

Title of Report	Constitution Review
For Consideration By	Constitution Committee
Meeting Date	30 January 2023
Classification	Open
<u>Ward(s) Affected</u>	N / A
Director	Dawn Carter-McDonald, Director of Legal, Democratic and Electoral Services

1. Introduction

- 1.1. This report updates Members of the Constitution Committee on progress by the Constitution Officer Working Group (“COWG”) with the review of the Council’s Constitution and presents first and final drafts of various sections for review and approval (as appropriate).
- 1.2. A meeting to discuss general arrangements for meetings of this Committee and the timetable towards adoption of the new Constitution by Full Council was held with the Chair and Vice-Chair of the Committee earlier this month. In order to better facilitate the Committee’s discussions, both the Chair and Vice-Chair advocated that we extend the date for the adoption of the new Constitution to July 2023 which will give the Committee further opportunities to reflect on proposed changes; and will also provide opportunities to engage with Scrutiny, the Youth Parliament and undertake a period of soft public engagement.
- 1.3. With regards to the format of meetings of the Committee going forward, it has been agreed by the Chair and Vice-Chair that a ‘page turn’ approach will not be adopted. Officers will instead:
 - Present an outline of what the relevant Part / Section is intended to do;
 - Highlight any significant proposed changes from the current Constitution; and
 - Raise issues / queries for discussion by the Committee to aid officers with future amendments.

2. **Recommendations**

- 2.1. **That the Committee approve the final drafts of Parts One and Two of the Constitution appended to this report as Appendices 2 and 3, noting that Officers will insert cross-references at a later stage and will continue to review the documents for typographical errors and plain English / grammatical improvements.**
- 2.2. **That the Committee consider and provide comments / observations on the first drafts of those Parts and Sections appended to the report as Appendices 4 to 9.**
- 2.3. **That the Committee endorse the revised timetable leading to approval of the Constitution by Full Council in July 2023.**
- 2.4. **That the Committee agree additional meeting dates in April and May.**

3. **Background**

- 3.1. In order to assist members of the Committee with the arrangement of the new Constitution, the working draft index is appended to this report at Appendix 1.

Progress since last meeting

- 3.2. Since the last meeting of the Constitution Committee, the COWG has:
 - Further reviewed Parts One (Your Council) and Two (Articles of the Constitution) in light of the comments made by the Committee at its meeting on 23 July.
 - Reviewed the overarching content of Part Three and commenced a further review of the Terms of Reference of the Council's various committees etc to ensure that there will be consistency in format.
 - Reviewed the Council Procedure Rules and Cabinet Procedure Rules, which will sit within Part Four.
 - Working alongside colleagues from other Directorates, commenced reviews of the Overview and Scrutiny Procedure Rules, Call-in Procedure Rules, Budget and Policy Framework Rules which will sit within Part Four.
 - Working alongside colleagues from other Directorates, commenced reviews of the Council's Financial Procedure Rules and Contract Standing Orders which will sit within Part Five.
 - Completed first drafts of the content of new Part Six relating to Attendance at Meetings, Public Speaking, Access to Information, Petitions, Deputations and the Protocol for Livestreaming / Recording meetings.

- Completed a first draft of a new Monitoring Officer Protocol which will sit within Part Eight.
- Working alongside colleagues from other Directorates, commenced a review of the Licensing Code of Practice which will sit within Part Nine. Work to review the Planning Code of Practice was commenced prior to this Constitution Review and is nearing completion.
- Commenced work on drafting a Protocol on the Governance of Council Interests in Companies which will sit within Part Nine.
- Completed the first draft of the Protocol on Remote Attendance at Council Meetings which will sit within Part Nine.

Discussion points

- 3.3. The following section of the report references those matters which were the subject of substantive discussion at the previous Committee meeting (summer 2022) and either provides an explanation as to how the COWG propose to resolve those discussions or seek further guidance from the Committee.
- 3.4. **Your Council.** Members will recall the discussion around the definition of 'citizen' (those who live or work in the borough) at the last Committee. Following the meeting, the COWG reviewed the Constitutions of other local authorities by way of benchmarking to see how they defined the term. One authority (Buckinghamshire) uses the term 'residents' rather than 'citizens', but that would exclude those persons who may work in the borough but not live here. Most (for example, Newham, Waltham Forest, Southampton) do not define the term at all, but rather distinction between the various rights of citizens within the remainder of the text.
- 3.5. **Articles of the Constitution.** Members will recall the discussion concerning that part of Article 3 relating to political groups and how to refer to opposition groups when, as now, there is more than one opposition group and suggested that the COWG look back at earlier versions of the Constitution to see how the issue was addressed the last time there was more than one opposition groups. In 2011, Article 3 simply stated 'the opposition group(s) will be the party with a minority of members', with the glossary going on to explain that 'in the event of two opposition groups having equal numbers of members, the official opposition group will be the incumbent opposition group'. Thus it appears from that time that one opposition group would be viewed as being the 'official' opposition. The Constitution is silent as to how the other opposition group would be addressed. Due to the cyber attack, no versions of the Constitution other than those dating from 2010 and 2011 have been able to be located at the current time.

Substantive Amendments to Existing Parts / Sections

- 3.6. The following section of the report provides details of substantive amendments which have been made to various existing sections of the

Constitution. Members should note that amendments have also been proposed to the wording in order to provide the reader with greater clarity or to reflect the principles of plain English.

