

## **Committee: Standards Committee**

**Date: 24 October 2012**

Agenda item: 9

Wards: All

### **Subject: Changes to the Constitution**

Lead officer: Paul Evans, Assistant Director of Corporate Governance

Lead member: Councillor Mark Allison, Cabinet member for Finance

Forward Plan reference number:

Contact officer: colin.millar@merton.gov.uk

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#### **Recommendation:**

- A. That the Standards Committee considers and comments on the proposed changes to the constitution for reference to General Purposes Committee and the Council.
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## **1 PURPOSE OF REPORT AND EXECUTIVE SUMMARY**

- 1.1. This reports seeks approval to constitutional amendments required for the following purposes:
- (i) To comply with the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012 in respect of executive decision making (see section 2 below);
  - (ii) To revise the scheme of delegation to permit Licensing Committee to deal with all licensing matters including excercising powers in respect of licensing of sex establishments and street trading issues;
  - (iii) To make corrections to other provisions where the current information is inaccurate or unclear (see section 5 below);

## **2 DETAILS – NOTICES OF EXEMPT INFORMATION AND KEY DECISIONS**

- 2.1. The Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012 require us to publish a notice 28 clear days in advance of any executive meeting which will consider information in exempt session. In Merton this applies only to meetings of the Cabinet. The South London Waste Partnership Joint Committee which is a joint executive committee is also affected by the regulations but they are governed by their own constitution.
- 2.2. The exempt regulations apply to any executive decision taken at a meeting so it affects Cabinet key and non-key decisions alike.
- 2.3. The regulation also changes the way in which we must give notice of key decisions. The Forward Plan as a legal concept is abolished and replaced with a requirement that we give 28 clear days notice of all key decisions.
- 2.4. Administratively we are keeping the forward plan process as a means to gather and publish the relevant information. Report authors will be required to indicate for each Cabinet report whether or not there is exempt

information to be considered. If exempt information is indicated a notice will be published on the web site in respect of the exempt item.

- 2.5. Representations may be made by anyone giving reasons as to why the item should not be held in exempt session and the decision maker must respond to those representations.
- 2.6. There is an exempt urgency procedure which must be followed if the 28 day deadline is not met. This will require the Chair of the Overview and Scrutiny Commission (or the Mayor in the absence of the Chair) to give approval before the item can be taken in exempt session.
- 2.7. The existing Special Urgency procedure is not affected. The existing General Exception procedure is only affected by the change in the deadline for key decision notices.

### **3 PROPOSED AMENDMENTS - NOTICES OF EXEMPT INFORMATION AND KEY DECISIONS**

- 3.1. Part 2, Article 3.1(b) after section (iv) – this explains the right to make representations about proposed exempt items.
- 3.2. Part 2 Article 7.6 – deleted – this is covered by Article 13.5
- 3.3. Part 2 Article 13.9 – new section specifying that the Access to Information Rules apply to decision makers
- 3.4. Part 4B Rule 10.1 – cross reference to new sections on exempt procedures
- 3.5. Part 4B Rule 10.2 – cross reference to new sections on exempt procedures
- 3.6. Part 4B Rule 11 – cross reference to new sections on exempt procedures
- 3.7. Part 4B Rule 13(a) – the notice is now specific to the item – the Forward plan is now an administrative arrangement only;
- 3.8. Part 4B rule 13(b) – change to statutory deadline;
- 3.9. Part 4B rule 13(c) – Superfluous and inaccurate – Rule 4 applies to all meetings of Cabinet, Council and its committees;
- 3.10. Part 4B section 14 – delete – there is no longer any legal concept of a Forward Plan;
- 3.11. Part 4B Rule 15 – amendment to requirement to publish a notice of a key decision to comply with new statutory position;
- 3.12. Part 4B Rule 15(a) – remove reference to previous notice period;
- 3.13. Part 4B Rule 16 – The new regulation allows for the Chair of the Overview and Scrutiny Commission, the Chairman and the vice-Chairman of the Authority to approve these requests – in Merton we do not have a vice-chairman of the authority as the deputy mayor is not elected by members;
- 3.14. Part 4B Rule 17.1 – amended for simplification;
- 3.15. Part 4B Rule 17.2 – Corrections;
- 3.16. Part 4B Rule 18 – New rule on exempt procedure at Cabinet;
- 3.17. Part 4B Rule 19 – New rule on exempt urgency procedure;
- 3.18. Part 4B Delete old rules 18-20 regarding private Cabinet meetings

#### **4 DETAILS AND PROPOSED AMENDMENTS – LICENSING COMMITTEE**

- 4.1. Part 3B section 1.3A – Licensing Committee – re-establishes the Licensing Committee so that it can deal with all licensing matters including exercising powers in respect of the licensing of sex establishments and street trading matters.

#### **5 DETAILS AND PROPOSED AMENDMENTS – CORRECTIONS**

- 5.1. Part 2 Article 2.2 – the Government may, by statute, change the date of the Borough elections.
- 5.2. Part 2 Article 5.2 – the Deputy Mayor is not elected by members but appointed by the incoming Mayor in each year.
- 5.3. Part 2 Article 5.3 – as the Deputy Mayor is not elected by members he/she cannot act as vice-chairman of the authority.
- 5.4. Part 2 Article 14.3, 14.4, 14.5 and 16.3 – corrections to reflect new officer designations.
- 5.5. Part 4A paragraph 4.1(a) – correction to allow substitution on all Council appointed committees except Licensing Committee. The current wording would exclude non-regulatory committees (including Scrutiny bodies) from having substitutes.

