

Item No. 4.4	Classification: Open	Date: 19 May 2010	Meeting Name: Council Assembly (Annual Meeting)
Report title:		Constitutional Review	
Ward(s) or groups affected:		All	
From:		Strategic Director of Communities, Law & Governance	

RECOMMENDATIONS

That the following constitutional changes be recommended to council assembly:

Overview and scrutiny – Article 5 and procedure rules

1. That the changes to Article 5 on overview and scrutiny and the overview and scrutiny procedure rules as described in paragraph 15 and set out in Appendix 1 of this report be agreed.

Part 3G: Licensing committee and sub-committees – minor variations process

2. That the constitution be amended to include provision for the determination of applications for minor variations of premises licences and club premises certificates, as set out in Appendix 2 of this report (see also paragraphs 16-26).

Contract standing orders

3. That the changes to contract standing orders as described in paragraphs 27-35 and set out in full in Appendix 4 of this report be agreed.

Treasury management – audit and governance committee / financial standing orders

4. That the changes to part 3L of the constitution to include scrutiny of the treasury management strategy and policies in the audit and governance committee's role and functions, as described in paragraph 39 and set out in Appendix 5, be agreed.
5. That the changes to financial standing orders to include monitoring and reporting of treasury management activity as set out in paragraphs 40-42 be agreed.

Budget and policy framework

6. That council assembly notes that a further report on the recommendations of scrutiny sub-committee C about the budget and policy framework will be submitted to the next council assembly (see paragraphs 44-46).

Consequential changes

7. That officers be authorised to undertake any consequential and cross referencing changes arising from changes to the constitution (see paragraph 47).

BACKGROUND INFORMATION

8. The council assembly on 24 March 2010 agreed a number of constitutional changes including: proposals for the creation of a separate set of community council procedure rules and a number of other statutory changes that had come to officers' attention. This report covers constitutional areas that form part of the annual review of the constitution.
9. 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.
10. All constitutional changes are considered by constitutional steering panel, which then recommends changes to council assembly. All the changes in this report were recommended by the constitutional steering panel, which met on 30 March 2010. 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 constitute the first of two reports forming the full review, the second of which is scheduled to be submitted to next council assembly. This report focuses on those specific issues identified over the course of the year, including the impact of any government announcements. The constitutional steering panel in March 2010 decided to consider any proposals submitted from the political groups in June, which it agreed to recommend to the July meeting of council assembly. At the same time officers are continuing to work on preparations for other constitutional changes, and there may be additional matters to bring to a future constitutional steering panel.
12. The report sets out the key issues and changes arising from the constitutional review. 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:
- Overview and scrutiny – Article 5 and procedure rules
 - Part 3G: Licensing committee and sub-committees
 - Contract standing orders
 - Treasury management – audit and governance committee / financial standing orders
 - Member and officer protocol
 - Consequential changes

Community impact statement

14. There will be no direct impact on local people from 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.

OVERVIEW AND SCRUTINY – ARTICLE 5 AND PROCEDURE RULES

15. The proposed changes are mainly for reasons of clarity and to pick up past drafting errors. In addition, amendments are recommended to the call-in and councillor call for action procedures following experience in the 2009-10 municipal year where it became apparent that it would be helpful for the constitution to be more specific.

The recommended changes are set out in Appendix 1.

PART 3G: LICENSING COMMITTEE AND SUB-COMMITTEE – MINOR VARIATIONS PROCESS

Minor variations to premises licences / club premises certificates

16. The Legislative Reform (Minor Variations to Premises Licences and Club Premises Certificates) Order 2009 & The Licensing Act 2003 (Premises Licences and Club Premises Certificates) (Miscellaneous Amendments) Regulations 2009 came into force on 1 July 2009. The regulations amend the Licensing Act 2003 and the Licensing Act 2003 (Premises licences and certificates) Regulations 2005. The regulations include a new process for minor variations to premises licences and club premises certificates to allow this category of applications to be determined at officer level. In July 2009 the Department of Culture, Media and Sport issued supplementary guidance under Section 182 of the Act in relation to the new minor variations process. The guidance emphasises that this is intended to be a simplified process and recommends that decisions on minor variations should be delegated to licensing officers. The latter is a recommendation which reflects best practice but is not a statutory obligation.
17. The constitutional changes required by these regulations were first reported to the constitutional steering panel on 6 October 2009. At the time the

constitutional steering panel asked that the views of the licensing committee be sought and the following information be provided:

