



GOVERNANCE COMMITTEE

Appendix 1

Subject Heading:

Changes to the Constitution

SLT Lead:

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Policy context:

Governance

Financial summary:

None

The subject matter of this report deals with the following Council Objectives

Communities making Havering
Places making Havering
Opportunities making Havering
Connections making Havering

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SUMMARY

This report proposes changes to the Constitution for recommendation to Council on Members' common law right to access documents on a 'need to know' basis and the rules of procedure relating to budget setting.

RECOMMENDATIONS

That the Committee recommend to Council that:

1. the Protocol on Member/Officer Relations is amended to authorise the Monitoring Officer to decide, on a case by case basis, a Member's common law right to access documents; and
2. the Council's Budget and Policy Framework Rules are amended in accordance with paragraph 3.3 of this report.

REPORT DETAIL

1. Background

- 1.1 This report proposes changes to the Constitution for recommendation to Council on Members' common law right to access documents on a 'need to know' basis and the rules of procedure relating to budget setting.

2. Members' 'need to know'

- 2.1 The Council's Protocol on Member/Officer Relations (which is in Part 5 of the Constitution) includes a section on '*Access to information – 'Need to Know'*'. Members statutory, but qualified, rights of access to information are recorded in Part 4 of the Constitution (Rules of Procedure – Access to Information Procedure Rules).
- 2.2 In respect of non-executive decision making, Members have statutory rights by s100(F) of the Local Government Act 1972. In respect of executive decision making, Members have statutory rights by r16 and r17 of the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.
- 2.3 These rights are in addition to Members' common law right to access documents on a 'need to know' basis but such access is also subject to limitations. In other words, there is no unrestricted entitlement to see Council documents. A Member has to have good reason to see documents, i.e. it has to be necessary for the Member to be able to carry out his/her duties.
- 2.4 There are other exceptions too. According to case law, there is no right to a "roaming commission to go and examine ... documents ... because he is a councillor". Nor does a Member have a right to know if he/she has an indirect motive or purpose for obtaining the document. Further, even if there is an entitlement in principle, some documents may be so confidential that they cannot be disclosed without necessary redaction.

- 2.5 Members' common law right to access documents therefore has to be decided on a case by case basis. As well as demonstrating a need to know, the right has to be balanced against competing data protection and privacy rights and the need for confidentiality if circumstances so require.
- 2.6 Currently, the Protocol on Member/Officer Relations does not state in terms who is authorised to decide a Member's common law right to access documents. It is proposed therefore that the Protocol is amended to expressly authorise the Monitoring Officer to respond to any such requests on a case by case basis.
- 2.7 Members are asked to note that the Leader has also approved such a delegation to the extent that the right to access documents relates to executive decision making.

3. **Council procedure rules on budget setting**

- 3.1 The Local Authorities (Standing Orders) (England) Regulations 2001 (the Regulations) require local authorities to incorporate into their standing orders a mechanism for resolving disputes between Cabinet and Council when setting the budget and policy framework.
- 3.2 More specifically, according to r3(1)(b) a local authority operating executive arrangements in the form of a Leader and Cabinet must incorporate in standing orders for regulating its proceedings and business the provisions set out in Part II of Schedule 2 of the Regulations or provisions to the like effect (see **Appendix 1**). These provisions relate to Council's consideration each year of Cabinet's budget proposals for the following financial year.
- 3.3 In Part 4 of the Constitution, the Council's Budget and Policy Framework Procedure Rules are set out. At paragraph 2.9, provision is made for "an Executive Mayor" to object to any Council decision to amend the budget as proposed by Cabinet. As such a provision is of no relevance given the Council's Leader and Cabinet model of governance, it is proposed that it be replaced with the following:
- "2.9 If following consideration of the Executive's budget proposals, Council has any objection to them, it must inform the Leader of any objections which it has to the Executive's proposals and must give the Leader instructions requiring the Executive to reconsider, in the light of those objections, those proposals in accordance with Council's requirements.*
- 2.10 *Where Council gives instructions in accordance with paragraph 2.9, it must specify a period of at least five working days beginning on the day after the date on which the Leader receives the*

instructions on behalf of the Executive within which the Leader may:

2.10.1 submit a revision of the proposals as amended by the Executive, which have been reconsidered in accordance with Council's requirements, with the Executive's reasons for any amendments made to the proposals, to Council for Council's consideration; or

2.10.2 inform Council of any disagreement that the Executive has with any of Council's objections and the Executive's reasons for any such disagreement.

