

Item No. 8.3	Classification: Open	Date: 10 July 2013	Meeting Name: Council Assembly
Report title:		Constitutional Review 2013/14	
Ward(s) or groups affected:		All	
From:		Proper Constitutional Officer	

RECOMMENDATIONS

That the following constitutional changes be adopted by council assembly, as recommended by the constitutional steering panel:

PART 2 - ARTICLES

Overview and scrutiny function

1. That council assembly notes that consequential changes are required to the constitution following the introduction of the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013.
2. That the revised Articles attached at Appendix A and the revised Overview and Scrutiny procedure rules attached at Appendix B, be agreed (see paragraphs 12 - 27).

PART 3H - COMMUNITY COUNCILS

Section 106 release – consultation with community councils

3. That the proposal to streamline the consultation process on the release of Section 106 monies over £100,000 be agreed (see paragraphs 28 - 36).

PART 4 - RULES

Access to information procedures rules and cabinet procedures rules

4. That council assembly notes that consequential changes are required to the constitution following the introduction of The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
5. That the revised access to information procedure rules attached at Appendix C and the revised cabinet procedure rules attached at Appendix D, be agreed (see paragraphs 37 - 51).

PART 6 – PROTOCOLS

Member and officer protocol and communications protocol

6. That the revised member and officer protocol at Appendix E be agreed (see paragraphs 52 - 62).

7. That the marked up copy of the proposed communication protocol as set out in Appendix F, be agreed.

CONSEQUENTIAL CHANGES

8. 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.

BACKGROUND INFORMATION

9. This report covers constitutional areas and a number of other statutory changes that had come to officers' attention that form a periodic review of the constitution.
10. The objective for making changes to the constitution is to ensure that it is easily understood and user friendly. In order to achieve this, council assembly should take 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.
11. 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. All the changes were considered by the constitutional steering panel at its meeting on 17 June 2013.

KEY ISSUES FOR CONSIDERATION

PART 2: ARTICLES – OVERVIEW AND SCRUTINY FUNCTION

12. Local authorities in England operating executive arrangements, such as Southwark, are required to make provision for one or more overview and scrutiny committees ("OSCs"): [section 9F Local Government Act 2000].
13. Section 244 National Health Service Act 2006 (as initially drafted) enabled the Secretary of State to make regulations relating the scrutiny of the health service by OSCs.
14. Regulations under section 244 were made in 2002 (Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Regulations 2002) ("the 2002 Regulations"), as amended in 2004 (see the Local Authority (Overview and Scrutiny Committees Health Scrutiny Functions) Amendment Regulations 2004) ("the 2004 Regulations").
15. The Health and Social Care Act 2012 ("the 2012 Act") has conferred functions in relation to public health to principal local authorities, and has provided for the

establishment of health and wellbeing boards (“HWBs”) by each principal local authority, including Southwark. HWBs are committees of the council for the purposes of the Local Government Act 1972, and by virtue of section 196 of the 2012 Act, a local authority may arrange for the discharge of any of its functions through its HWB. However, section 196(4) of the 2012 Act prevents the discharge of a local authority’s health scrutiny functions through the HWB.

16. New regulations made under the 2012 Act, the Local Authority (Public Health, Health and Wellbeing Boards and Health Scrutiny) Regulations 2013 (“the 2013 Regulations”), revoke the 2002 and 2004 Regulations, replacing them (in Part IV) with a new set of regulations in relation to health scrutiny.
17. The bodies which can be subjected to scrutiny have changed as the institutions of the NHS have been reformed. The 2002 Regulations related to “local NHS bodies” (meaning primary care trusts, strategic health authorities and NHS trusts). The 2013 Regulations relate to “relevant NHS bodies” (meaning the NHS commissioning board, clinical commissioning groups and the NHS trusts) and “relevant health service providers” (health service providers besides NHS trusts). The 2013 Regulations use the term “responsible person” to refer to both “relevant NHS bodies” and “relevant health service providers”.