#### **6 ALTERNATIVE OPTIONS**

- 6.1. The Council must comply with the provisions of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012 and other statutory provisions.
- 6.2. Within the statutory framework it is a matter for the Council to make any constitutional provision it sees fit for its proper governance.

#### **7 CONSULTATION UNDERTAKEN OR PROPOSED**

- 7.1. Standards Committee and General Purposes Committee.

#### **8 TIMETABLE**

- 8.1. General Purposes Committee 7 November 2012
- 8.2. Council 21 November 2012

#### **9 FINANCIAL, RESOURCE AND PROPERTY IMPLICATIONS**

- 9.1. None

#### **10 LEGAL AND STATUTORY IMPLICATIONS**

- 10.1. The changes detailed in section 3 above are required to give effect to the Local Authorities (Executive Arrangements) (Meetings and Access to Information) Regulations 2012.

#### **11 HUMAN RIGHTS, EQUALITIES AND COMMUNITY COHESION IMPLICATIONS**

- 11.1. None

#### **12 CRIME AND DISORDER IMPLICATIONS**

- 12.1. None

**13 RISK MANAGEMENT AND HEALTH AND SAFETY IMPLICATIONS**

13.1. None

**14 APPENDICES – THE FOLLOWING DOCUMENTS ARE TO BE PUBLISHED WITH THIS REPORT AND FORM PART OF THE REPORT**

- Appendix A - proposed revisions to Part 2
- Appendix B – proposed revisions to Part 3B
- Appendix C - proposed revisions to Part 4A
- Appendix D - proposed revisions to Part 4B

# APPENDIX A - PROPOSED AMENDMENTS TO PART 2

## ARTICLE 2 – MEMBERS OF THE COUNCIL

### 2.1 Composition and Eligibility

- (a) **Composition.** The Council will comprise 60 Members, otherwise called Councillors. Three Councillors will be elected by the voters of each Ward in accordance with a scheme drawn up by the Local Government Commission and approved by the Secretary of State.
- (b) **Eligibility.** Only registered voters of the London Borough of Merton or those living or working in the Borough will be eligible to hold the office of Councillor.

### 2.2 Election and Terms of Councillors

The regular election of Councillors will be held on the first Thursday in May every four years beginning in 2002 **unless other legislative provision is made**. The terms of office of Councillors will start on the fourth day after being elected and will finish on the fourth day after the date of the next regular election.

### 2.3 Roles and Functions of All Councillors

- (a) **Key roles.** All Councillors will:
  - (i) collectively be the ultimate policy-makers and carry out a number of strategic and corporate management functions;
  - (ii) contribute to the good governance of the area and actively encourage community participation and citizen involvement in decision-making;
  - (iii) effectively represent their communities and bring their communities' views into the Council's decision-making process, i.e. become the advocate of and for their communities;
  - (iv) respond to constituents' enquiries and representations, fairly and impartially and act as an advocate for constituents in resolving particular concerns or grievances;
  - (v) balance different interests identified within the ward or electoral division and represent the ward or electoral division as a whole;
  - (vi) participate in the governance and management of the Council; and
  - (vii) maintain the highest standards of conduct and ethics.

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- (iii) find out from the forward plan what key decisions will be taken by the Cabinet and when;
- (iv) see reports and background papers, and any records of decisions made by the Council and the Cabinet except where confidential or exempt information is likely to be disclosed, and the meeting is therefore held in private;

### **Make representations to the Cabinet when it proposes to take decisions in private session**

- (v) inspect the Council's accounts and make their views known to the external auditor; and
  - (vi) inspect the Councillors' register of interest.
- (c) **Participation.** Citizens have the right to participate in the Council's meetings through Question Time and may be invited to contribute to investigations by the Overview and Scrutiny Commission or Panels. The Council will also promote a network of area forums aimed at enabling citizens to express views on local matters as part of its community leadership role. Citizens may also attend and address Committees and Sub-Committees responsible for decisions on planning and licensing matters.
- (d) **Complaints.** Citizens have the right to complain to:
- (i) the Council itself under its complaints scheme;
  - (ii) the Ombudsman after using the Council's own complaints scheme;
  - (iii)

### 3.2 Citizens' Responsibilities

Citizens must not be violent, abusive or threatening to Councillors or officers and must not wilfully harm things owned by the Council, Councillors or officers.

Citizens are encouraged to make conscientious use of their roles as voters and as members of a wider community by:

- (a) voting at every election;
- (b) respecting the expression of differing opinions in public debate;
- (c) promoting tolerance and respect between their fellow citizens; and
- (d) individually and collectively seeking information about the decision-making role of Councillors whilst respecting the Council's procedures which give effect to a representative democracy.

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The Council has set out in Part 3 of this Constitution the responsibilities for the Council's functions.

## Article 5 - CHAIRING THE FULL COUNCIL

### 5.1 Role and function of the Mayor

The Mayor, or in the Mayor's absence, the Deputy Mayor will have the following roles and functions:

- (a) to be the ceremonial representative of the Council, taking precedence on all such occasions;
- (b) to chair meetings of the Full Council and in this capacity, shall exercise all the powers and duties described in the Council Procedure Rules as set out in Part 4 of this Constitution.

### 5.2 Selection of The Mayor and Deputy Mayor

The Mayor ~~and Deputy Mayor~~ will be elected by the Council annually. Vacancies occurring during the year will be filled for the remainder of the municipal year.

