



Full Council
1st March 2010

Report from the Borough Solicitor

For Action

Wards Affected:
None

Changes to the Constitution

1. Introduction

- 1.1 This report firstly sets out proposed changes to the Constitution arising from the forthcoming new executive arrangements. Secondly there are incidental changes required as a result of changes in legislation, or to overcome problems which have arisen with the current constitution.

2. Recommendations

Members are asked to:

- 2.1 Agree that the proposed amendments to the Constitution as set out in Appendix A be adopted and take effect on 9th May 2010.
- 2.2 Agree that the proposed amendments to the Constitution set out in Appendix B be adopted and take effect immediately.

3. Detail

- 3.1 There are two sets of changes to the constitution proposed: those which give effect to the new legislation regarding changes in executive arrangements, and those changes which are minor and unrelated to the executive arrangements but arise as a consequence of changes in the legislation or problems arising with the current format which require amendments to be made.

Changes to give effect to the new executive arrangements

- 3.2 The Local Government and Public Involvement in Health Act 2007 made changes to the way in which Councils can choose to exercise their executive arrangements. Councils were required to choose between a Mayor and Cabinet executive Model or a Leader and Cabinet executive Model by 31st December 2009.
- 3.3 On 23rd November 2009 this Council resolved to adopt the Leader and Cabinet executive Model with effect from 9th May 2010. In addition members also resolved that Full Council would retain the power to remove the Leader by a vote of no confidence.
- 3.4 The legislation prescribes certain executive arrangements for each model. For example the term of office of the Leader is 4 years and the Leader must appoint a deputy. Some aspects of the executive arrangements are left to local choice. For example the Leader may choose the number of members in the executive (subject to a statutory requirement of more than 2 and no more than 9 members).
- 3.5 The amendments in Appendix A give effect to the Council's resolution of 23rd November 2009 and the requirements set out in the Act. Where there are local choices the proposed amendments seek to maintain the present arrangements so far as is possible. This provides stability and continuity of the current executive arrangements.
- 3.6 The fundamental changes to the executive arrangements (as required under the Act) are in relation to the appointment of members to the executive, and the role of the Leader. The changes to the Constitution are predominantly set out in Part 2 Article 7 which contains the form and composition of the executive and the manner in which the functions will be discharged. The changes also impact on the provisions in Part 4 (Responsibility for Functions) and Part 3 (Standing Orders). The changes to the operation of the vote of no confidence are set out in paragraph 13 of Standing Orders. There are also miscellaneous alterations elsewhere in the Constitution to give proper effect to these changes. Set out in Table A below are the most significant differences between the current position and the proposed future arrangements.

TABLE A

	Current Position	Proposed Future Position	Required by Law (LGA2000 as amended) or Local Choice	Page number of Appendix A
1.	The Leader of the Council is appointed at	The Leader is appointed at the first Annual	Legal requirement	Page 7 para 7.3 &

	a meeting following the ordinary elections and annually thereafter.	Meeting following the ordinary elections. He/she is appointed for a term of 4 years.		7.4
2.	The Leader ceases to be Leader 4 days after the ordinary elections.	The Leader continues in office until the AGM after the next ordinary elections whether or not he/she is re-elected. (He/she is deemed to continue to be a Councillor).	Legal requirement	Page 7 para 7.5
3.	The Leader can be removed by a vote of no confidence of full council if the motion is signed by 40% of the non-executive members.	The Leader can be removed by vote of no confidence (motion requirement altered to 40% of all the members).	Local Choice – resolved by Council 23.11.2009	Page 12 para 12(b)
4.	The Council elects the members to the Executive (currently 9 in number) on an annual basis.	The Leader chooses membership of the executive (drafted as 9 members). Term of office 4 years, except for the deputy which is 1 year (subject to the Leader removing members see below at 5).	Legal requirement that Leader chooses the Executive. Leader has discretion on number (between 2 and 9 months) and length of term of office.	Page 7 para 7.2, 7.8, 7.12 & 7.13
5.	The members of the Executive and the deputy can only be removed by Council.	The Leader can end the term of office of any executive member including the Deputy.	The Act gives power to the Leader.	Page 7 para 7.10(d) & 7.13(c)
6.	When the Leader is no longer in office, a new Leader is appointed by the Council.	The Deputy Leader becomes Leader if the office becomes vacant. If the Leader is removed by a vote of no confidence, the council elects a new Leader.	Legal provision in the Act.	Page 7 para 7.15 Page 12 para 12(b)
7.	The executive powers are vested in the	The executive powers are vested in the	The Act provides that	Page 10 para 7.23

