

Report To: Full Council

Date of Meeting: 28th February 2012

Lead Member / Officer: Councillor Hugh Evans/Gary Williams, Monitoring Officer

Report Author: Gary Williams – Monitoring Officer
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Title: Constitution Review

1. What is the report about?

One of the Business Transformation Board's Workstreams is to review the Council's Constitution and within the Corporate Governance Committee terms of reference is the making of proposals for changes to the Constitution. The final adoption of the amended Constitution will be a decision for the full Council.

2. What is the reason for making this report?

To inform Members of the outcome of the consultation process to date and suggested areas of changes. Council is requested to consider the outline of the proposed amendments within this report, in advance of the Council meeting where the changes will be discussed in detail. Members will be provided with a copy of the draft new Constitution at this future meeting and have the opportunity to consider the detail therein. Drafting is currently underway, and Members have requested to be provided with a 'tracked changes' version when the amendments are considered in detail.

3. What are the Recommendations?

3.1 That Council:

- (i) note the contents of the report and feedback from Members at the Constitution review workshop held on 24th January 2012.
- (ii) to consider the proposed overview of changes to the Constitution and recommend that the Monitoring Officer proceed with drafting the changes in order that Members can have sight of the full draft at a proposed special Council meeting in March 2012.

4. Report details

- 4.1** The Corporate Governance Committee has received regular reports in respect of the review of the Constitution. The purpose of this report is to provide

members, in particular those Members who could not attend the workshop on the 24th January 2012, with an overview of the changes proposed.

4.2 At the Constitution review workshop on the 24th January there were twenty Members in attendance. A presentation was provided to the workshop, a copy of which is attached at Appendix 1.

4.3 There was a discussion amongst the Members present at the workshop on the topics raised by the presentation. The feedback from Members was as follows:

4.4 **Scheme of Delegation**

It was pointed out to Members that most officer delegations contained in the Constitution are delegations to the Chief Executive who then is able to pass authority down to other officers. It was proposed to Members, and they agreed, that the Constitution should be more transparent and that the scheme of delegations should include details of the Heads of Service to whom delegated powers have been granted.

4.5 It was put to Members that there should be generic delegations to the Chief Executive and the Corporate Directors with specific delegations being made to Heads of Service set out in either a table or list format in order that any officer, Member or member of the public would easily be able to identify which officer had authority to take which delegated action. It was stressed to Members that the purpose of such a scheme would merely be to make more open and transparent what currently existed and was not to in effect create a whole new raft of delegated powers. Members agreed that the scheme of delegation should be more transparent.

4.6 As part of the presentation examples were given to Members of delegated powers to Cabinet Members some of which were very clear and some of which may be prone to duplication between Cabinet portfolios. It was agreed by Members that work should be done to review the clarity of the description of portfolios in the Constitution to avoid the duplication of delegated powers.

4.7 **Description of Functions**

The current Constitution provides in Part 3 a description of the functions of the authority and describes those functions which are exercised by Council and those which are exercised by the Cabinet. The Constitution currently refers to regulations which have subsequently been updated and describes functions by reference to the regulations. It is not clear from the wording of the Constitution, to an officer, Member or member of the public which are functions of the Council and which are functions of the Cabinet without making reference to the regulations. It was proposed to Members that Part 3 of the Constitution should list those functions which are functions of Council, those functions which are "local choice" functions, those functions which are exercised by the Cabinet or Full Council depending on the circumstances and those functions which are the responsibility of Cabinet. This will make the Constitution lengthier but will provide greater clarity for officers, Members and members of the public.

Members agreed at the workshop that this part of the Constitution should be drafted in that format.

4.8 Committee Terms of Reference

Members were informed at the workshop of areas which required updating. The Licensing Committee list of powers needs updating in order to include references to the Gambling Act 2005. The Corporate Governance terms of reference need to be amended to include consideration of members' attendance and training. The terms of reference for the Planning Committee would need to be reviewed to ensure that the powers described in those terms were up to date. Members agreed with these proposed changes.

4.9 Contract Procedure Rules

As part of the presentation to Members, they were provided with information about the increased flexibility that may be available in respect of "Part B" services. Members were happy for the contract procedure rules to be amended accordingly. In respect of the Tender Opening Committee, Members were of the view that provided that independent oversight and safeguards were in place then it would not be a requirement that Lead Members be in attendance.

