



**Standards and Constitutional Oversight Committee**

**31<sup>st</sup> January 2019**

<b>REPORT TITLE:</b>	<b>Council Procedure Rules – Standing Order concerning voting and electronic voting</b>
<b>REPORT OF:</b>	<b>Director of Governance and Assurance (Monitoring Officer)</b>

**REPORT SUMMARY**

This report seeks to address deficiencies in Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) concerning voting methods. It has regard to the model standing order contained in statutory Guidance and recommends a revised standing order to make improvements and to cater for use of the electronic voting system in the Council Chamber.

**RECOMMENDATION/S**

That the Committee

- (a) Recommends that Council adopt a revised Standing Order 18 of the Council Procedure Rules (Part 4(A) of the Constitution) as attached at Appendix C

## **SUPPORTING INFORMATION**

### **1.0 REASON/S FOR RECOMMENDATION/S**

- 1.1 The Council is legally required to have regard to the statutory Guidance in drafting Council standing orders. The draft revision at Appendix C is based on the model standing order contained within the Guidance, together with:
- (a) those elements of the existing WBC standing order that appear to have been drafted with good reason and are not otherwise found in the Model; and
  - (b) amended to cater for the addition of an electronic voting system and the Council's preferred custom and practice as set out in the report below.

### **2.0 OTHER OPTIONS CONSIDERED**

- 2.1 That the current standing order remains unchanged. This will not address the issue of the current standing order requiring a vote at each meeting to allow for use of electronic voting.
- 2.2 That the standing order is amended in some other way, perhaps as part of an overall review. This will involve a delay.

### **3.0 BACKGROUND INFORMATION**

- 3.1 It was reported to the Committee's meeting of 20th November 2018 that the Council Chamber Electronic Voting System had been activated as of mid-August 2018. Demonstrations for Elected Members had taken place on 26th September and on 3rd, 8th and 10th October 2018 and the first Council meeting utilising the new electronic voting system took place on 15th October 2018.
- 3.2 Following the installation of the new electronic voting system in the Council Chamber, and consultation with Members on its usage, it was identified that the Council's Constitution would require revision of Standing Order 18 of the Council Procedure Rules. This was primarily that the default method of voting should be altered to electronic voting as opposed to a 'show of hands'. This alteration would negate the need to vote and suspend standing orders at the beginning of every Council meeting, to enable use of the electronic voting system at future meetings.
- 3.3 Member's views were sought on an alteration to the existing standing order. Following debate, the Committee formed the view that the additional sections suggested that covered the issue of electronic voting, taken largely from a detailed standing order used in another council, would alter the balance and flow of the meeting. Rather, the Committee requested that the Council Procedure Rule 18 be re-considered in its entirety, with a further Council meeting taking place between that meeting and the Committee considering this matter again.

- 3.4 The current standing orders include reference to and means of utilising electronic voting, including the Mayor's powers where the system has failed or is potentially misused. These were drafted for a previous electronic voting system, however, and miss several elements. In particular, the current standing order:
- presumes or requires a vote on whether to use the electronic voting system at the beginning of each meeting (at 18(1)); and
  - is confusing in relation to a recorded vote (referred to as a 'card vote') in that it does not necessarily differentiate between a recorded vote and the current means of electronic voting and does not specify the stating of the vote for the gallery and web-cast.
- 3.5 The current standing orders therefore require a vote at the beginning of each meeting to permit the use of electronic voting system and to waive the standing order to provide clarity.
- 3.6 As well as containing the mandatory standing orders, in drawing up standing orders, the Authority is required by to have regard to the Statutory Guidance in drafting standing orders. The Guidance contained notes as well as a set of Model Standing Orders containing what the Guidance calls 'Council Procedure Rules' as 'Part 4(1) of the Model Constitution'. To this Model has since been added further mandatory standing orders to insert.
- 3.7 The current Model Standing Orders build on, and remain largely similar to, the model standing orders issued in 1963 (and reprinted 1973) and earlier. They provide a 'factory re-set', which is worth regularly coming back to, to re-examine where the Council has strayed from them and whether the reason for so doing remains, is worthwhile and is thus worth retaining or not.
- 3.8 Attached as Appendices are
- As Appendix A, the Council's current standing order 18 on 'Voting'.
  - As Appendix B, the Model Standing Order upon which the above is based and to which the Council is to have regard.
- 3.9 As can be seen, the two are quite different in places and certain paragraphs appear to be missing or worded in an entirely different way in the WBC standing order compared to the Model. It is worth noting that this situation is repeated elsewhere in the Council's Constitution.
- 3.10 Attached as Appendix C, therefore, is a recommended to the Committee as a replacement standing order 18 of the Council Procedure Rules for adoption by the Council.
- 3.11 Having regard to the statutory Guidance, the draft at Appendix C is based on the model standing order, together with those elements of the WBC standing order that appear to have been drafted with good reason and are not otherwise found in the Model and amended to cater for the addition of an

