



Council
28 February 2023

Title	Constitution Review
Report of	Monitoring Officer
Wards	All
Status	Public
Urgent	No
Key	Yes
Enclosures	<p>Appendix A – Financial Regulations</p> <p>Appendix B – Contract Procedure Rules</p> <p>Appendix C – Procedure for Dealing with Complaints Against Members</p> <p>Appendix D – Officer Code of Conduct</p> <p>Appendix E – Terms of Reference of Cabinet</p> <p>Appendix F – Terms of Reference of Council</p> <p>Appendix G – Terms of Reference of Committees</p> <p>Appendix H – Article 7 Officers</p> <p>Appendix I – Delegations to Officers</p> <p>Appendix J – Budget and Policy Framework</p> <p>Appendix K – Council Procedure Rules (to follow)</p> <p>Appendix L – Committee Procedure Rules</p> <p>Appendix M – Executive Procedure Rules (to follow)</p> <p>Appendix N – Consultation Findings Report</p> <p>Appendix O – Equality Impact Assessment</p>
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Summary

The Council's Constitution is the framework for the Council's operations and decision-making and ensures the Council operates in a way which is efficient, transparent, ethical and accountable to local people. It is a reference point for Members, officers and the public.

The Secretary of State has given directions pursuant to S.9P of the Local Government Act 2000 via the Local Government Act 2000 (Constitutions) (England) Direction 2000. The information that is required in the Constitution includes the membership, terms of reference and functions of the authority's committees or sub-committees and any rules governing the conduct and proceedings of meetings of those committees or sub-committees.

In July 2022, the Council passed a resolution which requested that officers review the Council's governance arrangements to move to an Executive system. To give effect to the change the Council's Constitution requires re-writing. It needs to be made up-to-date and legally compliant, reflective of the Council's values and ambitions and consistent with the need for clear, efficient and timely decision-making.

The Constitution sets out a duty for the Monitoring Officer to review the Constitution and make recommendations and changes which need to be approved by full Council.

Due to the size of the Constitution, the time required to review it and the date for the new constitution to come into effect being May 2023, the Monitoring Officer considers that it would be best dealt with in stages. Once the final report is approved, the new Constitution will come into effect at Annual Council in May 2023.

In order to review the Constitution, an informal Cross-Party Member Constitution Working Group was established and consultation with some other Members has also taken place.

Relevant sections have and will be considered by necessary stakeholders including Council Management Team and a Constitution Review Cross-Party Working Group working group, where appropriate.

The Licensing Code has been considered by the Licensing Committee.

Council has agreed the following sections in January 2023:

- Article 1 (The Constitution)
- Article 2 (Members and the Council)
- Article 3 (The Full Council)
- Article 4 (The Mayor)
- Article 5 (Decision-making)
- Article 6 (The Executive)
- Access to Information Rules
- Members Licensing Code

Council is asked to consider the following sections of the Constitution in this report:

- Appendix A – Financial Regulations

- Appendix B – Contract Procedure Rules
- Appendix C – Procedure for dealing with complaints against members
- Appendix D – Officer Code of Conduct
- Appendix E – Terms of Reference of Cabinet
- Appendix F – Terms of Reference of Council
- Appendix G – Terms of Reference of committees
- Appendix H – Article 7 Officers
- Appendix I – Delegations to Officers
- Appendix J – Budget and Policy Framework
- Appendix K – Council Procedure Rules
- Appendix L – Committee Procedure Rules
- Appendix M – Executive Procedure Rules

The Constitution review will also be supported by training for Members and officers to assist members in understanding the various parts of the Constitution and its implications.