**The deputy mayor will be appointed by the incoming Mayor at the Annual Meeting each year.**

### 5.3 Responsibilities

The Mayor, ~~and in his or her absence, the Deputy Mayor,~~ will have the following responsibilities:

- (a) to uphold and promote the purposes of the Constitution, and to interpret the Constitution when necessary;
- (b) to preside over meetings of the Council so that its business can be carried out efficiently and with regard to the rights of Councillors and the interests of the community;
- (c) to ensure that the Council meeting is a forum for the debate of matters of concern to the local community and the place at which Members who are not in the Cabinet are able to hold the Cabinet to account;
- (d) to promote public involvement in the Council's activities;
- (e) to be the conscience of the Council; and
- (f) to attend such civic and ceremonial functions as the Council and he/she determines appropriate.

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- (b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or
- (c) they are no longer Councillors; or
- (d) they are removed from office by the Leader.

### ~~7.6 — Proceedings of the Cabinet~~

~~Proceedings of the Cabinet shall take place in accordance with the Cabinet Procedure Rules set out in Part 4-D of this Constitution~~

### 7.7 Assistant Cabinet members

The Leader may appoint Assistant Cabinet Members. The appointment of an Assistant Cabinet member will specify the areas of responsibility of the member and identify the cabinet member whom the office holder is to assist. (Assistant Cabinet Members are not members of the Executive)

7.8 The Leader will have power to allocate the support of Assistant Cabinet members to particular Cabinet members; his allocation of roles shall be reported to and noted by the Council (or the General Purposes Committee on its behalf). The leader shall have power to reallocate the support of Assistant Cabinet members between the Cabinet members; any such re-allocation shall be reported to and noted by the Council (or the General Purposes Committee on its behalf).

## Article 8 – REGULATORY AND OTHER COMMITTEES

### 8.1 Regulatory and other committees

The Council has established committees to discharge some of its non-executive functions. These committees are listed in Responsibility for Council Functions in Part 3 of this Constitution. The committees will follow the Council's Rules of Procedure set forth in Part 4-A of this Constitution.

## Article 9 – THE STANDARDS COMMITTEE

### 9.1 Standards Committee

The Council has established a Standards Committee with membership, role and functions as set out in paragraph 1.1 of Part 3-B of this constitution.

### 9.2 Proceedings

Proceedings of the Standards Committee shall take place in accordance with the Council's Standing Orders incorporating the Procedure rules set out in Part 4 of this Constitution.

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- c) to be significant in terms of its effects on communities and groups of service users living or working in an area comprising one or more wards or electoral divisions in Merton Council; or
- d) to amend the agreed budget and policy framework.

- (ii) **Procedure.** A decision taker may only make a key decision in accordance with the requirements of the Cabinet Procedure Rules set out in Part 4 of this Constitution.

### 13.4 **Decision-Making by the Full Council**

Subject to Article 13.8, the Council meeting will follow the Council Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### 13.5 **Decision-Making by the Cabinet**

Subject to Article 13.8, the Cabinet and Cabinet committees will follow the Cabinet Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### 13.6 **Decision-Making by the Overview and Scrutiny Commission**

The Overview and Scrutiny Commission and panels will follow the Overview and Scrutiny Procedures Rules set out in Part 4 of this Constitution when considering any matter.

### 13.7 **Decision-Making by other Committees and Sub-Committees established by the Council**

Subject to Article 13.8, other Council committees and sub-committees will follow those parts of the Council Procedures Rules set out in Part 4 of this Constitution as apply to them.

### 13.8 **Decision-Making by Council Bodies acting as Tribunals**

The Council, a Councillor or an officer acting as a tribunal or in a quasi-judicial manner or determining/considering (other than for the purposes of giving advice) the civil rights and obligations or the criminal responsibility of any person will follow a proper procedure which accords with the requirements of natural justice and the right to a fair process contained in Article 6 of the European Convention on Human Rights.

### 13.9 **Access to information**

**All decision makers will follow the rules set out in Part 4B of the Constitution as far as those rules apply to them.**

## Article 14 – FINANCE, CONTRACTS AND LEGAL MATTERS

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### 14.1 Financial Management

The management of the Council's financial affairs will be conducted in accordance with the financial regulations set out in Part 4 of this Constitution. Where there is any conflict between the provisions of this Constitution and the financial rules, the provisions of the Constitution shall prevail.

### 14.2 Contracts

Every contract made by the Council will comply with the Contract Standing Orders set out in Part 4 of this Constitution. Any contract with a value exceeding £50,000 entered into on behalf of the Council in the course of the discharge of an executive function shall be made in writing. Such contracts must either be signed by at least two officers of the authority or made under the common seal of the Council attested by at least one officer.

### 14.3 Legal Proceedings

The ~~Head of Civic and Legal Services~~ **Assistant Director of Corporate Governance** is authorised to institute, defend or participate in any legal proceedings in any case where such action is necessary to give effect to decisions of the Council or in any case where the ~~Head of Civic and Legal Services~~ **Assistant Director of Corporate Governance** considers that such action is necessary to protect the Council's interests.

### 14.4 Authentication of Documents

Where any document is necessary to any legal procedure or proceedings on behalf of the Council, it will be signed by the ~~Head of Civic and Legal Services~~ **Assistant Director of Corporate Governance** or other person authorised by him/her, unless any enactment otherwise authorises or requires, or the Council has given requisite authority to some other person.

### 14.5 Common Seal of the Council

The Common Seal of the Council will be kept in a safe place in the custody of the ~~Assistant Director of Corporate Governance~~ ~~Head of Civic and Legal Services~~ **Assistant Director of Corporate Governance**. A decision of the Council, or of any part of it, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the ~~Assistant Director of Corporate Governance~~ ~~Head of Civic and Legal Services~~ **Assistant Director of Corporate Governance** should be sealed. The affixing of the Common Seal will be attested by the ~~Assistant Director of Corporate Governance~~ ~~Head of Civic and Legal Services~~ **Assistant Director of Corporate Governance** or another officer authorised by him/her.