3.7. **Council Procedure Rules.**

- In respect of rules 9 and 10, Officers are proposing that the requirements around public and member questions be subject to some harmonisation, in particular around the length of the question itself. In addition, a further reason for refusing to accept a question is proposed where the question relates to ongoing legal proceedings in which the Council is involved to bring this into alignment with the Council's petition scheme; this is because the Council will be constrained about what can be said due to those proceedings.
- A similar amendment is proposed in respect of deputations (rule 11) as regards to reasons for not accepting a deputation.
- Rule 13 deals with Opposition Sponsored Business, currently the Constitution refers to such business being conducted at meetings which have been 'identified' for the inclusion of such business. However, in practice there is no such formal identification; it is therefore proposed that opposition sponsored business can be put forward for any meeting of Council, save the Annual Meeting and budget meeting. Harmonisation with questions, petitions and deputations as to the reasons for rejecting such business is also proposed. Finally, as regards opposition sponsored business, currently such debates will continue until the Speaker concludes that 'sufficient time' has been given which does not provide clarity for anyone; therefore an explicit time period is proposed to be introduced, in the same way as applies for questions, petitions and deputations.
- In rule 18 a specific reference to Lead Members / Committee Chairs introducing annual reports has been included as these reports are usually accompanied by a report prepared by the relevant Group Director as this reflects current practice.
- Rule 23 deals with the record of members' attendance at meetings. Many authorities have explicit requirements for members to be in attendance for a certain length of time in order for their attendance to 'count'. A similar approach is therefore being proposed.
- In rule 27 which deals with the suspension or amendment of the Council Procedure Rules, reference has been added to the ability to suspend the rules regarding the amount of time set aside for Motions. In light of the revised timetable for adoption of the new Constitution, this will also be taken forward at the Annual Meeting in May 2023 as an amendment to the existing Constitution.

- Existing rule 29 which concerns smoking at meetings is proposed to be deleted given that this is dealt with under legislation which prohibits smoking in the workplace and public buildings.
- Existing rule 30 (renumbered in new rules) which deals with the use of electronic communications devices has been rephrased to make it more relevant to how both elected members and officers use devices during meetings.

3.8. **Cabinet Procedure Rules.** The COWG is proposing that, where possible, Cabinet's procedure rules are aligned with Council procedure rules, e.g. questions, petitions, deputations. Similarly where the procedure rules are identical to those relating to Council then rather than stating them again in full, it is proposed to cross-reference to the relevant Council Procedure Rule with appropriate amendments. The rule relating to the items considered at Cabinet has been expanded upon to include all of the standing items that the meeting does, in fact, consider.

New Sections / Parts

- 3.9. **Public Participation (Part Six).** As referred to in previous Committee reports, this is an entirely new part to the Constitution aimed at providing members of the public with easy to access information as to how they can participate in the Council's decision-making processes. Up to now, members of the public have had to refer to information contained in various different parts of the Constitution and this will bring all of the information together in one place. Whilst this does have the effect of lengthening the Constitution due to repetition of certain information contained elsewhere, the COWG consider that this is more than offset by the benefits of the public being able to easily access this information.
- 3.10. **Monitoring Officer Protocol (Part Eight).** Benchmarking undertaken with other local authorities indicates that the majority include a Monitoring Officer Protocol within their Constitution which sets out the working arrangements and working relationships necessary for the Monitoring Officer to effectively discharge their statutory obligations. The COWG is therefore proposing that such a Protocol be introduced into the Council's Constitution.
- 3.11. **Protocol on Remote Attendance at Council Meetings (Part Nine).** Although the law currently does not permit the Council to conduct its Councils meetings through any other format than in person, it is recognised that elected members have come to value the option of being able to 'attend' a meeting remotely from time to time because of various other personal and professional commitments. Whilst members are aware of the legal constraints around such attendance and how the Council itself has elected to deal with such participation, the COWG considers that the Constitution should include a protocol so that the expectations and limitations are clear not only for elected members but also members of the public and other persons who may be interested in the conduct of Council meetings.

4. **Comments of the Group Director of Finance and Corporate Resources.**

4.1. There are no financial implications arising from the recommendations contained within this report.

5. **Comments of the Director of Legal, Democratic and Electoral Services**

5.1. Section 37 of the Local Government Act 2000 requires that the Council must prepare and keep up to date a document known as the Constitution which contains a copy of the Council's standing orders, a copy of the Council's code of conduct, and such other information (if any) as the Council considers appropriate.

5.2. In addition, Article 15 of the Constitution requires the Monitoring Officer to monitor and review the operation of the Constitution and to make recommendations for the way in which it could be amended in order to achieve its purposes.

5.3. There are no legal implications arising directly from this report.

Appendices

Appendix 1 - Working draft index to new Constitution

Appendix 2 - Final draft for Part One (Your Council)

Appendix 3 - Final draft for Part Two (Articles of the Constitution)

Appendix 4 - Draft wording for Part Three (Responsibility for Functions)

Appendix 5 - Draft wording for Council Procedure Rules

Appendix 6 - Draft wording for Cabinet Procedure Rules

Appendix 7 - Draft wording for Part Six (Public Participation)

Appendix 8 - Draft wording for Monitoring Officer Protocol

Appendix 9 - Draft wording for Protocol on Remote Attendance at Council Meetings

Background documents

None

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