4.10 Freedom of Information

The concept of a Freedom of Information Panel made up of officers trained specifically to deal with freedom of information requests was explained to Members. The purpose of the Panel would be to provide a consistent approach to the application of exemptions from disclosure. In other authorities where a Freedom of Information Panel exists, the Panel is the only body entitled to exempt any information from disclosure. This results in publication of information being more likely as a consistent corporate approach would be taken to the application of exemptions. Members accepted that a Freedom of Information Panel would be a good idea and that such a Panel should be described appropriately in the Constitution.

4.11 Members

As part of the presentation Members at the workshop were informed of the views expressed by the Corporate Governance Committee at its previous meeting that there should be an expectation that Members would attend more than the statutory minimum number of meetings but that it was difficult to identify a figure. Members agreed that there should be an expectation of attendance at meetings, however, views were expressed as to the ability of Members from different backgrounds e.g. in full time employment to attend as many meetings as others. Members were informed that the Modern.gov system which was being introduced would automatically provide access to attendance figures in a public manner.

4.12 As part of the presentation Members were informed of Corporate Governance Committee's views regarding training in respect of planning and code of conduct

being mandatory. Members were asked for views on what other areas of training should or could be made mandatory. Members agreed that planning and code of conduct training should be mandatory. A further suggestion was made that some form of local government finance training should also be mandatory but did not suggest other areas.

- 4.13 There was a discussion regarding the requirements in the code of conduct to register gifts and hospitality. Members were informed that a number of authorities provide a financial limit in their code of conduct below which it is not necessary to register gifts and hospitality. The current code of conduct in Denbighshire does not have any figure which means that Members would technically be in breach of the code of conduct if they received any gifts and hospitality of whatever value and did not register it. The general view of the meeting was that it would be appropriate to amend the code of conduct to allow Members to receive gifts and hospitality up to a value of £25 without the need to register it.

4.14 Members role descriptions

At the workshop Members were provided with copies of draft role descriptions for a Member and a Group Leader. All proposed role descriptions are now attached as Appendix 2.

- 4.15 Members discussed the contents of the role description and raised a number of issues. The first of these issues was in respect of the requirement to attend all relevant meetings. The question was asked as to whether or not there was a definition of "relevant meetings". Another aspect of the role description which caused concern to some Members was the reference to an annual appraisal of Members. The Leader suggested to the meeting that the appraisal was not necessarily a process by which Members were judged as to whether or not they were effective but was also an opportunity for Members to identify areas of support or training or development that they would require to assist them in carrying out their duties. It was agreed that the issues raised by Members would be fed back to the Head of Modernising Education who had been drafting the role descriptions in readiness for the new Council.

4.16 Self Regulatory Protocol

There was a discussion amongst Members regarding the inclusion of the Self Regulatory Protocol to deal with sub threshold complaints under the code of conduct on a more local basis, where those complaints were made by a Member of the County Council against another Member. Members were of the view that this was a good thing and confirmed that the protocol should be included in the Constitution.

4.17 Cabinet

As part of the presentation Members were provided with information relating to the process by which appointments were made to Cabinet. Currently the Cabinet in Denbighshire is politically balanced. The Leader is able to appoint

Councillors to the Cabinet after consultation with the leaders of the political groups. In the event of a political group declining, at the time when Cabinet is being appointed, to take up any or all of its seats on the Cabinet, the Leader may appoint Councillors to fill the vacancy following further consultation with the leaders of the political groups. The rules of political balance will not apply to the filling of such vacancies.

- 4.18 There is no requirement in law for the Cabinet to be politically balanced. Section 24 of the Local Government Act 2000 exempts executive bodies from political balance.
- 4.19 Members were informed of a proposal that had arisen during consultation and been made to the Constitution Review Working Group which was that the rules of political balance should not apply to the Cabinet as this may provide an incentive for groups to splinter with a potential proliferation of smaller groups in an attempt to manipulate the rules on political balance. The proposal made to the Constitution Review Working Group was that the principles of political balance should apply to appointments to Cabinet, but should only apply to groups with a membership of 5 or more. This was considered to be consistent with the proposals of the Independent Remuneration Panel for Wales which has decided that Group Leader salaries should only be paid to leaders of groups with 10% or more of the membership of the authority, and with Denbighshire's current scheme of allowances which only pays a Group Leader's allowance to a leader of a group with 5 or more members.
- 4.20 The discussion at the meeting revealed a common view that this would promote political stability within the Council. There was general agreement amongst Members that this proposal should be included in the Constitution.
- 4.21 An area that has very recently emerged is the opportunity to update the thresholds for award of contracts by Cabinet from £250,000 to £1 million. The current thresholds were set back in 2004 and have not been updated since. The current thresholds are as follows:

Up to £100,000 by the Chief Officer
From £100,000 to £250,000 by the Lead Member
Over £250,000 by Cabinet.