14.6 In addition to the Seal being attested by any one of the Officers referred to above documents of a Ceremonial nature of those carrying some prestige (including Long Service Awards) shall also, if appropriate bear the Signature of the Mayor or the Deputy Mayor in addition to that of the Chief Executive.

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## Article 16 – SUSPENSION, INTERPRETATION AND PUBLICATION OF THE CONSTITUTION

### 16.1 Suspension Of The Constitution

- (a) **Limit to Suspension.** The Articles of this Constitution may not be suspended. The Council Procedure Rules may as specified in paragraph (b) below, be suspended by the full Council to the extent permitted within those Rules and the law.
- (b) **Procedure to Suspend.** A motion to suspend Council Procedure Rules will not be moved without notice unless at least one half of the whole number of Councillors are present. The extent and duration of suspension will be proportionate to the result to be achieved, taking account of the purposes of the Constitution set out in Article 1.

### 16.2 Interpretation

The ruling of the Mayor or the Chair of any Committee and Committee Commission or Panel as to the construction or application of this Constitution or as to any proceedings of the Council shall not be challenged at any meeting of the Council. Such interpretation will have regard to the purposes of this Constitution contained in Article 1.

### 16.3 Publication

- (a) The **Head of Democracy** ~~Services~~ ~~Manager~~ will give a printed copy of this Constitution to each Member of the authority upon delivery to him/her of that individual's declaration of acceptance of office on the Member first being elected to the Council.
- (b) The **Head of Democracy** ~~Services~~ ~~Manager~~ will ensure that copies are available for inspection at Council offices, libraries and other appropriate locations, and can be purchased by members of the local press and the public on payment of a reasonable fee.
- (c) The **Head of Democracy** ~~Services~~ ~~Manager~~ will ensure that the summary of the Constitution is made widely available within the area including the Council's website and is updated as necessary.

## SCHEDULE 1: DESCRIPTION OF EXECUTIVE ARRANGEMENTS

The following parts of this Constitution constitute the executive arrangements:

1. Article 6 (Overview and Scrutiny Commission and Panels and the Overview and Scrutiny Procedure Rules;
2. Article 7 (The Cabinet) and the Cabinet Procedure Rules;

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## APPENDIX B - PROPOSED AMENDMENTS TO PART 3B

- (iii) To determine the terms and conditions on which officers hold office (including the terms of dismissals), restructures, exits, statutory discretion's relating to termination payments, reorganisations involving changes to staff responsibilities at Deputy Chief Officer and above.
- (iv) All other staffing matters that have not been delegated to any other decision maker.
- (v) (Amended May 18 2005)

### 1.3 **Planning Applications Committee** (amended by Council 28.04.04)

- (a) **Membership:** 15 Members
- (b) **Functions:**
  - (i) To hear and determine all applications received under the Town and Country Planning Acts, including heads of terms of any ancillary agreements
  - (ii) To hear and determine objections to new Tree Preservations Orders
  - (iii) To exercise the Council's functions in relation to planning control and building control
  - (iv) To consider the implications of changes in legislation and powers relating to control over development and building control, and related enforcement matters
  - (v) To develop an annual work programme, set targets and a review mechanism through the year
  - (vi) To ensure all the work of the committee promotes the Council's commitment to equality of opportunity for Councillors, staff and the local community
  - (vii) To ensure the work of the committee meets the needs and aspirations of the local community and is responsive to the wishes of the community at large
  - (viii) To arrange for the discharge of any of its functions by the Director of Environmental Services

### 1.3A **Licensing Committee** ~~(established 28.04.04)~~ **2003 and Licensing Committee (Miscellaneous)**

#### 1.1 **These committees will consist of the same membership and be scheduled to meet at the same time to deal with:**

##### **(a) Licensing Committee (2003)**

## APPENDIX B - PROPOSED AMENDMENTS TO PART 3B

- (i) All matters which can be dealt with by the Licensing Committee established by the Licensing Act 2003
- (b) Licensing Committee (miscellaneous)
  - (i) Licensing matters which cannot be dealt with by the Licensing committee established under the Licensing Act 2003
- 1.2 Membership:
  - 10 Members
- 1.3 Functions – Licensing Committee (2003):
  - (a) To discharge on behalf of the Council all of its licensing functions which are not reserved to full Council or another decision maker pursuant to the provisions of:
    - (i) the Licensing Act 2003
    - (ii) the Gambling Act 2005
    - (iii) Schedule 3 of the Local Government (Miscellaneous Provisions Act 1982 (in respect of sex establishments)
  - (b) To advise the Council on its Statements of Policy with respect to the exercise of its licensing functions relating to
    - (i) the Licensing Act 2003
    - (ii) the Gambling Act 2005
  - (c) To agree any Statements of Policy relating to Schedule 3 of the Local Government (Miscellaneous Provisions Act 1982 (in respect of sex establishments)
  - (d) To review the Statements of Policy at such times as it considers appropriate and report to Council when required.
  - (e) To delegate functions to sub committee(s) or officers as appropriate, having regard to guidance issued by the Secretary of State
- 1.4 Functions – Licensing Committee (miscellaneous)
  - (a) To deal with any other licensing matter which must be dealt with by a committee of the council and cannot be dealt with by the Licensing Committee (2003)
  - (b) To deal with any matter which the Chief Executive considers appropriate to be referred to the Licensing Committee (miscellaneous)

~~(a) Membership: 10 Members~~

~~(b) Functions:~~

## APPENDIX B - PROPOSED AMENDMENTS TO PART 3B

- ~~i) To discharge on behalf of the Council all of its licensing functions which are not reserved to full Council pursuant to the provisions of the Licensing Act 2003 and Gambling Act 2005.~~
- ~~ii) To advise the Council on its Statements of Policy with respect to the exercise of its licensing functions relating to the Licensing Act 2003 and Gambling Act 2005.~~
- ~~iii) To review the Council's said Statements of Policy at such times as it considers appropriate and report to Council on recommended revisions.~~
- ~~iv) To delegate functions to sub-committee(s) or officers as appropriate, having regard to guidance issued by the Secretary of State~~
- ~~v) To deal with entertainment licenses and associated consents and street trading licenses~~

### 1.4 Appeals Committee

(a) **Membership:** 3 Members

(b) **Functions:** To determine appeals against decisions made by or on behalf of the authority relating to:

- (i) applications for rehousing;
- (ii) licensing determinations; and,
- (iii) any other appeals which are not delegated to another decision-maker.

