

Report To: Corporate Governance Committee

Date of Meeting: 23rd January 2019

Lead Member / Officer: Hugh Evans, Leader/Gary Williams, Head of Legal, HR and Democratic Services

Report Author: Gary Williams, Head of Legal, HR and Democratic Services

Title: **Annual Constitution Review**

1. What is the report about?

This report is about the Council's Constitution and a review of its provisions, in particular, the application of political balance to the composition of the Cabinet.

2. What is the reason for making this report?

- 2.1** The Committee is as part of its terms of reference required to monitor and review the Council's Constitution. This report refers to the updates required to be made to the Council's Constitution to take into account decisions of Council and Cabinet and any legislative or operational changes that have taken place since the last review. In addition, Council passed a Motion on 23rd October 2018 to ask the Corporate Governance Committee to consider options and present a report to the Full Council on 19th February, 2019 which outlines how the Constitution could be changed to remove the requirement for political balance in the Cabinet.

3. What are the Recommendations?

- 3.1** That Members consider the contents of this report in respect of the political balance of Cabinet.
- 3.2** That Members consider the proposed changes to the Constitution set out in paragraphs 4.13 and 4.14 of this report and recommend them to Council.

4. Report details

- 4.1** The Council is required by law to operate executive arrangements in accordance with Part II Local Government Act 2000 (the 2000 Act). Under these arrangements, the Council must have an "Executive". The Executive can take one of two forms.
- 4.2** One option is to have a directly elected Mayor who may appoint between two and nine more councillors to form the Executive with the Mayor. Before a Council can have a directly elected Mayor, it must hold a referendum on whether or not to operate this model of executive.
- 4.3** The second option is to have an Executive consisting of a councillor elected by the Council as Leader, together with between two and nine councillors who may be appointed either by the Leader, or by the Council. In Denbighshire this model of

Executive is operated and is called Cabinet. The appointment of councillors to the Cabinet is by the Leader.

- 4.3 The 2000 Act specifically exempts Cabinet from being subject to the duty contained in s15 Local Government and Housing Act 1989 (the 1989 Act) to apply the rules of political balance to its membership. This means that the Cabinet is not required by law to be politically balanced in its composition. The Council may, however, choose to apply some form of political balance if it wishes.
- 4.4 The current arrangements for the composition of the Cabinet are contained in Section 5 of the Council's Constitution as set out in Appendix 1 to this report. These provisions seek to apply some element of political balance to the Cabinet but do not reflect the absolute duty set out in the 1989 Act.
- 4.5 The starting point in the Constitution is that the Cabinet should be politically balanced. The intention behind this provision was that there be a Cabinet that reflected the political make-up of the Council and thereby the decision of the electorate. This was intended to provide for political stability.
- 4.6 The principles of political balance are only to be applied to political groups consisting of five or more members. By law, a political group may exist when a minimum of two members provide written notification that they are a political group and identify one of their number as group leader. The intention behind this provision was to provide for stability and discourage the splintering of groups by individual members in order to obtain seats on Cabinet and other bodies.
- 4.7 The model adopted by the Council provides that the Leader may appoint councillors to Cabinet subject to the principles of political balance set out above following consultation with Group Leaders. If any political group declines to take their seats on Cabinet the Leader may fill those vacancies without regard to the principles of political balance following further consultations with the other Group Leaders.
- 4.8 If at any time, a political group that has previously declined seats on Cabinet decides to take up those seats, the Leader must make such changes to the membership of the Cabinet as to ensure that the principles of political balance set out above are complied with.
- 4.9 If Council wishes to dispense with the requirement for the Cabinet to be politically balanced, then there are two possible models that are available to it. The first is that the Leader, once elected by Council, is free to appoint councillors to Cabinet without any formal restriction as to political balance. This is known as the "strong leader" model. The Leader could appoint councillors to Cabinet in a politically balanced way if he/she saw fit but would not be required to do so.
- 4.10 The second option is that the Council could elect a Leader and then elect members of the Cabinet. It would then be for the Leader to assign portfolios to those members. This election may be for the term of the Council or until each Annual Meeting. This is known as the "weak leader" model.
- 4.11 A brief check on the published constitutions of the unitary authorities in Wales reveals that of the twenty two councils, sixteen (including Denbighshire) have

adopted the “strong leader” model. Six Councils have adopted the “weak leader” model. A table setting out which Councils have which form of Cabinet is attached as Appendix 2

- 4.12 Denbighshire is the only Council that has any formal requirement for the principles of political balance to apply.
- 4.13 Members will recall that at previous meetings they have discussed aspects of the CIPFA Practical Guidance for Audit Committees guidance document as part of the Internal Audit Update reports. At the meeting of the Committee held on 21st November 2018 members were informed that the Chief Internal Auditor had compared the Committee’s current terms of reference with the guidance. There is attached at Appendix 3 a copy of a draft amended terms of reference with the changes shown in red. One aspect of the draft terms of reference that needs to be considered by the Committee is the reference to complaints which are not currently reported to the Committee but are in fact reported to Performance Scrutiny.
- 4.14 In addition, in accordance with the Monitoring Officers’ obligations to keep the Constitution fit for purpose, and in accordance with the delegations made to the Monitoring Officer to update the Constitution following member decisions or new legislative duties or powers which the document should reflect, the following changes have been made and are reported to you:
- Updated the Officer Scheme of Delegation with legislation not previously captured;
 - Updated the Cabinet Scheme of Delegation following changes to portfolios
 - Following consultation with Standards Committee amended the procedure for dealing with conduct hearings.
 - Updated the Planning Committee membership to reflect the new number of members.
 - Updated the Head of Highways and Environment scheme of delegation in order to implement and operate the Sustainable Drainage Body (SuDS) and the power to set the level of fixed penalty notices in accordance with the range legally set by the Welsh Government.

Extracts of those areas of the Constitution that have been amended are attached as Appendix 4.

5. How does the decision contribute to the Corporate Priorities?

A fit for purpose modern constitution providing assurances on governance and decision making, ethical behaviour, and allowing the public and third parties to see who is the responsible decision maker on issues affecting them supports the Council in achieving its corporate priorities.

6. What will it cost and how will it affect other services?

There are no direct costs associated with this report.

7. What are the main conclusions of the Well-being Impact Assessment?

There is no requirement for an assessment for this report.

8. What consultations have been carried out with Scrutiny and others?

There have been no other consultations in respect of this report. The views of the Committee are sought before reporting back to Council.

9. Chief Finance Officer Statement

There are no direct financial consequences of this report. However it is important that the Council has an up to date, fit for purpose Constitution which forms a key element of the council's governance framework.

10. What risks are there and is there anything we can do to reduce them?

There is a risk that without regular review the Constitution will become out of date and not fit for purpose.

11. Power to make the Decision

Section 13 Council Constitution

Part II Local Government Act 2000