

 Brent	<p>Annual Meeting of the Council</p> <p>17 May 2017</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, in particular in relation to the process for call-in of decisions to scrutiny committees, the arrangements for the council's Audit Committee, the establishing of a new Housing Scrutiny Committee and amendment of the Members' Allowance Scheme.

2.0 Recommendations

- 2.1 That Council approves the changes to the Constitution proposed in this report and authorises the Chief Legal Officer to amend the Constitution accordingly.
- 2.2 That Council approves the proposed amendments to the Members' Allowance Scheme and authorises the Chief Legal Officer to fulfil the publicity requirements.

3.0 Detail

- 3.1 A number of changes are proposed to the council's constitution to improve governance and procedures. The proposed amendments are shown in the appendices to the report. Additions to the existing text are underlined and deletions are indicated by crossing through. The main changes are described below and in footnotes in the appendices.
- 3.2 Call-in of decisions to scrutiny committees

Changes are proposed to the arrangements for call in of decisions to scrutiny committees. Currently the provisions in the constitution are located in two separate places in the Constitution and the relationship between the provisions in Standing Orders and in the Call-In Protocol, are unclear. Some aspects of the procedure need to be clarified. In addition, following consideration of procedures elsewhere, it is proposed that scope be created for members who submit a call in request to seek reassurance or clarification from members or officers and to withdraw their call-in request if they are then satisfied. It is proposed that the 15 working days within which the scrutiny meeting must normally take place should be measured from the date of the successful call in rather than from the date of the decision.

3.3 The proposed amendments to the Constitution are as follows:

- (i) Attached in Appendix 1 are proposed changes to Standing Orders to :
 - a. Bring the relevant provisions into one location (Standing Orders 20 and 21) and set out more clearly the requirements for a valid call-in request;
 - b. Provide in Standing Order 20(c) the opportunity for informal resolution of member concerns referred to above
 - c. Make clear that a decision cannot normally be implemented during the 5 day call-in period and provide for urgency arrangements, in exceptional circumstances, where immediate implementation is necessary.
- (ii) Attached in Appendix 2 are proposed changes to the Call-in Protocol to:
 - a. Make the wording a bit clearer in some places;
 - b. Link more clearly to the relevant standing orders;
 - c. Be clearer about the information required to be included in a call-in request;
 - d. Clarify the process for determining whether the criteria to be met before a call-in can proceed are met;
 - e. Set out in more detail; the process to be followed at the call-in meeting;

3.4 Proposed changes to the Audit Committee

Changes are proposed in respect of the council's Audit Committee to include a specific reference to fraud and corruption and to reflect a recommendation made by the Audit Committee that there be an annual report from the Committee to full Council. It is also proposed that to strengthen the governance role of the Audit Committee by reconstituting it as an Audit Advisory Committee under section 102(4) Local Government Act 1972. This will enable the independent members of the committee (including the chair) to vote on matters before the committee, giving them equal status with councillor members. The councillor members of the new Audit Advisory Committee will meet as a decision-making Audit Committee when necessary (probably concurrently with or at the end of an Audit Advisory Committee meeting) to

take the formal decision to approve the council's accounts and any other decisions that may become necessary.

- 3.5 The proposed terms of reference of the Audit Advisory Committee are contained on Appendix 3, along with the terms of reference for meetings of the Audit Committee to take technical decisions when required.

3.6 Establishment of a Housing Scrutiny Committee

On 24 April 2017, Cabinet decided that in the future housing management services to the council's tenants and leaseholders will be provided by the council itself. The decision was made subsequent to a special meeting of Full Council on 20 April 2017 called to give all Members the opportunity to consider the outcome of the formal consultation undertaken by the council and to express their views.

- 3.7 Informed by recommendations made by the Community and Wellbeing Scrutiny Committee on what should happen in the event of Cabinet deciding to pursue the in-house option, the Constitutional Working Group agreed proposals for a new scrutiny committee to be established dedicated to exercising the council's overview and scrutiny functions in relation to housing matters.

- 3.8 If established by Full Council, Members are asked to note that the Housing Scrutiny Committee will be advised to explore and, if appropriate, to make arrangements to extend its membership to a number of co-opted members. The final decision, however, on any proposed appointments will be for Full Council to make.

- 3.9 The proposed remit of the Housing Scrutiny Committee and the consequential change to the remit of the Community and Wellbeing Scrutiny Committee are tracked in Appendix 4.

3.10 Amendment of the Members' Allowance Scheme

If the proposal to reconstitute the Audit Committee as an Audit Advisory Committee is approved, the Members' Allowance Scheme will be amended to record that the co-opted member allowance payable to the independent members is referable to their new role.