### 1.5 Overview And Scrutiny Commission

(a) **Membership:** Membership 19, consisting of 4 co-optees and 15 Council Members.

(b) **Functions:** The functions of the Overview and Scrutiny Commission and Panels are set out in Article 6 of Part 1 of the Constitution and should be read in conjunction with the Overview and Scrutiny Commission Procedure Rules in Part 4-E.

#### 1.5.A Better Health Care Closer To Home Joint Overview And Scrutiny Committee (as amended September 2004)

(a) **Membership:** 18 Members, 5 appointed by Merton

(b) **Functions:** To:-

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## APPENDIX C - PROPOSED AMENDMENTS TO PART 4A

- (a) in the absence of the Mayor and Deputy Mayor, choose a member to preside;
- (b) receive apologies for absence;
- (c) approve minutes of the last meeting;
- (d) receive any declarations of Interest from Members;
- (e) receive a presentation of the Budget/Council Tax report from the relevant officer(s);
- (f) officers to respond to questions from Members via the Mayor as Chair of the meeting;
- (g) to receive remarks from the Cabinet on the report;
- (h) Council to debate the report and take any motions and/or amendments.

**3.4** A meeting to discuss the timetabling of the agenda for Council meetings may be arranged to provide relevant advice to the Mayor. Each group may nominate one representative to attend the timetabling meeting which shall be arranged by Democratic Services. However, the Mayor as Chair of the meeting has conduct of the running of the meeting.

**3.5** Chief Officers or their nominees may speak or respond to relevant questions at all Council meetings at the request of the Mayor or the person presiding as Chair of the meeting. However, care must be taken to ensure that officers are not drawn into political debate in the Council meetings.

#### **4. SUBSTITUTION FOR MEMBERS OF COMMITTEES AND SUB-COMMITTEES**

##### **4.1 When Permissible**

Named substitutions drawn from named Party pools for each committee will be acceptable where appointed members are unable to attend a meeting of the following committees:

- (a) all ~~regulatory~~ **Council appointed** committees **except any Licensing Committee established under the Licensing Act 2003**;
- (b) Cabinet advisory committees providing that the substitute for the Cabinet member is also a member of the Cabinet.

##### **4.2 Procedure**

The appointed Member must notify the Chair of the committee or sub-committee of their apologies and indicate the name of his or her substitute

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## PART 4 – B

### ACCESS TO INFORMATION PROCEDURE RULES

#### 1. SCOPE

These rules apply to all meetings of the Council, the Overview and Scrutiny Commission and Panels, the Standards Committee, all other committees and sub-committees and public meetings of the Cabinet and Cabinet sub-committee (together called meetings).

#### 2. ADDITIONAL RIGHTS TO INFORMATION

These rules do not affect any more specific rights to information contained elsewhere in this Constitution or the law.

#### 3. RIGHT TO ATTEND MEETINGS

Members of the public and media may attend all meetings subject only to the exceptions in these rules.

#### 4. NOTICES OF MEETING

The Council will give at least five clear working days notice, or any minimum amount of time set by statute, of any meeting by posting details of the meeting at the Merton Civic Centre, London Road (the designated office) and on the Council's website ([www.merton.gov.uk](http://www.merton.gov.uk)).

#### 5. ACCESS TO AGENDA AND REPORTS BEFORE THE MEETING

The Council will make copies of the agenda and reports open to the public available for inspection at the designated office and on the Council's website at least five clear working days before the meeting.

If an item is added to the agenda later, the revised agenda and each such report will be available to the public and open to inspection as soon as the report is available to Councillors.

#### 6. SUPPLY OF COPIES

The Council will supply copies of:

- (a) any agenda and reports which are open to public inspection;
- (b) any further statements or particulars necessary to indicate the nature of the items in the agenda; and
- (c) any background documents identified in the report or supplied to Councillors in connection with the report

## APPENDIX D - PROPOSED AMENDMENTS TO PART 4B

to any person on payment of a charge for postage and any other reasonable costs.

### **7. ACCESS TO MINUTES ETC. AFTER THE MEETING**

The Council will make available copies of the following for six years after a meeting:

- (a) the minutes of the meeting or records of decisions taken, together with reasons, for all meetings of the council or of the Cabinet, excluding any part of the minutes of proceedings when the meeting was not open to the public or which disclose exempt or confidential information;
- (b) a summary of any proceedings not open to the public where the minutes open to inspection would not provide a reasonably fair and coherent record;
- (c) the agenda for the meeting; and
- (d) reports relating to items when the meeting was open to the public.

### **8. BACKGROUND PAPERS**

#### **8.1 List of Background Papers**

The author will set out in every report a list of those documents (under the heading background papers) relating to the subject matter of the report which is his/her opinion;

- (a) disclose any facts or matters on which the report or an important part of the report is based; and
- (b) which have been relied on to a material extent in preparing the report but does not include published works or those that disclose exempt or confidential information as defined in rule 10 below.

