

|                        |  |
|------------------------|--|
| Meeting:               | <b>THE COUNCIL</b>   |
| Date:                  | 17 July, 2014  |
| Title:                 | The New Constitution   |
| Purpose of the Report: | To ask the Council to adopt the amendments to the Constitution following a review. |
| Submitted by:          | Councillor John Pughe Roberts, Chairman of the Audit Committee                     |
| Cabinet Member:        | Councillor Dyfed Edwards, Council Leader   |
| Officer:               | Dilys Phillips, Monitoring Officer   |

## **BACKGROUND**

1. An explanation was given to the Council on 2 May 2013 that work was underway to draw up a standard Constitution for all Unitary Councils in Wales. The work was motivated by the substantial differences that became apparent between the legal requirements on local government in Wales compared with those in England as a result of the Welsh Government's legislative powers. This, combined with the fact that each Council in Wales now had executive arrangements (Leader and Cabinet), made it timely to present a new constitutional document that would allow better consistency of interpretations across Wales. Advantage was also taken of the opportunity to simplify the document and present it in a more coherent format.
2. The Audit Committee is the committee that is responsible for reviewing governance matters within the Council and it was this committee that undertook the work of reviewing the Constitution. It did so by establishing a Working Group which proceeded to consider various sections of the document in detail and consult with relevant bodies within the Council.
3. Consultations were undertaken specifically with the Democratic Services Committee, the Cabinet, the Scrutiny Chairs and Vice-chairs Forum, the Planning Committee, the Standards Committee, the Employment Appeals Committee and the Heads of Department on various elements of the Constitution. The observations were collated by the Working Group and it submitted its final report to the Audit Committee on 6 May.
4. In addition, an attempt was made to raise awareness of the changes amongst the Council's members by submitting a report to the four Area Forums, and then on 1 May a summary of the main changes were sent via e-mail to all Council members along with an invitation to make observations.

## THE NEW CONSTITUTIONAL DOCUMENT

5. The format of the new Constitution is very different to the current format,; however, not many substantial changes are made. Although the Constitution is in a standard format and is consistent with all Welsh Councils, there is an opportunity to obtain local variations and the Working Group has attempted to keep the changes to the existing arrangements to a minimum. There are 23 Sections in the new constitutional document and they are listed in Appendix 1. The full document is 250 pages long.
6. Nevertheless, the main changes affecting members and the Council's governance arrangements are restricted to seven sections of the Constitution only.
7. Appendix 2 includes a brief summary detailing the main changes to these seven sections and the relevant sections are all attached to the report.

## MATTERS TO CONSIDER

8. Along its journey through the various consultative bodies, the Working Group and the Committee, there was only a difference of opinion regarding two matters. The Council is requested to specifically address these matters and reach a decision on them.
9. On the whole, all other amendments proposed in the new standard Constitution received support from the Working Group, the body consulted with and the Audit Committee, and they make up the Audit Committee's recommendations to the Council.
10. The two matters where there was no full consensus are as follows:-
  - (a) placing a restriction on the duration of Full Council meetings; and
  - (b) reaching a decision on proposals to close or establish individual schools under the schools organisation plan.
11. In relation to the duration of the Full Council meetings, the standard Constitution proposes that a condition should be imposed stating that the meeting will close after a specific period of time and that any remaining business is deferred until the next meeting. The Democratic Services Committee was of the opinion that no fixed timescale should be set for Full Council meetings. The Working Group was of the opinion that it was appropriate to set a fixed timescale of 4 hours and give the Chair the discretion to continue with the meeting beyond that if he/she deems that this is appropriate. This is the recommendation received from the Audit Committee. 7
12. In relation to schools organisation plans, the matter requiring consideration derives from the recent change to legislation rather than from the contents of the standard Constitution.

13. Despite reaching a decision regarding a proposal to reorganise a school or schools, the local authority is required to follow a certain procedure. After holding a statutory consultation with a wide-range of stakeholders, a decision needs to be made regarding proceeding with the proposals made by publishing a formal public standard notice, the Cabinet's decision. A fixed timescale is set for submitting objections to the Notice. In the past, if an objection was received then the decision to be confirmed would be submitted before the Minister for Education. Now, this decision (with some exceptions), be there an objection or not, will be submitted before the local authority. The Schools Organisation Code 2013 was published which provides guidance on the system.

Under the new legal system, there is a choice regarding whether the Cabinet or Council or Local Decision Committee is the appropriate body to make this decision. The Working Group was of the opinion that the Cabinet was the most appropriate body to make the decision for the reason that any reorganisation that had commenced would be the Cabinet's plan and thus it would be fair for the Cabinet to take full responsibility for the decision rather than sharing it between two bodies. The Audit Committee was dissatisfied with this recommendation and was of the opinion that the Full Council should have a role in the decision process. A request was made for a report to the Full Council encompassing the information and taking into account the committee's wish that the Cabinet submits a recommendation to the Full Council on the final decision. Another option, e.g. a Scrutiny Committee could give attention to the proposal before the Cabinet considered the matter.

