



City of Westminster

General Purposes Committee

Date: Wednesday 20 October 2010

Classification: For General Release

Title: Constitutional Issues

Report of: Head of Legal and Democratic Services

Wards Involved: Not Applicable

Policy Context: Management of the Council

Financial Summary: There are no financial implications

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1. Executive Summary

- 1.1 This report, seeks approval to some minor changes to the Council's Constitution, as described in paragraph 3.1 of the report.

2. Recommendations

- 2.1 That the Council be recommended to approve the changes set out in this report at paragraph 3.5 and in Appendix A.

3. Background

- 3.1 Officers in Legal and Democratic Services regularly review the Constitution with a view to identifying changes which could reduce any unnecessary bureaucracy processes or improve procedures. Some proposed changes are outlined below:

Transcript of Council Questions

- 3.2 These are currently transcribed and circulated with the minutes of the meeting for approval at the following Council meeting. It is suggested that in order to speed up the publication of these questions and replies responsibility is given, in Standing Orders, to the Head of Legal and Democratic Services to transcribe and place the transcription of the City Council's website. The proposed Standing Order sets out a timeframe of 28 days for this, but this is a maximum period and is likely to be much shorter.

Members will be alerted to the availability of the transcript by an entry in the Weekly Information Bulletin.

The minor change to process will ensure the transcript is available on the Council's website more quickly than is presently the case.

3.3 Review of Call In Procedures

At the Council meeting on 28 April 2010 the Cabinet Member for Finance and Resources, in response to a Council Question, undertook to review the call-in procedures so that where assets of the Council were being relinquished, which are valued at £100,000 or over, that the call-in provisions apply. At the moment call-in applies to executive decisions by the Cabinet, Cabinet Member or a key decision by an Officer. It is proposed to expand the call-in provisions so that proposals relating to the purchase or disposal of assets valued at £100,000 or above are also capable of being called-in. The proposed change is set out in Appendix A.

3.4 Other aspects of the call-in provisions have also been reviewed following a recent call-in activated by three Members of the Built Environment, Business Enterprise and Skills Policy and Scrutiny Committee. This revealed that some changes and clarifications are necessary to that part of the Council's Constitution which relate to call-in by Policy and Scrutiny Committees.

3.4.1 **Para 16 (a):** This provides that details of the Cabinet and individual Cabinet Member decisions are circulated to all members of the relevant Policy and Scrutiny Committee. The proposed revised provision clarifies that this will also include the reports to be issued at the same time they are issued to the relevant Cabinet Member including reports which are confidential and exempt from public disclosure. These will be forwarded as now electronically. The proposed change is set out in Appendix A.

Para 16 (b): The update here is to clarify that the call-in period expires at 5pm on the fifth working day of the call-in period.

Para 16 (c): This is amended to reflect that a Member may withdraw a call-in request. In the event that such a withdrawal reduces the number of Members still requesting a call in to below 3 the call-in will then cease and no further action be taken including the holding of the meeting.

The period in which the Policy and Scrutiny Committee is required to meet has also been clarified so that it is clear that the Policy and Scrutiny Committee whose members trigger the call-in is required to meet within 10 working days of the call-in being triggered. The meeting shall be called by the Head of Legal and Democratic Services, having consulted the Chairman within 5 days of the call-in. The revised provision also reflects that the requirements of the Access to Information provisions, which require meetings to be called with 5 clear days notice will apply. Meetings can however be called with less notice where there are special circumstances justifying urgent consideration.

Para 16 (d): The change here is to reflect that the referral to full Council should only relate to matters which are, in the opinion of the Head of Legal and Democratic Services, contrary to the Budget and Policy Framework. This is because the Council, as a body, is not responsible for the discharge of executive functions which comply with the Council's Budget and Policy Framework. The provision otherwise remains unchanged, except that mention is made to the Chairman, of the relevant Policy and Scrutiny Committee, being invited in the event that the call-in refers to a matter being referred to the Cabinet to the meeting to address the Cabinet on behalf of the Policy and Scrutiny Committee.

3.5 Policy and Scrutiny Committee Rules

It is suggested that these are amended to include the following updated paragraph, the additions for which are shown in bold. This makes clear that Policy and Scrutiny Committees are entitled to also scrutinise non executive decisions, but it is also made clear that this does not relate to individual applications, registrations or consents. An amended paragraph 13 (a) to the Policy and Scrutiny Committee procedural rules, which reflects this point, is also set out below for consideration.