Information sought	Response
1. The panel asked whether the new regulations require the council to have a process for considering minor variations.	Officer advice is that this new statutory process for dealing with minor variations to premises licences and club premises licences. It is a requirement that a separate process exists.
2. That revisions to the constitution be reviewed to ensure sufficient clarity of the scope of minor variations in line with guidance.	The licensing committee has received two reports on the minor variation process. In the latest report to the licensing meeting in March 2010 a detailed description of the scope of minor variations was provided, which derives from the statutory guidance, which identifies the scope of such a variation and in particular states what cannot amount to a minor variation. The scope of a minor variation is set out in Appendix 3 of this report. The committee also noted a protocol setting out how licensing officers should deal with the minor variations process under delegated authority.
3. That the report clarifies that the revised provisions relate to alcohol licences and not gambling licences.	Officers can confirm that this process relates to premises licences under the Licensing Act 2003. It does not apply to gambling licences.

Licensing committee

18. The licensing committee on 8 October 2009 considered a report on the changes. The committee noted the constitutional change but asked officers to report back with additional information on the scope of a minor variation and provide a protocol setting out how licensing officers would discharge this function under delegated authority. On 9 March 2010 the licensing committee considered a protocol detailing how the process would operate in practice. The committee had no comments and agreed to note the officer protocol.
19. The licensing committee have been advised that a report is to be submitted to the constitutional steering panel and then to council assembly, seeking to amend the council's constitution in order to provide for determination of contested minor variation applications by the head of service (the Environmental Health and Trading Standards Business Unit Manager). In the event that this proposal is approved by the council assembly, amendment will also be made to the appropriate internal scheme of delegation. The recommended changes required to the constitution are set out in Appendix 2.

Minor variations process

20. The new process is established to provide a simplified applications process for minor variations to premises licences and club premises certificates where such variations will not impact adversely on the licensing objectives. In effect these provisions relate to a relatively small number of applications. Minor variations will generally fall into four categories:
 - Minor change to the structure or layout of a premises
 - Small adjustments to licensing hours, specifically excluding extending the terminal hour
 - The removal of out of date, irrelevant or unenforceable conditions or addition of volunteered conditions
 - The addition of certain licensable activities.
21. The DCMS guidance is helpful, in defining the relevant forms of application. Some of the main points raised are set out in Appendix 3.
22. Applications for new premises licences, major variations of existing licences, licence reviews and temporary event notices (TENs) remain unaffected and will continue to be considered by the licensing sub-committees.
23. No provision is made within the regulations for the public hearing of any contested application. Supplementary guidance issued by the Department of Culture Media and Sport (DCMS) under section 182 of the 2003 Act notes that the “Government recommends that decisions on minor variations should be delegated to licensing officers”.

Community impact statement

24. The 2003 Licensing Act sets out four licensing objectives. These are
 - To prevent crime and disorder
 - To ensure public safety
 - To prevent nuisance
 - To protect children from harm.
25. Although this new process provides a simplified system for making minor variations to premises licences and club premises certificates, it is intended only for applications that have no adverse impact on the objectives.
26. The simplified process, however, progresses the government’s simplification agenda; removing unnecessary burdens on business but without affecting protections afforded local residents. The process retains provision for (limited) public consultation and the involvement of the responsible authorities where necessary

CONTRACT STANDING ORDERS

27. 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 finance director and monitoring 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

28. The recommended substantive changes are set out below (and are included in Appendix 4).

Revised section 3.1 on corporate contracts

29. Amendments are proposed to this section to make it clear that the requirement to use corporate contracts includes corporate frameworks and that their use is mandatory.

New section 3.5 Leasing

30. The requirement to obtain the finance director's written permission before entering leasing contracts is made clear in the FSOs but until now has not been included within the CSOs. In order to ensure that officers are aware of this when consideration is being given to entering a leasing contract, it is proposed that this requirement be referred to explicitly here.

