

**Report To:** Full Council

**Date of Meeting:** 27<sup>th</sup> March 2012

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

**Report Author:** Lisa Jones – Deputy Monitoring Officer

**Title:** Constitution Review

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**1. What is the report about?**

One of the Business Transformation Board's Workstreams is to review the Council's Constitution

Members are requested to bring a copy of their current constitution with them to this meeting, in addition to the amended copy (which will be sent under separate cover) where the changes have been highlighted for ease of reference.

**2. What is the reason for making this report?**

The Council is required to have a constitution by law and with the preparations for the new Council from May 2012, it is a timely opportunity to modernise the current version, making it more transparent to Members, Officers and the public at large. Changes to the constitution need to be approved by Full Council.

**3. What are the Recommendations?**

- 3.1 That Council determines the frequency at which training on the Code of Conduct for Members should become mandatory, approves the limit of £25 for the requirement to register gifts and hospitality and adopts the amended Code of Conduct to reflect these requirements.
- 3.2 That Council adopts the Protocols referred to in paragraph 4.15.
- 3.3 That Council consider and approve the proposed changes to the Constitution as set out in the report details below.

**4. Report details**

**4.1 Code of Conduct**

Members are now aware 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 proposal is that this is set at a limit of £25, the level at which it would be appropriate to allow Members to receive gifts and hospitality up to a value of £25 without the need to register it. The Standards Committee has endorsed this level and recommends to Council that such level is set.

There is also a general consensus from the consultation, that training on the Code of Conduct should also be mandatory. Standards Committee have been consulted on this proposal at its meeting on the 9<sup>th</sup> March, and the majority of the members resolved that annual training should be compulsory for all Members. The report taken by the Monitoring Officer regarding this issue recommended that training should be mandatory once in each term of office, (i.e. once every four years) and any attendance over and above this level, was not mandatory, but good practice. It is therefore a matter for Members what requirement is to be set. In order to make this compulsory, the Constitution and the Code of Conduct has been drafted to reflect this obligation, and Members should be aware that failing to attend the training would in itself then be a breach of the code. Members are referred to the additional wording in the Code of Conduct as set out in Part 5 of the Constitution.

#### **4.2 Member Role Descriptions**

Following on from the member workshop, where these were debated, Officers have taken on board the comments that members made and drafted some changes to the description.

#### **4.2 Champions**

There are a number of Members who have taken on the role of Champion and Officers felt that this should be embedded within the new Constitution reflecting this important commitment.

#### **4.3 Cabinet**

As part of the workshop, 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.

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.

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.

The discussion at the workshop 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.

#### **4.4 Planning**

Planning Committee Members will be fully aware of the requirement to attend training in order to participate in this quasi-judicial process. This obligation is now set out in the Constitution, in addition, the Planning Protocol that Members agreed in 2008 is also set out in the Protocols section of the Constitution.

#### **4.5 Standards Committee**

This Committee's terms of reference have been amended, which will include an Annual Report to the Full Council by the Monitoring Officer and Chair of Standards regarding complaints of breaches of the Members Code of Conduct. In addition, at the Members' Workshop on the 24<sup>th</sup> January 2012 Members felt that the Corporate Governance Committee had a role to play regarding attendance by members at training events, and the option of a reference to the Standards Committee.

#### **4.6 Article 12 – Statutory Officers**

All Statutory Officers are set out within this section, with a reference to Part 9.2 which contains the comprehensive scheme of delegation to these Officers.

#### **4.7 Article 13 – Decision making**

The additional obligation here is to ensure regard is had to Equalities and the public sector duty to comply with equality law.

#### **4.8 Signing and Sealing of Documents**

Since the post of Legal Services Manager has been redundant, there have been delays at times in the signing of contracts and court proceedings. The proposal is to extend the number of authorised signatories to certain senior level of qualified legal personnel within Legal and Democratic Services.

#### **4.9 Continual Review of the Constitution**

The proposal is that we have a standing annual item at the least, at Corporate Governance and Full Council, to enable the Council to adopt future changes to the Constitution. Changes on the horizon such as the Local Government Wales Measure, will also necessitate Full Council approving any new obligations.

#### **4.10 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 format is set out in the draft constitution and although it makes the Constitution lengthier, will provide greater clarity for officers, Members and members of the public.

#### **4.11 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.

#### **4.12 Scrutiny**

The current constitution limits the number of call ins that can be made, and although call in is not a frequent occurrence, it appears inconsistent with the legislation to limit this ability of scrutiny. The minor amendment here is therefore to do away with the limit.

#### **4.13 Contract Procedure Rules**

As part of the workshop, Members were provided with information about the increased flexibility that may be available in respect of “Part B” services.

- When a Public Body procures goods, services or works, it must comply with EU Procurement Legislation, which has been adopted into our national laws by virtue of the Public Sector Contracts Regulations 2006, commonly referred to as the OJEU Regulations.

