

FLINTSHIRE COUNTY COUNCIL

REPORT TO: FLINTSHIRE COUNTY COUNCIL

DATE: TUESDAY, 19 FEBRUARY 2013

REPORT BY: DEMOCRACY & GOVERNANCE MANAGER

SUBJECT: UPDATING THE CONSTITUTION

1.00 PURPOSE OF REPORT

1.01 To consider updating changes to the Council's Constitution pursuant to recommendations from the Constitution Committee, its Chairman, and officers.

2.00 BACKGROUND

2.01 Section 37 of the Local Government Act 2000 requires a local authority such as Flintshire to keep up-to-date a Constitution containing information prescribed by the Welsh Government and for that to be available for inspection by members of the public. Section 38 requires the authority to have regard to guidance issued by the Welsh Government and the subsequent guidance required the Constitutions to be in the modular format that Flintshire has.

2.02 At its meeting on the 24 July 2006 the Constitution Committee considered a report recommending a programmed review of the Constitution over a three year period and resolved to endorse that programmed review. Six areas of the Constitution were identified for review in year one. The first three of those were reported to the Constitution Committee on the 24 October 2012 and to County Council on the 13 November 2012. This report concerns the remaining three areas for review this Council year namely:-

1. Council Procedure Rules
2. Cabinet Procedure Rules
3. Overview & Scrutiny Procedure Rules

2.03 A review of the above three areas has been undertaken by the Democracy & Governance Manager and there has been consultation with relevant members, the Chief Executive and the Head of Legal & Democratic Services prior to consideration by the Constitution Committee at its meeting on the 30 January 2013. Following that meeting Councillor Carver identified two further amendments and the officers also identified two further amendment. These have been discussed with the Chairman of the committee who recommends that these four minor amendments also be made in addition to those

agreed by the committee at its meeting on the 30 January 2013. Copies of the proposed changes, together with tracked reasons for each proposed change are available in Member Services and in each of the group rooms.

3.00 CONSIDERATIONS

- 3.01 In undertaking the review the guiding principles have been to update to reflect current arrangements, avoid unnecessary bureaucracy and to avoid ambiguity of wording. The extent to which changes can be made is limited by the requirement to follow the Welsh Government guidance and to include the information the Welsh Government requires to be included in Constitutions.
- 3.02 One consideration members need to be aware of is that recently the Welsh Government have commissioned Dickinson Dees Solicitors to prepare a draft model Constitution which would be relevant to the Council's own review but at the present time there is a lack of clarity as to what may emerge from this. It is therefore considered that the Council should continue with its own three year programme of review, at least until this draft model Constitution is available.
- 3.03 The updating review of the Council procedure rules includes the following proposed changes:-
- Clarification that the annual meeting will be chaired by the Vice Chair in the absence of the Council's Chair (rule 1.1).
 - To clarify the matters dealt with at ordinary meetings (rule 2).
 - The written answers to questions will be circulated to all members (rule 9.5).
 - Updates to reflect changes to the Local Government Act 1972 (rules 22.1 and 22.3).
- 3.04 In addition, in a letter from Carl Sargeant dated 28 January 2013 he indicated that section 4 of the Local Government (Wales) Measure 2011 relating to remote attendance at meetings would be implemented as soon as possible. This provision allows for remote attendance at meetings. Sub section 4 requires the relevant Council rules to make clear that there will not be a quorum at a meeting unless there is at least one more in actual attendance than those who are in remote attendance. It will therefore be necessary to amend the Council procedure rule concerning quorum (rule 7) to reflect this. This was agreed by the Constitution Committee, together with an amendment to the rule concerning members signing attendance sheets (rule 17) to allow for remote attendance.
- 3.05 On the 31 January the Corporate Overview & Scrutiny Committee was temporarily technically inquorate and the Chair acting on officer advice continued the meeting on an informal basis until a Member who had left returned to the meeting. It is common practice with other councils

that the procedure rule relating to quorum gives a discretion to the chair to recommence the meeting after a short adjournment if there is a temporary difficulty with achieving a quorum. Once remote attendance at meetings is implemented there may be a temporary technical problem that leads to the meeting becoming inquorate. For these reasons officers recommend that the chair has a discretion to reconvene the meeting within 15 minutes where a quorum can be restored.

- 3.06 Subsequent to the Constitution Committee meeting Council Carver drew attention to two points concerning procedure rule 11.5. In paragraph 1 it refers to motions being submitted to the Monitoring Officer when it is clear from procedure rule 11.1 they should be delivered to the office of the Democracy & Governance Manager. It is therefore recommended that both references are to the Democracy & Governance Manager. Secondly, in paragraph 5 of 11.5 where it is not clear who should contact the third parties it is recommended that this be amended so that it indicates that officers shall where appropriate contact the third parties.
- 3.07 The updating review of the Cabinet procedure rules includes the following proposed changes:-
- To add paragraph (d) to rule 1.4 to reflect the change agreed by County Council at its November 2012 meeting.
 - To clarify the wording in rule 1.5 (c) in relation to interests of members or officers so that they comply with the appropriate code of conduct.
 - To delete the reference in 2.5 to every Cabinet agenda having an item for matters referred by Overview & Scrutiny Committees as there is not always a matter referred to the Cabinet by Overview & Scrutiny so as to reflect current practice.
- 3.08 Following the Constitution Committee meeting on the 30 November 2012 the Democracy & Governance Manager realised there needed to be an amendment to Cabinet procedure rule 1.8 concerning quorum to cater for remote attendance. This has therefore been clarified to make clear at least two of the three needed for a quorum have to be in actual attendance rather than remote attendance.
- 3.09 The review and updating of the Overview & Scrutiny procedure rules includes the following proposed changes:-
- To clarify and update the terms of reference of the Overview & Scrutiny Committees in rule 1 so that they are consistent with those in article 6 of the Constitution.
 - To amend rule 7 concerning who chairs Overview & Scrutiny Committee meetings to reflect the legislation that came into effect in April 2012.
 - The protocol referred to in rule 9 and attached as annex A was

amended at the Constitution Committee meeting to reflect Councillor calls for action introduced by the Local Government (Wales) Measure 2011.

- To remove certain sub paragraphs of rule 16 relating to call-ins as they are not necessary and merely add confusion (existing paragraphs f, g and i have been deleted).
- To update rule 17 concerning the party whip to reflect section 78 of the Local Government (Wales) Measure 2011.
- To replace reference to the Co-ordinating Committee with reference to the Constitution Committee (rules 19 and 20).

4.00 RECOMMENDATIONS

4.01 For Council to agree the changes recommended by the Constitution Committee and those recommended by its Chairman and officers to the Council, Cabinet and Overview & Scrutiny procedure rules.

5.00 FINANCIAL IMPLICATIONS

5.01 None as a result of this report.

6.00 ANTI POVERTY IMPACT

6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

8.01 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as a result of this report.

10.00 CONSULTATION REQUIRED

10.01 None as a result of this report.

11.00 CONSULTATION UNDERTAKEN

11.01 With Council Chair and Vice Chair on Council procedure rules. With Leader and Deputy Leader on Cabinet procedure rules. With Overview & Scrutiny Chairs on Overview & Scrutiny procedure rules. With the Chief Executive and Head of Legal & Democratic Services on all proposed changes.

12.00 APPENDICES

12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION ACT) 1985 **BACKGROUND DOCUMENTS**

Tracked changes to Council, Cabinet and Overview & Scrutiny procedure rules.

Letter from Carl Sargeant dated 28 January 2013.

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