Proposed changes to the articles

18. The power to “review and scrutinise any matter relating to the planning, provision and operation” (hereafter “the scrutiny function”) of the health service is essentially unchanged in the 2013 Regulations, except that the 2013 Regulations confers that power on the local authority, and not on the OSC. However, the authority can discharge its scrutiny function through an OSC.
19. Therefore the new second paragraph delegates the function to the overview and scrutiny committee. The regulation specifically state that where a NHS body or health service provider consults the council and another authority or authorities about a proposal for a substantial development of or variation to the health service affecting more than one council’s area a joint overview and scrutiny committee must consider the proposals. The new third paragraph delegates the operation of this to the overview and scrutiny committee.
20. The changes to detail the new function are set out under paragraph 5.3.
21. The change in Article 5.1 is required due to the amendment by the Localism Act 2011 of section 21 Local Government Act 2000. The requirement on English local authorities operating an executive system to make provision for overview and scrutiny now derives from section 9F of the Act (as amended by Localism Act 2011).
22. The changes are set out in Appendix A.

Overview and scrutiny procedure rules

23. The new arrangements for joint committees are detailed in a new paragraph 7. All subsequent paragraphs will need to be renumbered.
24. In paragraph 17 a new clause is added to allow OSC to call a deputy cabinet member to attend to review their performance in deputy role.

25. An amendment in paragraph 21 is to make clearer when a key decision made by an officer can be called in.
26. The changes are set out in Appendix B.
27. In respect of community impact, effective scrutiny of health issues will benefit the whole of Southwark.

PART 3H - COMMUNITY COUNCILS

Section 106 release – consultation with community councils

28. Under Part 3H of the council's constitution, community councils comment to planning committee or its sub-committees on the proposed expenditure of funds over £100,000 secured through legal agreements under section 106 (S106). It is recommended that this process is streamlined by consulting members of the relevant community council over email before reports are submitted to planning committee or its sub-committees. In the event that members of the community council feel a report should be considered at a community council such a request can be agreed by the relevant chair of the community council.
29. As this is a function reserved to community council in the constitution, chairs and vice-chairs were consulted on the proposals and their views were reported to the constitutional steering panel on 17 June 2013.
30. When approving allocations of S106 funds a report is required and the S106 protocol approved by the chief executive in 2009 requires different sign-offs depending upon the amount:
 - £1 to £34,999, report with S106 manager concurrent and delegated approval.
 - £35,000 to £99,999 report with S106 manager and finance concurrents, 2 week consultation with chair and vice chair of the community council. Delegated approval.
 - £100,000+ report with S106 manager, finance and legal concurrents, community council meeting consultation. Planning committee approval.
31. The constitution also requires consultation with the community council on S106 spend over £100,000 and these have historically been considered at planning community councils.
32. The proposal is to digitalise the process for spend over £100,000 so that community council members can comment on proposals without reports being required to go to community council meetings, reports would be emailed to the community council members for comments. This would allow members of the community council to ask that it be heard at the next meeting or that they can give their comments by e-mail.
33. As the council is seeking to spend more S106 funds across the borough particularly local projects this would enable more S106 reports to be considered without reports overloading agendas, and allowing more time at meetings to discuss other local issues. The S106 reports are already consuming a

significant part of agendas, particularly in the north of the borough.

34. The public will still be consulted as part of the planning committee consultation and be able to input at that stage. Members will retain the right to ask for any report to be heard at a community council meeting – these requests will be directed to the head of development management in a similar way to requesting planning applications are heard by a planning committee or sub-committee.
35. The cabinet member for regeneration and corporate strategy has been briefed and is supportive of the proposed digitalisation subject to agreement with chairs and vice chairs. The proposal was raised with the chairs and vice-chairs at their March meeting and they were in support of the change. Therefore changes to the constitution to clause 1 of the matters reserved to the community council are suggested along the following lines:

To comment to planning committee and its sub-committees on the proposed expenditure of funds over £100,000 secured through legal agreements under section 106 of the Town and County Planning Act 1990, or any previous legislation where the site to which the agreement relates and the site(s) where expenditure will be incurred are in the same community council area, when requested by two or more councillors in the relevant community council area subject to the agreement of the chair of the community council in consultation with the appropriate chief officer.

Note: Additional wording indicated by underlining.

