

	<p><b>Full Council</b> 22<sup>nd</sup> May 2006</p> <p><b>Report from the Borough Solicitor</b></p>
<p>For Action <span style="float: right;">Wards Affected: ALL</span></p>	
<p><b>Proposed Revisions to Brent's Constitution</b></p>	

**1.0 Summary**

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

**2.0 Recommendations**

Members are asked to:-

- 2.1 Consider whether to change the number of Executive members that make up the Executive.
- 2.2 Consider whether to move power to allocate the Executive portfolios from the Leader of the Executive to Full Council and, if so, to agree what the portfolios should be.
- 2.3 Agree to merge the Overview Committee and the Scrutiny Committee and create a new Overview and Scrutiny Committee and to note the proposed change of name for the sub-committees.
- 2.4 Agree that all three Leaders of the political groups be entitled to put a 'Group Leader's Motion', similar to the Motions Selected by the Leader's of the Opposition Groups currently in Standing Orders and that each motion may be debated for up to 15 minutes.

- 2.5 Agree that the number of questions permitted to be asked at Question Time be reduced to 9 and that each of the political groups is allocated 3 questions.
- 2.6 Delete and/or amend the posts and allowances as shown in the appendix and to note that a full review of the Members Allowance Scheme will be brought before members at a future meeting of Full Council.
- 2.7 To agree the other changes shown as tracked changes in the appendix and to authorise the Borough Solicitor to make any consequential amendments to the Constitution to reflect those agreed changes and any others agreed by members.
- 2.8 To agree that a cross party member and officer review group be established to review the future operation of the Overview and Scrutiny structure

### **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 and good practice. The recommended changes are shown as tracked changes in the Appendix which contains relevant extracts from the Constitution and which, for ease of reference, also contains footnotes explaining the reasons for the proposed changes. In cases where the change is minor or is self-explanatory there are no footnotes.
- 3.2 The main changes cover the following areas:-
- Moving power to determine and allocate executive member portfolios from the Leader of the Executive to Full Council
  - The merger of the Overview and Scrutiny committees
  - Consultative Fora Chairs
  - Access to Information
  - Property management
  - Contract Standing Orders
  - Children and Young Peoples Plan
  - Planning Control delegations to officers
  - Gambling Licensing
  - Motions Selected by the Leaders of the Opposition groups and Question Time.
  - Allowances
  - Other changes

*Moving power to determine and allocate executive member portfolios from the Leader of the Executive to Full Council*

- 3.3 The Constitution currently provides that there will be ten executive members, including the Leader of the Executive. Full Council could decide

to change the number of members on the Executive. There must be a minimum of three and a maximum of ten.

- 3.4 The Constitution also provides, at Standing Order 12(a), (b) and (c), that although Full Council appoints the Leader and the Executive it is the Leader who allocates portfolios to those executive members and delegates executive functions to officers and the Highways Committee. This was appropriate when the Leader was also the Leader of the majority group. Now that the position has changed and there is no overall control the Council could amend the Constitution so as to move power to allocate portfolios and to delegate functions from the Leader of the Executive to Full Council in which case it would also need to decide what the portfolios should be and who they should be allocated to.

#### *Suggested merger of Overview and Scrutiny committees*

- 3.5 In 2002 an all party constitutional working group chaired by Professor George Jones of the LSE recommended a constitution to Full Council. A key aspect of this was to recommend a Separate Overview and Scrutiny Committee. The former's role was to both scrutinise policy and to make policy development suggestions to the Executive. The latter's role was to scrutinise the actions of the Executive and service delivery. This was a bold and innovative experiment and the valuable work of the task groups attest to its successes. However, the overwhelming experience of both members and officers has been that there has been an artificial wall constructed between the scrutiny of acting and the policy that drives it and therefore that the Overview and Scrutiny functions should be pulled together. Whilst all participants and Council inspectors have praised the work of Task Groups and the Forward Plan, Performance and Finance and Health Committees there has, over the course of time, been a number of questions raised by the Scrutiny Management Board over the efficacy of the three panels.
- 3.6 Given the above, the need to make an integrated Scrutiny and Overview system work and the challenges now being posed around further scrutiny of health and community safety, we believe it would be in the best interest of the Council to reconvene the Constitutional Monitoring Group to meet during June and July with a view to agreeing an operational Overview and Scrutiny system for recommendation to Full Council in September. CMG could be expanded to include the Chair of the suggested merged Overview and Scrutiny Committee and the Chairs of the Select Committees and nominees of the three party Leaders. We also recommend that whilst nominations are put forward by the parties for the three Scrutiny/Overview panels, these panels do not meet and that the element of the scrutiny structure remains in abeyance until after the September Full Council has agreed the new structure.

