

<b>Item No.</b> 8.1	<b>Classification:</b> Open	<b>Date:</b> 24 March 2010	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Constitutional Changes	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Communities, Law & Governance	

## RECOMMENDATIONS

That council assembly adopt the following constitutional changes, recommended to it by the constitutional steering panel:

### Annual and Local Elections 2010: Council Assembly Procedure Rules

1. That council assembly procedure rule 1.1 (notice and summons of meetings) be amended as follows for the May 2010 annual meeting of council assembly if parliamentary and local elections are held on the same day in 2010:

Add new rule 1.1 (1b) to read:

‘In the event that the parliamentary and local elections are held on the same day, the chief executive will give notice to the public of the time and place of any meeting in accordance with the access to information rules. At least five clear working days before the meeting, the chief executive will send a summons signed by him or her by post to all members of the council or leave it at their usual place of residence. ....’

Renumber the existing rule 1.1 (1) as 1.1 (1a).

2. That the amendment be applied to the annual meeting in 2010 only.

### Article 10: Designation of scrutiny officer

3. That Article 10 of the constitution be amended in accordance with the requirements of the Local Democracy, Economic Development and Construction Act 2009 by inserting a new section designating an officer as scrutiny officer to support the work of the overview and scrutiny committee. The detailed changes are set out in Appendix 1.

### Part 3M: Standards Committee - Politically restricted posts

4. That the roles and functions of the standards committee in relation to politically restricted posts be amended in clause 14 as follows:

**Insert** ", hearing appeals" after "granting" to read

"To consider the granting, hearing appeals and supervision of exemptions from political restrictions".

See paragraphs 23-26 of the report.

## Community Council Procedure Rules

5. That revised community council procedure rules, within Part 4 of the constitution, be adopted as set out in Appendix 2 (see paragraphs 27-33).
6. That as a consequence of the above recommendation a set of committee procedure rules be approved, by deleting sections and references to community councils in the current committee and community council procedure rules.

## Consequential changes

7. That officers be authorised to undertake any consequential and cross referencing changes arising from changes to the constitution.

## BACKGROUND INFORMATION

8. In October 2009 the constitutional steering panel considered a change to the constitution concerning notice for the annual meeting in May 2010 in the event of parliamentary and local elections taking place on the same day. The panel agreed to recommend this change to council assembly, which is to be considered on 24 March 2010 – the last date that it can be considered. At the October meeting a timetable for a review of procedure rules as they apply to community councils was agreed. The constitutional steering panel on 2 March 2010 considered a set of draft community council procedure rules, which are recommended for approval. The constitutional steering panel in March also considered a number of other statutory changes to the constitution that have come to officers' attention as a result of legislative changes. Recommended changes on these areas are included in this report. The constitutional steering panel decided to recommend the changes to council assembly on 24 March 2010 for approval.
9. The ongoing objectives for making changes to the constitution is to ensure that it is easily understood and user friendly. In order to achieve this, the constitutional steering panel has taken into account that the constitution should be:
  - **Accessible** to all those who need to use it to understand their rights and obligations under it.
  - **Efficient:** supporting effective decision-making so that the business of the council can be delivered in line with best practice on corporate governance.
  - **Inclusive:** so that decision-making is open and transparent and involves local communities.
10. All constitutional changes are considered by constitutional steering panel, which then recommends changes to council assembly. Changes to the constitution are generally agreed by council assembly, unless another body or individual is authorised to do so – see Article 1.15.

## KEY ISSUES FOR CONSIDERATION

### Introduction

11. The constitutional changes in this report do not constitute the full review, which will take place in May with the main focus on specific issues identified over the course of the year, including the impact of any government announcements.
12. The report sets out those elements which either have to be brought forward in March to meet statutory obligations, or which officers have been asked to bring forward in March by the CSP. Changes to the constitution are shown as follows:
  - Additions (shown as underlined);
  - Deletions (shown with a ~~strikethrough~~).
13. The key issues requiring consideration are set out below:
  - Annual and Local Elections 2010 – Council Assembly Procedure Rules
  - Article 10 – Designation of scrutiny officer
  - Part 3M: Standards Committee - Politically restricted posts
  - Community Council Procedure Rules
  - Consequential changes

### **Community impact statement**

14. There will be no direct impact on local people of adoption of these changes to the council's constitution. However, providing for wide involvement of those using the constitution, including the local community where relevant, will enable people to understand the role that they can play in the decision making of the council and how the council will safeguard high standards of conduct amongst members and officers. Any specific issues relevant to each constitutional change are set out in the relevant section below.

