

Report of: Acting Director of Law and Governance and Monitoring Officer

Meeting of:	Date:	Ward(s):
Annual Council	24 September 2020	All

Delete as appropriate:	Exempt	Non-exempt
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SUBJECT: Constitution Update**1. Synopsis**

- 1.1 This report proposes a number of changes to the Council's Constitution to ensure it reflects changes in legislation and council policy and remains fit for purpose.

2. Recommendations

- 2.1 To approve the amendments to the Constitution set out in the appendices.

3. Background

- 3.1 The appendices contain extracts from the Constitution in which proposed changes are marked, by crossing through in the case of deletions and by underlining in the case of additions. The main changes proposed are described below.

4. Main proposed changesTerms of Reference and Committee Memberships

- 4.1 Following the merger of Clinical Commissioning Groups in North Central London, the membership of the Health and Wellbeing Board has been revised to take into account the new NHS CCG governance structure.

Other minor amendments to terms of reference and committee memberships are proposed. Council is asked to note that the Policy and Performance Scrutiny Committee has agreed to disband its sub-committees and therefore their terms of reference do not feature in Part 5 of the Constitution.

Non-Executive Functions

- 4.2 Pavement Licensing has been added to the list of non-executive functions at Appendix 2 following the introduction of the Business and Planning Act 2020.

Access to Information Procedure Rules

- 4.3 Amendments are proposed to the Access to Information Procedure Rules to clarify and explain the rights of members to exempt information. This does not alter the rights of members to exempt information, which are set out in statutory regulations.

References to the European Union

- 4.4 In line with United Kingdom's departure from the European Union, it is proposed to remove references to European Law.

Members' Allowances Scheme

- 4.5 It is proposed to amend the Members' Allowances Scheme following the local government pay settlement for 2020/21. A number of changes are also proposed to simplify and update the scheme. The amendments proposed to the document are set out at Appendix B.

5. Implications

5.1 Financial implications:

There are no direct material financial implications associated with the amendments to the Constitution as set out in this report.

5.2 Legal Implications:

The Council must keep its Constitution up to date (section 9P Local Government Act 2000).

5.3 Environmental Implications and contribution to achieving a net zero carbon Islington by 2030:

There are no direct environmental implications resulting as a result of this report.

5.4 Resident Impact Assessment:

The council must, in the exercise of its functions, have due regard to the need to eliminate discrimination, harassment and victimisation, and to advance equality of opportunity, and foster good relations, between those who share a relevant protected characteristic and those who do not share it (section 149 Equality Act 2010). The council has a duty to have due regard to the need to remove or minimise disadvantages, take steps to meet needs, in particular steps to take account of disabled persons' disabilities, and encourage people to participate in public life. The council must have due regard to the need to tackle prejudice and promote understanding.

An initial assessment has been undertaken and it has been concluded that a full assessment is not required as there are no direct impacts on residents.

5. Reason for recommendations

- 5.1 This report proposes a number of changes to the Constitution to ensure that the document remains up to date and fit for purpose.

Appendices:

- Appendix A – Proposed Amendments to the Constitution
- Appendix B – Proposed Amendments to the Members' Allowances Scheme

Background papers:

None

Final report clearance:

Signed by:



Peter Fehler,
Acting Director of Law and Governance
Monitoring Officer

23 September 2020

Date

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APPENDIX A

Proposed Amendments to the Constitution

(i) Terms of Reference and Committee Memberships

Part 5: Terms of Reference – Health and Wellbeing Board

HEALTH AND WELLBEING BOARD

Composition

- Leader of the Council
- ~~Lead Executive~~ Member for Health and Social Care
- ~~Lead Executive~~ Member for Children, Young People and Families
- ~~GP and Chair of the Islington Clinical Commissioning Group~~
- ~~GP and Vice Chair of the Islington Clinical Commissioning Group~~
- ~~Lay Vice-Chair, Islington Clinical Commissioning Group~~
- ~~CCG Chief Operating Officer~~
- One elected Governing Body member for Islington, North Central London Clinical Commissioning Group
- One Executive Director, North Central London Clinical Commissioning Group, or their nominated representative
- Director of Adult Social Care
- Corporate Director of People
- Director of Public Health
- Health Watch representative (one member)
- ~~CCG Director of Nursing and Quality (non-voting)~~
- Local NHS Commissioning Board representative (non-voting)
- The Camden and Islington NHS Trust (non-voting)
- The Whittington NHS Trust (non-voting)
- Voluntary Sector representative (non-voting)
- Islington GP Federation representative (non-voting)

Part 5: Terms of Reference – Grievance Committee

Composition

The Grievance Committee shall comprise of five members, as follows:

- Chief Whip of the Majority Group (Chair)
- ~~Deputy Leader of the Council~~ Executive Member for Health and Social Care
- Three other members.

