

COMMITTEE	AUDIT AND GOVERNANCE
DATE	30 NOVEMBER 2017
TITLE	REVIEW OF THE CONSTITUTION
PURPOSE OF THE REPORT	TO MAKE RECOMMENDATIONS TO THE FULL COUNCIL TO AMEND THE CONSTITUTION
AUTHOR	MONITORING OFFICER
ACTION	ACCEPT THE REPORT AND THE RECOMMENDATION

Background

1. The constitution was adopted in its current form in July 2014. This was in itself a fundamental change from a perspective format in adopting a new national model that was the result of work by the Wales Monitoring Officers Group with support from the Welsh Government WLGA and based on a model prepared by the legal firm Bond Dickinson.
2. Since adoption, regular changes have been made to the Constitution. This was the result mainly of changes in legislation or developments such as the instigation of the Local Pension Board and the recent Scrutiny Review. However, with use of the new Constitution it is appropriate to reflect on the document as a whole to see if there is need for changes to reflect the work arrangements and experience of the Authority.
3. This report includes recommendations for amendments. Some of them are housekeeping matters or providing clarity but others suggest different paths for matters such as decision-making. The proposed changes are set out in Appendix 1
4. The recommendations have been discussed with a sub-group of the Audit and Governance Committee and their specific comments are noted.

Recommendation.

Recommend that the Full Council amends the Constitution in accordance with the report subject that the amendment to paragraph 9.12.3 comes into force after the Councils annual meeting in May 2018.

A. Section 4.7.3 - Declaration of Acceptance of Office – Chairman

5. The concept of “Proper Officer” is widely used within local government legislation to identify particular responsibilities. The aim of this specific provision is to formalize the role of the Chief Executive in taking the Declaration of Acceptance of Office before the Full Council.

B. Section 40.20.4 - Notices of Motion

6. Currently every Notice of Motion for the Council is checked from a propriety perspective. Generally, their form is acceptable and goes forward without amendment. However, there were occasions when a need arose to agree amendments with the proposer to ensure a proper decision. It needs to be borne in mind that a Notice of Motion does not waive the need to comply with the Constitution nor the law in relation to decisions. Often the changes are in relation to procedural matters e.g. asking for decisions which are cabinet matters, unclear wording or incorrect factual assumptions. The aim of this clause as recommended is to set out a formal arrangement in the Constitution to deal with these matters. This is more transparent but in reality will not change what currently takes place.

C. 9.12.3 - Chair/Vice Chair – Committee

7. It is the arrangement in Gwynedd that a Member may not be the chair more than one Committee. The current wording does not do this to Vice Chairs. Because of the way this clause is drafted it is unclear what exactly the impact of this is on the role of the Vice Chair. For example in an area such as scrutiny, this means that both the Vice Chair and Chair attend meetings of the Scrutiny Forum and represent the Committees. It also means that a member as a Vice Chair can end up Chairing two Committees if the Chairman is not available and if this is an extended period this can involve de facto chairing.

The Group considered this to be logical particularly as Chairs and Vice Chairs had quite active roles outside Committees such as Scrutiny and Audit. It was suggested however that this change should be implemented following the annual meeting to maintain the stability of the current position.

CH. 11.3.6 - Proper Officer for Access to Information

8. A practical change as the Monitoring Officer does not have a role in preparing minutes this should be the Head of Democratic Services.

14.12 Excluding the Public – Exempt items

9. According to the New Constitution the Head of Democratic Services is responsible for making decisions whether an item to be placed on an agenda is to be exempt or not. Practically the Monitoring Officer has a very significant input into this decision and it is considered better therefore that this arrangement is formalised by changing the provision and putting the decision in his hands.

D. 14.15.2 Decisions Cabinet and Cabinet Members and Urgency

10. The first change is purely practical given that the Chief Executive has no direct role in preparing minutes and this should be the Head of Democratic Services.
11. There is provision for urgent decisions by the Cabinet which excludes the right to call in to scrutiny. This requires the consent of the Chairman of the Council. There is a similar arrangement for decisions by individual members of the Cabinet but the provision it does not formally exclude the arrangement to call in to scrutiny. If there is justification for acting urgently then it is sensible to have a similar provision. Such a decision would need the consent of the chair of the relevant Scrutiny Committee. The Group agreed with the proposal.

DD. 15.3.4-5 The Budget.

12. There is a legal requirement for the Council to adopt a balanced Budget. Additionally when coming to any decision this needs to be done whilst considering matters which are relevant and disregarding those which are irrelevant, the Wednesbury rule. This also relates to any amendment proposed. Consequently proposing an amendment of the budget is challenging and needs careful and detailed consideration.
13. There is considerable preparation for the Budget which allows members to receive detailed information about the intent and considerations. The budget is placed before the Audit and Governance Committee and recommended by the Cabinet. Therefore, information about the budget is available for some time before the Council meeting.
14. There is currently no procedure in relation to the proposing amendments to the budget in the Council. If members do not pre consult on their intention there are two key problems:
 - (a) The current outcome are amendments which cannot demonstrate a balanced budget and are therefore unlawful.
 - (b) The second possible consequence is an amendment which cannot practically be advised upon as being a proper proposal at that time and place.

It is therefore recommended that a provision is placed in the Constitution which, on the one hand supports members ability to respond to the budget but on the other means that the Head of Finance specifically is given an opportunity to consider and advise on the amendment.

15. The Group was of the opinion that recommendation involved providing notice of an intention, which would encourage members to seek prior advice if they intended to propose an amendment and should not be seen as a fetter on members rights. It was accepted that an amendment to change the Budget required detailed preparation work. It was also noted that preparation of the budget involved consultations with members in any event. Therefore, by the time the Budget was presented to the Council a member should have a good understanding of the direction and context.

E. Scrutiny Arrangements

16. It is recommended that minor housekeeping amendments are made following the scrutiny review.