#### **8.2 Public Inspection of Background Papers**

The Council will make one copy of each background paper listed in a report available for public inspection for six years after the date of the meeting concerned.

## 9. SUMMARY OF PUBLIC'S RIGHTS

These Access to Information Procedure Rules, as part of the Constitution, constitute the written summary of the public's rights to attend meetings and to inspect and copy documents. These Rules and the entire Constitution are available at Merton Civic Centre and on the Council's website ([www.merton.gov.uk](http://www.merton.gov.uk)).

## 10. EXCLUSION OF ACCESS BY THE PUBLIC TO MEETINGS

### 10.1 Confidential Information – Requirement to Exclude Public

The public must be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that confidential information would be disclosed.

**Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 18 and 19 of these rules also apply**

### 10.2 Exempt Information – Discretion to Exclude Public

The public may be excluded from meetings whenever it is likely in view of the nature of the business to be transacted or the nature of the proceedings that exempt information would be disclosed.

Where the meeting will determine any person's civil rights or obligations, or adversely affect their possessions, Article 6 of the Human Rights Act 1998 establishes a presumption that the meeting will be held in public unless a private hearing is necessary for one of the reasons specified in Article 6.

**Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 18 and 19 of these rules also apply**

### 10.3 Meaning of Confidential Information

Confidential information means information given to the Council by a government Department on terms which forbid its public disclosure or information which cannot be publicly disclosed by reason of a Court Order.

### 10.4 Meaning of Exempt Information

Exempt information means information which falls within the seven categories below and is not prevented from being exempt by virtue of the

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two qualifications in paragraph 10.5 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.

Category	Condition
1. Information relating to any individual	
2. Information which is likely to reveal the identity of any individual	
3. Information relating to the financial or business affairs of any particular person (including the authority holding that information).	“financial or business affairs” includes contemplated as well as past of current activities;
4. Information relating to any consultations or negotiations, or contemplated consultations or negotiations, in connection with any labour relations matters arising between the authority or a Minister of the Crown and employees of, or office holders under, the authority.	<p>“employee” means a person employed under a contract of service;</p> <p>“labour relations matter” means – any of the matters specified in paragraphs (a) to (g) of section 218(1) of the Trade Union and Labour Relations (Consolidation) Act 1992(b) (matters which may be the subject of a trade dispute, within the meaning of that Act); or any dispute about a matter falling within paragraph (a) above; and for the purposes of this definition the enactments mentioned in paragraph (a) above, with the necessary modifications, shall apply in relation to office-holders under the authority as they apply in relation to employees of the authority;</p> <p>“office-holder”, in relation to the authority, means the holder of any paid office appointments to which are or may be made or confirmed by the authority or by any joint</p>

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	board on which the authority is represented or by any person who holds any such office or is employee of the authority.
5. Information in respect of which a claim to legal professional privilege could be maintained in legal proceedings.	
6. Information which reveals that the authority proposes (a) to give under any enactment a notice under of by virtue of which requirements are imposed on a person; or (b) to make an order or direction under any enactment.	
7. Information relating to any action taken or to be taken in connection with the prevention, investigation or prosecution crime.	

### 10.5 Qualifications to Exemption of Information

Information falling within paragraphs 10.4 is not exempt information if it falls within either of the following categories:

Category	Definition
Information falling within paragraph 3 above is not exempt information by virtue of that paragraph if it is required to be registered under the companies Act 1985; the Friendly Societies Act 1974; the Friendly Societies Act 1992; the Industrial and Provident Societies Acts 1965 to 1978; the building societies Act 1986; or the Charities Act 1993.	“registered” in relation to information required to be registered under the building Societies Act 1986(c), means recorded in the public file of any building society (within the meaning of that Act).

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Information is not exempt information if it relates to proposed development for which the local planning authority may grant itself planning permission pursuant to regulation 3 of the Town and Country Planning General Regulations 19992(c)	
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### 11. EXCLUSION OF ACCESS BY THE PUBLIC TO REPORTS

If the Chief Executive or the Monitoring Officer thinks fit, the Council may exclude access by the public to reports which in his or her opinion relate to items during which, in accordance with rule 10, the meeting is likely not to be open to the public. Such reports will be marked “Not for publication” together with the category of information likely to be disclosed.

**Where it is proposed to exclude the public from a meeting of the Cabinet or any cabinet committee sections 18 and 19 of these rules also apply**

### 12. APPLICATION OF RULES TO THE CABINET

- (a) **General Application.** Rules 13 – 24 apply to the Cabinet, its committees and sub-committees.
- (b) **Meetings to Take Key Decisions.** If the Cabinet or its committees meet to take a key decision then it must also comply with Rules 1 – 11 unless Rule 15 (general exception) or Rule 16 (special urgency) apply. A key decision is as defined in Article 13.3 of this Constitution.
- (c) **Meetings in Advance of Collective Key Decisions.** If the Cabinet or its committees meet to discuss a key decision with an officer other than a political adviser, within 28 days of the date the decision is to be taken according to the forward plan, then the Cabinet or committee must also comply with Rules 1 – 11 unless rule 15 (general exception) or Rule 16 (special urgency) apply. This requirement does not include meetings whose sole purpose is for Officers to brief members.