(ii) Non-Executive Functions

APPENDIX 2 – EXECUTIVE AND NON-EXECUTIVE FUNCTIONS

(i) FUNCTIONS WHICH CANNOT BE EXERCISED BY THE EXECUTIVE

This table (based on the provisions of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000) (the “Regulations”) sets out the functions of the Council which by law cannot be exercised by the Executive. All these functions will be exercised by officers unless they are reserved to a member body or referred to a member body by an officer. Numbers omitted or comments in square brackets relate to legislation which has been repealed or amended since the Regulations were enacted.

<i>Function</i>	<i>Provision of Act or Statutory Instrument</i>	
B. Licensing and registration functions (in so far as not covered by any other paragraph of this Schedule)		Except where specified all of the functions listed under this section B will be exercised by the Corporate Director of Environment and Regeneration or an officer within the Corporate Director’s department to whom the function has been delegated under Part 3 UNLESS the function has been reserved to the Licensing Committee or its sub-committees or of the Licensing Regulatory Committee or is required to be undertaken by the Corporate Director of People or are required to be determined by the Council itself
<u>73. Power to determine applications for pavement licences</u>	<u>Part 1 of the Business and Planning Act 2020.</u>	

[The subsequent paragraphs will be re-numbered accordingly]

(iii) Access to Information Procedure Rules

Part 4 – Procedure Rule 98 (to become procedure rule 97)

98. 97. ADDITIONAL RIGHTS OF ACCESS TO DOCUMENTS FOR MEMBERS

98.1 97.1 Material relating to business at public meetings

(a) All members will be entitled to inspect, at least 5 clear days before the meeting, any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business to be transacted at a public meeting of the Executive unless:

~~(i) It contains exempt information falling within paragraphs (a), (b), (d), (e) and (g) or paragraph (c) (to the extent that the information relates to terms proposed or to be proposed by or to the Council in the course of negotiations for a contract) of the categories of exempt information at paragraph 88.4; or~~

(i) It contains exempt information falling within the following paragraphs of Schedule 12A of the Local Government Act 1972:

1 – Information relating to any individual

2 – Information which is likely to reveal the identity of an individual

4 – Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.

5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.

7 – Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.

or;

(ii) It contains the advice of a political adviser, if any; or

(iii) The document is in draft form.

(b) As prescribed by legislation, all members will be entitled to inspect, at least 5 clear days before the meeting, any document which is in the possession or under the control of the Executive or its committees and contains material relating to any business to be transacted at a public meeting of the Executive, which contains the following categories of exempt information falling within the following paragraphs of Schedule 12A of the Local Government Act 1972:

3 - Information relating to the financial or business affairs of any particular person, including the authority holding that information (providing that, if the information relates to the award of a contract, the negotiations are concluded)

6 - Information which reveals that the authority proposes -

_____ (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
(b) to make an order or direction under any enactment

98.2 97.2 Material relating to private meetings or parts of meetings

- (a) Subject to (c) below all members of the Council will be entitled to inspect any document in the possession or under the control of the Executive or its committees which contains material relating to:
- (i) any business which has been transacted in a meeting or part of a meeting of the Executive;
 - (ii) any decision which has been made by an individual member; or
 - (iii) any recordable executive decision which has been made by an officer.
- (b) The right contained in paragraph (a) arises when the meeting concludes or, in the case of an individual Executive member or officer decision, immediately after the decision has been made and the document shall be made available within 24 hours.
- (c) Members of the Council will not be entitled under this paragraph to:
- (i) Any document that is in draft form;
 - (ii) Any part of a document that contains exempt information falling within ~~paragraphs (a), (b), (d), (e) and (g) or paragraph (c) (to the extent that the information relates to terms proposed or to be proposed by or to the Council in the course of negotiations for a contract) of the categories of exempt information at paragraph 88.4; or~~
the following paragraphs of Schedule 12A of the Local Government Act 1972:
 - 1 – Information relating to any individual
 - 2 – Information which is likely to reveal the identity of an individual
 - 4 – Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.
 - 5 – Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.
 - 7 – Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime;or;
 - (iii) The advice of a political adviser or any person acting in that capacity, if any.
- (d) Members of the Council will be entitled under this paragraph to any part of a document that contains exempt information falling within the following paragraphs of Schedule 12A

of the Local Government Act 1972:

3 - Information relating to the financial or business affairs of any particular person, including the authority holding that information (providing that, if the information relates to the award of a contract, the negotiations are concluded)

6 - Information which reveals that the authority proposes -
(a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or
(b) to make an order or direction under any enactment

98.3 97.3 Nature of rights

These rights of a member are additional to any other right he/she may have.

