

	Full Council 27 February 2025
	Report from the Corporate Director of Law & Governance
	Lead Member – Deputy Leader and Cabinet Member for Finance & Resources (Councillor Mili Patel)
Changes to the Constitution	

Wards Affected:	All
Key or Non-Key Decision:	Council
Open or Part/Fully Exempt: <small>(If exempt, please highlight relevant paragraph of Part 1, Schedule 12A of 1972 Local Government Act)</small>	Open
List of Appendices:	One Appendix 1 – Proposed changes to the Constitution
Background Papers:	None
Contact Officer(s): (Name, Title, Contact Details)	Debra Norman Corporate Director of Law & Governance 020 8379 1578 Debra.norman@brent.gov.uk

1.0 Executive Summary

- 1.1. This report proposes changes to reflect a recent restructure of Directorates, new procurement legislation and other minor matters.

2.0 Recommendation(s)

- 2.1 To agree the changes to the Constitution set out in Appendix 1 with effect from 1 April 2025.
- 2.2 To authorise the Corporate Director of Law & Governance to amend the Constitution accordingly, including making any necessary incidental or consequential changes.
- 2.3 To designate the post of Director of Law as the council's Monitoring Officer post in accordance with s5 of the Local Government & Housing Act 1989.

2.4 To note that, to the extent that the changes relate to executive functions of the Council, they have been approved by the Leader.

2.5 To authorise the Chief Executive, in consultation with the Leader, to bring forward the implementation of any of the proposed transfers of functions to a date earlier than 1 April 2025.

3.0 Detail

3.1 Contribution to the Borough Plan and Strategic Priorities

3.1.1 Ensuring the Constitution is kept up to date and supportive of good governance contributes to the delivery of all of the strategic priorities within the Borough Plan by supporting and enhancing the Council's activity.

3.2 Background

3.2.1 Directorate Restructure

Following a restructure of Directorates agreed by the Chief Executive to be implemented in full on 1 April 2025, changes to reflect the new allocation of functions, and the designation of the Director of Law post as the council's Monitoring Officer, will be required throughout the Constitution. These are not all included in Appendix 1 as they are mostly job title and directorate names changes.

3.2.2 Section 9.4 in Part 3 of the Constitution (Responsibility for Functions) which contains the description of which functions sit with which Corporate Director and their directorate will be amended to read as follows:

9.4 The Chief Executive, and Corporate Directors listed below shall have responsibility for the following general and related areas:-

(a) **Chief Executive:**

Head of Paid Service. Managerial leadership of the Council including responsibility for overall corporate management and operational responsibility for all staff. Providing and securing of advice to the Council, and councillors, on strategy and policy. Acting in an executive capacity by making decisions or ensuring a system is in place for other officers to make decisions, as authorised by the Council. Delivering probity, value for money and continuous improvement. Acting as Returning Officer for General, Greater London Authority and Local elections.

(b) **Corporate Director, Service Reform and Strategy:**

Adult Social Services, community services, direct services and client affairs, adult physical disability, learning disability, mental health services, services to older people, safeguarding adults, emergency duty team, asylum, reablement, adult social care complaints, commissioning and quality, support planning and review, any other function listed in Schedule 1 of the Local Authority Social

Services Act 1970 (not delegated to the Corporate Director, Children and Young People). Strategic commissioning and procurement. Health partnerships, health inequalities and Public Health. Leisure centres, sport and physical activity. Parks and open spaces. Communications, conference and events. Insight, innovation, data and digital transformation. Corporate planning, policy and performance. Social infrastructure and community engagement. Insight and Innovation. Wholly owned housing companies.

(c) Corporate, Director Children, Young People and Community Development:

Statutory Director of Children's Services, school effectiveness service, outdoor education, pupil referral units, education tuition service, parent partnership service, exclusion teams, education welfare service, behaviour support, SEN assessment service, SEN transport, education psychology, youth and 16-19 education, employment, family support, education, and schools organisation, child protection, safeguarding, children's social care, adoption, fostering, placements, children with disabilities and all functions of the Local Authority not reserved to members including but not limited to early years education and school places, education and training provision for young people. Commissioning of education related capital build projects. Employment and skills (including adult and community education). Homes for Ukraine/refugees, Picture Palace development and the Black Community Action Plan. Community safety and prevention. Making all Public Spaces Protection Order under the Anti-Social Behaviour Crime and Policing Act 2014 in consultation with the Cabinet Member for Safer Communities, Jobs and Skills.

(d) Corporate Director, Finance and Resources:

Statutory s151 officer, finance and debt, capital programme management, payroll and pensions, health and safety, IT/digital shared services and Oracle Cloud Support. Audit, investigations, insurance and emergency planning. SIRO. Legal services, human resources, organisational development, governance, scrutiny, electoral services, complaints, Members casework and Mayoral support. Workforce/organisational equalities. Senior executive support.

(e) Corporate Director, Neighbourhoods and Regeneration:

Regulatory services, street naming and numbering, environmental health, licensing, street trading, trading standards, contaminated land, pollution control, food safety and pest control. Caretaking services on housing estates. Licensing. Public realm, lead flood authority, transportation, highways, healthy streets and parking, street lighting, waste management and recycling, street cleansing, environment, CCTV monitoring. Regeneration, urban renewal, economic development, statutory and non-statutory planning, building control and land charges. Council led, affordable housing supply and development. Property and Facilities management. Schools capital programme. The Energy Team. Climate resilience.

