

CONSTITUTION AND DEMOCRATIC SERVICES COMMITTEE

Date of Meeting	Thursday, 12 January 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 7th of July 2022 the Committee established a working group to consider a draft model ordinary language guide to the constitution and revisions to the draft updated model constitution, before reporting back to the Committee with recommendations to be approved at Council in respect of those documents.

The working group has met on four occasions and has considered the changes to the revised model constitution and the content of the model ordinary language guide to the constitution.

A first 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 but some further drafting work will need to be undertaken before the documents can be adopted by Council.

RECOMMENDATIONS

1	That the Committee recommends to Council that the draft amended constitution should be adopted subject to a further internal consistency check and proof-read.
2	That the role descriptions in the draft Model Constitution should be the subject to consultation with relevant Members before the constitution is adopted at the Annual General Meeting.

3	That the ordinary language guide be adopted subject to a final document and cross reference comparison with the draft constitution to ensure accuracy and consistency between those documents.
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REPORT DETAILS

1.00	WORKING GROUP MEETINGS
1.01	The working group met on four occasions, on the 19 th of October, the 18 th November, and on the 1 st and the 15 th of December. The group agreed that there were broadly five work streams for consideration. The first was the need to modernise language in the Council’s constitution; the second was the need to incorporate the changes to the model constitution in a way that still reflects the local position at Flintshire; the third was to incorporate administrative changes required by the Local Government and Elections (Wales) Act 2021; the fourth was to update references to legislation and the fifth was to consider the content of the model ordinary language guide and whether it is fit for purpose.
1.02	The need to modernise the language in the constitution included matters such as reflecting that meetings are no longer purely held in person. So, for example, words stating that minutes will be handed down by the Chair, or that minutes will be written in a book have become outdated. The group agreed that it is important for such updates to be incorporated into the Council’s constitution to ensure that the language in the constitution reflects the current position at the Council.
1.03	In terms of making sure amendments in the updated model reflect the local position at Flintshire, the model refers to a number of roles and positions that Flintshire does not have (such as a “Presiding Member” or “Mayor”) and such references are not applicable to the Council’s constitution and should therefore not be incorporated into the Council’s constitution. Further, the Council have adopted local protocols and have established practices and procedures that are not all reflected in, or are not entirely consistent with, those contained in the updated model constitution.
1.04	For example, the Council’s Planning Code of Practice has been updated to reflect the experience of Members of the Council who have been involved in the planning process over time and has been adapted to take account of that experience after appropriate consultation with the Council’s Planning Strategy Group, this Committee and the Council itself. This has ensured that the advice in that Code of Practice is locally relevant. The group agreed that such local protocols should be retained and simply updated with any new statutory references contained in the updated Model Constitution which are required.
1.05	In addition, the group considered that solely local protocols, such as the Protocol on Member Newsletters and the Local Resolution Procedure should be retained.

1.06	<p>The Local Government and Elections (Wales) Act 2021 introduced a number of additional powers and/or requirements that the Council needs to adopt and/or reference in their constitution. For example, the Act introduced requirements in respect of Petition Schemes, a matter which the Council has already addressed and has adopted its own processes. However, all such administrative changes and powers introduced by that Act need to be reflected in the constitution. The group have considered those requirements and recommend their incorporation into the Council's constitution.</p>
1.07	<p>The first model constitution was produced in 2014 and, as a result, some of the legislative references within it are outdated as they have been superseded by new legislation. For example, references to 'Data Protection Act 1998' have been deleted, and 'Data Protection Legislation' has been re-defined to refer to the Data Protection Act 2018 and the UK General Data Protection Regulation (UK GDPR). Where such legislative references or changes have not already been incorporated into the Council's own constitution, those references need to be included or altered accordingly.</p>
1.08	<p>One of the requirements of the Local Government and Elections (Wales) Act 2021 was for Councils to publish an ordinary language guide to the constitution so that the contents of the constitution were more easily accessible and understandable for everyone. The group has considered the content of the model guide and recommends that, subject to the adaptation of it to reflect the local position in Flintshire, it should be adopted by the Council, as the group considers that the guide is fully fit for purpose. This is subject to a final document and cross reference comparison with the draft constitution in order to ensure accuracy and consistency between those documents.</p>
1.09	<p>The group also considered a part of the model constitution setting out definitions of roles for certain members/positions within the Council. Those role descriptions are also referenced in the ordinary language guide but have never been adopted by the Council. The role descriptions are shown at Section 31, at the end of the draft updated constitution. The group considered that including such descriptions in the Council's constitution and ordinary language guide may well be useful to members of the public and aid their understanding of how the Council works. However, the group considers that before those role descriptions are adopted by the Council there should be further consultation with members of the Council who hold those roles in order that they are fully aware of, and in agreement with, the appropriateness of those role descriptions.</p>
1.10	<p>The working group considered that the most efficient way of ensuring the appropriate changes referred to above are made to the Council's constitution is to incorporate the required changes into the Council's current constitution. The draft updated constitution has been produced accordingly and the changes are shown as tracked changes to that document. A further full internal consistency check, proof-read, and an update of any cross-references will need to be undertaken before the final draft constitution is adopted by Council.</p>

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.

5.00	APPENDICES
5.01	App 1 - Report to the Committee on the 7 th July 2022. App 2 - Draft constitution guide with tracked changes. App 3 - Draft constitution guide clean copy.

6.00	LIST OF ACCESSIBLE BACKGROUND DOCUMENTS
6.01	Current Constitution
6.02	Model Constitution
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7.00	GLOSSARY OF TERMS
7.01	Natural Justice - principles of law which require government/public bodies to act fairly e.g. consulting people affected by a decision.
7.02	Welsh Local Government Association – the representative body for all local authorities in Wales. It liaises with Welsh Government, provides advice and assistance to improve governance and helps to co-ordinate activity.