3.7 In the meantime, it is suggested that some initial changes are agreed by Full Council, namely.

- The Overview Committee and the Scrutiny Committee to be abolished and in their place established a single Overview and Scrutiny Committee.
- The Health Overview Panel to become the Health Overview and Scrutiny Panel.
- The three scrutiny panels, namely Children & Families, Quality of Life and Adult and Social Care, to become Overview and Scrutiny Panels.
- The two scrutiny select committees, namely Forward Plan and Performance & Finance, to become Overview and Scrutiny Select Committees.

3.8 The membership of the new Overview & Scrutiny Committee and the new Children & Families Overview and Scrutiny Panel must contain voting co-opted members who are required to be appointed to the committee and sub-committee because the terms of reference include consideration of education matters. The existing committees contain 17 councillors plus 4 voting co-opted members and 2 non-voting co-opted members. This total number of members was necessary in order to maintain political balance and to ensure that the then majority group had the majority of seats on the committee (as required by the Local Government and Housing Act 1989). This particular aspect of the political balance rules no longer applies now that no one party has an overall majority so the size of the committee could be reduced. It is suggested that this is considered as part of the review of overview and scrutiny. In order to inform that debate the following table gives some examples of what the make up of the committee might be.

<b>Size of committee</b>	<b>Liberal Democrats (43%)</b>	<b>Labour (33%)</b>	<b>Conservative (24%)</b>	<b>Voting co-opted members</b>
17	7	6	4	4
15	6	5	4	4
13	6	4	3	4
11	5	4	2	4

3.9 Standing Order 19(d) currently provides that the Chair of the Scrutiny Committee should not be a member of the Majority group. Given the new political balance of the authority this requirement is unnecessary and can be deleted. Consequently, the Chair of the new Overview and Scrutiny

Committee (if agreed) would merely be appointed from amongst the non-executive members of the Council.

- 3.10 The members' Allowances Scheme includes an allowance for the Chair of the Scrutiny Committee and the Chair of the Overview Committee, each in the sum of £11,385. The overall cost of the allowances scheme will be reduced by £11,385. It is suggested that the role of opposition spokesman on Overview could also be deleted. The allowance for this post is currently £1,987.

#### *Consultative Fora Chairs*

- 3.11 Paragraph 10.11(b) of Article 10 of the Constitution currently provides that the chairs of the fora will be from the Majority group. It is suggested that this should be deleted so that they will be chaired by a councillor appointed by the Council.

#### *Access to Information*

- 3.12 The Local Government (Access to Information) (Variation) Order 2006 which came into force on 1<sup>st</sup> March (together with two other orders which make consequential changes to legislation) aims to bring the rules about whether Executive and Committee reports must be made available to the public into line with the categories of information which are exempt from disclosure under the Freedom of Information Act.
- 3.13 The categories of 'exempt information' in the new order are broadly similar to the old ones but the wording in some categories has changed and some categories have merged. More significant is the change to the qualifications that apply to each category with most of the new categories of information requiring a public interest test to be applied, similar to the public interest test under the Freedom of Information Act. The Democratic Services Manager will now be required to apply a public interest test before deciding whether to exempt information.
- 3.14 There are three categories of exempt information which only apply to Standards Committee hearings. These are the final three categories shown in the list in the appendix, namely information subject to an obligation of confidentiality, information relating to national security and the deliberations of a Standards Committee on reaching a finding on a referral to it of an allegation of misconduct.
- 3.15 Members are not generally entitled to see exempt items although they may well have other rights to see them such as under the common law 'need to know' rule or in accordance with our Access to Information Protocol which is more generous than the statutory minimum. However, the new legislation qualifies some categories of exempt information so that members, but not the press or public, can see the items even though they would be otherwise exempt. This applies to exempt category 6 (the making of an order or notice) and category 3 (information relating to the

financial or business affairs of another person, but not if the information in this category 3 relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract).

