

**REPORT TO THE STRATEGY & RESOURCES COMMITTEE - 9TH JULY 2020
AGENDA ITEM 10**

PROPOSED AMENDMENTS TO THE CONSTITUTION

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| Report of: | Lidia Harrison – Head of Legal Services and Monitoring Officer |
| Purpose of Report: | To enable the Committee to consider proposed amendments to the Constitution in response to recent issues raised at, and arising from, Group Leader meetings. |
| Publication status: | Unrestricted. |
| Recommendations: | <p>That it be recommended to Council that:</p> <ul style="list-style-type: none">A. Standing Orders 13, 20 and 21 be amended in accordance with Appendix A to clarify the rights of political groups to appoint, and subsequently change, their Members on pre-allocated seats on Committees and Sub-Committees;B. Standing Order 29 (1.2) be amended in accordance with Appendix C to allow a Councillor, or a person resident, working or studying in the District, to ask a supplementary question at a Council or Committee meeting arising from the answer to their original question;C. subject to the Council remaining in a state of no overall control (i.e. where no single political group has an absolute majority of seats), throughout Financial Regulations, the Scheme of Delegation and the Planning Protocol (parts C, E and F of the Constitution), all references to officers having to consult specific Members of the Administration (listed at Appendix D) be deleted and replaced with a requirement that such consultations take place with the Leaders, or their nominated representatives, of political groups comprising ten or more Councillors; andD. should a single political group gain an absolute majority of seats on the Council, the Chief Executive, in accordance with the power granted by Standing Order 46 (2), be authorised to rescind the constitutional amendments in C above and replace them with a requirement for officers to consult solely with the Leader of the Council or his/her nominated representative. |
| Appendices: | <ul style="list-style-type: none">A – proposed amendments to Standing Orders 13, 20 and 21.B – arrangements made by some other Councils for dealing with questions from members at the public at meetings.C – proposed amendments to Standing Order 29 (1.2).D – extracts from the current Constitution whereby officers are required to consult Members about specific matters. |

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| Background papers defined by the Local Government (Access to Information) Act 1985 | None |
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1. Background

1.1 The Constitution of the Council describes the way in which the Council conducts its business. It contains not only the Council's Standing Orders, but also the various rules and procedures for decision-making, access to information, terms of reference for Committees and Sub-Committees, the Code of Conduct for Members, the Officer / Member Protocol, as well as other specific rules relating to contracts and finance.

1.2 The Constitution forms the cornerstone of effective corporate governance.

1.3 Following recent Group Leader meetings and dialogue with the Chairman of the Council, Officers were asked to review certain parts of the Constitution to:

- clarify the rights of political groups to appoint their Members to pre-allocated seats on Committees and Sub-Committees;
- require Officer / Member consultation arrangements to be extended to include the two main opposition groups; and
- enable anyone asking a question at a meeting under Standing Order 29 (1.2) to be able to ask a supplementary question arising from the first answer.

1.4 This report presents suggested changes to Standing Orders, Financial Regulations, the Scheme of Delegation and the Planning Protocol (parts B, C, E and F of the Constitution) in connection with 1.1 above.

1.5 Subject to Standing Order 46 (which enables the Chief Executive to make minor and consequential amendments, such as correcting typographical errors) changes to the Constitution must be ratified by Full Council. While this Committee is responsible for reviewing the Constitution, it can only make recommendations to Council regarding proposed revisions.

2. Clarification of the rights of political groups to appoint their Members to pre-allocated seats on Committees and Sub-Committees – proposed amendments to Standing Orders

2.1 Determination of the number, size and political balance of Committees is a 'reserved matter' for Council.

2.2 However, once the Council has determined the allocation of Committee seats, the appointment of Members to those seats is a matter for the respective political groups. While it may be good practice for the Council to formally note the membership of its Committees at the earliest opportunity following any change, Full Council cannot override the wishes of political groups in terms of their choice of councillors to fill their allocated positions.