Officers Recommendations

- 1. That Council consider and approve the second tranche of the Constitution as set out in the Appendices A to M attached.**
- 2. That Council agree that the Constitution sections attached as Appendices A to M will come into effect at Annual Council in May 2023.**
- 3. That Council delegate authority to the Monitoring Officer to make ‘housekeeping changes’ to the Constitution such as terminology to ensure consistency, numbering and formatting changes.**
- 4. That Council note the Public Participation Consultation findings report and Equalities Impact Assessment as set out in Appendices N and O.**

1. Why this report is needed

1.1 Under Section 9P of the Local Government Act 2000:

- (1) A local authority must prepare and keep up to date a document (referred to in this section as its constitution) which contains:
- a) a copy of the authority's standing orders for the time being,
 - b) a copy of the authority's code of conduct (if any) for the time being under section 28 of the Localism Act 2011,
 - c) such information as the Secretary of State may direct, and
 - d) such other information (if any) as the authority considers appropriate.

Such other information as the Secretary of State directs – under the Local Government Act 2000 (Constitutions)(England) Direction 2000 this information includes the membership, terms of reference and functions of the Council’s Committees and Sub-Committees, and any rules governing the conduct and proceedings of those Committees and Sub-Committees.

- 1.2 Subject to the provisions above, it is for the Council to decide what information its Constitution should contain.
- 1.3 The current version of the Constitution needs to be amended to enable the Council to move to an Executive system from Annual Council on 23 May 2023.
- 1.4 Detailed changes and the reason for them are set out below.

2. Reasons for recommendations

- 2.1 To enable the Council to move to an Executive system from Annual Council on 23 May 2023 the Council needs to re-write the Council’s Constitution.
- 2.2 Council agreed the following sections in January 2023:
 - Article 1 (The Constitution)
 - Article 2 (Members and the Council)
 - Article 3 (The Full Council)
 - Article 4 (The Mayor)
 - Article 5 (Decision-making)
 - Article 6 (The Executive)
 - Access to Information Rules
 - Members Licensing Code
- 2.3 **Consultation Findings Report**
- 2.4 The Consultation on Public Participation at Council Committee meetings launched on 14 December 2022 and ended on 24 February 2023.
- 2.5 The consultation document and questionnaire was informed by a peer review of a number of other local authorities which sought to identify best practice in terms of public engagement in formal democratic processes. The information was utilised to help develop options to broaden the current opportunities for public participation at formal decision-making bodies and ways to improve or expand the current offer.
- 2.6 In addition, research and good practice guidelines have been used to develop the new arrangements for public participation at full council and committees which are underpinned by the principles:

- Simplification of language
 - Participation rules which are easy to understand
 - Transparency
 - Removing any unnecessary barriers
 - Resident involvement in decision making (e.g., Overview and Scrutiny investigation)
- 2.7 The detailed findings of the consultation and a breakdown of the approach to the consultation are set out in the consultation findings report at Appendix K.
- 2.8 The consultation consisted of a summary consultation document and online questionnaire which was published on [Engage Barnet](#).
- 2.9 Paper copies and other alternative formats of the consultation were also made available on request.
- 2.10 The consultation was widely promoted through a variety of communication channels including via the council's resident's e-newsletter, Barnet First magazine, the council's website, School Circulate newsletter, posters in public buildings, Twitter, and Facebook adverts.
- 2.11 Detailed findings are set out in the consultation findings report attached at Appendix K.
- 2.12 The consultation document was split into two parts, the first focused on the current arrangements for public participation. The second part set out the proposed new approach for public participation at full council and committee meetings. The consultation invited views on the:
- Public questions at council meetings
 - Public comments at council meetings
 - Raising issues at Area Committees
 - Petitions
 - Speaking at Planning Committee meeting
 - Speaking on Assets of Community Value Listings at committee meetings
 - Speaking on Funding Applications at Area Committee meetings
 - Deputations
 - Participation in Cabinet and Overview & Scrutiny Committee meetings
 - Enabling more people to get involved with the Council decision-making process
- 2.13 Those respondents who elected to receive a paper copy were sent both the consultation document and questionnaire.
- 2.14 A total of 53 questionnaires have been completed - with one being posted in which was incorporated into the following analysis with the responses submitted online.