- 3.16 It is proposed to make changes to the Access to Information Rules to reflect these legislative requirements and also to make consequential changes to the Access to Information Protocol. These are shown in the appendix.

#### *Property Management*

- 3.17 The Head of Property and Asset Management has requested a number of changes to the delegated powers relating to property management in order to provide greater flexibility whilst at the same time improving the control mechanisms within the Council such that the Head of Property and Asset management has more information about property acquisitions and disposals. It is suggested that the power of directors to acquire and grant interests in land be subject to two further requirements that the Head of Property and Asset Management is consulted and approves the terms of any proposed transaction and the terms are forwarded to him for noting on the Council's asset register. It is also suggested that the threshold below which the Head of Property and Asset Management can acquire or dispose of land be increased from £20k rental value to £50k rental value and from £50k, if granted at a premium, to £150k, if granted at a premium. These changes are considered satisfactory by the Borough Solicitor.

#### *Contract Standing Orders, E-Tendering and reverse auctions*

- 3.18 A number of changes are proposed to Contract Standing Orders to reflect the implementation in UK law of an EU Procurement Directive through the Public Contracts Regulations 2006. The changes made to the Contract Standing Orders include a new definition of framework agreements; changes to the thresholds at which a tendering process is required to be undertaken and changes to the provisions concerning e-tendering and e-auctions. In addition, in November last year a requirement for a standstill period between the selection of the successful tenderer and the actual award of the contract was introduced into standing orders. This was to reflect EU case law and in anticipation of specific legislation being introduced in due course. The standstill period as implemented in the new regulations is extremely detailed so it is proposed that the rules included in standing orders be briefer with detailed guidance being given in the Council's Contract Procurement and Management Guidelines.
- 3.19 Also included in the changes are some clearer provisions about when authority is required from the Executive in respect of collaborative procurements with other public authorities. These are set out in Standing Order 85. It is now made clear that where there is to be a delegation of powers to another authority an Executive decision (or a Council decision as appropriate) will be needed. It is also clarified that it is only where the Council's element of the value of the contract exceeds the threshold for

high value contracts under standing orders (£500k) that the approval of the Executive is required prior to the tendering process being undertaken and for award. Where the collaborative procurement involves payments being made to another authority in respect of the costs of the procurement process, the agreement with the other authority will be subject to standing orders where its value is over the relevant threshold.

- 3.20 Laser is a local authority energy buying arrangement administered by Kent County Council on behalf of over 70 local authorities, including Brent, covering gas, oil and electricity. Kent undertakes competitive procurement processes on behalf of the local authorities in the group through OJEU, including setting up framework agreements for their benefit. As the energy market is highly volatile, prices available under the Laser arrangements are generally only held by the suppliers for a brief period, often just a couple of hours. This means that in situations where the value of the supply will exceed 500k (and therefore under the Constitution Executive approval is required to approve the tendering process and to award the contract) Brent is not in a position to make decisions quickly enough to take advantage of the best prices. It is therefore proposed that the delegation of powers to officers in the Constitution be amended to exempt contracts to be awarded for the supply of energy through the Laser arrangements with Kent County Council from the requirements for specific Executive approval of each contract. Instead it is proposed that power to award all such contracts is delegated to the Director of Finance.

#### *Children and Young People's Plan*

- 3.21 Section 17 of the Children Act 2004 and the Children and Young People's Plan (England) Regulations 2005 require local authorities to prepare and publish a Children and Young People's Plan ("CYPP"), setting out their strategy for services for children and relevant young persons. 'Relevant young persons' means those of 18 and 19, those over 19 receiving services, including leaving care and those over 19 and under 25 with learning difficulties. The CYPP replaces various statutory plans which currently form part of the Council's Policy Framework, namely the Children's Services Plan, the Early Years Development Plan and the Education Development Plan as well as other statutory and non-statutory plans. Hence, the references to the plans and policies which constitute the Policy Framework need to be amended to reflect this. This is shown in the appendix. The 2006 Regulations also removes the reference to Community Care Plan as there is no longer a requirement to formulate such a plan.
- 3.22 The Local Authorities (Functions and Responsibilities) (Amendment) (England) Regulations 2006 ("the 2006 Regulations") specify that the CYPP is a shared responsibility of the Executive and Full Council. In accordance with the usual practice under the Constitution this means that the Executive will develop the plan but ultimately it will be for Full Council to adopt the final document. At Brent, the CYPP was endorsed by the

