



**COUNCIL ASSEMBLY**

**(ANNUAL MEETING)**

**WEDNESDAY MAY 21 2008**

**SUPPLEMENTAL AGENDA No. 3**

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**5A. CONSTITUTIONAL REVIEW – ADDENDUM REPORT**

**1**

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<b>Item No.</b> 5A.	<b>Classification:</b> Open	<b>Date:</b> May 21 2008	<b>Meeting Name:</b> Council Assembly
<b>Report title:</b>		Constitutional Review – Addendum Report	
<b>Ward(s) or groups affected:</b>		All	
<b>From:</b>		Strategic Director of Legal and Democratic Services	

## RECOMMENDATIONS

1. That the additional information set out in this report be considered in conjunction with item 5 on the constitutional review on the main agenda, together with the following recommendations:
  - Recommendation 2A: Part 2 – Articles (*see paragraphs 4 - 7*)
  - Recommendation 4A: Part 3B – Executive roles and functions (*see paragraphs 8 - 9*)
  - Recommendation 12A: Council assembly procedure rules (*see paragraph 10*)
  - Recommendation 13A: Access to information procedure rules (*see paragraph 11*)
  - Recommendation 15A: Overview & scrutiny procedure rules (*see paragraph 12*)
  - Recommendation 16A: Contract standing orders (*see paragraphs 13 - 15*)
  - New Recommendation 20: Independent and co-opted members attendance at meetings (*see paragraphs 18 - 24*)

## BACKGROUND INFORMATION

### Comprehensive Constitutional Review 2008-09 - objectives

2. On July 19 2007 the constitutional steering panel (CSP) agreed the objectives and work programme for the constitutional review for 2008-09. The constitutional steering panel undertook the review during 2007-08. The recommendations of the panel are set out in item 5 on the main agenda circulated on May 9 2008.

## KEY ISSUES FOR CONSIDERATION

3. This addendum report provides supporting information to be considered as part of the review of the constitution. The draft constitution considered by the constitutional steering panel flagged up a number of areas where updates might be provided for the meeting. A copy of the current constitution with marked changes and comments has been circulated as Supplemental Agenda No. 1.

### Part 2 – Articles

4. In redrafting the articles, officers need to advise of some further specific issues on articles 1 and 7:

**Article 1.05 – Changes to the Constitution**

5. Article 1 in Supplemental Agenda No. 1. contained an outline draft for an updated clause on changes to the constitution based on what is required by statute to be decided by council assembly (e.g. establishment of council committees and the procedure rules) and what can be left to decision of others (e.g. includes the list of chief officers, decision making structure, protocols, glossary etc).
6. On May 7 2008 constitutional steering panel also agreed to recommend to council assembly that the list of appointments set out in Part 3B be maintained and updated by an officer of the council. It is recommended that the monitoring officer is the designated officer. Article 1.05 has been updated to reflect this change. Page 154 of Supplemental Agenda No. 1 sets out in appendix 1 to the council assembly procedure rules the “Protocol governing discussion in council assembly on investigations and rulings of the Standards Board, standards committees and adjudication panels”. A comment explains that this section is to be updated to bring it in line with the new arrangements for hearing complaints through the local filter. To allow the appendix to be updated, officers have suggested that in future this protocol be maintained and published by the monitoring officer. Article 1.05 is set out in full below:

**1.05 Changes to the constitution**

- (a) Subject to (b) below, any changes to the constitution which can only be approved by the council assembly will require the prior consideration of the proposal by the constitutional steering panel.
- (b) The constitution and its appendices will be changed as follows:

Part	Title	Changes by:
<b>1.</b>	<b>Introduction</b>	Agreed by council assembly, subsequently updated by the monitoring officer as necessary (see article 16.03). Changes notified to all members by monitoring officer.
	Decision making structure	Maintained and published by the monitoring officer.
<b>2.</b>	<b>Articles</b>	Agreed by council assembly. Exception – In article 10.02, head of paid service to determine and publicise a description of overall departmental structure showing the management structure.
<b>3.</b>	<b>Who takes decisions?</b>	Agreed by council assembly. Exceptions – Monitoring officer to: (1) update the details of executive members; and (2) maintain Part 3S: Appointments to outside bodies, as required.
<b>4.</b>	<b>Procedure rules</b>	
	Access to information	Agreed by council assembly.
	Budget & policy framework	Agreed by council assembly.
	Council assembly	Agreed by council assembly.