13. Members and officers giving account

- (a) Any policy and scrutiny committee, sub-committee or task group may scrutinise and review decisions made or actions taken in connection with the discharge of any Council functions, ie executive decisions **and decisions of non-executive committees. The power to scrutinise non-executive decisions should normally, in line with Government guidance, be exercised as part of wider policy reviews and Policy and Scrutiny Committees should not normally scrutinise individual decisions made by non-executive committees, particularly decisions in respect of development control, licensing, registration, consents and other permissions.** As well as reviewing documentation, in fulfilling the scrutiny role, Policy and Scrutiny Committee may require any member of the Cabinet, the head of paid service and/or any senior officer to attend before it to explain in relation to matters within their remit:
- (i) any particular decision or series of decisions;
 - (ii) the extent to which the actions taken implement Council policy; and/or
 - (iii) their performance

and it is the duty of those persons to attend if so required.”

In order to cover this point completely the following additional term of reference to each Policy and Scrutiny Committee and for completeness also the Westminster Scrutiny Commission is suggested:

“(b) To carry out the Policy and Scrutiny function in respect of matters within the remit of the Council's non-executive Committees and Sub-Committees, which are within the broad remit of the Committee, in accordance with paragraph 13 (a) of the Policy and Scrutiny procedure rules”.

4. **Legal Implications:** None.
5. **Financial Implications:** None.
6. **Other Implications:** None.

**If you have any queries about this Report or wish to inspect any of the Background Papers please contact Mick Steward: Tel: 020 7641 3134;
Email: msteward@westminster.gov.uk**

BACKGROUND PAPERS

- Constitution

REVISIONS TO THE CONSTITUTION

Revised Standing Order 9 (a)

Proposed Additional Standing Order 9 (a) (II)

- (II) Questions and Replies shall be transcribed by the Head of Legal and Democratic Services and placed on the Council's website no later than 28 days following the date of the Council meeting.

16. Call-In

- (a) When a decision is made by the Cabinet, an individual Member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an officer with delegated authority from the Cabinet, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within 2 working days of being made. All the Members of the relevant Policy and Scrutiny Committee(s) and where the decision affects a single ward the relevant Ward Members **will be sent copies of the report, at the time of issue and a record of such decisions within the same timescale by electronic means by the person responsible for publishing the decision.**

Proposed Revised – Paragraph 16 (b) of the Policy and Scrutiny Committee Rules of Procedure

- (b) That notice will bear the date on which it is published and will (save where an exception under (h) below applies specify that the decision will come into force, and may then be implemented, **at 5pm** on the 5th working day after the publication of the decision, unless (c) below applies. (Where an exception under (h) below applies the decision will come into force as soon as it is made).

Proposed Revised – Paragraph 16 (c) of the Policy and Scrutiny Committee Rules of Procedure

- (c) During that period (if applicable), the proper officer shall call-in a decision for scrutiny by the Committee if so requested by any 3 Members of the Committee entitled to vote on the subject matter of the decision and/or, in relation to a decision affecting a single ward by all 3 members of that ward and shall then notify the decision taker of the call-in. He/she shall call a meeting of the Committee on such date as he/she may determine, where possible after consultation with the Chairman of the Committee, and in any case within 5 working days of the decision to call-in. Where call-in is requested by all three members of a ward, those Members will be invited to the relevant meeting. In

circumstances where one of the Ward Members is the decision taker or otherwise unable to act the ward call-in can be activated by the remaining two Ward Members. **If at anytime after the call-in has been triggered but prior to the Committee meeting taking place one of the three Members withdraws their call-in request no further action in relation to the call-in shall take place.**

Exceptions

- (h) In order to ensure that call-in is not abused, nor causes unreasonable delay, certain limitations are to be placed on its use. These are:
- (i) that a Policy and Scrutiny Committee may refer back to the decision maker or to the Council only one decision in any three month period;
- (ii) only decisions involving expenditure, reductions in service, or the **sale of assets** over a value of £100,000 may be called in;
- (iii) a majority of the Members of a Policy and Scrutiny Committee are needed for a decision to be referred back to the decision maker or to full Council;
- (iv) the call-in procedure may not be used where the decision is in accordance with the recommendations of the relevant Policy and Scrutiny Committee.
- (v) in the case of Ward Member call-in (referred to in (c) above, a maximum of four such call-ins a year per ward will be permitted.

Proposed Revised – paragraph 16 (a) of Policy and Scrutiny Committee Rules of Procedure.