

Constitution Review

Summary of Proposed changes June 2021

Part	Paragraph number	Proposed changes
Part 1 – Summary and explanation		Drafting changes only to reflect other proposed structural changes and new terminology
Part 2 - Articles	4.2	<p>Update definition of policy framework to reflect current suite of strategies:</p> <ul style="list-style-type: none"> • Business Plan • Community Plan • Equality and Community Cohesion Strategy • Housing Strategy • Local Plan • Children and Young People’s Plan • Strategic Business Continuity Plan • Procurement Strategy • Neighbourhood Renewal Strategy • Climate Change Strategy • Wimbledon Town Centre Masterplan
	7.4/7.5 removal of leader and cabinet members	delete reference to leader and cabinet members being disqualified as no longer a legal possibility
	13.3 Urgency	delete reference to urgency committee in relation to council decisions needed urgently as hasn’t been established for a number of years. Such decisions to be taken by the Chief Exec where that is lawful and to be reported to the next meeting.

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3 –A Responsibility for Local Choice functions	1.1 (o)	Delete reference to appeals against rehousing decisions as Merton no longer owns housing stock Update statutory references and remove reference to benefits review boards as these no longer exist and appeals are heard by tribunals.
	Miscellaneous	Other drafting changes only to reflect other proposed structural changes and new terminology
3- B Responsibly for non-executive functions	Introduction	Make it clearer that unless specifically reserved for Full Council or a committee, all decisions are delegated to officers, in accordance with the scheme of delegation to officers which will now be a composite scheme covering exec and non exec functions and will form part 3E of the constitution.
	1.2 Terms of Reference of Standards and General Purposes	<ul style="list-style-type: none"> Includes power to establish a Hearing subcommittee to deal with complaints against members
	1.2 Appointments Committee	Includes power to deal with disciplinary matters for the Head of Paid Service, Section 151 Officer and MO
	1.3 Planning Applications Committee	Clarification of which types of application can only be decided by Committee
	1.4.4 Licensing Committee (2003)	Add in more detailed Scheme of Delegations as previously agreed by Council for licensing and gambling
	1.4.5 Licensing Committee (Miscellaneous)	Add in more examples of the types of licensing matter which the ‘miscellaneous’ hearing committee can deal with
	1.5 Appeals Committee	Recommend deletion as it was established to deal with appeals against housing decision made by the Council in its capacity as a landlord. It no longer meets.
	1.8 Joint Regulatory Services Committee	Recommend deletion as Richmond and Wandsworth Councils have indicated they no longer wish to have

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		elected member participation in the governance arrangement for the regulatory services partnership (RSP)
	1.9 Local Pensions Board	Change to Pensions Committee, clarify terms of reference to distinction between elected member body and advisory pensions board
	1.10 and 1.11 Health and Well Being Board	Add in terms of reference of Health and Well Being Board and Sub group
	1.13 JCC with Ethnic Minority Organisations	Add in terms of reference of JCC with Ethnic Minority Organisations
	1.14 SACRE	Add in SACRE
3 – C Responsibility for Executive Functions		
	1.1	Making it clear that the Leader is responsible for deciding how executive decisions are made and cross referring to the new scheme of delegation in part 3E
	1.1(g)	Refined list of matters reserved for cabinet decision, reflecting practice on the ground and making express reference to contracts worth £2m or more which is currently contained in contract standing orders but not elsewhere. Covers reserved CHAs decisions (<i>if agreed in separate paper</i>)
	1.3	Add in terms of reference of joint committees –South London Partnership and South London Waste Partnership
Part 4- A Council Procedure Rules		
	2.3 Order of Business and Strategic theme	<ul style="list-style-type: none"> Restructure format of strategic theme debate so that the relevant Cabinet member introduces the report followed by questions and motions on that theme. Member questions on other issues are taken separately, after public questions but before the strategic theme debate

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		<ul style="list-style-type: none"> Clarify process for choosing strategic theme – at nomination of group leaders either on rotation or proportionately
	6 + 12 Time limits for questions and motions	<ul style="list-style-type: none"> Strategic Theme <u>motions</u> submitted 3 clear days before meeting (currently 9am day before the meeting, provided that the report on the strategic theme is circulated before the main agenda) “Ordinary” member questions submitted 7 clear days before meeting (currently 3 clear days) to allow them to be circulated with the agenda (written answers still to be circulated on the day) No “motions” on community forms reports Amendments to be submitted by 9am on the working day before the meeting (currently no time limit), unless chair agrees a later submission Amendments to be circulated by 5pm on day of the meeting
	5.1 Changing time and date of meetings	Clarify power of Chief Executive to cancel or vary meeting dates: needs agreement of, but not a request from the Chair, although they may make such a request and group Leaders should be consulted .
	10.5 Voting on appointments	Cause clarifying casting vote of the Chair in the event of a tie
	8.4 Length of speeches	Addition of ability to agree different speech lengths as happens now in practice
	12. Questions	Remove separate provision 12.1 for members to ask questions on Cabinet and Cabinet committee reports.
	New SO 21	Provisions for the public to attend meetings remotely and for non committee members to do so too, noting that