Part	Title	Changes by:
		Exception – Appendix 1 on “Protocol governing discussion the discussions on investigations and rulings of the Standards Board, standards committees and adjudication panels” - Maintained and published by the monitoring officer. <i>(Note: This section is to be updated to bring it in line with the new arrangements for hearing complaints through the local filter).</i>
	Committee & community council	Agreed by council assembly.
	Executive	Agreed by council assembly.
	Overview and Scrutiny	Agreed by council assembly.
	Contract standing orders (CSOs)	Agreed by council assembly, with minor changes (as defined in the CSOs) being made by the monitoring officer, after consultation with the finance director. Changes notified to all members by monitoring officer.
	Financial standing orders (FSOs)	Agreed by council assembly, with minor changes (as defined in the FSOs) being made by the finance director, after consultation with the monitoring officer. Changes notified to all members by monitoring officer.
	Officer employment	Agreed by council assembly.
<b>5.</b>	<b>Codes</b>	
	Code of conduct	Agreed by council assembly.
<b>6.</b>	<b>Protocols</b>	
	Member and officer	Agreed by council assembly. <i>Note: Currently under review.</i>
	Communications	Agreed by council assembly. <i>Note: Currently under review.</i>
	Members’ allowances scheme	Agreed by council assembly.
<b>7.</b>	<b>Other information</b>	
	List of councillors	Maintained and published by the monitoring officer.
	Overall departmental structure showing the management structure.	Determined and published by the chief executive (Article 10.02).
	Glossary	Maintained and published by the monitoring officer.
	Index	Maintained and published by the monitoring officer.
	Anything else in this section	Background information on constitution, decision making including flow charts. Maintained and published by the monitoring officer.

### Article 7 – The Executive

7. The main report stated that a new rule to give the leader discretion to make changes to the membership of executive committees during the course of the municipal year, using a notification process similar to that for replacing executive members or changing their portfolios, would be included in this article. At CSP on May 7 there was some discussion about a Labour Group proposal to restrict this discretion to the existing executive committee i.e. the major projects board, and make provision for council assembly to agree to

extend the provision to any new executive committee established in the future. The whips undertook to consult with their respective groups on this proposal.

#### **Recommendation 2A: Part 2 – Articles**

That the updated Article 1.05 be agreed (see table above).

### **Part 3 – Responsibility for Functions (renamed ‘Who takes decisions?’)**

#### **Part 3B – Executive Roles and Functions**

8. On page 58 of Supplemental Agenda No. 1, officer indicated that they were continuing to review the list of executive plans and strategies and would provide a further update for the meeting if necessary. The Local Authorities (Functions and Responsibilities) England Regulations 2000, sets out those plans and strategies which cannot be the responsibility of the executive e.g. policy framework. In respect of any other plans or strategy (i.e. those not specified in Schedule 3(policy frame work) or Regulation 4(1)(b) (plans and strategies for the control of the council's borrowing or capital expenditure), Schedule 4 of the Regulations lists a number of circumstances when the function of the executive cannot be exercised by them. These include situations when council assembly determines that the adoption or approval should be its responsibility instead of the executive. When considering the updated list of other plans and strategies in the table below, council assembly could decide to make the decision itself instead of the executive.
9. This section of the report sets out an updated list for approval. The main changes are:
  - Deletion of health and social care plan, quality protects management action plan and regeneration strategy.
  - That ‘Medium term financial strategy’ be amended to say ‘Medium term resources strategy, including housing revenue account’.
  - Addition of supplementary planning documents and housing renewal strategy.

The revised list is set out in full below:

### Plans and strategies to be approved by the executive

- ~~Area based regeneration plans~~
- Asset management plan
- Local Area Agreement (LAA)
- ~~Departmental performance plans~~
- ~~European strategy~~
- Food law enforcement plan
- Green travel plan
- ~~Health and social care strategy~~
- Plans and strategies which comprise the housing investment programme`
- Medium term resources financial strategy (including the housing revenue account)
- Capital strategy and programme
- ~~Post inspection action plan~~
- ~~Quality protects management action plan~~
- ~~Regeneration strategy~~
- Housing renewal policy
- Renewal areas strategies
- Road safety plan
- Schemes for financing schools
- Special education needs action plan
- Waste strategy
- Youth strategy
- Housing strategy
- Statement of community involvement
- Supplementary planning documents
- Employment strategy
- Enterprise strategy

Note: This list is not exhaustive.

#### **Recommendation 4A – Part 3B: Executive Roles and Functions**

1. That the updated list of plans and strategies to be approved by the executive set out in Part 3B be agreed (see table above).
2. That the Members consider whether the monitoring officer should be authorised to update the list as and when required.