electronic voting system and the Council's preferred custom and practice. This includes:

- (a) Primacy of the electronic voting system, except where that is unavailable or the process is in malfunction, but allowing time to be saved where it is considered that agreement is clearly by assent;
- (b) A recorded vote process, triggered by six members, whereby voting is announced for the benefit of the Chamber and web-cam record by roll-call; and
- (c) Not permitting voting by ballot.

#### **4. FINANCIAL IMPLICATIONS**

There are no financial implications associated with the adoption of an amended standing order.

#### **5. LEGAL IMPLICATIONS**

5.1 Section 9P of the Local Government Act 2000 (as amended by the Localism Act 2011), 'Local authority constitution' requires that:

- '(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.'*

5.2 The Local Government Act 2000 (Constitutions) (England) Direction 2000 set out 26 matters (a-z) which should be included, a number with their own subparagraphs. This amounts to 82 matters in all that are to be considered and contained in the Constitution.

5.3 Section 9Q, 'Guidance', goes on to further require that:

- '(1) A local authority must have regard to any guidance for the time being issued by the Secretary of State for the purposes of this Part.*
- (2) Guidance under this section may make different provision for different cases or descriptions of local authority.'*

5.4 Statutory Guidance, including the new Model Standing Orders referred to here, was issued in July 2001.

## **6. RESOURCE IMPLICATIONS: ICT, STAFFING AND ASSETS**

There are no resource implications associated.

## **7. RELEVANT RISKS**

Adopting standing orders without obvious or evidenced regards having been had to the legal requirement to do so runs the risk of challenge.

Continuing to waive existing standing orders in order for a Council meeting to operate is not conducive to good administration.

### **REPORT AUTHOR:**

**Philip McCourt (Monitoring Officer)**

**telephone: (0151) 691 8569**

**email: [philipmccourt@wirral.gov.uk](mailto:philipmccourt@wirral.gov.uk)**

### **APPENDICES**

- A:** Current Standing Order on Voting
- B:** Model Standing Order on Voting
- C:** Recommended revised Standing Order on Voting

**WBC CURRENT STANDING ORDERS**

**Part 4(A) Council Procedure Rules**

**18. Voting**

- (1) The normal method of voting at meetings of the Council shall be by show of hands unless the Council determines otherwise.
- (2) The Mayor may decide at any time to discontinue use of the electronic voting system if satisfied that it is not working correctly.
- (3) When the electronic voting system is being used, the Mayor may require or allow the vote to be retaken either electronically or by show of hands if he/she considers that there has been any malfunction of the equipment or any incorrect use of it.
- (4) No individual votes will be recorded in the minutes of Council unless either a “card vote” is requested pursuant to paragraph (5) hereof or a “recorded vote” is requested pursuant to paragraph (6).
- (5) If a member of the Council makes a request before a vote is taken for a “card vote” and is supported by five other members rising in their places, voting shall be by that method so as to show how all members present and voting gave their votes provided that when the electronic voting system is to be used a “card vote” shall mean only the electronic recording of such votes.
- (6) Where immediately after a vote is taken at a meeting of the Council, any member of that body so requires, there shall be recorded in the minutes of the proceedings of that meeting whether that person cast his/her vote for the motion/amendment, or against the motion/amendment (a dissent) or whether he/she abstained from voting.
- (7) When the electronic voting system is not being used, a card vote may still be requested during the procedure referred to in Standing Order 9(1).
- (8) In taking a vote upon any question, only those members of the Council who are present in the Council Chamber and seated in their places when the question is put from the Chair shall be entitled to vote.