### 13. PROCEDURE BEFORE TAKING KEY DECISIONS

Subject to Rule 15 (general exception) and rule 16 (special urgency), a key decision may not be taken unless:

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- (a) a notice ~~(called here a forward plan)~~ has been published in connection with the matter in question;
- (b) at least ~~28~~<sup>five</sup> clear working days have elapsed since the publication of the ~~forward plan~~<sup>notice</sup>; and
- ~~(c) where the decision is to be taken at a meeting of the Cabinet or its committees, notice of the meeting has been given in accordance with Rule 4 (notice of meetings).~~

### **14. THE FORWARD PLAN**

#### **14.1 Period of Forward Plan**

~~Forward plans will be prepared by the Chief Executive to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.~~

#### **14.2 Contents of Forward Plan**

~~The forward plan will contain matters which the Chief Executive has reason to believe will be subject of a key decision to be taken by the Cabinet, Cabinet Committees, Cabinet Members, Officers or under joint arrangements in the course of the discharge of an executive function during the period covered by the plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:~~

- ~~(a) the matter in respect of which a decision is to be made;~~
- ~~(b) where the decision taker is an individual, his or her name and title, if any and where the decision taker is a body, its name and details of membership;~~
- ~~(c) the date on which, or the period within which, the decision will be taken;~~
- ~~(d) the identity of the principal groups whom the decision taker proposes to consult before taking the decision;~~
- ~~(e) the means by which any such consultation is proposed to be undertaken;~~

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~~(f)the steps any person might take who wishes to make representations to the Cabinet, Cabinet Committee or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and~~

~~(g)a list of the documents submitted to the decision taker for consideration in relation to the matter.~~

~~14.3 The forward plan must be published at least 14 days before the start of the period covered. The Chief Executive will publish once a year a notice in at least one newspaper circulating in the area, stating:~~

~~a.)that key decisions are to be taken on behalf of the Council;~~

~~b.)that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis;~~

~~c.)that the plan will contain details of the key decisions to be made for the four month period following its publication;~~

~~d.)that each plan will be available for inspection at reasonable hours free of charge at the Council's offices;~~

~~e.)that each plan will contain a list of the documents submitted to the decision takers for consideration in relation to the key decisions on the plan;~~

~~f.)the address from which, subject to any prohibition or restriction on their disclosure, copies of, or extracts from, any document listed in the forward plan is available;~~

~~g.)that other documents may be submitted to decision takers;~~

~~h.)the procedure for requesting details of documents (if any) as they become available; and~~

~~i.)the dates on each month in the following year on which each forward plan will be published and available to the public at the Council's offices.~~

~~14.4 Exempt information need not be included in a forward plan and confidential information cannot be included.~~

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## 15. GENERAL EXCEPTION

If a **notice of a key decision has not been published in accordance with Rule 13** ~~matter which is likely to be a key decision has not been~~ included in the forward plan, then subject to Rule 16 (special urgency), the decision may still be taken if:

- (a) the decision must be taken by such a date that it is impracticable to defer the decision until ~~it has been included in the next forward plan and until the start of the first month to which the next forward plan relates~~ **the proper notice period can be given**;
- (b) the Chief Executive and the Leader have notified the Chair of the Overview and Scrutiny Commission and/or of the relevant Panel, in writing, of the matter to which the decision is to be made;
- (c) the Chief Executive and the Leader have made copies of that notification available to the public at the offices of the Council and on the Council's Website; and
- (d) at least five clear normal working days have elapsed since the Chief Executive and the Leader complied with (a) and (b)

Where such a decision is taken collectively, it must be taken in public unless it is likely that confidential or exempt information would be disclosed.

## 16. SPECIAL URGENCY

If by virtue of the date by which a decision must be taken, Rule 15 (general exception) cannot be followed, then the decision can only be taken if the decision taker (if an individual) or the chair of the body making the decision, obtains the agreement of the Chair, ~~or in their absence the Vice Chair~~, of the Overview and Scrutiny Commission, **or, in the absence of the Chair of the Overview and Scrutiny Commission, the Mayor**, that the taking of the decision cannot be reasonably deferred. ~~If the Chair or Vice Chair of the Overview and Scrutiny Commission is unable to act, then the agreement of the Mayor will suffice. In all seven circumstances the Leader of the Majority Opposition is to be provided with copies of the relevant correspondence.~~

## 17. REPORT TO COUNCIL

### 17.1 When the Overview and Scrutiny Commission can Require a Report

If the Overview and Scrutiny Commission thinks that a key decision has been taken which ~~was not~~ **is not in compliance with rules 13-15 above**

it may require a report to be made by the Chief Executive and the Leader to the Council.

~~(a) included in the forward plan;~~

~~(b) the subject of the general exception procedure; or~~

~~(c) — the subject of an agreement with the Chair of the Overview and Scrutiny Commission, relevant Panel, the Mayor or the Deputy Mayor of the Council under Rule 16, the Overview and Scrutiny Commission may require the Leader and or Chief Executive to submit a report to the Council. The power to require a report rests with the Overview and Scrutiny Commission.~~

## 17.2 The ~~Cabinet's~~ Leader's Report to Council

The ~~Cabinet~~ Leader will prepare a report for submission to the next available meeting of the Council. However, if the next meeting of the Council is within seven days of receipt of the written notice, or the resolution of the committee, then the report may be submitted to the meeting after that.

The report to council will set out particulars of the decision, the individual or body making the decision and if the leader is of the opinion that it was not a key decision the reasons for that opinion.

## 17.3 Quarterly Reports on Special Urgency Decisions

In any event, the Leader will submit quarterly reports to the Council on the executive decisions taken in the circumstances set out in Rule 16 (special urgency) in the preceding three months. The report will include the number of decisions so taken and a summary of the matters in respect of which those decisions were taken.

### 18) Private meetings of the cabinet (Exempt procedure)

Any meeting of the cabinet or any cabinet committee which is proposed to be held wholly or partially in private session in order to deal with exempt or confidential business may only proceed in respect of those items of business in accordance with the following rules

1) A notice of the intent to hold a private meeting must be published at least 28 clear days prior to the meeting and that notice must indicate the reasons for the meeting to be held in private.