- 2.15 Overall, the responses to the consultation demonstrates support towards the implementation of the new arrangements for:
- public questions at council meetings
 - petitions
 - deputations
 - participation in Cabinet and Overview & Scrutiny Committee meetings
 - enabling more people to get involved with the Council decision-making process
- 2.16 In response to the outturn of the consultation findings and support towards public participation arrangements in the Executive model of governance, the following arrangements are highlighted and recommended for adoption by Council as part of the appended Constitution articles:

Citizens' Rights

- 2.17 To promote and encourage further public engagement, it is proposed to substitute the use of the word 'resident' with 'citizen' and refer to citizens' rights in the context of public participation. The term citizens includes residents living in Barnet as well as those people who study, work or have businesses in Barnet.
- 2.18 Furthermore, as part of the Governance Review project arrangements will be put in place to set up a dedicated council democracy webpage to help stakeholders to understand how they can participate in council decision making by setting out the options including for deputations, petitions, public questions and overview and scrutiny involvement.

Public Questions

- 2.19 To promote further engagement in council decision making, the arrangements for Public Questions will be expanded to other bodies such as Council and Cabinet as set out in the attached Constitution sections.
- 2.20 In relation to the full Council, there will be new arrangements which enable citizens to ask questions of Members of the Executive, Cabinet Member and Committee Chairs at the Council meeting. Questioners will be able to ask a supplementary question.
- 2.21 For any questions not dealt with due to time constraints, a written response will be provided to the questioner and published with the agenda papers for the meeting.
- 2.22 Public questions will be allowed at the new Cabinet, plus all committees, sub-committee and boards (as is currently the case).
- 2.23 A new arrangement for deputations (signed by between 5 and 24 people) will be embedded in the council's governance arrangements as follows:

Deputations

- 2.23 A new arrangement for deputations (signed by between 5 and 24 people) will be embedded in the council's governance arrangements as follows:

- Full Council – deputations will be allowed on matters that fall within the council's responsibilities or where the council could be reasonably expected to lobby on behalf of citizen.
- Cabinet and Committees – deputations will be allowed in relation to items on the agenda.

Petitions

- 2.24 By virtue of the benchmarking peer review and outcome of the public consultation it is recommended that the requirements for petition signatures be lowered to ensure that citizens receive responses when the petition reaches the relevant lower threshold. The following changes are therefore highlighted as set out in the Constitution articles for considering petitions:

Signatories	Authority
1 – 24	Joint statement of representation. Passed to the appropriate department.
25 – 500	Written response from the relevant Cabinet Member
501 – 3,000	<p>Reported to Cabinet or relevant committee: Cabinet; or Area Committee; or Other Committee</p> <p>The Lead Petitioner will be given 3 minutes to present the petition to Cabinet or committee. Following the presentation, the Leader and Cabinet Members, or Chair and Committee Members will have an opportunity to ask the Lead Petitioner questions. After the debate Cabinet or the committee will decide to:</p> <ul style="list-style-type: none"> • Take no action • Refer the matter to the relevant Cabinet Member or Committee Chair to provide a written respond to Lead Petitioner within 20 working days; or • Instruct an officer to prepare a report for a future meeting of Cabinet or the Committee on the issue(s) raised with a recommended course of action
3,001 or more	<p>Reported to Full Council (excluding Annual Council)</p> <p>The petition will be considered by Full Council and the following process will be followed:</p> <ul style="list-style-type: none"> • Lead Petitioner is given five minutes to present the petition; • Council Members have an opportunity to ask questions of the Lead Petitioner then debate the item;

	<ul style="list-style-type: none"> • The relevant Cabinet Member or Committee Chair will respond to the issues raised in the petition and outline the decision route (if any) he/she proposes to take which may include: <ul style="list-style-type: none"> ○ Take no action ○ Provide a written respond to Lead Petitioner within 20 working days; or ○ Instruct an officer to prepare a report for a future meeting of Cabinet or a Committee on the issue(s) raised with a recommended course of action
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Other Issues

- 2.25 Respondents made several other comments during the consultation on various issues including the location of meetings, accessibility of documents online, a lack of awareness of how they could participate, audio/visual issues, and the lack of remote attendance options. Officers will be considering these issues fully and will develop an action plan to respond to them details of which will be contained in the ‘You Said, We Did’ report published to Engage Barnet in due course. The action plan will cover all of the matters raised by the public with the aim of making it easier for the public to engage in meetings.

