

Item no: 15A

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- As permitted under clause 15.4 of the Leaders' Committee Governing Agreement, to agree a minor variation to London Councils' Governing Agreement 2001 substituting the reference to "the Audit Commission" with "London Councils' Leaders' Committee" in clause 7.5..

## Constitutional Issues – Minor Variations to London Councils Governing Agreements

### Background

1. “London Councils” is a term that is used to refer collectively, and for convenience, to three separately constituted, but inter-related, statutory joint committees appointed by the 33 London local authorities for the joint discharge of their functions i.e.:
  - London Councils Leaders’ Committee (“Leaders’ Committee”);
  - London Councils Transport and Environment Committee (“LCTEC”); and
  - Grants Committee.<sup>1</sup>
2. Leaders’ Committee has been established with the authorities’ agreement under sections 101 and 102 of the Local Government Act 1972 and section 9EB of the Local Government Act 2000 (and the relevant Regulations). LCTEC is similarly constituted. The Grants Committee has been established in accordance with the London Grants Scheme made under section 48 of the Local Government Act 1985 and which forms part of the Leaders’ Committee Governing Agreement.
3. The Leaders’ Committee Governing Agreement dated 13 December 2001 has been formally amended (varied) once in 2004<sup>2</sup> to give effect to a new Grants Scheme. The LCTEC Governing Agreement has been formally amended (varied) five times since 2001 to delegate the exercise of additional functions to LCTEC.<sup>3</sup> A number of minor variations to both Agreements were agreed by Leaders’ Committee on 15 July 2014.
4. London Councils must operate within the delegations which have been made to the joint committees (Leaders’, Grants and LCTEC) by the London local authorities (and as relevant for LCTEC, TfL) as set out in the Governing Agreements. There have been

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On 11 March 2014, in accordance with the Leaders’ Committee Governing Agreement, Leaders Committee approved the terms of reference of a new sectoral joint committee which was to be established under the London Councils governance arrangements. This sectoral committee, Pensions CIV Sectoral Joint Committee, was constituted on 17<sup>th</sup> July 2014.

<sup>2</sup> Variation to Agreement dated 13 December 2001 to make a New Scheme for Grants to Voluntary Organisations, dated 1 February 2004. The Grants Scheme is made pursuant to section 48 Local Government Act 1985.

<sup>3</sup> Refer: LCTEC Agreement dated 13 December 2001, the First Variation dated 1 May 2003, the Further Variation dated 30 November 2006, the Second Further Variation dated 8 June 2009, a delegation made pursuant to Part 3(D) on 27 October 2014, and the Third Further Variation dated 14 May 2015.

occasions when it has been necessary to supplement or amend these arrangements and this has been achieved by varying the terms of the Governing Agreements.<sup>4</sup> If this is not done, decisions taken by London Councils without appropriate delegated authority will be *ultra vires*. Additionally, a failure to comply with the governance framework, set out in the Governing Agreements, to support the effective discharge of the functions delegated to the London Councils joint committees, could be subject to challenge.

5. Leaders' Committee can approve minor variations to the Leaders' Committee Governing Agreement (clause 15.4) by a simple majority vote (clause 7.3 and Standing Order 13.2).

### **Proposed change**

6. The Audit Commission was abolished on 31 March 2015 following the implementation of the Local Audit and Accountability Act 2014. Whilst the Act does not require joint committees to prepare audited accounts, clause 7.5 of the Leaders' Committee Governing Agreement and London Councils' Financial Regulations require the Director of Corporate Resources to prepare and arrange the audit of the annual accounts of London Councils and its associated/sectoral joint committees.
7. At their meeting held on 19 March 2015, London Councils Audit Committee, a sub-committee of Leaders' Committee, considered the accounting and arrangements for London Councils' functions from 2015/16 onwards and agreed to recommend that Leaders' Committee approve a revision to that sub-committee's Terms of Reference to include the responsibility to make recommendations "on the appointment, re-appointment and removal of external auditors." It is proposed that that revision to that sub-committee's Terms of Reference is agreed as presented at Item [INSERT] on your Agenda today. However, it is recommended that the responsibility of formally appointing external auditors remains with Leaders' Committee which is the consequence of the abolition of the Audit Commission and the obligation to procure the audit of the annual accounts required under the Governing Agreement.

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<sup>4</sup> Amending a Governing Agreement, due to the number of parties, is a time consuming, and at times complex, process. Therefore, when the LCTEC Governing Agreement was varied in 2006 to delegate the exercise of additional functions to the joint committee, it was also varied to include provision for a more streamlined procedure to facilitate further delegations to the joint committee in appropriate cases .

8. In order to formally reflect these changes, this report asks Leaders' Committee to approve a minor variation to the Leaders' Committee Governing Agreement. Paragraphs 9 and 10 below detail the current and proposed wording, with the change underlined.

9. Currently, clause 7.5 of Leaders' Committee Governing Agreement says;

*7.5 The Finance Officer shall make appropriate arrangements to procure the audit of the annual accounts of London Councils and (subject to Schedule 5 and the LCTEC Agreement) the associated committees and any Sectoral joint committee at the end of each financial year by an Auditor approved by the Audit Commission. Copies of audited accounts shall be provided to London Councils Leaders' Committee, the associated committees and any Sectoral joint committee and sent to each of the London Local Authorities.*

10. The proposed amendment is to remove the reference to the Audit Commission as the body responsible for approving the appointment of the external auditor and substitute it with Leaders' Committee. The section would then read;

*7.5 The Finance Officer shall make appropriate arrangements to procure the audit of the annual accounts of London Councils and (subject to Schedule 5 and the LCTEC Agreement) the associated committees and any Sectoral joint committee at the end of each financial year by an Auditor approved by London Councils Leaders' Committee. Copies of audited accounts shall be provided to London Councils Leaders' Committee, the associated committees and any Sectoral joint committee and sent to each of the London Local Authorities.*

## **Recommendations**

11. Leaders' Committee is asked to:

- Agree a minor variation to the Leaders' Committee Governing Agreement 2001, substituting the reference to "the Audit Commission" with "London Councils' Leaders' Committee" in clause 7.5, as detailed in paragraph 10 of this report.

## **Financial Implications for London Councils**

12. There are no specific financial implications arising from this report.

## **Legal Implications for London Councils**

13. Variations to London Councils Governing Agreements must be properly made in a manner which is consistent with the terms of those Agreements. Each Governing Agreement makes provision for minor variations to the governance arrangements for each joint committee, albeit by different procedures.
14. It is the responsibility of the relevant joint committee to determine whether a change can be considered minor. In the past, variations have been considered minor if they do not involve any additional financial contribution or changes to the delegated powers or the functions of the joint committees.
15. The changes proposed in this report relate solely to the way the joint committees operate. They retain the existing relationships between the joint committees and do not change the functions delegated to each of them.
16. Clause 15.4 of the Leaders' Committee Governing Agreement enables minor variations to be made by a decision of the joint committee without requiring a formal written variation to the Governing Agreement which would need to be authorised and executed individually by all the participating authorities.

### **Equalities Implications for London Councils**

17. There are no specific equalities implications for London Councils arising from this report.