	<p>executive, and can be exercised by the executive, or a member, committee or officer. The Executive provides for the exercise of executive functions by the Executive, the Highways Committee, and Officers.</p>	<p>Leader. The Leader may arrange for these functions to be carried out by himself/herself, the Executive, a committee, a member, or officers. The draft provides that the Leader makes the same arrangements as those that are currently in place.</p>	<p>the Leader decides how those powers are exercised.</p>	<p>Page 12 para 13(c)</p>
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- 3.7 The Constitution adopted by the Council reflects the legal and practical working arrangements of the local authority. Currently the Executive decides how its functions are to be exercised and these arrangements are incorporated in the Constitution. Under the new legislation a large number of decisions about the executive arrangements are vested in the Leader. In order to reflect the Leader's agreement to the arrangements which are at his/her discretion it is proposed that there be an additional Part 9 to the Constitution. This is included in Appendix A to this report.
- 3.8 There will be a period between the ending of the current administration (4 days after the election on 6th May 2010) and the first Annual General Meeting (currently arranged for 26th May 2010) when no executive will be in place. In such circumstances the Constitution provides that where necessary the executive functions will be carried out by the Chief Executive. Indeed this has been the position in previous years after the ordinary elections. However, in future, after the elections in May 2010, any need for this power to be exercised is less likely because the new law provides that the Leader remains in office until the AGM after the ordinary elections.
- 3.9 Members are asked to agree the changes set out in Appendix A (which are shown underlined and marked in the margin) on the basis that such changes come into effect on 9th May 2010.

Minor Consequential amendments unrelated to the changes in the executive arrangements.

- 3.10 There are additional unrelated changes which need to be made to the Constitution. These major changes are explained in Table B below.

TABLE B

	Constitution Reference	Matter to be changed	Reason	Page Number of Appendix B
1.	Part 2 Art 9, para 9.8	Changes to the provisions for a quorate Standards Committee	New Standards Committee Regulations.	3
2.	Part 2 Art 13, para 13.9	Officer code of conduct now in force	Change in Council arrangements.	4
3.	Part 2 Art 1 para 1.3 and Part 3 Standing Orders General Para 1	Other than Part 7 of the Constitution, paper copies of the Constitution will not be provided to members unless requested.	The Constitution is available to members on the Council Intranet.	2 & 5
4.	Part 4 Table A	Arrangements for an alternative officer to the Asst. Director Human Resources	In some circumstances the A.D (Human Resources) will not be able to act on pension matters due to conflict or absence.	6
5.	Part 5 Standards Committee, paras 7, 10, 11	Amendments by Statutory Instrument to overcome a drafting error in the previous Regulations.	New Statutory Instrument reference and change of name of regulatory body.	7 & 8
6.	Part 7 Planning Code of Conduct	Amendments to various aspects of the planning code, most particularly those relating to site visits, approaches, and call in powers. Also a reduction in the frequency of the review period from every year to once every 2 years.	Changes to reflect the recommendations in the annual review of the Code and changes recommended in the Local Government Association Guidance. These changes were considered by the Standards Committee in January 2010 and made under the	9-16

			Borough Solicitor's delegated powers.	
7.	Part 3 Contracts Standing Orders	The definition of low and medium value contracts has been altered, and the amendment reflects the new threshold.	E.U. thresholds for tendering contracts for supplies and services are periodically reviewed.	17

3.11 Members are asked to approve the amendments proposed and attached as Appendix B to this report. These changes are shown by being underlined and marked in the margin.

4.0 Financial Implications

4.1 There are no financial implications arising from this report.

5.0 Legal Implications

5.1 The legal issues are dealt with in the body of the report.

6.0 Diversity Implications

6.1 There are no diversity implications arising from this report.

Background Papers

Brent Constitution

Contact Officers

Should any person require any further information about the issues addressed in this report, please contact Kathy Robinson, Senior Solicitor, Borough Solicitor's Office on telephone number 020 8937 1368.

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