2) A further notice must be published at least 5 clear days prior to the meeting and that notice must include:

a.) The reasons for the meeting to be held in private

- b.) Any representations received about why the meeting should be open to the public; and
- c.) A statement of responses to such representations

## 19) Exempt Urgency procedure

Where the date of the meeting at which it is proposed to consider exempt or confidential information makes compliance with (18 above) impracticable the meeting may only be held in private where:

- a.) The Chair of the Overview and Scrutiny Commission (or in his/her absence The Mayor) has agreed that the meeting is urgent and cannot reasonably be deferred; and
- b.) a notice of that agreement is published as soon as reasonably practicable;
- a.) —

## ~~18. CABINET MEETINGS RELATING TO MATTERS WHICH ARE NOT KEY DECISIONS~~

~~The Cabinet will decide whether meetings relating to matters, which are not key decisions, will be held in public or private.~~

## ~~19. NOTICE OF PRIVATE MEETING OF THE CABINET~~

~~(a) Members of the Cabinet will be entitled to receive five clear normal working days notice of a meeting to which they are summoned, unless the meeting is convened at shorter notice as a matter of urgency.~~

~~(b) Notice of private meetings of the Cabinet will be served on the Chairs of the Overview and Scrutiny Commission and Panels, leader of the Opposition and the Leaders of the minority groups, at the same time as notice is served on Members of the Cabinet.~~

## ~~20. ATTENDANCE AT PRIVATE MEETINGS OF THE CABINET~~

~~(a) **Overview and Scrutiny Commission and Panels.** Where a matter under consideration at a private meeting of the Cabinet is within the remit of the Overview and Scrutiny Commission or one of the Overview and Scrutiny Panels, the chair of the Commission or the relevant Panel, or in their absence the appropriate vice chair, may attend that private meeting with the consent of the person presiding, though not speak unless those present agree.~~

~~(b) **Members.** No Members other than Cabinet Members and those specified in (a) above will be entitled to attend private meetings of the Cabinet or those invited to attend by the Leader of the Council.~~

~~(c) Chief Officers. The Head of Paid Service, the Chief Financial Officer and the Monitoring Officer, or their nominees, are entitled to attend any meeting of the Cabinet. The Cabinet may not meet unless the Chief Executive, or his or her nominee with responsibility for recording and publicising the decision, is present.~~

## **21.18. RECORD OF DECISIONS**

After any formal meeting of the Cabinet, whether held in public or private, the Chief Executive or his or her nominee, will produce a record of every decision taken at that meeting as soon as practicable. The record will include a statement of the reasons for each decision and any alternative options considered and rejected at that meeting.

## **22.19. KEY DECISIONS BY INDIVIDUAL MEMBERS OF THE CABINET AND/OR OFFICERS**

### **22.1 Reports Intended to be Taken into Account**

Where an individual decision maker receives a report which he/she intends to take into account in making any key decision, then he/she will not make the decision until at least three clear normal working days after receipt of that report.

### **22.2 Provision of Copies of Reports to Overview and Scrutiny Commission and Panels**

On giving of such a report to an individual decision maker, the person who prepared the report will give a copy of it to the Chair of the Overview and Scrutiny Commission and any relevant Panel as soon as reasonably practicable, and make it publicly available at the same time, whilst ensuring that exempt and confidential information is safeguarded.

### **22.3 Record of Individual Decision**

As soon as reasonably practicable after an executive decision has been taken by an individual member of the Cabinet or a key decision has been taken by an Officer, he/she will prepare, or instruct the Proper Officer to prepare, a record of the decision, a statement of the reasons for it and any alternative options considered and rejected. The provisions of paragraphs 7 and 8 will also apply to the making of decisions by individual decision makers. This does not require the disclosure of exempt or confidential information or advice from a political adviser.

## **23.20. OVERVIEW AND SCRUTINY COMMISSION'S AND PANELS' ACCESS TO DOCUMENTS**

Subject to Rule 23.1 below, the Overview and Scrutiny Commission and Panels will be entitled to copies of any document which is in the

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possession or control of the Cabinet and which contains material relating to:

- (a) any business transacted at a public or private meeting of the Cabinet, Cabinet committee or Sub-committee; or
- (b) any decision taken by an individual member of the Cabinet.

### 23.1 Limit on Rights

The Overview and Scrutiny Commission and relevant Panels will not be entitled to:

- (a) any document that is in draft form;
- (b) 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
- (c) the advice of a political adviser.

## **24.21. ADDITIONAL RIGHTS OF ACCESS AND PANELS FOR MEMBERS**

### 24.1 Material Relating to Previous Business

All Councillors will be entitled to inspect any document, which is in the possession or under the control of the Cabinet and contains material relating to any business previously transacted at a private meeting unless it appears to the proper officer that compliance in relation to a document or part of a document that (a) or (b) below applies:

- (a) it would involve the disclosure of exempt information of a description within paragraph 10.4 above; or
- (b) It would involve the disclosure of the advice of a political adviser or assistant.

Notwithstanding sub-paragraph (a) above, a document shall be available for inspection if it falls within category 3 (information relating to the financial or business affairs of any particular person (including the authority holding that information)) except to the extent that the information relates to any terms proposed or to be proposed by or to the authority in the course of negotiations for a contract or category 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).

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## **24.2 Material Relating to Key Decisions**

All Councillors will be entitled to inspect any document (except those available only in draft form) in the possession or under the control of the Cabinet, which relates to any key decision unless Rule 24.1 (a) or (b) above applies.

## **24.3 Nature of Rights**

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