme of delegation which, amongst other things, authorises officers to make grants or give other financial assistance to organisations but subject to specified limitations. For example, there is a general grant award limit of £5,000 per annum.

3.20 The limitations set out in point 9 of the table at paragraph 2.5 of Part 4 needs updating to reflect Cabinet decisions as shown below:

<p>9. to make grants or give other financial or other assistance to organisations.</p>	<p>(a) Provided that if the grant or other financial assistance involves the grant of funds from Council's own resources</p> <p>(i) the relevant Director is satisfied that no adverse capital finance or other negative implications would arise, unless</p>
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written consent of the Chief Finance Officer is obtained.

(ii) no grant shall be made by officers if it amounts to more than £5k per annum except in the case of the Edward Harvist Trust where a grant not exceeding £7k per annum may be made and in the case of the Brent Advice Fund Grant where a grant not exceeding £10k per annum may be made.

(iii) no grant shall be withdrawn or reduced by officers if the receiving body has received a grant from the Council for each of the last five years for the same purpose unless such withdrawal is due to the fact that the body no longer meets the relevant grant criteria or conditions of grant.

(iv) the grant criteria has been approved by the Cabinet other appropriate body or person with appropriate authority.

(v) no grant shall be made by officers from the council's 'Main Programme Grant' or the 'Development Fund' Voluntary Sector Initiative Fund except with the prior approval of the Cabinet.

(b) Provided that where the grant or other financial assistance involves the distribution of funds received from a third party the grant or other financial assistance complies with the conditions under which the funds have been received by the Council.

Changes to Contract Standing Orders

Electronic Signatures

- 3.21 It is proposed that the use of electronic signatures be introduced. Although e-signatures for signing documents have been in use for some time in certain sectors, there has been no consensus on their validity. In August 2016 the Law Society issued a practice note on the use of electronic signatures confirming that electronic signatures are a valid method of executing commercial contracts under English law and highlights how as market practice and technology evolves, the use of electronic signatures has and will become increasingly common in a range of commercial transactions for reasons of flexibility, efficiency, and cost saving.
- 3.22 The Law Society practice note closely follows the eIDAS Regulation (EU No 910/2014) which came into force on 1 July 2016 establishing an EU-wide framework for electronic signatures.
- 3.23 It is considered appropriate for the Council to be able to take advantage of the benefits of using electronic signatures. As there are stringent requirements for the use of electronic signatures however, it is proposed that the Chief Legal Officer should determine which contracts or classes of contracts may be executed by electronic means and advise exactly how such contracts should be executed.
- 3.24 It is proposed that the following sub-paragraph be added to Standing Order 73:

“(e) All contracts, agreements or transactions required to be executed as a deed under seal or signed in accordance with these Standing Orders may be executed by electronic means where authorised by the Chief Legal Officer in respect of a particular contract or class of contract.”

Legislative/Statutory guidance changes

- 3.25 The following proposed changes update the Constitution to reflect new legislation/statutory guidance.
- 3.26 First, amendment is required to give effect to statutory guidance issued under Procurement Policy Note 8/16 which replaces the Pre-qualification Questionnaire with a new Selection Questionnaire. It is proposed that Contract Standing Order 96 (c) (ii) and (iii) be amended as follows:
- “(ii) Persons or bodies wishing to express an interest shall be sent a ~~pre-qualification selection~~ questionnaire to be completed and returned to the Council by the date specified in the notice.
- (iii) The response to the ~~pre-qualification selection~~ questionnaire shall be used to evaluate whether the person or body meets the Council’s minimum technical capacity and financial standing requirements and has relevant experience, and whether they should be included in a shortlist.”

3.27 Second, the Concession Contracts Regulations 2016 came into force on 18th April 2016 and apply to over threshold public works concessions and public services concessions. Certain changes to Contract Standing Orders are required to reflect the requirements of the new Concession Contracts Regulations 2016.

3.28 It is proposed that Contract Standing Order 82 which sets out various definitions be amended as follows:

European Procurement Legislation	The relevant EU Directives and corresponding UK Regulations as amended or replaced from time to time including the Public Contracts Regulations 2015 and the Public Contracts Regulations 2006 <u>Concession Contracts Regulations 2016</u> .
EU Thresholds	The current EU thresholds under European Procurement Legislation for the following types of contracts are: <ul style="list-style-type: none"> • • • • in the case of contracts for public works <u>or services</u> concession contracts, £4,104,394

3.29 In addition, it is proposed that Contract Standing Order 107(a) be amended as follows:

“Subject to the specific exceptions in the European Procurement Legislation, where the Contract is subject to the full application of the European Procurement Legislation (being a services contract, public works contract, public supplies contract, concession contract or Framework Agreement above the relevant EU Threshold) a mandatory standstill period of at least 10 calendar days must be observed between notifying all tenderers in writing of the award decision and the actual award of contract. The standstill period shall commence on the day after the written award notification is sent to all tenderers and the written notification must comply with the requirements of the European Procurement Legislation. If an unsuccessful tenderer requests further information, such information must be provided in accordance with the European Procurement Legislation.”

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

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