

CONSTITUTION AND DEMOCRATIC SERVICES COMMITTEE

Date of Meeting	Wednesday, 15 March 2023
Report Subject	Adoption of the Model Ordinary Language Guide to the Constitution and updates made to the National Model Constitution
Report Author	Chief Officer (Governance)

EXECUTIVE SUMMARY

On the 12th of January the Committee resolved to refer the draft constitution back to the working group for consideration of matters raised by the Committee. The Committee further resolved to recommend that Council adopt the ordinary language guide to the constitution, and it was adopted by Council at its meeting on 24 January 2023.

The Committee also resolved that there should be consultation on suggested member role descriptions within the draft constitution, prior to proposing those matters for adoption by Council. That consultation is due to take place in April.

The working group met on the 28th of February and considered all the matters raised by the Committee.

A draft of both the constitution and the ordinary language guide are attached as appendices to this report. The changes that the working group propose should be made to the Council's constitution are shown as tracked changes, including additional amendments made as a result of considering the comments raised by the Committee on the 12th of January last.

RECOMMENDATIONS

1	The Committee recommend to Council that the draft amended constitution should be adopted, with the exception of the role descriptions contained at Section 31 of the draft constitution and subject to a final internal consistency check, proof-read and cross reference with the ordinary language guide.
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2	Any additional work that the Committee considers should take place in respect of the Council's constitution will form part of a forward work programme for the Committee.
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REPORT DETAILS

1.00	WORKING GROUP MEETING
1.01	<p>Prior to the last meeting of the Committee, the working group met on four occasions to consider changes to the Council's constitution to bring it in line with the updated Model Constitution for Welsh County and County Borough Councils. The changes were recommended to accord with legislation brought into force since the previous model was produced in 2014, including changes introduced by the Welsh Local Government and Elections Act 2021 (the Act). That work is summarised in the report to the Committee of the 12th of January, which is attached as an appendix to this report for ease of reference. On the 28th of February the working group met again and considered all the matters raised by the Committee at its last meeting.</p>
1.02	<p>One matter raised by the Committee was that the working group should ensure that changes proposed to the constitution will not fundamentally alter the way the Council operates, including the way in which decisions are scrutinised. The working group are satisfied, having considered this matter and all other matters raised by the Committee, that the proposed changes to the constitution will not have that effect. Substantive changes recommended to be made to the constitution are matters required by statute and are not matters of choice. In addition, the Committee raised some matters that relate to the current constitution rather than the proposed changes and therefore fall outside the remit of the working group. The matters considered by the working group on the 28th of February are summarised below.</p>
1.03	<p>The Committee raised queries about words removed at page 24 of the draft constitution and whether this removed the right of the public to engage with the Overview and Scrutiny Committee.</p> <p>The reason the wording is proposed for deletion is that the deleted paragraph duplicates paragraph 3.2.1(b) and (d) of the draft constitution (page 23 of appendix 2) which states:-</p> <p>Members of the public can get involved in the following ways:</p> <p>(3.2.1(b))</p> <p>A member of the public can seek to get a matter included on the agenda of a future meeting by writing to the Democratic Services Manager explaining the matter he/she wishes to be considered, by which Member body and the reason why so that the Member body can consider this when considering its forward work programme; and</p>

	<p>(3.2.1 (d))</p> <p>Members of the public can come to and speak at any meeting which the Council has resolved should include participation by members of the public.</p> <p>You can also ask Formal Questions at meetings of Full Council.</p> <p>The changes to the constitution seek to avoid duplication in order to make the document more concise.</p>
1.03	<p>The Committee raised questions in respect of Page 27 of the draft constitution regarding functions of full Council.</p> <p>The Committee questioned whether this section should only contain matters that cannot be delegated by full Council. The Committee therefore asked whether 4.6.15 and 4.6.16 should be removed. This section of the constitution should contain both matters that cannot be delegated by Council and matters that may be delegated but that have not been so delegated. The Act has introduced a number of new Council functions and some of those functions may be delegated but have not been so delegated. Therefore 4.6.15 and 4.6.16 should be retained unless or until the matters are delegated by Council.</p>
1.04	<p>The Committee raised questions in respect of Page 28 of the draft constitution, again regarding functions of full Council. Queries were raised as to whether 4.6.21 a) and b) prevents Overview and Scrutiny Committees carrying out functions in this regard.</p> <p>This requirement has been brought into force under Section 89 of the Act. This is the corporate self-assessment duty for the Council to look at the effectiveness of its arrangements including the Council's scrutiny arrangements. The duty cannot be delegated but the monitoring of performance remains the province of Cabinet and the Overview and Scrutiny Committee. 4.6.21 a) and b) therefore need to be retained.</p>
1.05	<p>Similar queries to those set out at paragraph 1.04 of this report were raised regarding 4.6.19. This relates to approval and review of the Council's well-being objectives under the Well-being and Future Generations (Wales) Act 2015, and accompanying guidance. Overview and Scrutiny Committees will review the objectives and Cabinet will make a recommendation to Council for adoption. Therefore, 4.6.19 needs to be retained.</p>
1.06	<p>The committee requested additions be made to Page 46 regarding retaining recordings of electronic broadcasts of meetings. The timescales have now been added to the draft constitution.</p>
1.07	<p>A typographical error was raised in respect of page 59 of the draft constitution, which has been amended.</p>
1.08	<p>Comments were raised by the Committee regarding page 60 of the draft constitution, relating to job sharing by Cabinet members. Any job share will depend on the particular circumstances of the individuals at the time. It would not be practicable to specify those matters in advance. However,</p>