### **ANNUAL AND LOCAL ELECTIONS 2010**

15. At a meeting of the constitutional steering panel on 6 October 2009 the strategic director of communities, law & governance outlined plans for the parliamentary elections in 2010. She explained that there was one scenario that would required a change to the constitution. A change would be required if the parliamentary elections were called on the same day as the local election, Thursday 6 May 2010.
16. Should the two elections be held on the same day the returning officer has indicated that the count for the parliamentary elections would start on the Thursday evening and carry on into Friday morning and a separate count for the local elections would be held on Friday 7 May 2010.
17. Annual council is due to meet on Wednesday 19 May 2010 and in accordance with council assembly procedure rule 1.1 (1) (set out below), the summons for the meeting must be dispatched seven clear working days in advance of the meeting, normally this would be Friday 7 May 2010. This could potentially be the same day as the count in the scenario.

Council assembly procedure rule 1.1 (1) states:

The chief executive will give notice to the public of the time and place of any meeting in accordance with the access to information rules. At least seven clear working days before the meeting, the chief executive will send a

summons signed by him or her by post to all members of the council or leave it at their usual place of residence. ....’

18. The summons for the council assembly meeting cannot be issued until the count is complete. If the count for the local election is undertaken on Friday 7 May 2010, the membership of the council will not be confirmed until later on that day. Following the announcement of the local election results officers need to prepare agenda documentation, update systems and the membership lists of the council used by the post room to establish the members drop. These processes might not be complete until Tuesday 11 May 2010, which would be after the existing deadline for dispatch of the annual council agenda.
19. It is therefore suggested that council assembly dispatch be reduced to five clear working days for the 2010 annual meeting of council assembly. This constitutional change would not necessitate a reprinting of the constitution as it is a one off event.
20. The constitutional steering panel recommended that a report outlining the need for a constitutional change be submitted to council assembly.
21. The council is responsible for approving its procedures for conduct of meetings. It has been customary for Southwark to summons meetings of council assembly seven clear working days in advance of the meeting. However, schedule 12 of the Local Government Act 1972 allows for less than the seven clear working days for the public notice of meetings of a principal council (and of its committees and sub-committees).

#### **ARTICE 10 – DESIGNATION OF SCRUTINY OFFICER**

22. The Local Government Act 2000 (“the 2000 Act”) requires local authorities operating executive arrangements to have an overview and scrutiny committee to scrutinise decisions made. The Local Democracy, Economic Development and Construction Act 2009 strengthened these arrangements by inserting a new section into the 2000 Act to make it a requirement to designate an officer as scrutiny officer to support the work of the overview and scrutiny committee. The proposed changes to Article 10 reflect these changes and set out the functions of the scrutiny officer and list the restrictions on which officers cannot be designated by Southwark as scrutiny officer.

The constitutional steering panel recommended that the detailed changes set out in Appendix 1 be submitted to council assembly for approval.

#### **PART 3M: STANDARDS COMMITTEE - POLITICALLY RESTRICTED POSTS**

23. The Local Government and Housing Act 1989 requires every local authority to prepare and maintain a list of politically restricted posts and identifies three categories of post deemed to be politically restricted on the basis of one or more defined characteristics. Local government officers who are politically restricted may not stand for election or take part in a range of political activities.
24. One of these characteristics was posts paid at or above a certain level (currently equivalent to spinal point 44 £36,730). The Local Democracy, Economic Development and Construction Act 2009 removed this characteristic. The remaining characteristics are more subjective so a procedure to deal with request has been developed.

25. The responsibility for the granting of exemptions from political restriction rests with standards committees with effect from 1 April 2008 and this change clarifies role in hearing appeals in these cases.
26. The constitutional steering panel recommended that the following amendment to the roles and functions of the standards committee in clause 14.

#### Recommended constitutional change

**Insert** ", hearing appeals" after "granting" to read:

"To consider the granting, hearing appeals and supervision of exemptions from political restrictions".

### COMMUNITY COUNCIL PROCEDURE RULES

27. Community councils have a dual role of community engagement and local decision making. In December 2009 and February 2010 the community council chairs and vice-chairs meeting considered the implications of separating the committee and community council procedure rules and examined the likely impact on the rules and practice of community councils. Currently the business is governed by a comprehensive set of rules which are common to all meetings together with some specific to community councils. The rationale for reviewing this was that as area committees, community councils should be subject to similar rules on the governance and decision making but that they need to reflect the less formal environment in which they operate. Overall chairs and vice-chairs were supportive of creating a separate set of rules for community councils. It was felt that the separation might provide greater clarity for the management of community councils business and for members, public and officers.
28. Although community councils have a more informal approach to the conduct of some business, particular in relation to community engagement, they are still decision making bodies for many important decisions. Here compliance with good governance is critical.
29. The chairs and vice-chairs meeting on 11 February 2010 considered the following aspects of the community council meetings:
  - Interaction and discussion at meetings
  - Notice and summons of meetings and the fixing of dates a year in advance
  - Quorum for the meeting
  - Recording of meetings
  - Formal voting on decisions
  - The order of business
  - Community participation / formally public speaking
  - Public question time
  - Deputations.
30. Along side the above the chairs and vice-chairs meeting considered the following general observations:
  - a) The procedure rules provide a framework for managing business: this is

