

## Committee: Council

Date: 14 September 2022

## Subject: Amendments to the Constitution

Lead officer: Louise Round, Managing Director, South London Legal Partnership

Lead member: Councillor Billy Christie, Cabinet Member for Finance and Corporate Services

Contact officer: Amy Dumitrescu, Democracy Services Manager

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### Recommendations:

That Council authorise the following amendments to the Council's Constitution:

- A. Part 4B Para 17 and 18 (urgency procedures) as described in paragraph 2.2 below and detailed at Appendix A
  - B. Rule 2.3h (Community Fora Motions) as described at paragraph 2.6 below
  - C. Part 4A Para 21.5 (Remote Attendance) as described in paragraph 2.12 below and detailed at Appendix B
  - D. (Use of Resources) Part 5E as described at paragraph 2.13 below
  - E. Part 3D – Scheme of Delegation to Officers as described in Paragraph 2.9 to 2.10 below
  - F. To agree the treatment of contract extension for decision making purposes, details of which are set out in 2.11 below.
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## 1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY

- 1.1. To consider changes to the Constitution to update sections with current working practice and to amend any other sections as detailed within the report as required.
- 1.2. The amendments proposed within the report have been agreed by the Standards and General Purposes Committee at its' meeting on 21 July 2022.

## 2 DETAILS

- 2.1. Part 4B Access to Information Rules
- 2.2. Paragraph 18 of Part 4B (Exempt Urgency Procedure) of the Constitution refers to a meeting at which exempt or confidential information is to be considered being held in private. In such cases, where it is not possible to give 28 days' notice of the agenda item, as the constitution is currently drafted the consent of the Chair of the Overview and Scrutiny Commission is required to allow the item to be considered. This is not a legal requirement. Such a requirement only applies where it is proposed to hold the entire meeting in private which in practice rarely happens. Where there are meetings where restricted (exempt) appendices to reports or singular restricted items are being considered and therefore the majority of the meeting is held in public, with the public excluded for those items, the only

legal requirement is that the Chair of the Overview and Scrutiny Commission agrees to that item being considered if it has not been on the forward plan for at least **5** clear working days. It is therefore proposed to amend paragraph 18 to reflect the legislative requirements.

2.3. The Democracy Services Manager and the Monitoring Officer continue to work on internal processes to improve the use of the forward plan across the organisation to prevent items being required to go through the urgency process.

2.4. Part 22 and 23 of Part 4B which detail the access rights to documents by members and by members who are members of the Overview and Scrutiny Commission. General practice at Merton has been that all group office staff and all Councillors are automatically provided with access to all restricted documents, however there is no automatic legal right for all Councillors to this information and it is not good information governance practice to have such a wide circulation of confidential information. Council is therefore asked to note that the practice of an unrestricted circulation of exempt reports or appendices will cease and such documents will only be provided to Councillors who have a statutory right to see such documents if they request such documents and can demonstrate a 'need to know' to the Monitoring Officer.

2.5. Rule 2.3h – Community Fora Motions

2.6. The Constitution currently states that “Any original motion relating to the report of a Community Area Forum must be submitted to the Chief Executive by 9am on the day before the meeting to enable time-tabling before meeting.” However all other motions (Ordinary and Strategic Theme) are required to be submitted by the following deadlines:

6.1 (Ordinary Motions) - not later than 5pm on the day which is seven clear working days before the date of the Council meeting.

2.3G (Strategic Theme Motions) - such motions shall be submitted to the Chief Executive by 9am on the day two clear working days before the day of the meeting;

2.7 It is therefore recommended that the deadline for Community Forum motions be brought in line with other motions to allow for amendments to be submitted as required (by 9am the working day before the Council meeting). It is therefore recommended these motions be submitted by 9am on the day two clear working days before the day of the meeting as is the case for strategic theme motions.

2.8 **Inconsistency Between the Scheme of Delegation to Officers and Contract Standing Orders.**

2.9 When the constitution was revised following consideration by a cross party working group and this Committee in July 2021, the Scheme of Delegation to Officers contained in Part 3D of the Constitution set financial limits on the value of contracts Directors are able to award. That limit was £2million and all contracts in excess of that amount must be agreed by Cabinet (subject to certain urgency provisions). However, the Contract Standing Orders which also form part of the Constitution (Part4G) set financial limits by reference to

internal departmental schemes of management. Under those schemes, Directors are only authorised to award contracts up to a value of £500K. Contracts between £500k and £2million must be agreed either by the Director of Corporate Services (the Council's section 151 officer) or the chief Executive. It is not good governance for there to be internal inconsistencies in the Constitution and Standards and General Purposes Committee were therefore requested to consider which limit should apply and to recommend to full Council an amendment to reflect that decision.