- 2.3 It is acknowledged that a report to full Council on 19th July 2018 appeared to contradict 2.2 above, when the Council was asked to ‘approve’ the OLRG’s request for Councillor Sayer to replace Councillor Wren on the Planning Policy Committee. With hindsight, it would have been more appropriate if Council had been asked to note that change of membership.
- 2.4 To provide greater certainty for the future, it is suggested that amendments be made to Standing Orders 13 (Appointment of Committees); 20 (Sub-Committees); and 21 (Substitutes) to clarify the rights of political groups to appoint, and subsequently change, their Members to pre-allocated seats. The proposed revisions are shown at **Appendix A**. These include clauses whereby any amendments to a political group’s representation must be notified at least seven clear working days prior to a meeting for the change to take effect for that meeting. The intention of such clauses is to ensure certainty regarding a Committee’s or Sub-Committee’s membership at the time its agenda papers are published.
- 2.5 Consultation with Group Leaders has resulted in a further suggested amendment to Standing Order 21(2) for situations when a member is attending a meeting as a substitute and the principal member arrives part way through. While not directly connected to the rights of political groups to appoint Members to pre-allocated seats, officers accept that SO 21(2) should be re-worded to remove the mistaken impression that substitutes must withdraw from a meeting if the principal Member (for whom they are substituting) arrives during the proceedings. The proposed amendment is included within Appendix A.
3. Standing Order 29 (SO 29) – provisions regarding responses at meetings to written questions from Councillors and members of the public
- 3.1 SO 29 entitles Councillors, or persons resident, working or studying in the District, to submit written questions in advance of Council or Committee meetings.
- 3.2 At Council meetings, the Chairman may request that the answer be given by the Chairman of a relevant Committee. At Committee meetings, the Chairman may request that the answer be given by another Member or an Officer.
- 3.3 Clause (ix) of SO 29 states that, “*every question shall be put and answered without discussion*”. It has been suggested to Officers that this restriction should now be removed to enable a supplementary question to be put. As shown by the examples at **Appendix B**, the right to ask supplementary questions at meetings is now commonplace among other authorities.
- 3.4 Proposed amendments to SO 29 are therefore presented at **Appendix C**. Specifically, it is recommended that the discretion to provide “*a written answer ... where the reply to the question cannot conveniently be given orally*” should be withdrawn (although that clause has not often been relied upon in the past). It is also proposed that the following clauses be added to allow, and deal with, supplementary questions:
- *at the meeting, subject to the questioner being present, the Chairman will ask the questioner if the response answers their concern or if they wish to ask one supplementary question (if a supplementary question is asked, it must arise from the reply given); and*
 - *the Chairman may invite other Members present at the meeting to respond.*

4. Officer / Members consultation arrangements

- 4.1 Certain parts of Financial Regulations, the Scheme of Delegation and the Planning Protocol (parts C, E and F of the Constitution) require Officers to consult senior Members of the Administration (e.g. the Leader / Deputy Leader of the Council and/or the Chairman / Vice-Chairman of a Committee). The regulations / clauses concerned are shown at **Appendix D**.
- 4.2 It is proposed that, as Tandridge is now a 'no overall control' Council, the relevant Officers in such cases should, instead, be required to consult with the Leaders, or their nominated representatives, of political groups comprising ten or more Councillors (Recommendation C). This would avoid the Constitution having to quote specific political groups and for the relevant clauses having to be amended following any future changes to political balance.
- 4.3 However, Recommendation C is caveated to only apply if the Council remains in a state of no overall control (i.e. where no single political group has an absolute majority of seats). Should that situation change, Recommendation D will enable the Chief Executive to further amend the Constitution whereby the relevant officers will only be required to consult the Leader of the Council or his/her nominated representative. Such amendments are permitted by Standing Order 46(2) which concludes, "*Subject to the matter being reported on the Delegated Action List, minor and consequential amendments can be made by the Chief Executive.*"
- 4.4 It should be acknowledged that, notwithstanding the obligations to consult Members, the final decisions in connection with matters listed at Appendix D rest with the Officers concerned under the authority previously delegated by the respective Committees.

5. Financial implications

- 5.1 There are no direct financial consequences of this report. However, it is important that the Council has an up to date, fit for purpose Constitution which forms a key element of the council's governance framework.

