**APPENDIX 2**

## CONSTITUTION REVIEW WORKING GROUP – EXPLANATION AS TO THE PROPOSED AMENDMENTS

## COUNCIL PROCEDURE RULES (STANDING ORDERS)

Rule 3

The suggested amendment has come from officer discussions that there is a wish to see a set format for Council meetings and that due to the legal requirement to set a budget, that this meeting should only deal that issue only.

The amendments have also kept in mind that a Chair of a meeting should have the power to manage their meeting and make amendments to the running order of the meeting.

The amendment of rule 3 seeks to say that the items listed will be taken in that order, thus the consideration of motions was put last, but allows for the Chair to exercise their discretion to vary the order of business. Rule 3.2 is there to limit budget council to ensuring the Budget is agreed.

**This was supported by the Working Group**

Rule 6.1

This amendment is suggested to clarify that a summons does not need to be served for an adjourned meeting as it is the same meeting that had already been summoned. This is following a query from Democratic Services following the adjournment of the last Council meeting.

**This was supported by the Working Group**

Rule 8 - Quorum

This came from a query from Democratic Services following the closure motion at full council and what happens to the outstanding business. This is to confirm if a time and date is not set for the meeting to continue the meeting is not adjourned so the outstanding business will be added to the next meetings agenda.

**This was supported by the Working Group**

Rule 10

This amendment is following Cllr McIlwain's Question at last full Council on where the written answers to questions would be published.

**This was supported by the Working Group** – however it was confirmed that the publication of the draft minutes would not be made public in 10 working days so the

proposed amendment clarifies this.

Rule 12

Rule 12.2 was suggested to seek to limit the length of motions to focus on the issues and the time spent on motions so that Council can get through the agenda items without having to adjourn to a later date.

**This was not supported by the Working Group**

Rule 12.3 was suggested to limit the wording of 650 words for a motion put before full Council. Members suggested a 600 word limit and a 650 word limit to amendments.

Also considering the general 6-month rule that previous decision are not reconsider within that time, the suggested amendment that allows the Monitoring Officer to reject similar motions to comply with this requirement.

Rule 12.4 is included following discussions with group leaders to give the Chair of the meeting the power to review a motion refusal by the Monitoring Officer.

**This was supported by the Working Group**

Rule 12.6 has been amended following the last Council meeting on an issue raised by Councillor Martin that if strictly applied this would deny members the chance to debate almost all issues as the majority of day-to-day decisions are the responsibility of Cabinet.

**This was supported by the Working Group**

Rule 13.1

The amendment to 13.1(h) *by noon two working days* has been put forward by Cllr Maheshwari so that movers of motions have sufficient time to consider any proposed amendments.

The reason for a new Rule 13.1(u) *To extend the time limit for debating an individual member motion for a further 20 minutes*, is explained above.

**This was not supported by the Working Group**

Rule 14.6

This has been proposed to seek to manage the time spent on Individual Member Motions.

**This was supported by the Working Group**

Rule 14.7 is included in the Committee procedure rules but not the Council procedure

rules for some reason. It has been included to allow the Chair to control the meeting where members are not raising new issues and ensure the efficient conduct of the meeting.

**This did not receive full support and was amended to make sure each Group Leader (or nominated member) and ward councillors would be allowed to speak.**

Rule 17

Rule 17.1 was suggested

There is no general statutory requirement that a local authority councillor must be present throughout the entirety of a debate to be entitled to vote. However, a local authority may lawfully impose such a requirement through its standing orders, provided the restriction is rational and for a proper purpose. The Supreme Court confirmed in 2025 that standing orders prohibiting committee members from voting unless they were present throughout the whole of the committee's consideration of a matter are lawful.

Whether such a requirement applies in any particular case therefore depends on the specific standing orders adopted by the relevant local authority

Paragraph 42 of Schedule 12 to the Local Government Act 1972 provides that, subject to the provisions of the Act, a local authority may make standing orders for the regulation of their proceedings and business and may vary or revoke any such orders.

The wording of paragraph 42 is general, confirming that a local authority may make standing orders for the regulation of their proceedings and business. As a matter of ordinary language, the power for a local authority to make standing orders to regulate their proceedings includes the power to regulate the circumstances in which a member would be treated as qualified and entitled to vote

The Supreme Court addressed this issue directly in *R (Spitalfields Historic Building Trust) v Tower Hamlets LBC* [2025] UKSC 11. The case concerned standing orders adopted by Tower Hamlets London Borough Council which provided that in order to be able to vote upon an item, a councillor must be present throughout the whole of the committee's consideration including the officer introduction to the matter.