### **RELEVANT FACTORS**

- 14.
- The Guidance of the Schools Organisation Code which states that the Cabinet, due to its understanding of the organisation field, is best placed to make such decisions.
  - The Council's function in setting strategies and policies and the executive responsibility of the Cabinet.
  - The existence of the Scrutiny Committees' right to call in.
  - That the Council would not have been involved in the process leading up to the proposal.
  - The frequency and meeting timetable and the implications to scheduling schools organisation decisions which are also affected by funding and construction timescales, along with factors such as school holidays. A maximum of 16 weeks is permitted from the end of the objecting period to a decision being made, otherwise the Notice will fall.
  - The complexity of the final decision process and the importance of being familiar with the reasons for the proposals and the requirements of the Organisation Code when weighing up the decision as to whether or not the Statutory Notice will be confirmed.

- The need to prepare and publish a report on the objections and the Authority's response to the objections within 7 days of the decision.

The concept of a Local Decision Committee derives from the provisions of the Organisation Code. There are guidance and suggestions on the nature of such a committee in the Code, although it does not set out completely clear recommendations, but rather provides proposals on the type of options that would be possible when forming such a committee. It is also suggested that an independent clerk and legal support should be available for the committee along with an obvious requirement for training. It is not anticipated that this option could be recommended.

The factors outlined above are relevant to the alternative options noted. Such arrangements would result in submitting the matter before two separate meetings. It cannot be stated that this would be impossible; however, one can imagine that it would add to the risk regarding the timetable outlined above.

15. Subject to the above, the Audit Committee approves the recommendations of the Working Group and recommends that the Full Council adopts the new Constitution.

#### **RECOMMENDATION**

16. The Council is asked to:
  - (a) make a decision on the matters highlighted in paragraph 10(a) and (b) above.
  - (b) adopt the new Constitution in accordance with the Committee's recommendations and the summary given in the Appendices.

BACKGROUND DOCUMENT: Schools Organisation Code 2013 – Welsh Government

List of the Constitution's various sections:

|            |   |
|------------|---|
| Section 1  | Introduction  |
| Section 2  | Purpose, definitions, interpretations and amendment |
| Section 3  | Obtaining information and participation             |
| Section 4  | The Full Council                                    |
| Section 5  | The Cabinet   |
| Section 6  | The Leader  |
| Section 7  | Scrutiny Committees                                 |
| Section 8  | The Standards Committee                             |
| Section 9  | Regulatory and other committees                     |
| Section 10 | Joint-committees                                    |
| Section 11 | Officers  |
| Section 12 | Contracts, finance and legal matters                |
| Section 13 | Responsibility for functions                        |
| Section 14 | Access to Information Procedure Rules               |
| Section 15 | Budget and Policy Framework Procedure Rules         |
| Section 16 | Financial Procedural Rules                          |
| Section 17 | Contracts Procedural Rules                          |
| Section 18 | Members' Code of Conduct                            |
| Section 19 | Planning Code of Practice and Member Protocol       |
| Section 20 | Officers' Code of Conduct                           |
| Section 21 | Protocol for Member/Officer Relations               |
| Section 22 | Whistleblowing Policy (Confidential Reporting Code) |
| Section 23 | Descriptions of the Role of Members                 |

## APPENDIX 2.

### Reviewing the Constitution – Summary of the main changes.

The main change between the new Constitution and the current one is its format. Consequently, it is impossible to compare it clause by clause. See below a summary of the main changes to the Constitution whereby reference is made to the relevant section in the new Constitution.

| Section of the Constitution | The New Constitution  | The Current Constitution  |
|-----------------------------|---|---|
| <b>Section 4</b>            | <b>The Council</b>  |   |
| 4.13.2                      | The duration of the Full Council meetings to be restricted to 4 hours, with discretion to the Chair to allow more time. | There is no similar provision in the current Constitution.  |
| 4.18                        | Questions from the public are allowed at Full Council meetings, subject to conditions.                                  | There is a similar provision in the current Constitution, however it has not been implemented.                                  |
| 4.20                        | If the relevant notice has been given, proposals to the Full Council will be discussed on the day.                      | The rule which dictates that proposals are referred to a committee unless the Council votes to discuss them is being abolished. |
| 4.20.4                      | A proposal to dismiss the Leader must be signed by 20% of the Council's members.  | There is no similar provision in the current Constitution.  |
| 4.20.6                      | The time for discussing proposals is restricted to 30 minutes, unless the Council agrees to extend this timeframe.      | There is no similar provision in the current Constitution.  |