New section 4.5.3 on requests to delegate the decision on the award of a contract

31. It is proposed that a section be included to clarify to whom authority to delegate contract award decisions may be made.

Southwark will implement changes in executive arrangements to comply with the 'strong leader' model adopted by council assembly in November 2009. These new arrangements will come into effect from the annual meeting in May 2010. Under these arrangements the leader will be responsible for all executive functions, and will decide which of these functions can be delegated to the executive, individual executive members, or council officers. Where the leader has delegated the function to the executive, such as the award of a Gateway 1 contract, the executive may arrange for the discharge of this function by a chief officer. In addition the leader may be authorised to make the decision.

New section 4.6.1 on use of gateway 3 reports

32. At the moment requests to approve variations to a contract have required the use of a gateway 3 report, irrespective of the value of the variation. For approval of procurement strategies and contract awards, use of gateway 1 and 2 reports has been mandatory for contracts with an estimated value of more than £75,000 and good practice for those with a lower value. It is proposed to bring variation decisions into line with other contract-related decisions so that use of a gateway 3 report will be mandatory for all variation decisions of more than £75,000 and recommended for those with a lower value.

Revised section 4.7 on retrospective approvals

33. Since the requirement to report retrospective approval decisions to the audit and governance committee was introduced two years ago, it has applied to all decisions, irrespective of value. Following consideration by the audit and governance committee at its meeting earlier in February 2010 of the

introduction of a threshold, it is proposed that future reports be made to the committee only in relation to decisions with an estimated value of more than £100,000. Retrospective decisions below this figure will still need to be reported to the relevant departmental contract review board.

Revised section 4.9 on emergencies

34. Following emergency action taken to restore public ICT provision in Southwark's libraries, a need to review the definition of 'emergency' was identified. At the moment it is defined as "a situation where action is needed to prevent a risk of injury to... the security or structural viability of a property". Officers agreed that the action taken on this occasion fell within the definition of emergency action, but suggested that it would be appropriate to amend the section to clarify that a more comprehensive view can be taken. The changes proposed aim to make it clear that action taken in relation to assets such as IT infrastructure may fall within this section.

Revised section 5.1 on permission not to use the council's works approved list

35. At the moment CSOs are not explicit about the need to obtain permission to use a supplier who is not on the council's works approved list through a gateway 1 report for contracts valued below £5,000. This amendment is proposed to make this requirement clear.

TREASURY MANAGEMENT – AUDIT AND GOVERNANCE COMMITTEE / FINANCIAL STANDING ORDERS

Updated CIPFA's Treasury Management in the Public Services Code of Practice

36. Following the collapse of the Icelandic banks and the publication of reports by the Audit Commission and the Communities and Local Government Select Committee on local authority treasury management and investments, CIPFA has revised its Treasury Management in the Public Services Code of Practice and guidance notes. In managing borrowing and investment activities, local authorities are required to have regard to the Treasury Management Code.
37. Council assembly (council tax setting) meeting on 23 February 2010 noted the updated Treasury Management in the Public Services Code of Practice and formally affirmed its adoption by agreeing resolutions which included an invitation to the constitutional steering panel to consider future arrangements for additional review and scrutiny. The constitutional steering panel on 30 March 2010 considered this issue.
38. The revised code recommends additional reporting, monitoring and scrutiny of treasury management. Proposed changes in relation to these areas are set out in paragraphs 39 to 42 below.

Scrutiny of treasury management strategy and policies

39. The revised code proposes that responsibility for effective scrutiny of treasury management strategy and policies be undertaken by a nominated body which might be the full council, a relevant committee (such as audit or scrutiny committee) or a panel of individuals. The finance director retains responsibility for the execution and administration of treasury management decisions.

In relation to the scrutiny of the treasury management strategy and policies, the constitutional steering panel on 30 March 2010 considered making this the responsibility of one of the following: the pensions advisory panel, overview and scrutiny committee and the audit and governance committee.

The constitutional steering panel agreed to recommend that the remit of the audit and governance committee be extended to include this role. The proposed changes to the role and functions of the committee as set out in Part 3L of the constitution are set out below.