	<p>amendments have been added to the draft constitution referring to process in order to make it clear that the Leader or any two members of Cabinet wishing to job-share, will take appropriate advice and then settle arrangements that suit those individuals. That advice and those arrangements will cover such issues as division of responsibilities and whether powers can be concurrently exercised.</p>
1.09	<p>Comments were raised regarding page 64 of the draft constitution, in particular whether Cabinet meetings will be held entirely remotely or as hybrid meetings. The current Constitution says that when and how Cabinet meets is a matter to be decided by the Leader. The draft constitution has been amended to reflect this in respect of whether a meeting is hybrid or otherwise.</p>
1.10	<p>The Committee raised questions regarding Page 98 of the draft constitution, which refers to Assistants to the Cabinet. These provisions are new powers introduced by the Act. The Cabinet have no current intentions to appoint pursuant to these new powers. However, the provisions need further thought which requires a more detailed piece of work that should form part of a forward work programme for the Committee.</p>
1.11	<p>The Committee requested that the Senior Officer structure chart be added at Page 261 of the draft constitution and this has now been added. Page 277 included a drafting note that has now been removed.</p>
1.12	<p>The Committee raised comments regarding page 299 which deals with information sharing principles and the circumstances in which information will be provided in a timely fashion. The rules set out what will be supplied. If it is agreed that it is lawful and appropriate to supply information the time taken to supply the information will depend on volume and complexity of information and whether redaction or interpretation is needed. However, there is no proposed change to the rules. The working group have not been appointed to rewrite or review the Constitution over and above dealing with the matters summarised in the report to the Committee on the 12th of January last. Any wider issues in respect of the constitution would need to form part of the Committee's forward work programme.</p>
1.13	<p>Comments were raised regarding page 341 of the draft constitution in respect of the responsibilities of Chief Officers, including queries about statutory powers for interests to be registered and scrutinised. The only amendment to this part of the draft constitution, arising from the remit of the working group, is an amendment to refer to "DPA legislation", given the amended definition in the draft constitution. However, there is in fact no statutory power to require an officers' register of interests, and any such register is voluntary. In addition, a report was considered by Council in 2016 which dealt with the issue and those matters are made clear in the Employees' Code of Conduct.</p>
1.14	<p>The Committee raised queries regarding page 582 of the draft constitution and whether the word 'recognised' should be deleted from 4.1.4. This is not a part of the draft constitution that has been reviewed as part of the remit of the working group. However, there is only a requirement to speak to recognised trade unions. If the word is removed then there would be a requirement to consult all unions irrespective of the size of membership.</p>

	There is a statutory process for when recognition is refused so such unions are protected where refusal is unreasonable.
1.15	The Committee raised comments about some of the role descriptions which were resolved to form part of further consultation with all relevant members. Those descriptions will not be proposed to Council for adoption (notwithstanding that they are included in the draft constitution document attached to his report) until the consultation, planned for April, has taken place. Any comments can be submitted in response to that consultation.
1.16	The Committee approved the draft ordinary language guide at its meeting in January and it was adopted by Council at its meeting on 24 January 2023.

2.00	RESOURCE IMPLICATIONS
2.01	The work to create the national model and plain language guide was funded by the Welsh Local Government Association. The work to consider the changes has been accommodated within existing resources.
2.02	The draft constitution with the changes approved by the working group, incorporated as tracked changes to the draft constitution, have been produced by the law firm who produced the updated national model and plain language guide for the Welsh Local Government Association. They will also carry out a full internal consistency check, proof-read, and an update of any cross-references and a cross reference comparison with the ordinary language guide, to ensure accuracy and consistency between those documents. The costs are estimated to be between £3,000 and £4,000.
2.03	The approved updated constitution will require translation and into Welsh as will the ordinary language guide.

3.00	CONSULTATIONS REQUIRED / CARRIED OUT
3.01	The model documents contain a section of role descriptions for members who have certain specific roles within the Council. These role descriptions do not form part of the current constitution and it is appropriate to consult directly with members who hold these positions in the council before the Council adopts them.
3.02	The Council will need to approve and adopt the draft updated constitution and ordinary language guide.

4.00	RISK MANAGEMENT
4.01	The updated constitution and ordinary language guide are fully compliant with the legislative requirements for constitutions. They set rules and procedures that ensure the Council works in accordance with legislation

	and principles such as natural justice thereby reducing the risk of legal challenge.
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5.00	APPENDICES
5.01	App 1 - Report to the Committee on the 12 th of January 2023.
5.02	App 2 - Draft constitution with tracked changes.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Current Constitution
6.02	Model Constitution
	<p>Contact Officer: Gareth Owens, Chief Officer (Governance) Telephone: 01352 702344 E-mail: gareth.legal@flintshire.gov.uk</p>

7.00	GLOSSARY OF TERMS
7.01	None.