

Report Title: Amendments to the Constitution re: Decision Making in Election Year			
Joint Report of: The Chief Executive and the Head of Legal Services and Monitoring Officer			
Wards affected: All	Report for: Recommendation to Council		
1. Purpose 1.1 To amend the Council's Constitution by (1) clarifying the term of office of the Leader and Executive Members and (2) bringing the emergency procedures in election year into accord with local government legislation by granting extended delegated powers to the Chief Executive.			
2. Recommendations 2.1 That Members recommend to full Council the adoption of the changes to the term of office of the Leader and Executive Members, set out in Appendix 1 to this report, to have effect as amendments to Part H.1 of the Council's Constitution. 2.2 That Members recommend to full Council the adoption of the changes to the "Emergency Procedures in Election Year" including the delegated powers to the Chief Executive, set out in Appendix 2 to this report, to have effect as amendments to Part E.7 of the Council's Constitution. 2.3 That Members of the Committee support the recommendation from the Licensing Committee to full Council to extend the appointments of the existing Members of the Licensing Committee until the date of the Annual Meeting of the Council on 22 May 2006 as currently set out in recommendation 2.1 of the report to the Licensing Committee attached as Appendix 3 to this report.			
Report authorised by: <table><tr><td>Max Caller Interim Chief Executive Officer</td><td>Davina Fiore Head of Legal Services & Monitoring</td></tr></table>		Max Caller Interim Chief Executive Officer	Davina Fiore Head of Legal Services & Monitoring
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3.1 Executive summary

This report sets out proposals to clarify the term of office of the Leader and Executive Members. It also proposes bringing the “Emergency Procedures in Election Year” into line with the legislation by providing that the Chief Executive may exercise any of the Council’s functions, in consultation with the Mayor and the Leader, in the period between the Council Election date and the Annual Meeting of the Council.

3.2 Reasons for any change in policy or for new policy development

The proposals set out in the report are necessary to ensure that urgent matters requiring a decision outside the normal scheme of delegation to officers can be dealt with in the short period (4th May to 22nd May 2006) between the Elections and the Annual Meeting.

4. Access to information:

Local Government (Access to Information) Act 1985

The following background papers were used in the preparation of this report and can be inspected at the Alexandra House, 10 Station Road, Wood Green, London N22 7TR by contacting Terence Mitchison on 020 8489 5936:

- (i) Legal Service file on this matter.
- (ii) The Council’s Constitution

5. Background

- 5.1 As Members will be aware, no meetings of The Executive or any Council Committees or Sub-Committees are scheduled for the period between the Council Elections on 4 May and the Annual Meeting of the Council on 22 May (“the interim period”). Steps have been taken to ensure that no important matters are likely to require any decisions by Members in this interim period.
- 5.2 However, despite careful planning, unforeseen events can arise. It is essential in order to protect the Council’s interests, that there should be proper provision for taking urgent and decisions in the interim period on matters that fall outside the normal limits of officers’ delegated powers.

6. Terms of Office of the Leader and other Executive Members

- 6.1 Regrettably, the Council's Constitution is not clear about how long the Leader or other Executive Members remain in office. The relevant provision about the Leader's term of office is in Part H.1 of the Council's Constitution at article 15.03. This is attached as Appendix 1 to this report.
- 6.2 Certain unusual eventualities such as resignation or removal by the Council would bring the Leader's term to an end. The Leader will cease to hold office if he/she is no longer a Councillor. The general rule in 15.03 (f) is that the Leader serves until the "end of the municipal year" in which he/she is elected. However, there is no definition of "the municipal year" which would put an exact date on the end of the Leader's term.
- 6.3 In order to avoid uncertainty and possible dispute, it is recommended that the Leader's term of office be specified more precisely. The proposal is to amend 15.03 (f) so that the reference to the "municipal year" is deleted and replaced by a provision that the Leader serves until the Annual Meeting of the Council in the year after his/her election i.e. from one Annual Meeting until the next.
- 6.4 There is currently the same uncertainty about the term of office of the other Executive Members. The provision about their term is in Part H.1 at article 15.04. It is worded in the same way as the provision about the Leader with the same reference to the "end of the municipal year". The same amendment to clarify the position is proposed in 15.04 (f).
- 6.5 If any of the other Executive Members were not to be re-elected as Councillors, then any urgent decisions during the interim period which had to be taken within their portfolio responsibilities could always be taken by the Leader under existing urgency procedures in Part H.4 paragraph 2.06.
- 6.6 If the Leader were not to be re-elected as a Councillor, then the special delegation to the Chief Executive, proposed below, would ensure that the "executive" functions of the Council could be discharged in cases of urgency.

7. Emergency Procedures in Election Year

- 7.1 In Part E.7 of the Council's Constitution at section 6 there are provisions concerning "Emergency Procedures in Election Year". These are set out in Appendix 2 to this report.
- 7.2 As currently drafted these provisions refer to the Mayor making decisions in the relevant period after the Election and before the Annual Meeting. Unfortunately, it is not possible under local government legislation and case law for a single non-executive Member, including the Mayor, to make decisions even as a matter of urgency.
- 7.3 The proposal is to delegate to the Chief Executive the power to exercise any of the functions of the Council and The Executive in consultation with the Mayor and the Leader. The formal decision-making would be undertaken by an officer rather than a single non-executive Member and, therefore, this would be consistent with section 101 of the Local Government Act 1972 which provides for the delegation of the Council's functions.