(g) Corporate Director, Residents and Housing Services :

Nationality service, Registrar of Births, Deaths and Marriages and cemeteries. Customer services and community hubs. Revenue and benefits. Private sector housing, housing management and neighbourhood management (not including

caretaking services). ASB, nuisance and crime. Act Protection. Housing needs and support. Mortuary and Registrars. Assets of community value and partnerships. Cultural services (including arts, libraries, museums and archives and the London Borough of Culture legacy). Data protection and freedom of information. Equalities.

3.2.3 The Procurement Act 2023

The Procurement Act 2023 (**PA 2023**) to be introduced on 24 February 2025 aims to overhaul the UK's public procurement by replacing existing legislation and streamlining this into a single Act for procurements on or after its introduction. This reform is intended to make the procurement process quicker, enhance transparency, improve flexibility, increase value for money, and ensure alignment with international obligations. The legislation will also facilitate access to public procurement for new participants, including small businesses, enabling them to compete for and secure a greater number of public contracts. The Procurement Regulations 2024 (**PR 2024**) supplement the PA 2023.

3.2.4 To reflect the introduction of the PA 2023, various amendments to the Council's Contract Standing Orders are proposed. Detailed below are some of the significant headline changes under the PA2023 and the changes made to Contract Standing Orders:

3.2.5 Greater Transparency and Contract Governance

Transparency is now embedded through the whole procurement cycle from planning the procurement to the award and management of a contract. Consequently, the new PA 2023 has increased obligations on Contracting Authorities to publish notices linked to a wide range of events. There is now a total of 16 notices under the PA 2023

3.2.6 As a result, a new Contract Standing Order 115 (Statutory Procurement Notices) has been introduced in to Contract Standing Orders, which includes a table of all the notices under the PA 2023 and those under the Public Contracts Regulations 2015 (PCR 2015) (the PCR 2015 remains in force for contracts whose procurement commenced prior to 24 February 2024). The tables detail whether the notices are mandatory or discretionary and the purpose of each notice, including when they should be published.

3.2.7 Direct Awards

The PA 2023 introduces additional grounds to directly award a contract above the procurement threshold without the requirement to carry out a procurement process. Sections 41 – 43 and Schedule 5 of the PA 2023 details the grounds on which a Contracting Authority is able to rely upon to directly award a contract. One of the additional grounds includes where the public contract concerns the production of a prototype, or supply of other novel goods or services.

3.2.8 Contract Standing order 86(f) (Inviting Tenders for Contracts below Thresholds) has been amended to include the additional grounds which can be relied upon for directly awarding contracts under the PA 2023.

3.2.9 Competitive procurement procedures and award procedure

Under Section 20 of the PA 2023, the number of competitive procurement procedures has been reduced from 6 procedures to 2, these being:

- a) Open Procedure - this is essentially the same as the Open Procedure under the PCR 2015, being a single-stage tendering procedure without a restriction on who can submit tenders.
- b) Competitive Flexible Procedure – this is now a multi-stage procedure which gives Contracting Authorities discretion to design their own procurement process whilst still complying with the broader requirements of the PA 2023. This is said to give more flexibility and freedom for Contracting Authorities, and it is envisaged that this will deliver value for money and drive innovation through negotiation and dialogue with suppliers.

3.2.10 The award procedure has also been amended from the “most economically advantageous tender” to the “most advantageous tender”. The change to “most advantageous tender” will allow Contracting Authorities more flexibility and freedom to award contracts based on other considerations which they consider relevant such as social value and environmental benefits.

3.2.11 To reflect the changes to competitive procurement procedures, Contract Standing Order 95 (Inviting Tenders for Contracts over Thresholds) has been amended so that there is a reference to “relevant procurement procedures” only, thereby replacing the existing 6 procurement procedures previously referenced.

3.2.12 Mandatory Contract Award Notice and Standstill Period

Under the PA 2023 a mandatory contract award notice is required to be published after all supplier assessment summaries have been issued following the evaluation and award process in a procurement. The publication of the award notice will now trigger the standstill period which has been amended from 10 calendar days under the PCR 2015, to 8 working days under the new PA 2023. There is also a new requirement to publish a copy of a contract which is valued above £5m.

3.2.13 Contract Standing Order 107 (Notification of Tender Decision, Standstill Period, Debriefing and Acceptance) has been amended to reflect the new mandatory standstill period of 8 working days to be observed before entry into a contract under the PA 2023. Where a procurement commences before 24 February 2025, the existing legislation will apply and a mandatory standstill period of 10 calendar days is required to be observed.

4.0 Stakeholder and ward member consultation and engagement

4.1 None for the purposes of this report

5.0 Financial Considerations

5.1 None

6.0 Legal Considerations

6.1 These are contained in the body of the report.

7.0 Equity, Diversity & Inclusion (EDI) Considerations

7.1. 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 or civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

7.2 “Due regard” is the regard that is appropriate in all the circumstances. The weight to be attached to the effect is a matter for the council. As long as the council is properly aware of the effects and has taken them into account, the duty is discharged. Depending on the circumstances, regard should be had to the following:

- 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;
- the need to remove or minimise disadvantages suffered by persons who share a protected characteristic that are connected to that characteristic;
- 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;
- 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); and
- the need to tackle prejudice and promote understanding.

7.3 No equalities implications arise directly from this report.

8.0 Climate Change and Environmental Considerations

8.1 None

9.0 Human Resources/Property Considerations (if appropriate)

9.1 The changes in Appendix 1 reflect the outcome of a restructure consulted on in accordance with the Council's Managing Change Procedure.

10.0 Communication Considerations

10.1 None

Report sign off:

Debra Norman

Corporate Director of Law & Governance