97.4 Further detail of the exempt information requirements is set out at Appendix 5 of the Constitution,

Part 4 – Procedure Rule 97 (to become Procedure Rule 98)

97. 98. ADDITIONAL ACCESS TO DOCUMENTS FOR POLICY AND PERFORMANCE SCRUTINY AND OTHER SCRUTINY COMMITTEES

97.1- 98.1 Rights to copies

~~(a) Subject to Rule 97.2 below, members of the Policy and Performance Scrutiny Committee and any other Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Executive or its committees, which contains material relating to:~~

In addition to the rights of access granted to all members set out in Procedure Rule 97, members of the Policy and Performance Scrutiny Committee and any other Scrutiny Committee have certain additional rights of access to documents which contain material relating to:

- (i) Any business which has been transacted at a meeting of the Executive while it is open to the public or its committees;
- (ii) Any decision which has been taken by an individual member of the Executive; or
- (iii) Any decision which has been made by an officer.

~~(b) — The document shall be provided as soon as reasonably practicable and in any event no later than 10 clear days after the Proper Officer receives the request from the member concerned.~~

97.2 Limit on rights

~~(a) — No member will be entitled to:~~

~~(i) Any document that is in draft form;~~

~~(ii) Any part of a document that contains exempt or confidential information, unless that information is relevant to an action or decision they are reviewing or scrutinising or intend to scrutinise; or~~

~~(iii) The advice of a political adviser, if any.~~

98.2 Members of the Policy and Performance Scrutiny Committee and any other Scrutiny Committee will be entitled to copies of any document which is in the possession or control of the Executive or its committees which contains exempt or confidential information, providing that the information is relevant to an action or decision they are formally reviewing or scrutinising or intend to scrutinise, subject to rule 98.3 below.

~~(b) With regard to (ii) above, the member will need to demonstrate to the Proper Officer that the information requested is relevant and the Proper Officer shall take a decision as to whether the information should be made available, supplying reasons as appropriate.~~

98.3 The member will need to demonstrate to the Proper Officer that the information requested is relevant and the Proper Officer shall take a decision as to whether the information should be made available, supplying reasons as appropriate.

98.4 If the information is to be made available, the document shall be provided as soon as reasonably practicable and in any event no later than 10 clear days after the Proper Officer receives the request from the member concerned

Appendix 5 – Further Detail of the Exempt Information Requirements

Category	Condition	Availability to Members*
1. Information relating to any individual.	This information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	Restricted
2. Information which is likely to reveal the identity of an individual.	This information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	Restricted
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	<p>Information falling within paragraph 3 is not exempt information by virtue of that paragraph if it is required to be registered under—</p> <ul style="list-style-type: none"> (a) the Companies Act 1985; (b) the Friendly Societies Act 1974; (c) the Friendly Societies Act 1992; (d) the Industrial and Provident Societies Acts 1965 to 1978; (e) the Building Societies Act 1986; or (f) the Charities Act 1993. <p>Information falling within paragraph 3 is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.</p>	<p>Restricted to the extent that information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract if the information relates to the award of a contract, the negotiations are still ongoing.</p> <p><u>Information which does not meet the above description is available to members</u></p>

4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matter arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	This information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	Restricted
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	This information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	Restricted
6. Information which reveals that the authority proposes - (a) to give under any enactment a notice under or by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment	This information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	Available to members
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution of crime.	This information is exempt information if and so long as, in all the circumstances of the case, the public interest in maintaining the exemption outweighs the public interest in disclosing the information.	Restricted

* This column indicates whether councillors have an automatic right of access to an exempt report.

[Additional access to information rights for members of the council's scrutiny committees is set out at Procedure Rule 98.](#)

(iv) References to the European Union

Part 2 – Article 3.02 - Residents’ responsibilities

3.02 Residents’ responsibilities

There are a number of ways that Islington residents can contribute to a flourishing democratic local authority which this Constitution is intended to support:

- (i) assisting the Council with the compilation of the electoral register by responding to the annual canvass conducted in the autumn every year;
- (ii) exercising their right to vote in local, regional, and national ~~and European~~ elections;
- (iii) respecting and valuing the diversity of communities and their views within a densely populated urban area such as Islington;
- (iv) meeting their obligations in relation to the Council, such as paying their council tax, ensuring their child attends school, etc.

Part 5 – Terms of Reference – Audit Committee

7. To determine matters relating to the organisation and conduct of elections, including the following:

- i. ~~provision of assistance at European Parliamentary elections;~~
- ii. division of the constituency into polling districts;
- iii. division of the borough into polling districts.

Part 6 – Financial Regulations

1.4 Where there is conflict between ~~European Law, UK~~ Law, or Council policy then ~~European Law, UK~~ Law then Council policy shall apply in that order of priority. No officer, member or the Executive has any authority to waive any matter which is required under the law.

Appendix 2 – Executive and Non-Executive Functions

Function	Provision of Act or Statutory Instrument	
7. Duty to provide assistance at European Parliamentary elections.	Section 6(7) and (8) of the European Parliamentary Elections Act 2002 (c 24).	Chief Executive