- 2.10 Standards and General Purposes Committee at their meeting on 21 July 2022 considered the above and recommended that the contract award threshold for Directors remain at £500,000 and all contracts between £500,000 and £2million must be agreed by the Director of Corporate Services or the Chief Executive as stated within the Contract Standing Orders (Part 4G). It is therefore recommended that part 3D be amended in line with Part 4G.
- 2.11 The other area in the contract standing orders which requires clarification is whether when agreeing an extension to a contract, the threshold for determining who can make that decision and whether it constitutes a key decision is the value of the whole contract as extended or just the value of the extension. It is recommended that where, on the original contract award, there was a specific delegation by Cabinet to officers to exercise a right to extend, then only the value of any such extension should be taken into account in determining whether it is a key decision and who has authority to take it. In other cases, the cumulative value of the contract should apply.
- 2.12 Remote Participation at Meetings
- During the Covid-19 Pandemic, the Constitution was amended to permit remote participation at meetings where Councillors were unable to attend. Councillors are not permitted to vote if attending remotely however can still participate. The Constitution is currently silent on the definition of participation. It is therefore proposed to amend the current standing orders (Part 4A Para 21.5) to include the provision that members are not able to move or second motions or amendments remotely. A further line will therefore be added to 21.5 to this effect.
- 2.13 Use Of Council Resources
- At the meeting of Standards and General Purposes Committee on 21 July 2022, members considered a range of options for the use of Merton letterhead paper by political groups. It was the consensus of that meeting that the option recommended to Council be the following:
- “Political groups can continue sending welcome letters to residents on Merton letterhead so long as they comply with a template agreed with Monitoring Officer. Letters on ward business must be cleared by the

Monitoring Officer. The council will not pay for postage and letters must be hand delivered.”

It is therefore recommended that the Use of Council Resources (Part 5E) is amended to reflect this change.

### **3 ALTERNATIVE OPTIONS**

- 3.1. The Council is advised to make these changes to ensure the Constitution is up to date and compliant with current legislation and best practice. The alternative option would be to do nothing, which is not recommended

### **4 CONSULTATION UNDERTAKEN OR PROPOSED**

- 4.1. None for the purposes of this report

### **5 TIMETABLE**

- 5.1. If approved by Council, the amendments would be implemented with immediate effect.

### **6 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 6.1.

### **7 LEGAL AND STATUTORY IMPLICATIONS**

- 7.1. The Constitution provides that proposed changes to the Council's constitution be reported to the Standards and General Purposes Committee for approval prior to being considered at Council. (Article 15). This took place on 21 July 2022.
- 7.2. The Monitoring Officer has delegated authority to make minor administrative changes to the Constitution to reflect legislative changes or for the purposes of clarification.
- 7.3. The proposed amendments to the Constitution comply with the legislative requirements for decision making and in particular, the changes to paragraph 18 of the Access to Information Procedure rules reflect the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012

### **8 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 8.1. None for the purposes of this report

### **9 CRIME AND DISORDER IMPLICATIONS**

- 9.1. None for the purposes of this report

### **10 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

- 10.1. None for the purposes of this report

### **11 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Appendix A – Amended wording for Part 18 of the Access to Information Rules (Part 4B)

## **12 BACKGROUND PAPERS**

12.1. None

17 Any meeting of the Cabinet or any Cabinet committee which is proposed to be held wholly ~~or partially~~ in private session ~~in order to deal with exempt or confidential business~~ may only proceed in respect of those items of business in accordance with the following rules

- 1) A notice of the intent to hold a private meeting must be published at least 28 clear days prior to the meeting and that notice must indicate the reasons for the meeting to be held in private.
- 2) A further notice must be published at least 5 clear days prior to the meeting and that notice must include:
  - a.) The reasons for the meeting to be held in private
  - b.) Any representations received about why the meeting should be open to the public; and a statement of responses to such representations

#### 18 Exempt Urgency Procedure

Where the date of the ~~meeting~~ at which it is proposed be held in private ~~to consider exempt or confidential information~~ makes compliance with (17.1 above) impracticable the meeting may only be held in private where:

- a.) The Chair of the Overview and Scrutiny Commission (or in his/her absence The Mayor or in his or her absence the Deputy Mayor) has agreed that the meeting is urgent and cannot reasonably be deferred; and
- b.) a notice of that agreement is published as soon as reasonably practicable;

APPENDIX B – Part 4A Council Procedure Rules – Section 21 Remote Attendance

21.5 A member may participate in a meeting of Full Council remotely and shall have the right to ask questions pursuant to Rule 12. Such participation would not amount to attendance at that meeting for the purposes of ascertaining whether the meeting is quorate and they shall not be entitled to vote on any matter under consideration.

**Members are not permitted to move or second motions or amendments remotely.**

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