36. In respect of community impact, S106 release reports do not attract the same public interest as other items at community council meetings. Member of the public would still be able to make representations on reports when they are considered by the planning

PART 4 – RULES

Access to information procedures rules and cabinet procedures rules

37. On 15 August 2012 the Secretary of State for Communities and Local Government published The Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012. These regulations came into force on 10 September 2012 and revoked previous access to information regulations. The regulations have resulted in some changes to executive decision making which require a review of the access to information procedure rules.
38. The regulations also required some changes to executive decision making process such as changes to the forward plan, background documents and publication of important individual officer decisions. The access to information procedure rules need updating to reflect the new arrangements.
39. The regulations apply to executive arrangements only – covering cabinet, some decision making at community councils and individual decision making (by cabinet members and chief officers). The regulations do not apply to other meetings of the council.

Closed meetings of cabinet

40. Some of the key changes introduced by the regulations relate to private meetings of cabinet, or what is known in Southwark as the closed part of the meeting. Under the regulations, if cabinet intend to meet in closed session for all or part of the meeting then 28 clear days' notice of the intention and reasons to hold a closed meeting must be given so that people can make representations to request the meeting be held in public. A further 5 clear days notice must be given, including a statement of why the meeting will continue to be closed, if representations have been received. These notices have been incorporated into the forward plan and the cabinet agenda. In the event that 28 clear days' notice of a closed cabinet meeting is not given then an urgency procedure can be followed whereby the chair of overview and scrutiny committee or the Mayor if the chair is unable to act may give permission for cabinet to meet in closed session if he or she is satisfied the matter is urgent and cannot be reasonably deferred. A notice must be available for inspection at the council's offices and online in the event urgency procedures are followed. These changes are reflected in the proposed access to information procedure rules. These procedures only apply to meetings where executive decisions are taken i.e. cabinet and its sub-committees and community councils. It is unlikely that community councils will be required to hold closed meetings due to the nature of the decisions they take. The changes are set out in Appendix C.

Publicity in connection with key decisions/forward plan

41. Previously local authorities were required to publish a forward plan which gave notice of key decisions expected to be taken in a four month period. The forward plan was required to be published 14 days before the date which the plan came into effect. The minimum notice for a key decision is now 28 clear days. The forward plan is now published 28 clear days before the start of each month, so the forward plan to cover decisions from 1 January 2013 was published on 3 December 2012. The new requirements for the forward plan have been included in Appendix D.
42. The plan incorporates the 28 clear days' notice of a closed cabinet meeting (referred to in paragraph 8 above). In addition the plan is now required to list those documents to be submitted to the decision maker for consideration before a key decision is made – this has also been incorporated.

General exception and special urgency

43. The processes when a key decision is not on the forward plan or is urgent and five clear days notice remain the same. However there is now a requirement to publish a notice with the reasons why the item was not on the forward plan and/or is urgent. The current general exception notice fulfils these requirements and these are published on the council's website. The notices are compiled by the proper officer – who would be the proper constitutional officer.

Background documents

44. There is also a requirement that background documents, listed in reports for an executive meeting, are made available on the council's website. This includes cabinet and community councils when considering decisions relating to executive functions. Prior to the regulations, background documents were only

required to be listed and available for inspection. They include previously published council reports, government or other external publications or internal documents: business plans, correspondence, policies, etc. An address or contact is listed so that report authors can be contacted to inspect background documents.

45. The definition of background documents remain the same – that is documents that relate to the subject matter of the report and disclose any facts or matters on which the report or an important part of the report is based and were relied on to a material extent in preparing the report. The definition does not include published works. These requirements have been addressed in proposed access to information rules and amended cabinet report template. Exempt documents do not need to be listed.

Publication of executive decisions

46. As a result of the regulations, some non-key decisions taken by chief officers will be published on the council's website; this will include decisions which are sufficiently important and/or sensitive to be publicly available. Non-key decisions will also be subject to call-in, if published. The only executive decisions which won't be published are those taken by officers as follows:
- A decision which affects only particular individuals as opposed to the public generally;
 - A decision which is merely administrative in nature with only a remote connection with an executive function;
 - A decision which is so minor or routine or is otherwise one which would reasonably be considered to be of no interest to a reasonable member of the public.
47. As with all areas of delegation, the chief officer can also consider referring the decision to the appropriate cabinet member, or to full cabinet, if the chief officer considers there is significant public interest. This requirement does not apply to administrative or routine decisions or issues relating to individual(s). There are no changes to the strong leader delegation of executive functions.
48. An additional clause has been included into the cabinet procedure rules to extend individual decision making from cabinet members to chief officers (see Appendix D). The decisions will be recorded on a record of decision sheet similar to that used by individual cabinet members. The format will have some minor changes to reflect specific requirements in the regulations on how the officer decisions are to be recorded.