6. Legal implications

- 6.1 The legal implications associated with the proposed recommendations have been considered and addressed within the report.

7. Equality impacts

- 7.1 None

8. Conclusion

- 8.1 This report provides a summary of the proposed amendments to the Constitution in response to recent issues raised at, and arising from, Group Leader meetings.

Proposed amendments to Standing Orders

Standing Order 13 - Appointment of Committees

- (1) The Council shall at the Annual Meeting appoint Policy Committees and any other Committees which it is deemed necessary to appoint (such appointments shall be confined to determining Committees' terms of reference; their size; and the allocation of seats to political groups).
- (2) The Council may at any time similarly appoint such other Committees as are necessary to carry out the work of the Council.
- (3) Subject to any statutory provision, the Council:-
 - (i) shall not appoint any Member of a Committee to hold office later than the next Annual Meeting of the Council;
 - (ii) may at any time dissolve a Committee, amend a Committee's terms of reference, or alter a Committee's membership in so far as its size or allocation of seats to political groups are concerned.
- (4) Committees may, in turn, appoint Sub-Committees in accordance with Standing Order 20.
- (5) Subject to (6) below, the appointment of Members to committee seats shall be determined by political groups and noted by Full Council at the earliest opportunity.
- (6) Political Group Leaders may, from time to time, change their Members (including substitutes) in respect of the Committee seats allocated to their Groups by submitting written notice to the Chief Executive or nominated representative. Such changes will become effective for the next meeting of the respective Committee, provided that the required notice is received at least seven clear working days prior to the meeting in question.

Standing Order 20 – Sub-Committees

- (1) Every Committee may appoint Sub-Committees for purposes to be specified by the Committee. Such appointments shall be confined to determining Sub-Committees' terms of reference; their size; and the allocation of seats to political groups). Subject to (3) below, the appointment of Members to Sub-Committee seats shall be determined by Political Groups and noted by the parent committee at the earliest opportunity.
- (2) Subject to Standing Order 18(1), each Sub-Committee shall elect a Chairman at its first meeting of the Municipal Year.
- (3) Political Group Leaders may, from time to time, change their Members (including substitutes) in respect of the Sub-Committee seats allocated to their Groups by submitting written notice to the Chief Executive or nominated representative. Such changes will become effective for the next meeting of the respective Sub-Committee, provided that the required notice is received at least seven clear working days prior to the meeting in question.

Standing Order 21 - Committees and Sub-Committees – Substitutes and Quorum

- (1) Every Political Group may appoint a substitute Member for each Committee and Sub-Committee by submitting written notice to the Chief Executive or nominated representative. Such appointments, or changes to existing appointments, will become effective for the next meeting of the respective Committee or Sub-Committee, provided that the required notice is received at least seven clear working days prior to the meeting in question.
- (2) A substitute member of any Committee or Sub-Committee shall, in the absence of the appointed Member, be entitled to attend, speak and vote at the meeting. ~~but s~~ Should the appointed Member arrive during the course of the proceedings, the substitute Member, after completion of the Item of business under consideration, ~~subject to Standing Order No. 23, shall be required to withdraw from further participation~~ may remain in the meeting and, subject to the consent of the Chairman (Standing Order No. 23), may speak to subsequent items but shall not vote.
- (3) The quorum for Committee and Sub-Committee meetings shall be:
 - at least one quarter of the membership of the Committee or Sub-Committee; or
 - three Members

....whichever is the greater number.

APPENDIX 'B'

Arrangements made by some other Councils for dealing with questions from members at the public at meetings

(information obtained from the Councils' websites – the arrangements may, in some cases, only apply to Council or Cabinet meetings – different arrangements may apply for Planning, Licensing and other Committee meetings)