- useful as something to fall back on in event of queries/issues.
- b) Community councils are formally established meetings of the council. For decision making the statutory provisions relating to good governance need to be complied with to ensure decisions are intra vires. Examples include: quorum, notice, voting. However it is important the decision making requirements do not constrain the community engagement role.
  - c) Community councils operate with different degrees of formality. Creating a set of uniform community council procedure rules might not reflect the different approaches adopted by different community councils.
  - d) The position and role of the chair in facilitating the kind of meetings members wish is important, particularly as the chair has scope to interpret the rules, subject to consultation with the monitoring officer's representative. The chair is also able to use considerable discretion in the application of rules: an obvious example is in allowing members of the public to speak, which can only happen with the consent of the chair. At the same time this places an obligation on the chair to create the appropriate environment for informal interaction and discussion.
  - e) The community councils' protocol agreed in May 2009 has created a new document that underpins good practice for community councils.
  - f) There are some rules that could benefit from some updating in light of experience and development of community councils. One example is public questions.
  - g) Notwithstanding the above there are some areas that could be reviewed with a view to reflecting the flexibility in approaches e.g. the rules of debate.
31. There was a consensus that community councils would benefit from a distinct identity therefore a more simplified and more concise set of rules covering community councils has been drafted and is attached at Appendix 2. The draft rules are based on the current committee and community council procedure rules. All additions of new text are shown as underlined and all deletions are shown with a ~~strike through~~. The draft rules include:
- A new section on conduct so everyone is clear of expectations
  - An enhanced rule dealing with the powers of the chair
  - A new section on public engagement bringing together issues of public speaking, public questions and deputations
  - Simplified structure and numbering
  - Removal of unnecessary rules e.g. some of the more specific requirements about whether a public question should be in writing, detailed rules on debate following deputations
  - A redrafting of the rules of debate to allow meetings greater flexibility when to apply them.
32. These draft rules seek to balance flexibility to promote innovation and engagement with the different approaches whilst providing a clear framework for formal decision making.
33. The constitutional steering panel recommended that the detailed changes set out in Appendix 2 be submitted to council assembly for approval.

### **Community impact statement**

34. Community councils are important council bodies for community engagement and local decision making. Any clarity that can be introduced should benefit public participation and transparency in local decision making.

### **CONSEQUENTIAL CHANGES**

35. As a result of the changes suggested within this report officers will be required to update the constitution. Therefore council assembly is requested to authorise officers to undertake any necessary consequential changes.

### **OTHER IMPLICATIONS**

#### **Legal implications**

36. This comment advises council assembly of the legal procedure relating to changes to the council's constitution.
37. Section 37 of the Local Government Act 2000 requires the council to "prepare and keep up-to-date" a constitution. Statutory guidance from the Department for Communities and Local Government states that constitutions "should be drafted as a flexible document" but leaves it up to local authorities to determine how the constitution is to be changed. It is also recognised that council constitutions cannot cover every eventuality.
38. Article 1 (1.5) (a) of Southwark's constitution states that any changes to the constitution which can only be approved by council assembly will require the prior consideration of the proposal by the constitutional steering panel.
39. Council assembly may approve any amendment to the constitution where the issue in general has previously been considered by the constitutional steering panel. Further, there is a distinction between changes to the constitution which clarify existing roles and functions and those which raise completely new matters which have not been considered in accordance with Article 1.

#### **Resource implications**

40. Any changes to the constitution must be contained within the budget.
41. The constitution is produced in binder form with loose leaf pages and dividers. This means that any additional costs arising from the reproduction of small sections of the constitution are reduced compared to the reprinting of the whole constitution. Therefore, it is anticipated that the cost can be contained within existing budgets.

### **BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Southwark's Constitution.	Southwark Council, 160 Tooley Street, London SE1 2TZ	Lesley John 020 7525 7228
Community councils chairs and vice chairs meetings December 2009 and 11 February 2010 – Community	As above	Tim Murtagh 020 7525 7187

Council procedure rules reports		
Community Council Procedure Rules – Feedback from chairs and vice chairs	As above	Tim Murtagh 020 7525 7187

## APPENDICES

Appendix No.	Title
Appendix 1	Article 10 – Designation of scrutiny officer - Constitutional amendments
Appendix 2	Draft Community Council Procedure Rules

## AUDIT TRAIL

<b>Lead Officer</b>	Deborah Collins, Strategic Director of Communities, Law & Governance	
<b>Report Authors</b>	Ian Millichap, Constitutional Manager Lesley John, Constitutional Officer	
<b>Version</b>	Final	
<b>Dated</b>	10 March 2010	
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<b>Consultation with other officers / directorates / executive member</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Communities, Law & Governance	Yes	Incorporated
Finance Director	No	No
<b>Executive Member</b>	No	No
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