Executive on 13<sup>th</sup> March 2006 and was formally adopted by Full Council at its meeting on 24<sup>th</sup> April 2006.

### *Planning Controls Delegations to Officers*

- 3.23 Under paragraph 1 of the Planning Committee's Terms of Reference, applications for certain types of major development are referred to the committee for determination rather than being decided by officers under delegated powers. Where the application is recommended for refusal, the practice has become more prevalent recently for developers to withdraw their application once it appears on the agenda for a refusal (sometimes on the actual day of the committee meeting). This results in a waste of officer time in preparing a detailed report, and in member time in studying this prior to the meeting. The Council is also required to achieve a performance target of determining at least 60% of applications for major developments within 13 weeks. The increasing practice of withdrawing applications recommended for refusal at the last minute has the effect of unfairly weighting the figures for this performance target against the Council since withdrawals are not taken into account in assessing whether the target has been met. Recommendations for refusal have not proved to be controversial and there has only been one instance within the last five years of members overturning an officer recommendation to refuse. It is therefore recommended that the terms of reference be amended such that officers are permitted to refuse applications using delegated powers. If the recommendation is to grant permission then the matter will still be referred to the committee for consideration. There are safeguards in that if at least 2 members of the Council request an application to be considered by the planning committee then it has to be referred to the committee. Furthermore, officers can always refer an application to the committee rather than exercising their delegated powers if they feel this is appropriate in any particular case. Finally, the applicant has the safeguard that he or she can appeal to a planning inspector if they consider that the refusal is unjustified.
- 3.24. This approach was agreed by the Planning Committee on 26<sup>th</sup> April 2006 when they resolved as follows:

*“That in order to improve the management of the Planning Committee process and the delivery of government performance targets, the Borough Solicitor be advised that the committee seek the amendment of the appropriate standing order to extend the power to determine major developments that are recommended for refusal to officers”*

### *Gambling Licensing*

- 3.25 The Gambling Act 2005 received Royal Assent on 7th April 2005 but much of it has not yet come into force and/or will be amplified in regulations that are still awaited. At this stage only minor amendments are proposed to the Constitution. The Act, broadly, requires the Alcohol and Entertainment Licensing Committees set up under the Licensing Act 2003 to now



assume responsibility for licensing various forms of gambling. Changes to the Alcohol and Entertainment Committee terms of reference will not be made until further regulations have come into force but, in the meantime, the terms of reference of the General Purposes Licensing Sub-Committee should be amended so as to make it clear that it cannot deal with gambling licensing. In addition, there are two functions under the Act which can only be determined by Full Council. The first is adopting a Gambling Licensing Policy under the Act and the second is the power to pass a resolution not to issue casino premises licenses. This is reflected in the proposed amendments in the appendix.

#### *Motions Selected by the Leaders of the Opposition Groups and Question Time*

- 3.26 Given the new political balance of the Council it is suggested that perhaps all three group leaders could be entitled to put a 'Group Leader's Motion' which would replace the item currently in the Constitution which entitles the Leader's of the two largest opposition groups to put a motion. The time allocated to this item is currently 40 minutes. It is suggested that each of the three motions could be debated for up to 15 minutes, taking the total time for this item to 45 minutes.
- 3.27 Similarly, there are currently 10 questions permitted at Question Time with some questions allocated to political groups and some selected by way of random ballot. It is suggested that this could be reduced to 9 questions and that each group is allocated 3 questions.