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| | <p>Bromley Council</p> <p>A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply. After a reply to a supplementary question has been given, the Mayor may, having regard to the time available and other matters on the agenda, allow further supplementary questions to be asked by Members (this will usually be no more than one per Member.)</p> |
| | <p>Crawley Borough Council</p> <p>After the question has been answered, the person asking the question may ask one supplementary question relating to the same matter.</p> |
| | <p>Croydon Council</p> <p>Members of the public invited to put their questions will also be permitted to ask a single supplementary question but shall do so only if called upon by the Mayor to do so as this may be subject to time constraints.</p> |
| | <p>Epsom & Ewell Borough Council</p> <p>At the meeting, the Chairman will ask the questioner if the response answers their concern or if they wish to ask one supplementary question. If a supplementary question is asked, it must arise from the reply given. The Chairman may decline to answer a supplementary question or invite other Members of the relevant body to contribute to a response.</p> |

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| | <p>Mid Sussex District Council</p> <p>The questioner shall be present at the start of the meeting and may also put one supplementary question without notice to the Member who has replied to his original question. A supplementary question must arise directly out of the original question or the reply. Any supplementary question which does not fulfil the criterion will be rejected.</p> |
| | <p>Mole Valley District Council</p> <p>One supplementary question may be asked by the questioner, provided that it seeks clarification of the answer given to the original question and is not of a personal nature.</p> |
| | <p>Reigate & Banstead Borough Council</p> <p>A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must arise directly out of the original question or the reply.</p> |
| | <p>Sevenoaks District Council</p> <p>Council - At any one meeting no person may submit more than two questions and no more than two such questions may be asked on behalf of one organisation. Unless the Chairman decides otherwise, no discussion will take place on any question, but any Member may move that a matter raised by a question be referred to the Cabinet or the appropriate Committee or Sub-Committee. Once seconded, such a motion will be voted on without discussion.</p> |
| | <p>Sutton Council</p> <p>A supplementary question relevant to the original question may be asked. All questions and supplementary questions must be asked in plain English.</p> |

STANDING ORDER 29

**QUESTIONS AND REPRESENTATIONS AT MEETINGS
(other than petitions – Standing Order 30 refers)**(1) Questions

1.1 A Member of the Council may ask the Chairman of a Committee any question regarding a Committee minute which is under consideration by the Council.

1.2 Subject to (i) to (xi) below, a Councillor, or a person resident, working or studying in the District, may put a question to any meeting of the Council (other than the Annual Meeting) or a Committee on any matter in relation to which the Council / Committee has powers or duties or which affects the District:

- (i) such questions must be received by e-mail or in writing to the Chief Executive or nominated Officer at least three clear working days prior to the meeting;
- (ii) the Chief Executive may exercise discretion to refuse to allow a question to be presented if he / she considers it to be offensive, excessively lengthy, outside the scope of this Standing Order, or on the same subject as another question or upon which a question has been answered in the previous three months;
- (iii) at Council meetings, the Chairman may request that the answer be given by the Chairman of a relevant Committee;
- (iv) at Committee meetings, the Chairman may request that the answer be given by another Member or an Officer;
- (v) questions from a person resident, working or studying in the District shall be e-mailed to all Members by 6.00pm on the working day prior to the meeting and either:
 - read out at the meeting by the individual concerned from within the meeting room; or,
 - if members of the public are not permitted to attend in person for health & safety reasons, the individuals concerned will be given the opportunity to pre-record their questions (such recordings to be facilitated by the Council, limited to the individual speaking to camera, without additional augmentations to promote their views) and for the recordings to be replayed at the meeting. Otherwise, such questions will be read out by the Chief Executive or nominated officer, either from within a physical meeting place or from a remote location.
- (vi) the time allowed for questions and answers shall be ten minutes unless the Chairman deems that there are special circumstances for extending that period;
- (vii) the questions shall be taken in the order that they were received by the Chief Executive or nominated Officer;

(viii) such questions shall be dealt with at the beginning of the relevant meeting;

~~(ix) every question shall be put and answered without discussion;~~

(ix) answers may take the form of:-

(a) a direct oral answer; or

(b) where the desired information is contained in a publication of the Council, a reference to that publication.

~~(c) a written answer (copies of which shall be circulated to Members of the Council) where the reply to the question cannot conveniently be given orally.~~

(x) at the meeting, subject to the questioner being present, the Chairman will ask the questioner if the response answers their concern or if they wish to ask one supplementary question (if a supplementary question is asked, it must arise from the reply given);

(xi) the Chairman may invite other Members present at the meeting to respond to a supplementary question.

