

Special General Purposes Committee on 2 November 2006

Report Title: Amendments to Council Standing Orders on Substitute Members	
Report of: The Head of Legal Services and Monitoring Officer	
Wards affected: All	Report for: Recommendation to Council
1. Purpose 1.1 To amend the rules about the appointment of substitute Members when a Member is unable to attend a meeting of a Committee or Sub-Committee	
2. Recommendations 2.1 That Members recommend to full Council the adoption of the changes to Council Standing Orders, set out in Appendix 1 to this report, to have effect as amendments to Part E.8 of the Council's Constitution 2.2 That Members recommend to full Council the adoption of the changes to the Members' Code of Conduct for Planning Applications Sub-Committee, set out in Appendix 2 to this report, to have effect as amendments to Part C.4 of the Council's Constitution. 2.3 That Members recommend to full Council the adoption of the changes to the Scheme of Delegation to Officers, set out in Appendix 3 to this report, to have effect as amendments to Part F.7 of the Council's Constitution	
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3. Executive Summary and Reasons for Change

This report sets out proposals to amend Council Standing Order 43.4 which currently requires the Member intending to be absent to appoint a substitute by giving 3 clear days notice. The operation of this rule has given rise to practical problems. The revised rules now proposed would allow greater flexibility about timing combined with clarity on the requirement for training before Members serve on specified bodies.

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:

The Council's Constitution

5. Background

5.1 The text of the existing rule about substitute Members is mainly set out in Council Standing Order (CSO) 43.4 shown in Appendix 1 to this report. The principal features are (a) the Member proposing to be absent appoints the substitute, and (b) three clear days written notice must be given to the Head of Member Services by the absent Member.

5.2 CSO 43.5 clarifies that the substitute Member will have voting rights and that substitution is not allowed at The Executive and its subordinate Committees/bodies. This rule 43.5 is recommended for retention.

5.3 Only rule 43.4 would be deleted and replaced by the new text shown in Appendix 1 in italics and underlined. References to this new text are given with the relevant subparagraph in brackets e.g. (5)

6. Proposals

6.1 Under the new proposals, the Member intending to be absent would still, in most cases, give notice to the Head of Member Services to arrange for a substitute. This initial notice would have to be given by 10.00 a.m. on the morning of the meeting (see (5)). Removing the existing requirement for 3 clear days notice would create much greater flexibility.

- 6.2 Where any meeting takes place before 6.00 p.m, the initial notice must be given by 10.00 a.m. on the previous working day. This makes it plain that notices can only be given on days when Council offices are open (see (5)).
- 6.3 All notices must be given in writing but it would now be expressly stated that this includes e-mail (see (5) and (7)).
- 6.4 At present the power to appoint a substitute only arises where a Member is “unable to attend” a meeting. This might result in a legal challenge being made against a decision carried by the vote of a substitute Member in circumstances where the appointing Member’s reason for absence was called into question. Greater flexibility is now proposed by allowing absence “for any reason” (see (4)).
- 6.5 If a Member is abroad or seriously ill they may have difficulty giving notice. The new rules would allow the Chief Whip of a Group to give notice in place of the absent Member (see (4)).
- 6.6 One major change would be to have the actual selection and appointment of the substitute Member made the responsibility of the relevant Chief Whip or Group Officers (see (6), (7) and (8)). At present it is the responsibility of the absent Member. This could be a problem for example where the Member intends to be absent because of a prejudicial interest in an item. In such a case, the mere fact that the absent Member makes the appointment risks being seen as “improperly influencing” the decision on the item in breach of the Members’ Code of Conduct. Transferring the notification of appointment of the substitute to the Chief Whip or Group Officers should avoid this problem.
- 6.7 The initial notice to arrange for a substitute must always be given to the Head of Member Services or one of her nominated officers so that there is a clear record of due process. The Head of Member Services will then notify the relevant Chief Whip who would have the responsibility for selecting the substitute and giving the second notice stating the name of the substitute Member (see (6) and (7)). This second notice would have to be given in writing to the Head of Member Services no later than three hours before the meeting was due to start. This is to avoid any uncertainty about the right of the substitute Member to attend.
- 6.8 In order to facilitate the rapid selection of substitutes, it is recommended that each Political Group should nominate a series of reserve Members for each Committee and Sub-Committee. It would be a matter for each Group just how many reserves were nominated. A system of reserve Members would have the advantage that those Members would be known in advance and could be trained to serve on those bodies where specific training is necessary.
- 6.9 In any circumstances where none of the reserve Members was available or none had been nominated for the body, then the Chief Whip would have the power to select a substitute from any Member of the Group. This power would be subject to the training requirement in (9).
- 6.10 The training requirement currently applies to the Standards Committee and its Sub-Committees, the Planning Applications Sub-Committee, Disciplinary Appeals Panels, Grievance Panels, Job Evaluation Panels and hearings conducted by the Licensing Committee and its Sub-Committees. The proposed text of (9) is worded in such a way as to allow for the possible future addition of other bodies where training