MODEL STANDING ORDERS  
Part 4(1) Council Procedure Rules  
Statutory Guidance

17. VOTING

17.1 Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room at the time the question was put.

17.2 Chairman's Casting Vote

If there are equal numbers of votes for and against, the Chairman will have the right to exercise a second or casting vote. There will be no restriction on how the Chairman chooses to exercise a casting vote, including the choice not to use such vote.

17.3 Show of Hands

Unless a ballot or recorded vote is demanded under Rules 17.4 and 17.5, the Chairman will take the vote by show of hands.

17.4 Ballots

The vote will take place by ballot if [n] number of Members present at the meeting demand it. The Chairman will announce the numerical result of the ballot immediately the result is known.

17.5 Recorded Vote

If [n] Members present at the meeting demand it, the names for and against the motion or amendment or abstaining from voting will be taken down in writing and entered into the minutes. A demand for a recorded vote will override a demand for a ballot.

*Immediately after any vote is taken at a Budget Decision meeting of the Council there must be recorded in the minutes of the proceedings of that meeting the names of the persons who cast a vote for the decision or against the decision or who abstained from voting.\*\**

## 17.6 Right to Require Individual Vote to be Recorded\*\*

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether he/she voted for or against the motion or abstained from voting.

## 17.7 Voting on Appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

**RECOMMENDED ALTERATION TO STANDING ORDERS**

*Re-phrasing of current WBC wording or use of Model Standing Orders in blue  
Current WBC wording, different to the Model Standing Orders, re-used in black  
New wording in red*

**18. Voting**

(1) Majority

Unless this Constitution provides otherwise, any matter will be decided by a simple majority of those Members voting and present in the room **and seated in their places** at the time the question is put.

(2) Casting Vote

If there are equal numbers of votes for and against, the Mayor will have the right to exercise a second or casting vote. There will be no restriction on how the Mayor chooses to exercise a casting vote, including the choice not to use such vote.

(3) **Method of Voting**

Unless a recorded vote is demanded under 18.4 below, the Mayor will take the vote by **use of the electronic voting system or, if there is no dissent, by the affirmation of the meeting.**

The Mayor may decide at any time to discontinue use of the electronic voting system if satisfied that it is not working correctly. **If the Mayor considers that there has been any malfunction of the equipment or any incorrect use of it, the Mayor may require or allow the vote to be retaken, either electronically or by show of hands.**

**Where the electronic voting system is not working correctly or unavailable, the Mayor will take the vote by show of hands.**

(4) Recorded Vote

If a Member of the Council makes a request before a vote is taken **(including during the closure procedure referred to in Standing Order 9(1))** and is supported by five other members rising in their places, **the voting on any question shall be by roll-call and the names for and against the motion or**

amendment or abstaining from voting will be taken down in writing and entered into the minutes.

This standing order will apply automatically in respect of a vote taken at a Budget Decision meeting of the Council in accordance with the Budget and Procedure Rules at Part 4C of this Constitution. \*

(5) Right to Require Individual Vote to be Recorded

Where any Member requests it immediately after the vote is taken, their vote will be so recorded in the minutes to show whether he/she voted for or against the motion or abstained from voting. \*

(6) Voting on Appointments

If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person. (This does not apply to the office of the Mayor or Leader which is by election by Council).

*\*Statutory standing order*