References within the Constitution whereby officers are required to consult specific Members on certain matters

It is proposed that, in all such cases, the officers concerned must also consult the Leaders (or their nominated representatives) of other Political Groups which comprise ten or more members (currently the Independent and OLRG Alliance and the Liberal Democrats)

| Financial Regulations (Part C) | |
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| 16 - Invest to Save | <p>Subject to achieving a financial return of at least 2% above bank base rates and a measurable improvement in service, spending be approved as follows:</p> <p>(i) Up to £30,000 – to be approved by the relevant Chief Officer, subject to the concurrence of the Chief Finance Officer (or in his absence, or where the expenditure relates to his Directorate, by the Chief Executive) and in the consultation with the Chair of the Strategy & Resources Committee;</p> |
| 17 - purchase of land and buildings utilising the Investment & Development Fund or the Housing Revenue Account | <p>Subject to the conditions specified within Annex A [to Financial Regulation 17] the Chief Executive, in consultation with:</p> <p>a) the Leader or Deputy Leader and the Chair or Vice Chair of the Strategy & Resources Committee, can utilise the Investment & Development Fund; or</p> <p>b) the Leader or Deputy Leader and the Chair or Vice Chair of the Housing Committee, can utilise the Housing Revenue Account</p> <p>... for the purchase of land or buildings in accordance with the Council's general power of competence under the Localism Act 2011, or in the case of the HRA, for the Council's House Building Programme.</p> <p>Subject to all other conditions specified in Appendix E, the Chief Executive, in consultation with the Leader or Deputy Leader and the Chair or Vice Chair of the Strategy & Resources Committee, can amend the phasing of the capital budget for the Investment & Development Fund up to the maximum of the available approved funding.</p> |

| Delegation of powers to committees and officers (Part E) | |
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| Overview - clause (vi) | Authority to settle court proceedings to protect the Council's interests is delegated to the Monitoring Officer in consultation with the Chair or a Vice Chair of the relevant Committee |
| Terms of Reference of all Policy Committees – Clause C | Subject to the agreement of the Chief Executive and in consultation with the respective Policy Committee Chairs , to deal exclusively with any matter that also falls within the terms of reference of another Policy Committee / other Policy Committees and to resolve such matters unless reserved for determination by Full Council. |
| Housing Committee – powers to resolve (clause ii) | Freehold disposals of Housing Revenue Account assets worth between £250,000 and up to £1 million (the Chief Executive can determine freehold disposals of assets worth less than £250,000 in consultation with the Chair of the Committee). |
| Housing Committee – powers to resolve (clause iii) | Authority is delegated to the Chief Executive, in consultation with the Housing Committee Chair , to approve leasehold disposals of HRA assets of up to 16 years and with an annual rental valuation of up to £75,000. |
| Licensing Committee – scheme of delegation for alcohol and entertainment licensing | Officers to consult the Chair and Vice-Chair of the Committee to determine whether complaints are frivolous or vexatious. |
| Strategy & Resources Committee – powers to resolve (clause iii) | The Chief Executive can determine freehold disposals of General Fund assets worth less than £250,000 in consultation with the Chair of the Committee . |
| Strategy & Resources Committee – powers to resolve (clause iv) | Authority is delegated to the Chief Executive, in consultation with the Chair of the Committee , to approve leasehold disposals of General Fund assets of up to 16 years and with an annual rental valuation of up to £75,000. |
| Planning Protocol (within Part F) | |
| Planning Protocol – 12.4 | In exceptional and special circumstances, the Chief Planning Officer may, in consultation with the Head of Legal and the Chairman and Vice-Chairman of the Planning Committee , use his / her discretion to report the determination of Certificates of Lawfulness of an Existing or Proposed Use of Development (CLEUDs / CLUPDc) to the Planning Committee for decision. |
| Planning Protocol – Appendix 4 (Development Management Charter) – Enforcement Action | In particularly sensitive cases [enforcement matters] may be referred to the Planning Committee for discussion. Committee referral will be subject to the agreement of the [Chief Planning Officer] in consultation with the Chairman and/or Vice Chairman of the Committee . |