

SUMMONS ITEM 6



Full Council
28th November 2005

Report from the Borough Solicitor

For Action

Wards Affected:
ALL

Proposed Revisions to Brent's Constitution

1.0 Summary

This report sets out proposed changes to the Constitution required to be made as a result of changes to legislation and other changes recommended by officers.

2.0 Recommendations

Members are asked to:-

- 2.1 Agree the changes to the Constitution as shown in the appendix.
- 2.2 Appoint up to two elected members to the newly constituted Adoption and Permanency Panel.

3.0 Detail

- 3.1 The Constitution is kept under review throughout the year to ensure it is up to date and complies with all relevant legislation. The recommended changes to the Constitution are shown as tracked changes in the Appendix which, for ease of reference, also contains footnotes giving reasons for the proposed changes. The Appendix contains relevant extracts from the Constitution where changes are being proposed. In cases where the change is minor or is self-explanatory there are no footnotes.

- 3.2 The main changes cover the following areas:-

- The merger of Adult and Social Care with Housing and Customer Services
- Setting the Council Tax Base
- Licensing
- Contract Standing Orders, E-Tendering and reverse auctions
- Agreeing the Investment Strategy

- Area Housing Boards
- Responsibility for risk management
- Financial Regulations, transfers and virements
- The new Local Safeguarding Children's Board
- A new Adoption Panel
- Changes to Standing Orders using Delegated Powers

Adult & Social Care

- 3.3 On 10th October 2005 the Executive agreed to establish a new Housing and Community Care Department with effect from 31st October 2005 bringing together in one department the Council's housing, customer services and adult social care functions. This needs to be reflected in the Constitution as regulations require the constitution to contain an up to date management structure for the Council.

Setting the Council tax base

- 3.4 Calculating the Council Tax Base figure used to be expressly reserved to full council by section 67 of the Local Government and Finance Act 1992. Section 67 was amended by the Local Government Act 2003 and it is no longer necessary for it to be determined by Full Council. It can be agreed by Full Council or General Purposes Committee but not the Executive, which may only determine the various estimates to be used in making the calculations required by the Local Government Finance Act 1992. This has now been included in the terms of reference for the General Purposes Committee.

Licensing

- 3.5 The Licensing Act 2003 has transferred responsibility for the licensing of the sale and supply of alcohol and public entertainment from Magistrates Courts to local authorities. Alcohol and Entertainment Licensing Sub-Committees have been set up to hear disputed applications. Regulations prescribe certain procedures which have to be followed at hearings and these need to be reflected in the Licensing Code of Practice. Applications for licences which do not come under the Licensing Act 2003 (e.g. for tattoo parlours and sex shops) are heard by the General Purposes Licensing Sub-Committee.
- 3.6 Standing Order 62 provides that members may attend committees of which they are not members and may speak with the permission of the chair. However, at meetings of the Alcohol and Entertainment Licensing Sub-Committees members are only allowed by law to address the meeting if they are making a relevant representation as defined in the Act or if they are authorised to speak on behalf of someone who is making a relevant representation. The definition of relevant representation is quite narrow. Standing Orders need to be amended to reflect this statutory requirement.
- 3.7 People living or working in the vicinity of a premises who object or support a licence application may make a representation in respect of an application. Regulation 22 of the Licensing Act 2003 (Premises Licences and Club Premises Certificates) Regulations 2005 stipulates that only representations

received within 28 consecutive days from the day after the application was publicly advertised are deemed relevant. If a representation is received outside this time period, the legislation does not permit the sub-committee to consider it. The standing orders governing petitions need to be amended to reflect this.

