



Annual Council
11 July 2011

Report from the Director of Legal and Procurement

For Action

Wards Affected:
All

Changes to the Constitution

1.0 Summary

- 1.1 This report proposes three changes to the Council's Constitution: firstly the inclusion of a protocol on Call in of Executive decisions, secondly the inclusion of the new Code of Recommended Practice on Local Authority Publicity, and lastly some minor amendments in relation to Contract Standing Orders.

2.0 Recommendations

Members are asked to:

- 2.1 Agree to amend the Constitution to incorporate the changes to the Standing Orders relating to call in of Executive decisions as set out in **Appendix 1**.
- 2.2 Agree to amend the Constitution to replace the old Code of Recommended Practice on Local Authority Publicity with the new Code which is set out in **Appendix 2**.
- 2.3 Agree to amend the Constitution to incorporate the changes to Standing Orders relating to contracts as set out in **Appendix 3**.

3.0 Detail

Introduction

- 3.1 The Constitution is kept under review throughout the year to ensure that it complies with relevant legislation and that it operates effectively. Following the change in administration after the May 2010 elections a cross party Constitutional Working Group (CWG) was established, which included officer representation, to consider various aspects of the Council's decision making arrangements. The

proposed changes in relation to the call in procedure were discussed in detail at these meetings and have been 'piloted' for the last two months. The proposed change to the Code of Recommended Practice on Local Authority Publicity arises as a consequence of a change in the Code which is issued by central government. The proposed changes to Standing Orders relating to contracts are about strengthening the Council's contracts database, and execution of documents. Each change is discussed in detail below and members are asked to approve the changes as set out in the appendices and described below.

- 3.2 Following this report the Director of Legal and Procurement will update the electronic version of the Constitution available on the Council's intranet and internet sites to take account of the changes agreed by the Council.

Amendments to the Call in procedure

- 3.3 CWG has considered the operation of the call-in arrangements in light of a significant rise in the number of call-ins over the last year. Members of the CWG had earlier agreed that call-in should only be used as a means of last resort on issues of significance. CWG considered two ways in which call-in might be regulated; either by the introduction of a protocol agreed by all three political groups represented on the Council or by changing the threshold required to call-in decisions.
- 3.4 In arriving at a decision CWG recognised that there needed to be a balance between effectively holding the Executive to account and effective and efficient decision making. It was generally felt that the current call-in arrangements needed to be reviewed and that the operation of the Call-in Overview and Scrutiny Committee needed to be improved. It was therefore agreed that a protocol should be developed to provide a framework for call-in that would help ensure that call-in was used only when absolutely necessary and not as an information gathering exercise.
- 3.5 A draft protocol was submitted to a meeting of CWG and it was agreed that this should be trialled initially informally before being adopted by the Council for a formal trial period. The attached protocol has operated for the last two months during which there have been two meetings of the Executive and the decisions on one item have been called-in. The Council is now asked to adopt the protocol, attached as **Appendix 1**, for inclusion in Part 7 of the Constitution for a trial period of six months after which the CWG will review its operation. Also attached as part of **Appendix 1** are the consequent amendments to Standing Orders to reflect the existence of the protocol.
- 3.6 In agreeing the protocol, CWG were mindful of the importance of the flow of information to councillors by way of an effective Forward Plan and ensuring that the overview and scrutiny committees picked up the important decisions planned to be made so that effective pre-scrutiny could be carried out. It was agreed that all members should be sent an email link alerting them to the publication of the Forward Plan each month and that the work programmes for the overview and scrutiny committees should be regularly reviewed to ensure they pick up any important issues included in the Executive's work programme.

Amendments to Part 7 of the Constitution – Codes and Protocols

- 3.7 The Local Government Act 1986 section 2 states that ‘a local authority shall not publish any material which in whole or in part appears to be designed to affect public support for a political party’.

Section 4 of the Local Government Act 1986 provides that ‘the Secretary of State may issue one or more codes of recommended practice as regards the content, style, distribution and cost of local authority publicity, and such other related matters as he thinks appropriate and local authorities shall have regard to the provisions of any such code in coming to any decision on publicity’.

‘Publicity’ is widely defined and includes ‘any communication in whatever form, addressed to the public at large or a section of the public’.

The Act prohibits certain actions by the Council and must be adhered to. The Council is to ‘have regard’ to the Code.

- 3.8 The most recent Code of Recommended Practice on Local Authority Publicity (‘the Code’) was issued on 31st March 2011. It replaces the previous Code which was first issued in 1988 and then revised in 2001. The Code of Recommended Practice on Local Authority Publicity forms part of the Council’s Constitution and is included at Part 7 under the Codes and Protocols. The previous Code is now obsolete and the Council is required to have regard to the new Code in its dealing with publicity and other related matters. In addition, the Members’ Code of Conduct paragraph 6 requires that members must have regard to any applicable Local Authority Code of Publicity made under the Local Government Act 1986, and failure to do so may amount to breach of the Members’ Code of Conduct.
- 3.9 The new Code is based on 7 principles – that the publicity should be lawful, cost effective, even handed, appropriate, have regard to equality and diversity and be issued with care during periods of heightened sensitivity. The Code is similar to that previously issued in relation restrictions on use of Council resources for political publicity and publicity during election and referendum periods. Members will recall that during ‘purdah’ periods specific and detailed advice is provided in relation to publicity restrictions which in part draws on the Code. New elements of the Code include those relating to lobbying and local authority newspapers.
- 3.10 A Monitoring Officer advice note will be issued shortly in relation to aspects of the Code which directly affect Members.
- 3.11 Members are asked to agree that the new Code of Practice, attached as **Appendix 2**, replace the previous Code at Part 7 of the Constitution.

Amendments to Part 3 of the Constitution – Standing Orders

- 3.12 Amendments are being proposed to the Contract Standing Orders section of Standing Orders to reflect new practices in the provision of information to the Corporate Procurement Centre. The purpose of the amendment is to ensure that

the Council's Corporate Procurement Centre is notified of all Council's procurements exceeding £20,000 in value, so as to ensure that appropriate professional support is provided and to make sure that the Council's Contract Database is an accurate record of all the contracts above this value.

3.13 An amendment is also being proposed to the Sealing and Signing of Documents section of Standing Orders to allow for insurance contracts not to be executed as a deed, irrespective of value. This is because of the unusual nature of insurance contracts in that they are brought into existence by the issue of an insurance schedule and policy documents to the insured.

3.14 Accordingly Members are asked to approve the changes set out in **Appendix 3**.

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 on telephone number: 020 8937 1368, or email:kathy.robinson@brent.gov.uk.

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