- 7.4 This delegation would only operate during the relevant period between the Election and the Annual Meeting. The power would only be used in circumstances where it was genuinely necessary and impossible to defer a decision until the commencement of the scheduled cycle of meetings of Member bodies after the Annual Meeting. Any decisions taken would be reported to the next meeting of the appropriate Member body.
- 7.5 In the event that the Leader of the Council were not to be re-elected as a Councillor, then the Chief Executive would consult the Mayor on any proposed exercise of this delegated power. Under the Local Government Act 1972, the Mayor remains in office, even if not re-elected as a Councillor, until a successor becomes entitled to act. There is no need to make any amendment to the Council's Constitution about the Mayor's term.

8. Licensing Decisions

- 8.1 As explained above, all decisions involving major policy issues have been timetabled so that they can be taken at the scheduled meetings of Member bodies before the end of the 2005/06 cycle or after the Annual Meeting.
- 8.2 There is a specific concern about applications under the Licensing Act 2003 and the possible need for meetings of Member bodies during the interim period. This is because the legislation prescribes a very tight and inflexible timetable for holding hearings by a Licensing Committee or Sub-Committees into applications which are subject to objections. Applications for personal or premises licences, or for reviews of existing licences, made during late March/early April could, if contested, give rise to a statutory duty to hold a Licensing Committee or Sub-Committee hearing within the interim period.
- 8.3 The problem is that both the Licensing Committee and its subordinate Licensing Sub-Committees will cease to exist after the Council Elections. In the normal way, the Annual Meeting would appoint the Licensing Committee and the Licensing Committee itself must appoint its Sub-Committees. This could delay the establishment of the Licensing Sub-Committees beyond the end of May.
- 8.4 A report is being submitted to the meeting of the Licensing Committee on 21 February advising that Committee about the position. This report is attached as Appendix 3 to this report. The Licensing Committee is being invited to make a recommendation to full Council that Council extend the duration of the appointment of the existing Members to the Committee beyond the Elections on 4 May until the Annual Meeting on 22 May. This would only be for the purposes of determining any contested applications that must legally be determined during the interim period.
- 8.5 The outcome of the Licensing Committee's deliberations on this matter on 21 February will be reported to the General Purposes Committee on 2 March.
- 8.6 However, it is a statutory requirement for the operation of a Licensing Committee that its membership should comprise no fewer than 10 Members and no more than 15 Members. Unless at least 10 Members of the existing Committee are re-elected and willing to serve in the interim period after the Elections, the Licensing Committee will not be able to function.

- 8.7 The Licensing Committee is also being recommended to extend the appointments of the existing Members to the three Member Licensing Sub-Committees on the same basis as at paragraph 8.4 above. This would only be effective for any Sub-Committee if all three Members were to be re-elected as Councillors. Given the inevitable uncertainty, there is a specific need for the delegation to the Chief Executive in the interim period.
- 8.8 If the recommended delegation of power is granted to the Chief Executive, then she will be able to appoint any additional Members needed to allow the Licensing Committee to act. Such appointments would be on a purely interim basis with effect only up to the Annual Meeting.
- 8.9 Once a Licensing Committee had its full membership, it could either hear any contested application itself or appoint an emergency Licensing Sub-Committee to do so. Any appointments to such an emergency Licensing Sub-Committee would also be on a purely interim basis with effect only up to the Annual Meeting.

9. Recommendations

- 9.1 That Members recommend to full Council the adoption of the changes to the term of office of the Leader and Executive Members, set out in Appendix 1 to this report, to have effect as amendments to Part H.1 of the Council's Constitution.
- 9.2 That Members recommend to full Council the adoption of the changes to the "Emergency Procedures in Election Year", including the delegated powers to the Chief Executive, set out in Appendix 2 to this report, to have effect as amendments to Part E.7 of the Council's Constitution.
- 9.3 That Members of the Committee support the recommendation from the Licensing Committee to full Council to extend the appointments of the existing Members of the Licensing Committee until the date of the Annual Meeting of the Council on 22 May 2006 as currently set out in recommendation 2.1 of the report to the Licensing Committee attached as Appendix 3 to this report.

10. Equalities Implications

- 10.1 There are no specific equalities implications.

11 Comments of the Director of Finance

- 11.1 There are no financial implications.

12 Comments of the Head of Legal Services

12.1 The legal implications are set out in the main part of the report.

13 Use of Appendices

- 13.1 Appendix 1 to this report sets out the recommended amendments to Part H.1 of the Council's Constitution concerning the terms of office of the Leader and other Executive Members.
- 13.2 Appendix 2 to this report sets out the recommended amendments to Part E.7 of the Council's Constitution Members under the heading "Emergency Procedures in Election Year".
- 13.3 Appendix 3 to this report is the report to the Licensing Committee on 21 February 2006 entitled "Extending the Duration of the Licensing Bodies in Election Year".