2.11 When the period specified by Council, as referred to in paragraph 2.10, has expired Council must, when setting the budget, take into account:

2.11.1 any amendments to the proposals that are included in any revised proposals;

2.11.2 the Executive's reasons for those amendments;

2.11.3 any disagreement that the Executive has with any of Council's objections; and

2.11.4 the Cabinet's reasons for that disagreement;

which the Leader submitted to Council, or informed Council of, within the period specified."

3.4 The practical effect of the statutory provisions is to put the brakes on Council if it is minded to vary or substitute Cabinet's budget proposals and require that Cabinet's views are considered before a budget for the following year is set.

3.5 However, the statutory provisions do not otherwise restrict Council's ability to regulate its proceedings and business. Accordingly, the stipulation that Cabinet submits its proposals before 8th February in any financial year has not been incorporated into the procedure rules as it does not fit in with the timetabling of meetings leading up to the setting of the budget each year.

IMPLICATIONS AND RISKS

Financial implications and risks:

None in relation to this report.

Legal implications and risks:

The relevant legislative and constitutional provisions have been referred to in the body of the report.

Human Resources implications and risks:

None.

Equalities implications and risks:

None directly arising from this report.

Background Papers

None.

Appendix 1 – Relevant provisions of Part II of Schedule 2 of the Regulations

6.

Subject to paragraph 10, where, before 8th February in any financial year, the authority's executive submits to the authority for its consideration in relation to the following financial year—

- (a) estimates of the amounts to be aggregated in making a calculation (whether originally or by way of substitute) in accordance with any of [sections 31A, 31B, 34 to 36A, 42A, 42B, 45 to 49, 52ZF, 52ZJ, of the Local Government Finance Act 1992];
- (b) estimates of other amounts to be used for the purposes of such a calculation;
- (c) estimates of such a calculation; or
- (d) amounts required to be stated in a precept under Chapter IV of Part I of the Local Government Finance Act 1992,

and following consideration of those estimates or amounts the authority has any objections to them, it must take the action set out in paragraph 7.

7.

Before the authority makes a calculation (whether originally or by way of substitute) in accordance with any of the sections referred to in paragraph 6(a), or issues a precept under Chapter IV of Part I of the Local Government Finance Act 1992, it must inform the executive leader of any objections which it has to the executive's estimates or amounts and must give to him instructions requiring the executive to reconsider, in the light of those objections, those estimates and amounts in accordance with the authority's requirements.

8.

Where the authority gives instructions in accordance with paragraph 7, it must specify a period of at least five working days beginning on the day after the date on which the executive leader receives the instructions on behalf of the executive within which the executive leader may—

- (a) submit a revision of the estimates or amounts as amended by the executive ("revised estimates or amounts"), which have been reconsidered in accordance with the authority's requirements, with the executive's reasons for any amendments made to the estimates or amounts, to the authority for the authority's consideration; or
- (b) inform the authority of any disagreement that the executive has with any of the authority's objections and the executive's reasons for any such disagreement.

9.

When the period specified by the authority, referred to in paragraph 8, has expired, the authority must, when making calculations (whether originally or by way of substitute) in accordance with the sections referred to in paragraph 6(a), or issuing a precept under Chapter IV of Part I of the Local Government Finance Act 1992, take into account—

- (a) any amendments to the estimates or amounts that are included in any revised estimates or amounts;
- (b) the executive's reasons for those amendments;

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- (c) any disagreement that the executive has with any of the authority's objections; and
- (d) the executive's reasons for that disagreement, which the executive leader submitted to the authority, or informed the authority of, within the period specified.

10.

[Repealed]