|                         |   |  |
|-------------------------|---|--|
| 4.23                    | The Leader can call a general discussion on the condition of the county.  | The rule that dictates that a specific subject can be discussed at each Council meeting is being abolished.                            |
| <b>Section 5</b>        | <b>The Cabinet</b>  |  |
| 5.4                     | Specific functions for the deputy Leader are noted.   | There is no provision for the deputy Leader in the current Constitution.   |
| 5.9.5                   | Powers are given to statutory officers to demand that matters are discussed by the Cabinet.   | There is no similar provision in the current Constitution.   |
| <b>Section 7</b>        | <b>Scrutiny Committees</b>  |  |
| 7.7                     | There is a right to appoint up to 2 co-opted members, without a vote, on each scrutiny committee.   | The number of possible co-opted members has not been noted in the current Constitution.  |
| 7.18                    | Members who wish to include items on the agenda of a Scrutiny Committee must give at least seven days' notice.  | The current Constitution does not state the notice period required.  |
| 7.25                    | A restriction is placed on the number of the Cabinet's decisions that a committee or a member is allowed to call in for scrutiny within a specific period. (Calling In is the formal process which prevents the Cabinet from taking action until the Scrutiny Committee has considered the matter). | The rule in the current Constitution whereby a matter cannot be called in unless it is in breach of the law or a process is abolished. |
| 7.28                    | The Chairs will decide which committee will deal with a matter that falls within the remit of more than one committee.  | The current Constitution states that matters within the remit of more than one committee are discussed at both committees.             |
| 7.29 and appendices 1-3 | Detailed guidance is provided to councillors on how to implement the "councillor's call for action" procedure which allows a member to bring a matter relating to his/her ward to the attention of a scrutiny committee if he/she has failed to solve the matter in any other way.                  | There is no similar provision in the current Constitution.   |

|                              |   |   |
|------------------------------|---|---|
| <b>Section 13</b>            | <b>Responsibility for Functions<br/>(Appendix 1 – Non-executive Functions)</b>  |   |
| Employment Appeals Committee | <p>The responsibilities of the Committee will be to:</p> <p>Promote high standards of conduct amongst staff; monitor the implementation of the Officers' Code of Conduct; disseminate good practice amongst managers.</p> <p>Deal with appeals from Chief Officers.</p>   | <p>The current responsibilities are to:</p> <p>Deal with each appeal from staff.</p>  |
| <b>Section 13</b>            | <b>Responsibility for Functions<br/>(Appendix 3 - Delegation Scheme to Officers)</b>  |   |
| Corporate Directors          | To delegate to a corporate director (or head of department nominated by the corporate director), in consultation with a member of the Employment Appeals Committee and a human resource advisor, the right to determine appeals lodged by staff against disciplinary steps taken against them in appeals under any of the Council's employment policies where the right of appeal is permitted. | There is no such provision in the current Constitution.   |
| 3.20<br>(Setting fees)       | To delegate the right for each chief officer, in consultation with the Chief Executive, Head of Finance Department and Monitoring Officer and relevant Cabinet Member, to set fees for its service.   | The current Constitution shares the responsibility between the Cabinet, some committees (i.e. Licensing) and the chief officer. |
| <b>Section 15</b>            | <b>Budget and Policy Framework Procedure Rules</b>  |   |
| 15.1                         | The purpose of these rules is to explain the relationship between the Council's responsibilities to establish a budget and adopt some plans within the policy framework (e.g. the Strategic Plan) and the Cabinet's rights to implement and prioritise within the budget and policy framework.  | These rules are not included in the current Constitution.   |



|                   |  |  |
|-------------------|--|--|
| 15.2              | The process for developing a policy framework is that the Cabinet submits a recommendation to the Council; if a member wishes to propose an amendment to it at the Council a day's notice must be given; if the Council refuses the Cabinet's recommendation, the Leader is entitled to object and send it back to the Council for a final decision. | See above.   |
| 15.3              | The process for establishing a budget is that the Cabinet consults on its initial proposals (with the Audit Committee amongst others), and at the end of the consultation that it submits its final proposals to the Council for a decision.   | See above.   |
| 15.4 – 15.8       | The remainder of the rules deal with the process to follow if the Cabinet's decisions are contrary to the Budget or policy Framework.  | See above.   |
| <b>Section 19</b> | <b>Planning Protocol</b>   |  |
| (19).3.5          | A clause was added to clarify that a member with an interest does not have the right to act as a local member, but he/she can ask another member to take the role of representing the area's electors.   | This was not clear in the current Constitution.                      |
| (19).6            | The new clause follows the Ombudsman's guidelines on pre-determination, as a result of a change in the law.  | The current Constitution is based on the law as it stood previously. |
| <b>Section 21</b> | <b>Protocol for Member - Officer Relations</b>   |  |
| 21.5 and 21.7     | Description of the roles of members and officers included.   | No similar description in the current Constitution.                  |
| 21.14             | Explanation of the restriction on the political activity of officers.  | No detailed explanation included in the current Constitution.        |