A significant amount of Officer time is spent on the lower value contracts in getting the award approved, in addition increasing the Cabinet threshold will also free up Cabinet time to deal with higher value matters or any other matter. The proposals are:

- a) by the Head of Service having consulted with Chief Finance Officer if the contract value is under £250,000
- b) by the Cabinet Member in whose portfolio the service falls based on a report from the Chief Officer, if the contract value is between £250,000 and 1 million.
- c) following a report to Cabinet if the contract value is over 1 million.

This issue emerged after the Workshop, therefore in fairness Members have not had the opportunity to debate this issue. Feedback from the full Council on this proposal is welcomed however at this stage.

Members are assured that the legal obligation to comply with the EU Procurement regime remains and does not affect the Councils' internal award levels.

4.21 Public speaking

Members were informed at the workshop of the provisions of some other authorities which allowed members of the public to ask questions at meetings of Cabinet/executive and/or Full Council. The suggestion was that this process was consistent with the Council's ambition of getting closer to the community. It was explained to Members the limitations which are placed on this right to ask questions at executive and/or Council at other authorities e.g. the requirement to give 7 days notice of question, time limits for each member of the public seeking to speak and the criteria as to the subject matters which were to be the subject of the questions.

4.22 Members at the workshop were broadly in agreement that they did not wish to see such a scheme introduced in Denbighshire. Members felt particularly that Full Council was the only arena where a lot of Councillors were able to speak on issues and that members of the public could approach Councillors to raise matters on their behalf.

4.23 Protocols

There was a discussion amongst Members of the sort of protocols which should be included within the Constitution. Members were informed that a number of protocols exist, however they are not currently attached to the Constitution and therefore some officers/members or members of public may not know that they exist. One example of this was the planning protocol which had already been adopted by Full Council but did not appear in the Constitution.

4.24 Other areas which were suitable for inclusion as appendices to the Constitution would be guidance to Members in respect of their activities on outside bodies, a protocol and guidance to Members on their rights to access information. This document would go further than merely reciting the access to information rules. The Members self regulatory protocol in terms of the code of conduct was also considered to be a protocol that should be included as an appendix to the Constitution.

4.25 Members also raised issues around the liaison with local Members by officers and others in respect of issues affecting their wards. Members were informed that some authorities had a protocol for liaison with local Members appended to their Constitution and Members thought that this would be a good idea as it would provide clarity to officers and Members in this regard.

4.26 Members were also concerned about being notified when Ministers, MPs etc were visiting their ward and that there needed to be clarity in respect of the roles of representatives of the Council in attending such visits. It was suggested that a protocol relating to such matters be appended to the Constitution. This was further discussed with regard to the role of the Chair of the Council in greeting visiting dignitaries etc.

4.27 Local Government Wales Measure

Members were informed, as part of the presentation, of those issues in respect of which the Local Government Wales Measure 2011 would necessitate amendments to the Constitution. Members were informed at the workshop that many of these issues required guidance or regulation to be issued by the Welsh Government and such Draft Guidance has now been issued for consultation with this consultative period ending on the 30th March 2012. Members were informed that the Constitution would have to be amended to take into account changes introduced by the Local Government Wales Measure as and when they came into force.

It is proposed that a Briefing Note on the guidance will be available for Members in advance the meeting.

4.28 Continuous review of the Constitution

Members were informed as part of the presentation that officers believed that it would be appropriate to have a regular review of the Constitution and that any changes required to the Constitution to be made by Full Council if required on either a quarterly or annual basis. Members were in agreement with this suggestion.

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

The review forms part of the Business Transformation Programme of corporate improvements and contributes to the priority of a high performing Council.

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

There are no implications for other services as a result of this report.

7. What consultations have been carried out?

A Member Workshop has been held, questionnaires have been sent by post to all Members individually, Officers have been consulted extensively and a Working Group and two sub-groups have met regularly.

No external consultation has been identified as being required.

8. Chief Finance Officer Statement

Not required.

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

There is greater risk in not updating the Constitution. The revised Constitution must reflect the law and the document will be quality assured by a number of officers from various disciplines.

10. Power to make the Decision

The Local Government Act 2000 requires the full Council to adopt a Constitution.

The Corporate Governance Committee can make proposals for changes to ensure the Constitution continues to enable the Council to provide clear leadership to the community in partnership with citizens, businesses and other organisations as outlined in the Council's Constitution. That Committee is now formally making recommendations for this report to be presented to Full Council.