

Item No. 8.2	Classification: Open	Date: 16 October 2013	Meeting Name: Council Assembly
Report title:		Constitutional Review 2013/14	
Ward(s) or groups affected:		All	
From:		Proper Constitutional Officer	

RECOMMENDATIONS

That council assembly consider the recommendations of the constitutional steering panel regarding the following changes to the council's constitution:

PART 4: CONTRACT STANDING ORDERS

1. That the changes to contract standing orders as described in paragraphs 10 - 13 and as set out in full in Appendix 1 of this report be agreed.

PART 4: FINANCIAL STANDING ORDERS

2. That the changes to financial standing orders as described in paragraphs 14 - 16 and as set out in full in Appendix 2 of this report be agreed.

PART 3G: LICENSING COMMITTEE

3. That the changes to the licensing committee's terms of reference as described in paragraphs 17 - 24 and as set out in full in Appendix 3 of this report be agreed.

PART 3K: AUDIT AND GOVERNANCE COMMITTEE

4. That the changes to the audit and governance committee's terms of reference as described in paragraphs 25 – 28 and as set out in full in Appendix 4 of this report be agreed.

MEMBERS ALLOWANCE SCHEME

5. That the members' allowance scheme is adopted for 2013-14 (see paragraphs 29 - 32 and Appendix 5).

CONSEQUENTIAL CHANGES

6. 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

7. This report covers constitutional areas and a number of other statutory and regulatory changes that had come to officers' attention that are relevant to this review of the constitution.
8. The central 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.
9. All the constitutional changes outlined in this report were considered by the constitutional steering panel on 4 September 2013, and stand referred as a recommendation 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

PART 4: CONTRACT STANDING ORDERS

General advice on changes to contract standing orders

10. The contract standing orders (CSOs) are reviewed each year to reflect any statutory or procedural changes. Article 1 of the constitution provides that minor changes may be made by the monitoring officer and chief finance officer to CSOs, but all other changes must be agreed by council assembly. It should be noted that other changes which may be agreed to the constitution by council assembly may have an impact on CSOs which would need to be picked up subsequently.
11. A comparison of this council's contract standing orders with those of other London boroughs has commenced, in particular in relation to decision making thresholds, and this may lead to further proposals next year for consideration.

Substantive changes

12. Proposed substantive changes are set out below and are included in Appendix 1:
 - CSO 4.3 Supplemental advice from other officers in Gateway and other reports – it is proposed to require report authors to include advice from the strategic director of housing and community services in relation to all housing-related reports, in order to ensure that section 20 leaseholder implications are addressed appropriately.

Other minor changes

13. A number of other minor changes have been made to CSO 3 Particular types of contract to clarify the position in relation to the use of consortia and frameworks. These are summarised below and are included in Appendix 1:
 - CSO 3.1 Corporate contracts – the title and section have been amended for greater clarity, but without changing the requirements
 - CSO 3.2 Consortium contracts – this section and title have been reworded for greater clarity, but without changing the requirements
 - CSO 3.3 Framework/schedule of rates contracts – the title and subsection CSO 3.3.1 have been reworded for greater clarity and subsection CSO 3.3.2 has been moved to a new expanded section 3.4 on use of third party framework agreements and arrangements. No changes have been made to requirements
 - Definitions – updated and new definitions of consortium and framework related entries for greater clarity
 - Terminology – updated as required, e.g. post and portfolio titles.

PART 4: FINANCIAL STANDING ORDERS

General advice on changes to financial standing orders

14. The financial standing orders (FSOs) are reviewed each year to reflect any statutory or procedural changes. Article 1 of the constitution provides that minor changes may be made by the chief finance officer and monitoring officer to FSOs, but all other changes must be agreed by council assembly. It should be noted that other changes which may be agreed to the constitution by council assembly may have an impact on FSOs which would need to be picked up subsequently.

Substantive changes

15. The proposed substantive changes are summarised below and included in Appendix 2:
 - FSO 4 Setting the annual budget and the council tax – an amendment is proposed to 4a) to include approval and notification of the net rate yield for national non domestic rates to reflect the new requirements arising from new local government financing arrangements
 - FSO 5d) Budget adjustments/virements between directorates – a new subsection i) is proposed to make explicit the current requirement that adjustments affecting the schedule of corporately controlled budgets may only be made with the agreement of the chief finance officer. This has previously been included in 5c (budget adjustments/virements within directorates) but not 5d
 - FSO 5d) Budget adjustments/virements between directorates – a new subsection ii) is proposed to set out reporting requirements for any technical adjustments which may be made to budgets after the outturn has been reported to cabinet. Examples other than those listed could be the build up and release of the waste PFI reserve, movements to and from reserves related to rent free periods, or the smoothing of the cost of rent over a number

of years. This section confirms that any such adjustments will be reflected in the statement of accounts

- FSO 5d) Budget adjustments/virements between directorates – a new subsection iii) is proposed to make explicit the current arrangements for reporting adjustments up to £250,000 to cabinet
- FSO 5d) Budget adjustments/virements between directorates – an amendment to subsection iv) is proposed to include adjustments relating to reserves within the arrangements for obtaining approval.

Other minor changes

16. Minor changes are summarised below and included in Appendix 2:

- FSO 4 Setting the annual budget and the council tax – switch the order of b) Collection fund and d) Support for council tax so that FSO 4 flows more logically
- FSO 5c) Budget adjustments/virements within a directorate – removal of reference to ‘cost centre groups’ as these are no longer shown within the budget book
- FSO 5c)ii) Budget adjustments/ virements within a directorate – rewording for greater clarity but no change to requirements
- FSO 5c)iii) Budget adjustments/virements within a directorate – rewording to reflect current arrangements – in practice, cabinet already approves these adjustments and, in the event that an adjustment had been actioned which was not subsequently approved, it would be reversed
- FSO 11a) Prudential framework – reporting of indicators made explicit
- Terminology – updated as required, e.g. post and portfolio titles.