3. Alternative options considered and not recommended

- 3.1 The Council could retain the current Constitution un-amended. This is not recommended as the Constitution needs to be re-written to enable the Council to move to an Executive system from Annual Council on 23 May 2023.

4. Post decision implementation

- 4.1 Subject to the Council’s approval, the re-written constitution will come into effect at Annual Council on 23 May 2023.

5. Implications of decision

5.1 Corporate Priorities and Performance

- 5.1.1 A new Corporate Plan for 2023 – 2026 (Caring for people, our places and the planet: our plan for Barnet 2023-2026) is being reported elsewhere on the agenda for this meeting for Full Council approval. This report supports delivery of all Corporate Plan priorities.

5.2 Resources (Finance & Value for Money, Procurement, Staffing, IT, Property, Sustainability)

- 5.2.1 The current Administration have indicated that the new governance system should be cost neutral in respect of Members Allowances. However, there are costs associated with delivering the change of governance arrangements and these are currently being

collated but will include: officer time; facilitated workshops with Council Management Team and the Corporate Senior Management Team; additional staff capacity in the Governance Service to support the team during period of change; and legal costs associated with reviewing the Constitution. Costs will be met from existing Assurance budgets or the Transformation Reserve.

5.3 Legal and Constitutional References

- 5.3.1 Council's Constitution, Article 7 - the Constitution and General Purposes Committee terms of reference includes responsibility "To keep under review all aspects of the Council's Constitution so as to ensure that it remains current and fit for purpose, and to make recommendations thereon to the Council" and "To have responsibility for overseeing the Council's governance arrangements." The Constitution and General Purposes Committee agreed at their meeting on 6 October 2022 that Constitution amendments related to the Governance Review Project could be reported from the Constitution Review Cross Party Working Group directly to Council rather than via the Committee. To ensure that there is on-going Member involvement in the emerging Constitution, the Committee have agreed to set up a Constitution Review Cross Party Working Group to look at the detailed parts of the constitution that will then be reported to Council.
- 5.3.2 The law allowing the move to an Executive system is the Local Government Act 2000 section 9K under this section 'A local authority may cease to operate its existing form of governance, and start to operate a different form of governance.'
- 5.3.3 A resolution of a local authority is required in order for the authority to make a change in governance arrangements. As soon as practicable after passing such a resolution a local authority must –
- (a) secure that copies of a document setting out the provisions of the arrangements that are to have effect following the resolution are available at its principal office for inspection by members of the public, and
 - (b) publish in one or more newspapers circulating in its area a notice which:
 - i. states that the authority has resolved to make a change in its governance arrangements,
 - ii. states the date on which the change is to have effect,
 - iii. describes the main features of the change,
 - iv. states that copies of a document setting out the provisions of the arrangements that are to have effect following the resolution are available at the authority's principal office for inspection by members of the public, and specifies the address of the authority's principal office. The change has to be implemented at Annual Council.
- 5.3.4 It is expected that Council will deal with the resolution to change governance arrangements in May 2023.

5.4 **Insight**

5.4.1 N/A

5.5 **Social Value**

5.5.1 N/A

5.6 **Risk Management**

5.6.1 Risks are being managed via the Governance Review project. Any escalated risks will be reported to Members via this committee as required.

5.7 **Equalities and Diversity**

5.7.1 Decision makers should have due regard to the public sector equality duty in making their decisions. The equalities duties are continuing duties they are not duties to secure a particular outcome. The equalities impact will be revisited on each of the proposals as they are developed. Consideration of the duties should precede the decision. It is important that Council has regard to the statutory grounds in the light of all available material such as consultation responses.