may become mandatory.

- 6.11 In order to put the matter on a clear and logical footing, a change is also being recommended to Part C.4 of the Constitution which is the Members Code of Conduct for Planning Applications Sub-Committee (PASC). The relevant extract from Part C.4 is shown in Appendix 2 to this report. In paragraph 5.01 there is a requirement for Member training which states that PASC Members must be trained “within three months of appointment”. This implies that substitute Members can be appointed to PASC for one meeting with no training. This would be contrary to the proposals now recommended for CSO 43 and Government Guidance which expects all Members of Local Planning Authorities to have had appropriate training before they participate in decision-making. Therefore, the words “or within three months of appointment” should be deleted from paragraph 5.01 of Part C.4 as shown in Appendix 2.
- 6.12 At present there is a separate rule about substitute Members for the Licensing Sub-Committees. This is set out in Appendix 3 to this report which shows the “proper officer powers” delegated to the Head of Member Services in Part F.7 of the Constitution. At paragraph 1.4 (k) on page 2 there is a power to appoint substitute Members for one hearing or meeting when a permanent Member is unable to attend for any reason. It is now recommended that this delegated power be deleted because it would no longer be needed if the revised CSO 43 is adopted.

7. Recommendations

- 7.1 That Members recommend to full Council the adoption of the changes to Council Standing Orders, set out in Appendix 1 to this report, to have effect as amendments to Part E.8 of the Council’s Constitution
- 7.2 That Members recommend to full Council the adoption of the changes to the Members’ Code of Conduct for Planning Applications Sub-Committee, set out in Appendix 2 to this report, to have effect as amendments to Part C.4 of the Council’s Constitution.
- 7.3 That Members recommend to full Council the adoption of the changes to the Scheme of Delegation to Officers, set out in Appendix 3 to this report, to have effect as amendments to Part F.7 of the Council’s Constitution

8. Equalities Implications

- 8.1 There are no specific equalities implications.

9. Comments of the Director of Finance

- 9.1 There are no specific financial implications

10. Comments of the Head of Legal Services

- 10.1 If the changes recommended in this report are approved by General Purposes Committee, then they will be reported to the next meeting of full Council on 13 November for adoption as amendments to the Council's Constitution

11. Use of Appendices

- 11.1 Appendix 1 shows the existing text of Council Standing Order 43 (Part E.8 of the Constitution) on Substitute Members and the recommended new text.
- 11.2 Appendix 2 shows the words in the Code of Conduct for PASC (Part C.4 of the Constitution) recommended for deletion.
- 11.3 Appendix 3 shows the Proper Officer Powers of the Head of Member Services in the Scheme of Delegation to Officers (Part F.7 of the Constitution). The separate power relating to substitute Members for Licensing Sub-Committees is recommended for deletion.