### Part 4 – Rules

#### **Council Assembly Procedure Rules**

10. The current constitution includes a procedure rule on the “Withdrawal of motions and amendments”. This is currently rule 1.12(19). Supplemental

Agenda No. 1 flagged up the need to clarify the wording of this rule because of some duplication and it does not cover the situation where the mover wishes to withdraw a motion or amendment before it has been moved. The Keeling (illustrative) version of the constitution will include an amended wording on the "Withdrawal of motions and amendments". The revised rule is set out below:

#### **Withdrawal of a motion or amendment**

1. If the motion or amendment has been moved: A member may withdraw a motion or amendment which he/she has moved with the consent of both the meeting and the seconder. The meeting's consent will be signified without discussion. No member may speak on the motion after the mover has asked permission to withdraw it unless permission is refused. No further debate shall take place on a motion or amendment once it has been withdrawn.
2. If it has not been moved. If a motion or amendment has not yet been moved, it may be withdrawn by the mover. The consent of the meeting is not required. No debate shall take place on a motion or amendment once it has been withdrawn.

Note: Part 1 is unchanged. Part 2 is a new clause and reflects current advice.

#### **Recommendation 12 – Council Assembly Procedure Rules**

That the changes to clause 1.12(19) set out above in line with the principles recommended by CSP be agreed.

#### **Access to information procedure rules**

11. There is one minor change to the protocol on key decisions. The main report referred to a block of decisions which, although not deemed to be key decisions, are still deemed to have significance and are included in the forward plan. It recommended the inclusion of "Reports on corporate budget performance and monitoring" as they are already included in the forward plan. Officers are now recommending that the title is slightly amended so it is clearer. It will read:

- "Reports on corporate budget ~~performance and~~ monitoring and performance"

#### **Recommendation 13A – Access to Information Procedure Rules**

That the minor change to the access to information procedure rules outlined above be agreed.

#### **Overview & Scrutiny Procedure Rules**

12. Officers are recommending a consequential change so the position on reserve members serving on scrutiny committees has been clarified. The current procedure rules allow the same number of reserve places as members on overview & scrutiny committee and one less reserve places on each of the sub-

committees (subject to a minimum of one reserve place). In order to preserve these arrangements it is recommended that rule number 2.5 be amended:

“Each political group is entitled to nominate reserve members to overview & scrutiny committee and its sub-committees. The number of reserve member seats that each political group is entitled to nominate is equal to the same number of places as each group holds on overview & scrutiny committee and one fewer than the number of places each group holds on each of the sub-committees, subject to a minimum of one.”

#### **Recommendation 15A – Overview & Scrutiny Procedure Rules**

That the revised overview & scrutiny procedure rule 2.5 above be agreed see appendix 9).

#### **Contract Standing Orders**

13. A late consequential change by officers to correct a figure from £74,999 to £75,000 in the contract standing orders (CSOs) has not been included in the constitutional review report (item 5 on council assembly's agenda for May 21 2008).
14. The CSOs were amended at a late stage and the version in the Supplemental Agenda No. 1 is correct – this states CSO 5.2 covers contracts from £5,000 to £75,000 (and not £74,999). This amendment was necessary to remove an ambiguity about contracts with an estimated value of exactly £75,000.
15. However members should note that appendix 12 of the main report needs to be amended in line with this – so that paragraph 13 should say "Contracts from £5,000 to £75,000..." and not "Contracts from £5,000 to £74,999..."

#### **Recommendation 16A – CSO's**

That the minor change to Current Standing Orders set out above be agreed.

#### **Part 6 – Protocols**

##### Member officer protocol (together with the communication protocol)

16. The main report explained that the member officer protocol (together with the communication protocol), are currently under review and detailed proposals will be reported to a future meeting.
17. At CSP on May 7, officers reported that one issue that they would be seeking some legal advice on was whether this matter needs to be agreed by council assembly or as a matter of local choice it could be delegated to a committee or relevant officer. The outcome might require a change to Article 1.05 on changes to the constitution. In the interim the status quo will prevail. The report back on the protocols will be made initially to standards committee who are responsible for advising council assembly on any revisions. Any constitutional issues arising would be considered by CSP.