#### *Allowances*

- 3.28 Given the new political balance of the authority and given that no one political group has overall control it has become necessary to amend the Members Allowances Scheme because some of the posts no longer exist. A review of member allowances is currently being undertaken by the Borough Solicitor, including a review of the allowances paid to the members of the Alcohol and Entertainment Licensing sub-committees, and this will be reported to a future meeting of Full Council once consultation with the three groups has been carried out. However, in the meantime, a decision must be taken on the allowances currently in the scheme which no longer apply.
- 3.29 One suggestion would be to introduce a set allowance for the Leaders of the three main groups, possibly at the level currently set for the Leader of the main opposition group, namely £11,903. The allowances for the Leader and Deputy Leader could remain in the scheme at the same or a different level. If this suggestion is agreed then another would be to bring the allowance for the Chair of the Overview and Scrutiny Committee into line with this new allowance, increasing it slightly from £11,385 to £11,903. In the event that one or more of the group leaders assumed another role for which an allowance is payable then, in accordance with the usual rules, only one allowance would be payable.

- 3.30 There are currently three different amounts payable to the whips of the three groups, which was based on the size of the groups pre-election. It is suggested that the three whips could perhaps all be allocated the same allowance of, say, £5,147 which would be cost neutral, the total sum of £15,441 being the same as the total amount currently payable to the three whips. This would still be subject to the usual rules on only one allowance. Members may feel that this would be appropriate now that there is no overall control. If members are minded to make changes to the allowances scheme, other than minor changes, they will need to take into account the recommendations of the ALG Independent Panel. The most recent report was issued in the summer of 2003. A copy is available in the group offices. A copy of the Executive summary is attached together with a copy of an earlier report to Full Council (17<sup>th</sup> November 2003) on the subject of member allowances which sets out some of the guiding principles and issues which need to be taken into account.
- 3.31 Whatever detailed changes are agreed there are some decisions that must be taken. The following posts, currently within the scheme, need to be deleted or amended (including the suggested changes to overview and scrutiny):
- Delete one allowance for a chair of overview and/or scrutiny
  - Delete allowance for opposition spokesman on overview
  - Amend allowance for Leader of 1<sup>st</sup> Opposition
  - Amend allowance for Leader of 2<sup>nd</sup> Opposition
  - Amend allowance for Deputy of 1<sup>st</sup> Opposition
  - Amend titles, and possibly amounts, for the whips

#### *Other Changes*

- 3.32 The definition of 'Policy Framework' appears in a number of places throughout the Constitution and it is recommended that for consistency and ease of reference the definition appears in one place only and that elsewhere there are included cross references.
- 3.33 The Policy Framework currently contains a reference to Local Agenda 21 Strategy. This issue is now covered by the community strategy and can therefore be deleted from the list of policy framework documents to be approved by Full Council. The Community Strategy is separately listed in any event. The Policy Framework also contains a reference to the Interim Local Implementation Plan for the Mayor's Transport Strategy. This interim plan was for the period 2002 to 2003 and has already been adopted. This can therefore be deleted. The statutory reference in Table 3 is to section 108(3) of the transport Act 2000. However, this only applies to Passenger Transport Authorities, which Brent is not. It is therefore suggested that a note to this effect is added to the table in the event that Brent does at some future date become a Passenger transport Authority.
- 3.34 The Constitution currently contains a definition of 'Standing Panel'. This title has never actually been applied to any parts of the decision making

structure and can therefore be deleted. This would not stop new panels or sub-committees being established at some future date.

#### *Changes to Standing Orders Made Under Delegated Powers*

- 3.35 Under the Constitution the Borough Solicitor is permitted to make certain limited changes to the Constitution throughout the year but, in the case of Standing Orders, any variations which are more than minor variations are required to be submitted to Full Council for approval. There have been no changes to Standing Orders that require approval of Full Council.

#### **4.0 Financial Implications**

- 4.1 There may be an adjustment to the total amount payable under the members allowance scheme if any changes are made to it but the actual amount payable depends on the various roles held by individuals so it is difficult to tell what the cost implications would be.

#### **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**

- 6.1 This report has been screened by officers and there are not considered to be any equalities implications.

#### **7.0 Staffing/Accommodation Implications**

- 7.1 None.

#### **Background Papers**

1. Brent Constitution
2. The report of the Independent Panel to the Association of London Government, Summer 2003.

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