Cabinet procedure rules – recording, filming and photography at cabinet meeting

49. The regulations require a clause to be included on recording, filming and photography at cabinet meetings. Following consultation, the leader of the council has requested that a rule similar to the council assembly procedure rule on this subject be inserted into the cabinet procedure rules. A new clause is set out in Appendix D.

50. There are some resource implications associated with the publishing of officer executive decisions. The key decisions are already logged on the council's decision making system when the forward plan is generated, but will require the whole decision process to be executed on-line in future. There will also be some additional workload on departmental officers who will be required to prepare reports in accordance with the corporate templates and to provide open and closed reports in the case of exempt information. There are no specific additional resource requirements associated with the adoption of the other changes.
51. In respect of community impact, the press release from the Department for Communities and Local Government (DCLG) about the new regulations states the purpose is to introduce greater openness and transparency in executive decision making.

PART 6 – PROTOCOLS

Member and officer protocol and communications protocol

52. The member and officer protocol and communication protocol were introduced in May 2004.
53. The standards committee have a role of advising the council on the revision of these protocols. The protocols are further considered by the constitutional steering panel and agreed by council assembly.
54. At their meeting of 24 April 2013 the standards committee considered the member and officer protocol and resolved that further clarification was required.
55. The standards committee considered the protocol again on 11 June 2013 and referred its decisions to CSP on 17 June 2013. CSP concurred with the standards committee decisions and the recommendations outlined below stand referred to council assembly for agreement.
56. The member and officer protocol paragraphs 50 and 51 is being amended to reflect the changes in democratic services role and consequential amendments on room booking following the commissioning of Queens Road.
57. The member and officer protocol paragraph 35 is being amended to better ensure chief officers are aware of visits of members to services. This includes the further clarification requested by members at the previous meeting.
58. Paragraph 33 is being amended to deal with situations where the partner of a member receives a gift or hospitality as a result of being their partner.
59. Other changes have been made to reflect changes on the Source.
60. A marked up copy of the proposed protocol is attached as Appendix G.

Communications protocol

61. For completeness a marked up copy of the proposed communications protocol is attached as Appendix H.
62. In respect of community impact, good relationships between members and

officers are very important in aiding the decision-making process and helping to boost public confidence in the council. A protocol that defines each party's responsibilities creates certainty, which in turn leads to better decision-making and a more satisfied customer.

Resource implications

63. There are some resource implications associated with the changes outlined above but these can be dealt with within existing budgets.
64. 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.

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

65. Any legal issues are outlined in the body of the report.

BACKGROUND DOCUMENTS

Background Papers	Held At	Contact
Southwark Constitution http://www.southwark.gov.uk/info/10058/about_southwark_council/375/councils_constitution	160 Tooley Street, London SE1 2QH	Constitutional Team constitutional.team@southwark.gov.uk 020 7525 7228
Community council chairs and vice chairs meeting minutes 20 March 2013	160 Tooley Street, London SE1 2QH	Alexa Coates Constitutional Team 020 7525 7385
Code of recommended practice on local authority publicity	160 Tooley Street, London SE1 2QH	Norman Coombe Legal Services 020 7525 7678

APPENDICES

Appendix	Title
Appendix A	Part 2: Articles - Proposed changes
Appendix B	Part 4: Rules - Revised OSC procedure rules
Appendix C	Part 4: Rules - Revised access to information rules
Appendix D	Part 4: Rules - Revised cabinet procedure rules
Appendix E	Part 6: Protocols – Revised member and officer protocol
Appendix F	Part 6: Protocols – Revised communication protocol

AUDIT TRAIL

Lead Officer	Alexa Coates, Principal Constitutional Officer	
Report Author	Lesley John, Constitutional Officer	
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CONSULTATION WITH OTHER OFFICERS / DIRECTORATES / CABINET MEMBER		
Officer Title	Comments sought	Comments included
Director of Legal Services	Yes	Incorporated in the report
Strategic Director of Finance and Corporate Strategy	Yes	Incorporated in the report
Cabinet Member	No	No
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