The standing orders further provided that where an application was deferred and its consideration recommenced at a subsequent meeting, only members who were present at the previous meeting would be able to vote.

The Supreme Court unanimously dismissed an appeal against the Court of Appeal's decision holding that these standing orders were lawful. The Court rejected the argument that legislation conferred an entitlement on members to vote which could only be restricted by statute rather than by standing orders.

The Supreme Court accepted that the standing orders in the Spitalfields case were rational and served a proper purpose. The standing orders operated to protect the integrity of the decision-making process, to uphold the importance of listening to

representations and to promote public confidence in the procedure. This was a planning case but the same principles of protecting the decision-making process applies.

The reason for this proposed amendment is that all decisions to avoid legal challenge must meet what is known as the Wednesbury reasonable test. This in summary this involves considering several key aspects:

- whether the decision-maker properly directed themselves in law,
- took into account all relevant considerations and
- disregarded irrelevant ones,
- based the decision on adequate evidence, and
- reached a conclusion that is not so unreasonable that no reasonable authority could ever have come to it

The problem is the middle 3. If a member has not been present for the whole debate and heard all the arguments for and against, how can it be said for certain that they have took all relevant considerations into account, disregarded irrelevant one and based the decision on adequate evidence.

What if they missed part of the debate that may have changed their mind.

The Council could legitimately take the view that although an absent member might be able to read the notes of an earlier meeting or listen to a recording of it, that would not be a sufficient substitute for being present to listen in person to the representations made at the meeting.

To have this rule protects the Council from Judicial Review, but also, it protects members. If a member just turned up to the vote without hearing the debate, then they lay themselves open to a Code of Conduct Complaint for predetermination.

If you have not heard the debate and the arguments for and against then you must have already made up your mind before walking into the chamber and how much of the debate can you miss before being allowed to vote results in uncertainty and inconsistency. This change therefore also protects Councillors as well.

**This did not receive full support of the Constitution Working Group.**

Changes to Rules 17.3, 17.4 & 17.5 are to incorporate the use of the electronic voting system.

**This was supported by the Working Group**

<u>Rule 18.3(d)</u>

This has been suggested as the Monitoring Officer has received petitions on issues that have already been debated. It re-enforces the rule of not revisiting a decision from the last 6 months.

**This was supported by the Working Group in principle subject to clear drafting**

**as now shown in Appendix 1**

**OVERVIEW AND SCRUTINY PROCEDURE RULES**

**15 CALL-IN**

The inclusion of new Rule 15.2 of the Call-In Procedure is proposed by the Monitoring Officer. The proposed amendment states:-

15.2 If a decision is called in, the Monitoring Officer has the authority to refuse the call-in if the request does not state [*sufficient*] grounds to justify a call in and/or the outcome sought.

**This was supported by the Working Group provided the word sufficient grounds were removed.**

**For the reasons below the Monitoring Officer recommends that the word *sufficient* is included in the amendment.**

The phrase "call-in" is not used in legislation, but it is there that the central powers can be found.

There is a two-step legal process for the establishment of call-in at law.

1. s9F(2) of the Local Government Act 2000, as amended. This provides the general power for overview and scrutiny committees to review or scrutinise executive decisions;

2. s9F(4) of the same Act, which provides a specific power to review or scrutinise a decision made, but not implemented.

The Centre for Governance and Scrutiny guidance on Call-in explains that :-

"Call-in is a safety valve to delay and interrogate important executive decisions. It provides a way for councillors who do not sit on Cabinet to ask that particular decisions are reconsidered by the person or people who originally made them."

It further recommends that:-

"…the presence of clear rules around call-in's operation is important. Critically this is likely to include the use of criteria to determine whether a call-in is "valid". The use of criteria will make call-in more focused and reduce the risk that it will be used for exclusively party-political reasons – criteria also frame the nature of a debate in committee in a way that makes it more likely that a reasoned, informed outcome will be reached."

The guidance also highlights that:- "That request should be seen as notable because it is a function that should only be used in exceptional circumstances.."

Therefore, by stating that reasons should be given and the outcome sought gives the members an indication of the issues that members wish the executive to reconsider and ensure it is not just used for party political purposes.

**COMMITTEE PROCEDURE RULES**

**10. DEVELOPMENT MANAGEMENT APPLICATIONS**

**Public Speaking at Development Management Committee**

Due to a recent issue at DMC a decision was refused then reopened for debate and granted. In legal terms this is correct as Planning decision require reasons which were lacking in this case.

The amendment is to clarify that a formal decision has not been made until members have approved the reasons for either approval or refusal and that it is correct that the Chair can reopen debate to ensure that members give proper reasons for their decision which could include a reversal of the original vote.

**This was supported by the Working Group**