PART 3G: LICENSING COMMITTEE

17. The Scrap Metal Dealers Act 2013 came into effect on 1 October 2013.
18. Under the Act the Council has the ability to consider whether applicants for scrap metal dealers site and collectors licences are suitable to hold a licence. If the council is minded to refuse an application then the applicant is able to make representations to the council and have these heard. Guidance issued by the LGA proposes that for purposes of consistency of approach and human rights, all representations should be heard by the licensing sub-committee.
19. However there is a minor problem, the Act allows in Schedule 1: *If A informs the authority that A wishes to make oral representations, the authority must give A the opportunity of appearing before, and being heard by, a person appointed by the authority.*
20. Clearly the decision maker should hear and take into account any representation before making any decision. However, there is no reason why the oral representation cannot be made before a committee or sub-committee. There is a very small risk of challenge but given the need for the decision maker to hear any representation and the right of appeal this is acceptable
21. In reality the hearings required are likely to be few. However, current operators will need to apply under the new licensing regime under transitional

arrangements and guidance suggests that all applications made during the transition should be determined by 1 December 2013 (the date when offences under the Act may become enforceable) and it is possible that current registered operators may require a hearing.

22. The requirement on councils to allow an applicant to make oral representations means that it will be appropriate to refer any contested applications to a licensing committee. Therefore the constitution will need to be amended to ensure that applications for the grant, renewal or variation of a scrap metal licence which involves the applicant making representations are matters reserved to the licensing committee and its sub-committee.
23. Those applications which are uncontested or where there are no questions about the suitability of the applicant can be delegated to officers to make the decision.
24. The constitutional steering panel therefore recommends that Part 3G be amended as follows:

Add as part of Other reserved decisions:

29. Any application for the grant, renewal or variation of any scrap metal licence which involves the applicant making representations.
30. Revocation of any scrap metal licence.

PART 3K: AUDIT AND GOVERNANCE COMMITTEE

25. On 1 April 2013 the UK Public Sector Internal Audit Standards (PSIAS) came in to force. The PSIAS apply to all public sector internal audit service providers and compliance (or otherwise) with them must be reported by 30 March 2014. In order to review the internal audit service's compliance with the new code, the head of anti-fraud and internal audit undertook a self-assessment review which identified that some updates to the audit and governance committee's terms of reference in relation to its audit activity (Appendix 4) would need to be considered by council assembly.
26. Overall, the self assessment confirmed that the council is already largely compliant with the standards and the committee's terms of reference are fit for purpose. There are, however, some new requirements introduced by the code as set out in new points in the draft revised terms of reference: these are changes around terminology and confirmation of activity undertaken.
27. At their meeting on 17 July 2013 the audit and governance committee reviewed the draft revised terms of reference and confirmed that it proposed no amendments before consideration by the constitutional steering panel.
28. The proposed changes are summarised below and are shown in detail in Appendix 4:
 - Point 5 has been deleted and replaced by new points 5-9 to reflect new requirements of the PSIAS
 - Points 10 and 11 have been amended to more closely reflect the PSIAS
 - Point 16 has been amended to reflect changes in external audit provision
 - Point 21 has been amended to reflect recent changes to terminology.

MEMBERS ALLOWANCE SCHEME

29. The current scheme was agreed by council assembly on 23 May 2012. The Local Government & Housing Act 1989 and the Local Authorities (Members' Allowances) (England) Regulations 2003 require authorities to make a scheme for payment of allowances to councillors. The regulations do not set the amounts that can be paid.
30. Before making, amending or reworking its allowance scheme, the council is required, by the regulations, to have regard to any recommendations of an independent remuneration panel. The council is not, however, bound to adopt all or any of the panel's recommendations provided it has given them due consideration and is satisfied that it has justifiable reasons for not doing so. The London Councils Independent remuneration panel last reported in 2010 and it is on these recommendations which the current scheme is based.

Basic Allowance

31. No change is required to the basic allowance. The figure will remain at £10,599 unless members specifically agree to change it.

Allowances

32. The Local Authorities (Members' Allowances) (England) Regulations 2003 provides, under section 5.1i, for an SRA to be paid for carrying out "such other activities in relation to the discharge of the authority's functions as require the member an amount of time and effort equal to or greater than would be required for any other specified activity" (these include chairing committees, representing the council and acting as a spokesperson). There are no amendments proposed to the level of SRA to be paid.

OTHER CONSIDERATIONS

Resource implications

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

SUPPLEMENTARY ADVICE FROM OTHER OFFICERS

34. 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

APPENDICES

Appendix	Title
Appendix 1	Contract Standing Orders – Proposed Amendments
Appendix 2	Financial Standing Orders – Proposed Amendments
Appendix 3	Part 3G: Licensing Committee – Proposed Amendments
Appendix 4	Part 3K: Audit and Governance Committee – Proposed role and functions
Appendix 5	Members Allowance Scheme

AUDIT TRAIL

Lead Officer	Alexa Coates, Principal Constitutional Officer	
Report Author	Lesley John, Constitutional Officer	
Version	Final	
Dated	25 September 2013	
Key Decision?	No	
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 Services	No	No
Cabinet Member	No	No
Date final report sent to Constitutional Team		25 September 2013