Contract Standing Orders, E-Tendering and reverse auctions

- 3.8 It is proposed to amend contract standing orders so as to enable the electronic despatch and return of tender documents (e-tendering) and e-auctions (otherwise known as reverse auctions) when tendering contracts and to prescribe the rules for use of e-tendering and e-auctions. These amendments are in-line with new EU Procurement Directives and e-government initiatives. Additionally, as a result of EU case law and imminent UK legislation it is proposed to introduce new rules into contract standing orders requiring a standstill period between the decision to award a contract and the actual award of a contract and the provision of debriefing information for unsuccessful tenderers. Further amendments have been made to standing orders and the officer delegations in Part 4 of the constitution to enable the use of the new competitive dialogue tendering procedure, to clarify existing standing orders and delegations relating to the assignment and novation of contracts and the restrictions on the authority to make grants and to authorise the Borough Solicitor to agree rules for the operation of an 'Approved List' in consultation with the Director of Finance and Corporate Resources in order to facilitate the early introduction of an Approved List.

Agreeing the Investment Strategy

- 3.9 The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2004 amended paragraph (1)(b) of Regulation 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 ('Functions not to be the sole responsibility of an Authority's Executive'). The effect of the amendment was to extend the range of plans and strategies which have to be adopted by Full Council to include a plan or strategy for the control of the Council's investments. Since the Regulations came into effect the Treasury Management Strategy has been referred to the Full Council for approval on each occasion. The proposed amendment to Table 3 in Part 4 gives effect to this position.

Area Housing Boards

- 3.10 The Constitution currently specifies that there are 6 Area Housing Boards ("AHBs") as part of the Council's formal consultation network, they are:

- North Wembley
- South Wembley
- North Kilburn
- South Kilburn
- Harlesden & Brentfield
- St. Raphaels

- 3.11 The aims of the AHBs are broadly to be a conduit for information to and from the Council's tenants and leaseholders, with input from other interested groups. With effect from December 2004 Brent Housing Partnership ("BHP") assumed responsibility for servicing the Boards, although they have always had a role in attending the meetings and preparing reports. After reviewing attendance at and general operation of the AHBs, BHP have asked to change the way in which the Council's AHBs operate by merging some and reducing the pool from which membership may be drawn. Minor changes such as moving the date of the AGMs are also proposed. In fact, most of the changes reflect practice that has developed over the last few years.
- 3.12 The proposal is to merge North Wembley and South Wembley and to merge Harlesden & Brentfield and St. Raphaels, retaining separate boards for North Kilburn and South Kilburn. BHP consider that this will solve the problem of poor attendance at three of the existing AHBs (namely North Wembley, South Wembley and St. Raphaels), and is also expected to result in a £6,000 reduction in the cost of servicing the Boards. This will not mean that some areas are without representation, merely that the catchment area for some of the Boards is wider than it has been in the past.
- 3.13 The aims of the AHBs will remain as they currently are. The other changes are designed to improve the efficiency and effectiveness of the Boards or to reflect the current practice. They are:
- A reduction in the pool from which members of an AHB may be drawn, by deleting reference to private sector tenants, owner occupiers and local businesses. This has been happening for some time in practice.
 - A reduction in the size a tenants and residents association ("TRA") must be before it can have two rather than one representatives on an AHB (from 500 to 300 members).
 - The introduction of voting rights for representatives of local community groups with a housing interest (currently only TRA representatives may vote).
 - A restatement of the 4-person quorum with the introduction of a requirement for three of the four to be TRA representatives.
 - AGMs to be held in September rather than April or May.

Financial Regulations, Transfers and Virements

- 3.14 The revised Financial Regulations presented in this report are the result of a substantive review of the Regulations. The main drivers leading to the changes now proposed were:
- The CPA "Use of Resources" self assessment: This sets out expected systems, processes and controls to be in place for key financial activities such financial management, financial reporting, internal control and financial standing. It was evident that having started this assessment that there was a need to assign clearer responsibility for various aspects of financial activity within financial

regulations. The assessment process also highlighted the need to define partnership arrangements which do not take the form of traditional contracts and to ensure there are control mechanisms in place for them. A definition of Partnership Arrangements has been added to the Constitution and the regulations set out the control arrangements.