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		they will not count towards the quorum or the purposes of the six month rule (separate paper for consideration of SGP)
4B- Access to Information Procedure Rules	12	Removal of provisions preventing private meetings between cabinet and officers within 28 days of formal cabinet as this is no longer a legal requirement relating to cabinet
	15	Include deputy mayor in list of persons who can authorise urgent decisions where a proposed decision is not on the forward plan and/ or 5 clear days notice has not been given
4C Budget and Policy Framework Procedure Rules	2. Budget setting	Delete paragraph 2(e) which erroneously gives the Leader a second right to object to the Council's budget proposals after they have already been sent back to cabinet for reconsideration
	5 Call in of decisions on the grounds they are outside the budget or policy framework	<p>Clarification for process:</p> <p>Being outside the budget or policy framework is a separate ground for call in</p> <p>Call in goes to Overview and Scrutiny Commission who take advice from the MO or S.151 officer.</p> <p>A. If MO concludes decision is already compliant, it can be implemented forthwith.</p> <p>B. if MO/ . 151 officer considers it is not compliant, produces a report which is sent to all councillors</p> <p>Cabinet meets to decide whether to proceed</p>

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		<p>If Cabinet wishes to proceed, refers matter to Council.</p> <p>Council either:</p> <p>confirms decision is within policy framework; or</p> <p>amends policy framework to make decision compliant;</p> <p>remits to Cabinet to reconsider and if wish to proceed, to amend decision so it is in compliance.</p>
	6(b) policy framework	amended to make it clear that only where a plan falls in policy framework and needs ministerial consent is full council approval required, not any plan that needs ministerial consent. Reflects legal position.
4D Cabinet Procedure Rules	1.5(c)	Clarifies legal position on attendance of non cabinet members during the part of any meeting where exempt information is being considered and the press and public have been excluded. That is, they permitted to stay if it necessary for the performance of their role
4E Overview and Scrutiny Procedure Rules	7 Meetings times and dates	Changed to reflect the fact the calendar is agreed by full council after consultation with chairs (currently says the chair of the commission and panels <i>decide</i>). Chief exec may vary or cancel in exceptional cases with the agreement of the chair of the Commission and after consulting the chair of the panel if relevant.

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	16 Call in	<p>Clarifying that only executive, not administrative, decisions of officers are susceptible to call in (i.e. key decisions and executive non-key (defined by article 13.3(c)(i)) including those where the value is 250k-499K)</p> <p>Adding in being apparently contrary to the policy framework or budget as a discrete ground for call in.</p> <p>Also removing wording which appears to give the Commission the power to decide whether a call in is valid as that contradicts the later provisions which confer that decision on the monitoring officer taking into account the criteria set out in 16(e)</p> <p>Cross referring to the budget and policy framework rules where that ground applies for the process to be followed.</p> <p>Inserting express power to fix specific additional meeting to hear call ins</p>
<p>Hearing subcommittee Process Part 5.A Appendix to complaints process</p>		<ul style="list-style-type: none"> • • Include specific power for the chair to vary the procedure if appropriate, including to elide the fact finding and determination of breach stages • Make it clear that the subcommittee has to consider the public interest when deciding whether to exclude the press and public
<p>Members Complaints Process (on website not currently part of Constitution)</p>	4.2 Validity of complaints	Amended to make it clear that procedure only applies to acts of a member acting in that capacity or claiming to

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Will become an addendum to Part 5 A – Code of Conduct		act or giving the impression that they are acting in that capacity.
	4.5 Consultation with Independent person	Remove mandatory requirement for the Monitoring Officer (MO) to consult with the Independent person (IP) at the beginning of the process. Still mandatory to consult before deciding to refer the complaint for formal investigation.
	4.6 Factors to be taken into account when considering whether to refer for investigation	<p>Adds in:</p> <ul style="list-style-type: none"> • Prohibition on considering ‘complaints which are already the subject of other complaints process • Power not to consider vexatious complaints or those appearing designed to harass or insult • Adds presumption that complaints over 3 months old will not normally be investigated • Adds presumption that process does not cover complaints about Council decisions, polices or service failure • Gives the MO power not to investigate if the complaint could more appropriately be dealt with through political group or party processes
Members complaints process	7.3	<ul style="list-style-type: none"> • Where the investigation officer concludes that there is a breach of the code, the complaint will proceed to a hearing by a hearing subcommittee, rather than a full meeting of the standards and General Purposes Committee (although the

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		<p>Terms of Reference (TOR) of Standards and General Purposes will retain the right to have full hearings).</p> <ul style="list-style-type: none"> The current 'filter' stage of the process whereby the committee decides, on receipt of the investigating officer's report <u>whether</u> to refer the complaint for hearing, is removed, if the report concludes there is a prima facie breach. That is now be a decision for the MO.
New Part 7B Scheme of Delegation to Officers	replaces and combines parts 3E (scheme of delegation by cabinet), 3F (scheme of delegation by Full Council) and part 7B (Scheme of delegation to officers by chief executive)	<p>Brings together all the delegations into one place. The Chief Executive still has overarching responsibility but, unlike at present, there are direct delegations to the four council directors.</p> <p>As before, the principle is that unless specifically reserved for decisions by a member body, they are deemed delegated to the relevant director. Each director will then draw up departmental schemes of management setting out levels of responsibility within departments, including financial limits</p>
	4	Provisions for dealing with conflicts of interest
	6	Sets out the context for taking decisions, to be consistent with council policy, budget and financial regulations
	11	<p>Clarifies position on urgent decisions and emergencies – power to take urgent decision where it cannot reasonably be deferred to the next meeting. Requires consultation with relevant cabinet member or committee chair and compliance with the access to information procedure rules.</p> <p>Such consultation can be dispensed with in real emergencies if it is not reasonably practicable</p>

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	Appendix	List of proper officers has been updated