- 3.11 If a Housing Scrutiny Committee is established by Full Council, it is further proposed that the Members' Allowance Scheme is amended to make provision for the payment of special responsibility allowances to the Chair (£14,281) and Vice-Chair (£5,101) of the Housing Scrutiny Committee as well as the six other Members of that Committee (£3,234). These allowances match the allowances payable to Members of the Community and Wellbeing Scrutiny Committee and Resources and Public Realm Scrutiny Committee.

- 3.12 Given the possibility of the appointment of co-opted members to the Housing Scrutiny Committee, it is also proposed that provision be made for co-opted

member allowances of £226 (which is what the education co-opted members on the Community and Wellbeing Scrutiny Committee receive).

- 3.13 Before amending its Members' Allowance Scheme, the council has to have regard to the recommendations set out in the independent remuneration panel's report. The Remuneration of Councillors in London 2014 – Report of the Independent Panel, so far as relevant, proposed the following: the role of committee member and vice-chair of a scrutiny committee receive a special responsibility allowance of between 20-30% of the remuneration package for the Leader (i.e. £2,392 to £8,941). The role of chair of a scrutiny committee receive a special responsibility allowance of between 40-60% (i.e. £15,486 to £28,581) of the remuneration package for the Leader.
- 3.14 It is worth noting, however, that since 2014 members allowances have been set at a reduced, or much reduced, level than the amount recommended by the independent panel.
- 3.15 If approved, Full Council is requested to authorise the Chief Legal Officer to fulfil the usual publicity requirements.
- 3.16 It is also proposed that another amendment is made to the Members' Allowance Scheme in response to the following issue. The 2014 Report of the Independent Panel recommended that:

“councils should make arrangements in their members' allowances schemes to allow the continuance of special responsibility allowances in the case of sickness, maternity and paternity leave in the same terms that the council's employees enjoy such benefits (that is to say, they follow the same policies).”

- 3.17 Thus far no such provision has been made by the council in its Scheme.
- 3.18 It is proposed therefore that the following amendment be made to the scheme:

“Maternity, Paternity and Sickness Pay

13. (1) *A Councillor shall continue to receive in full a basic allowance as set out in Schedule 1 of this Scheme during any period of maternity, paternity and sickness leave.*
- (2) *A Councillor entitled to a Special Responsibility Allowance shall continue to receive their allowance during any period of maternity, paternity and sickness leave in the same way that the Council's employees enjoy such benefits.*
- (3) *If another Councillor is appointed to cover the period of absence, the replacement will be entitled to receive the same allowance.”*

- 3.19 For the avoidance of doubt, if Full Council were to agree the above amendment, it would be without prejudice to the council's legal powers to amend (at any time) or even revoke its Members' Allowance Scheme.

4.0 Financial Implications

- 4.1 The additional cost of the housing scrutiny amendment to the Members' Allowance Scheme at any given time will depend on the allocation of special responsibilities, as a Member is entitled to a single special responsibility allowance only irrespective of the number of special roles that Member has been allocated, and any vacancies.
- 4.2 The actual additional costs of a Member receiving a special responsibility allowance to cover a period of absence will entirely depend on the circumstances and will therefore vary from year to year. The maximum cost of these amendments is not estimated to exceed £50,000 and can be contained within the existing budget envelope.

5.0 Legal Implications

- 5.1 These are addressed in the body of the report.

6.0 Diversity Implications

- 6.1 Under section 149 of the Equality Act 2010, the council has a duty when exercising its functions to have 'due regard' to the need to eliminate discrimination, harassment and victimisation and any other conduct prohibited under the Act and advance equality of opportunity and foster good relations between persons who share a protected characteristic and persons who do not. This is the public sector equality duty. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex, and sexual orientation.
- 6.2 Due regard is the regard that is appropriate in all the circumstances. The weight to be attached to the effects is a matter for the council. As long as the council is properly aware of the effects and have taken them into account, the duty is discharged. Depending on the circumstances, regard should be had to the following.
- 6.3 The need to enquire into whether and how a proposed decision disproportionately affects people with a protected characteristic. In other words, the indirect discriminatory effects of a proposed decision.
- 6.4 The need to remove or minimise disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic.
- 6.5 The need to take steps to meet the needs of persons who share a protected characteristic that are different from the needs of persons who do not share it. This includes taking account of disabled persons' disabilities. There can be a positive duty to take action to help a disabled person. What matters is how they are affected, whatever proportion of the relevant group of people they might be.

- 6.6 The need to encourage persons who share a protected characteristic to participate in public life (or in any other activity in which participation by such persons is disproportionately low).
- 6.7 The need to tackle prejudice and promote understanding.
- 6.8 The proposal to make provision for maternity, paternity and sickness pay for Members entitled to a special responsibility allowance will ensure that councillors are not adversely and disproportionately affected by any period of leave related to pregnancy, maternity/paternity or a disability. It will also advance equality of opportunity by removing or minimising the financial disadvantage that a councillor with a relevant protected characteristic would otherwise suffer and encourage full participation in public life.

Background Papers

None

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