- The CIPFA best practice guidance: This makes it clear that certain areas of financial activity and the related responsibilities were not currently included in Financial Regulations. It also identified that some of the current rules governing general conduct in relation to financial matters could to be strengthened.
- External and internal audit reviews: Certain issues were identified in external and internal audit reviews which have been addressed in the proposed amendment to the regulations.
- Improving clarity and presentation: It was considered that the clarity of the regulations could be enhanced by changes to the layout and by more specific wording in some instances concerning the assignment of responsibilities to particular officers of the council and in the general rules of conduct which have to be adhered to by all officers of the council.

3.15 New and significantly expanded sections include the control framework in relation to the financial aspects of Partnerships (Regulation 6.10); external funding and the provision of goods and services to other bodies (Regulations 6.2 and 6.3); risk management and insurance and internal control (Regulations 7.1 and 7.2) and a new section placing responsibility on managers to report money laundering (Regulation 7.6).

3.16 The Scheme of Transfers and Virements contained in Part 6 of the Constitution sets out the rules that govern the ability of officers and then Executive to make changes to the financial arrangements agreed by the Council when it sets the Council's budget in late February/early March each year. The budget report contains a Schedule of Earmarked Reserves and the Scheme of Transfers and Virements contains rules about the use of those reserves and provisions during the financial year.

3.17 A change is proposed to the scheme to give power to the Director of Finance and Corporate Resources to agree, subsequent to the budget and as part of finalising the Council's accounts for approval by members, that additional reserves be established up to a maximum of £1m in each Service Area. This would be where, for example, expenditure has not been incurred as expected in the year just gone but is expected to be incurred instead early in the new Financial Year.

Area Child Protection Committee/Local Safeguarding Children's Board

3.18 The Children Act 2004 requires each top tier local authority to establish a Local Safeguarding Children Board (LSCB) to replace the Area Child Protection Committee, by April 2006. An LSCB will have much in common with and retain many of the responsibilities of the ACPC and the core of its

business will be to safeguard and promote the welfare of children. The primary difference is that the LSCB has the responsibility to ensure the effectiveness of what is done by each agency to safeguard and promote the welfare of children. It also has a wider remit than the ACPC which includes the responsibility to prevent harm happening in the first place. The LSCB will have a number of additional functions:

- An oversight of recruitment policies and procedures to recruit and supervise people who work with children
- Ensuring the safety and welfare of children who are privately fostered
- A monitoring and evaluation role
- A requirement to ensure co-operation between local authorities when children move across boundaries
- To establish and implement child death review procedures for all children who die in the borough.

3.19 The references to the ACPC in Article 11 of the Constitution have been deleted and there is now inserted a new section describing the Local Safeguarding Children's Board.

Adoption Panel

3.20 The Adoption Agencies Regulations 2005 stipulate that all members of a panel established before 30 December 2005 shall cease their appointments on that date. The agency is required to establish a new adoption panel, with effect from 30 December 2005. The Regulations do not make fundamental changes to the operation of the panel but there are alterations to membership, tenure and quoracy, as well as more significant changes to the placement of children for adoption, covered by new pan-London policies and procedures. Appointment of elected members to the new Panel can be made by Full Council or the General Purposes Committee. Appointment of officers and external people to the panel will be made by the Director of Children's Services.

4.0 Financial Implications

4.1 The Director of Finance and Corporate Resources has undertaken a review of the Council's Financial Regulations and has proposed a number of changes which it is felt would strengthen the Council's financial control framework. There are no cost implications arising from this report.

5.0 Legal Implications

5.1 Section 37(1) of the Local Government Act 2000 requires the Council to operate Executive arrangements and to prepare and keep up to date a document known as the "Constitution". Other legal implications are addressed in the body of the report and throughout the Appendix.

6.0 Diversity Implications

None.

7.0 Staffing/Accommodation Implications

None.

Background Papers

Brent Constitution

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