In the Introduction, insert **new** clause:

4. Scrutiny of the treasury management strategy and policies.

In the role and functions, after clause 19 insert **new** section called "Treasury management":

20. To review and scrutinise the treasury management strategy and policies.

Renumber sections from clause 4.

A full version of the role and functions showing the changes is set out in Appendix 5.

Monitoring and reporting of treasury management activity

40. In relation to reporting of treasury management activity, CIPFA's update to its Treasury Management Code restated the importance of risk management and raised the number of reports going to council assembly from two, as now, to three in future. The treasury management strategy is reported to council assembly for approval each year before the start of each year at the council tax setting meeting and the substantive changes proposed in paragraph 42 below make explicit the subsequent reports at mid year and year end to council assembly.
41. The revised code proposes that responsibility for implementation and regular monitoring of treasury management policies and practices be delegated to a named body which might be the full council, executive, a relevant committee or a panel. As the executive already has responsibility for strategic management of the council's resources and for the council's revenue and capital budgets and receives regular monitoring reports, it is proposed that these be extended to cover monitoring of treasury management activities. The recommended substantive changes are set out in paragraph 42 below.
42. Following on from CIPFA guidance the following substantive changes are recommended to FSO 11 (b) on treasury management borrowing and treasury management strategy and decisions:

Revised section 11 (b) (ii) - Decisions

All executive and operational decisions on borrowing, credit finance and investments are delegated to the finance director, ~~who shall report on activity at least twice a year.~~

New section 11 (b) (iii) - Reporting

The finance director shall monitor and report on operational activity in relation to the strategy on a quarterly basis to the executive and at mid year and year end to council assembly.

General advice on changes to financial standing orders

43. 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 finance director 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.

BUDGET AND POLICY FRAMEWORK

44. In 2009-10 scrutiny sub-committee C undertook a review of the format and detail of revenue budgets, scrutiny of budget proposals and improved consideration by council assembly, approval of the capital programme and use of reserves, which was referred by overview and scrutiny committee in November 2009 to the executive.
45. The executive on 15 December 2009 agreed to refer those recommendations relating to constitutional issues, including monitoring financial performance, approval of the capital programme and use of reserves, to be addressed as part of the annual constitutional review.
46. A separate report on proposals of scrutiny sub-committee C on the budget and policy framework is scheduled to come forward to the next council assembly.

CONSEQUENTIAL CHANGES

47. 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

48. This comment advises council assembly of the legal procedure relating to changes to the council's constitution.
49. 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 and when the constitution is to be changed. It is also recognised that council constitutions cannot cover every eventuality.

50. 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.
51. 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

52. The budget for 2010-11 was set on 23 February 2010 and any changes to the constitution must be contained within the budget.
53. 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

Background Papers	Held At	Contact
Southwark's Constitution.	Southwark Council, 160 Tooley Street, London SE1 2TZ	Lesley John 020 7525 7228
Constitutional steering panel - 30 March 2010 - report.	Southwark Council, 160 Tooley Street, London SE1 2TZ	Lesley John 020 7525 7228

APPENDICES

Appendix No.	Title
Appendix 1	Overview and scrutiny – articles, procedure rules and councillor call for action protocol
Appendix 2	Licensing Committee and Sub-Committee – Constitutional amendments for minor variation applications
Appendix 3	Licensing – Minor variations – background information Summary of process for considering minor variation applications
Appendix 4	Contract Standing Orders - Constitutional amendments
Appendix 5	Audit and Governance Committee – Constitutional amendment arising from new treasury management responsibilities

AUDIT TRAIL

Lead Officer	Deborah Collins, Strategic Director of Communities, Law & Governance	
Report Authors	Ian Millichap, Constitutional Manager Lesley John, Constitutional Officer	
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Key Decision?	No	
Consultation with other officers / directorates / executive member		
Officer Title	Comments Sought	Comments included
Strategic Director of Communities, Law & Governance	Yes	Incorporated
Finance Director	Yes	Incorporated
Head of Financial Governance	Yes	Incorporated
Strategic Director of Environment and Housing (Environmental Health and Trading Standards Business Unit Manager)	Yes	Incorporated
Executive Member	No	No
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