5.7.2 The statutory grounds of the public sector equality duty are found at section 149 of the Equality Act 2010 and are as follows:

5.7.3 A public authority must, in the exercise of its functions, have due regard to the need to:

- a) Eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
- b) Advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
- c) Foster good relations between persons who share a relevant protected characteristic and persons who do not share it.

Having due regard to the need to advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Remove or minimise disadvantages suffered by persons who share a relevant protected characteristic that are connected to that characteristic;
- b) Take steps to meet the needs of persons who share a relevant protected characteristic that are different from the needs of persons who do not share it;
- c) Encourage persons who share a relevant protected characteristic to participate in public life or in any other activity in which participation by such persons is disproportionately low.

The steps involved in meeting the needs of disabled persons that are different from the

needs of persons who are not disabled include, in particular, steps to take account of disabled persons' disabilities.

Having due regard to the need to foster good relations between persons who share a relevant protected characteristic and persons who do not share it involves having due regard, in particular, to the need to:

- a) Tackle prejudice, and b) Promote understanding.

Compliance with the duties in this section may involve treating some persons more favourably than others; but that is not to be taken as permitting conduct that would otherwise be prohibited by or under this Act.

The relevant protected characteristics are: Age, Disability, Gender reassignment, Pregnancy and maternity, Race, Religion or belief, Sex, Sexual orientation, Marriage and civil partnership

Officers consider that the proposals are an opportunity to look at how the public engage with the council and to advance engagement and to potentially remove any barriers to engagement.

- 5.7.4 The Equalities Impact Assessment is at Appendix L and shows there is a positive impact on those with protected characteristics.

5.8 **Corporate Parenting**

- 5.8.1 The role of members in Corporate Parenting will be outlined in the constitution.

5.9 **Consultation and Engagement**

- 5.10 A Governance Review Cross Party Member Working Group has been set up to look at the detail of the constitution. Public consultation on the ways that the public can engage with the council has taken place. Attached to this report at Appendix K are the results of the consultation findings. Appendix L is the equality impact assessment.
- 5.11 The consultation results show that there was a desire for more ways for the public to engage in committee meetings, Cabinet and Council. As a result of this the procedure rules for Committees, Cabinet and Council have been extended to allow for deputations and questions to the leader. The thresholds for petitions have been lowered.

5.12 **Environmental Impact**

- 5.12.1 There are no direct environmental implications arising from the recommendations.

6. **Background papers**

- 6.1 Council, 26 July 2022, Item 14.5, Administration Motion in the name of Councillor Barry Rawlings – Barnet's Governance Arrangements: Agenda for Council on Tuesday 26th July, 2022, 7.00 pm [Agenda for Council on Tuesday 26th July, 2022, 7.00 pm \(moderngov.co.uk\)](#)

- 6.2 Constitution & General Purposes Committee, 6 October 2022, Item 12 – Governance Review Project Update: Agenda for Constitution and General Purposes Committee on Thursday 6th October, 2022, 7.00 pm [Agenda for Constitution and General Purposes Committee on Thursday 12th January, 2023, 7.00 pm \(moderngov.co.uk\)](#)
- 6.3 Constitution & General Purposes Committee, 13 January 2023, Item 11 – Governance Review Project Update: [Agenda for Constitution and General Purposes Committee on Thursday 12th January, 2023, 7.00 pm \(moderngov.co.uk\)](#)
- 6.4 Council, 24 January 2023, Constitution Review, Item 12.1: [Agenda for Council on Tuesday 24th January, 2023, 7.00 pm \(moderngov.co.uk\)](#)
- 6.5 Policy & Resources Committee, 22 February 2023, Item 9 – Corporate Plan: [Agenda for Policy and Resources Committee on Wednesday 22nd February, 2023, 7.00 pm \(moderngov.co.uk\)](#)