- The starting point is the overriding EU principles that there must be openness, transparency and equal treatment of bidders. These principles apply to all our procurement activity irrespective of the type of service we are procuring.
- These Regulations separate procurement into either fully regulated procurement under 'Part A' or, largely unregulated procurement referred to as 'Part B'. Health and Social Services are classified currently as Part B and this proposed amendment only relates to this type of procurement.
- The time, effort and expense in following the current procedures under our Contract Procedure Rules is counter productive in that the savings achieved in running a full procurement exercise on each occasion, as opposed to extending the term of the contract, has resulted in negligible savings. There is therefore the opportunity to utilise the flexibility in the legislation for this type of service procurement, to generate efficiency.
- Its important to note that there is a national initiative led by the WLGA to roll out a standard set of CPR's for all Local Authorities. In addition, on the horizon are changes in 2013 to the EU procurement regime, whereby the proposal to merge Parts A and B. Full Council will therefore be likely to consider the Contract Procedure Rules again, but in far greater detail next year.

There is also the opportunity to update the thresholds for award (including the exemption from tendering) 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 £1,000,000.
- c) following a report to Cabinet if the contract value is over £1,000,000.

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

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. The proposed amendment is that the Lead Member is given the opportunity to attend if they wish, and to be given a reasonable notice period. This is now set out in draft within the rules at CPR 22.2 for Members' perusal. The Head of Internal Audit is currently working on the revised system of tender opening in order to look at areas where we can do this more efficiently.

#### **4.14 Standards Committee Hearing Procedure**

The procedure for this Committee to deal with hearings regarding alleged breaches of the Code of Conduct is set out after the Code, to improve transparency and faith in the process.

#### **4.15 Protocols**

- **Self Regulatory Protocol**

There was a discussion amongst Members at the workshop 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. This is now set out in the protocols section. The Standards Committee have been involved significantly in the development of this document and recommend its adoption. The Public Services Ombudsman for Wales has also had sight of the draft, and approves the approach being suggested.

- **Protocol for Liaison with Members**

This provides guidance to Officers regarding notification to the local member.

- **Protocol on Members Access to Information**

Guidance to Members on their rights to access information. This document goes further than merely reciting the access to information rules.

- **Code of Best Practice in Planning Matters**

This has already been adopted by Full Council in 2008 but was not previously included within the Constitution.

- **Protocol for Members sitting on Outside Bodies**

The Corporate Governance Committee has agreed that Members be provided with guidance on their role on outside bodies. In addition to this guidance, Legal Services are also looking at a review of the necessity for Members to sit on all the current bodies.

- **Protocol on the role of Chair and Leader in representing the Council.**

This sets out guidance on the above roles regarding visiting dignitaries.

#### **4.16 Scheme of Delegation to Officers**

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.

The proposal is that there should be generic delegations to the Chief Executive and the Corporate Directors, with specific delegations being made to Heads of Service (and to Directors where required or appropriate), set out in a 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 at the workshop, that the purpose of such a scheme would be merely to make more open and transparent what currently existed; it was not to in effect to create a whole new raft of delegated powers. Members agreed that the scheme of delegation should be more transparent.

Set out in Part 9.2, is the proposed draft Scheme of Delegation to Officers

This is not a scheme that will mirror their job description, but is a scheme of delegation by Cabinet, Full Council or Committee. Officers whose role involves compliance with a high level of regulation, will inevitably have a far greater level of delegation, in order to achieve a more efficient working Council.

This Scheme, will become a 'living document', and as such will need to be updated as and when new legislation impacts on the work of a Service, or conversely, is repealed. A standing item, at least annually, will be set from here on in, at Corporate Governance Committee and at Full Council, in order to slot in changes to the law, as and when this happens. There will be forthcoming amendments flowing from the Local Government Wales Measure, and this is one area which will necessitate updates to the Constitution and the Scheme of Delegation. Therefore, although there will be an annual standing item, it is likely to be more frequent.

If on a day to day basis, as the Scheme is consulted and followed, there are areas which are not clear or are presenting difficulties in the decision making process or otherwise, then the Senior Leadership Team have been advised that this should be communicated to the Monitoring Officer, to enable this Council to consider what (if the law permits) can be changed to improve processes.

#### **4.17 Freedom of Information**

The concept of a Freedom of Information Panel made up of officers trained specifically to deal with freedom of information requests has been debated previously. 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. The panel is referred to as a delegation within the Officers Scheme of Delegation in Part 9.2

#### **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 were set up and have met regularly; full council have received an overview of the proposals previously.

No external consultation has been identified as being required.

#### **8. Chief Finance Officer Statement**

The changes to the Contract Procedure Rules outlined in section 4.13 are sensible given the fact they have not been reviewed for 8 years.

#### **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.