Independent and co-opted members' attendance at meetings

18. CSP on April 22 2008 asked officers to look at the issue of independent member attendance at standards committee. Officers have sought advice on how best to effect this change and this is set out below. This also looks at the application of any change to scrutiny co-opted members as this would provide a consistent approach to all non-councillors on committees.
19. The Local Authorities (Members Allowance) (England) Regulations 2003 specify that the amount of a co-optee allowance may be withheld where the member is suspended or partially suspended.
20. Under section 85(1) of the Local Government Act 1972 (LGA 1972) if a member of a local authority fails to attend a meeting of the council throughout a period of six consecutive months from the date of his/her last attendance, he shall, unless the absence is authorised by the council, cease to be a member of the authority.
21. The above provision does not specify that it is also applicable to co-optees. However, for the purposes of the local authority conduct regime, contained in Part 111 of the Local Government Act 2000 (LGA 2000) and secondary legislation made under it, a co-optee member in relation to a London borough council means a person who is not a member of the authority but who is a member of a committee or sub-committee of the authority (section 49(7)(a)). The conduct regime applies to co-opted members who have the same duty as an elected member to comply with the code of conduct. Under section 83(11)(a), a person who is disqualified under Part 111 of the LGA 2000 will also be disqualified from being or becoming a member of any committee or sub-committee.
22. Section 104 of the LGA 1972 contains a similar provision to section 83(11)(a) above and states that a person who is disqualified from being an elected or a member of a local authority shall be disqualified for being a member of a committee including a sub-committee.
23. It appears, therefore, that by analogy with the conduct regime in the 2000 Act, and the provisions of section 104 LGA 1972, the statutory intention behind the provisions should be taken to be that the rules on disqualification apply equally to co-opted members and elected members.
24. The best way to implement this change is to add a clause into the committee and community council procedure rules, with a corresponding cross referencing change to the overview and scrutiny procedure rules and members' allowance scheme.

**Recommendation 20 – Independent and co-opted members attendance at meetings**

Committee and Community Council Procedure Rules – Add new clause 2.2(3):

“In the event that an independent member of the standards committee or co-opted member does not attend a meeting of the committee on which

**Recommendation 20 – Independent and co-opted members attendance at meetings**

they serve for a period of six consecutive months, without the approval of the council, they shall cease to be a member of the authority".

Overview and Scrutiny Procedure Rules – Add new clause 3.1:

"In the event that a co-opted member does not attend a meeting of the committee on which they serve for a period of six consecutive months, without the approval of the council, they shall cease to be a member of the authority".

Consequential change to Members' Allowance Scheme – Add footnote at end of clause 27 (on when allowances are payable):

"In the event that an independent member of the standards committee or co-opted member does not attend a meeting of the committee on which they serve for a period of six consecutive months, without the approval of the council, they shall cease to be a member of the authority and payment of the allowance will automatically stop".

**Community Impact Statement**

25. These are set out in the main report.

**REASON FOR URGENCY**

26. This report contains additional advice that was not available at the time of the agenda despatch when item 5 on the main agenda was circulated. Item 5 flagged up a number of areas that would be subject to further report back. The advice in this report relates to recommendations on constitutional changes set out in the main report and Supplemental Agenda No. 1 that are due to be considered on May 21 2008.

**REASON FOR LATENESS**

27. At the time of the agenda despatch some additional officer advice had been sought but was not yet available. Some of the changes set out in this report arose from consequential changes made to the constitution when preparing the Keeling (illustrative) version.

**BACKGROUND DOCUMENTS**

<b>Background Papers</b>	<b>Held At</b>	<b>Contact</b>
Reports and Minutes of the Constitutional Steering Panel	Constitutional Team, Town Hall, Peckham Road, London SE5 8UB	Lesley John 020 7525 7228
Council Assembly (Annual Meeting) Agenda – May 21 2008	Constitutional Team, Town Hall, Peckham Road, London SE5 8UB	Lesley John 020 7525 7228

**AUDIT TRAIL**

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<b>Report Author</b>	Ian Millichap, Constitutional Team Manager	
<b>Version</b>	Final	
<b>Dated</b>	May 16 2008	
<b>Key Decision?</b>	No	
<b>CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / EXECUTIVE MEMBER</b>		
<b>Officer Title</b>	<b>Comments Sought</b>	<b>Comments included</b>
Strategic Director of Legal and Democratic Services	Lead officer	Yes
Finance Director	No	No
<b>Executive Member</b>	N/a	N/a
<b>Date final report sent to Constitutional/Community Council/Scrutiny Team</b>		May 16 2008

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COUNCIL ASSEMBLY (ANNUAL MEETING) – SUPPLEMENTAL**

**MUNICIPAL YEAR 2008-09**

**NOTE:** Original held by Constitutional Team; all amendments/queries to  
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