



## **ANNUAL COUNCIL – 12TH MAY 2016**

**SUBJECT: CONSTITUTIONAL MATTERS**

**REPORT BY: INTERIM HEAD OF LEGAL SERVICES & MONITORING OFFICER**

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### **1. PURPOSE OF REPORT**

- 1.1 To deal with those matters that require consideration at the Annual Meeting of the Council in accordance with the Council Procedure Rules.
- 1.2 To update Members of changes and amendments to legislation affecting the Council's Constitution.
- 1.3 To note and adopt the amended Code of Conduct for Members as set out in Appendix 1 to the Report.
- 1.4 To ask Council to delegate authority to the Interim Head of Legal Services and Monitoring Officer to make the necessary changes to the Council's Constitution to give effect to the changes referred to in the Report.

### **2. SUMMARY**

- 2.1 This report sets out details of those matters that require consideration at the Annual general Meeting of Council. It also proposes several amendments to the Council's Constitution to reflect recent legislative amendments including the adoption of the revised Code of Conduct for Elected Members.

### **3. LINKS TO STRATEGY**

- 3.1 The requirement to establish and maintain the Council's Constitution is set out in the Local Government Act 2000.

### **4. BACKGROUND**

- 4.1 The Council's Constitution was formally adopted by the Council in May 2002. It sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that the decision making processes are efficient, transparent and available to local people. The Constitution is a 'living document' in that it is constantly being updated and revised to reflect new government legislation and improvements and changes in procedures gained in light of experience.

## **5. THE REPORT**

5.1 The Council's Procedure Rules require the Annual Meeting to appoint at least one overview and Scrutiny Committee, a Standards Committee and such other Committees the Council considers appropriate to deal with the matters which are neither reserved to the Council nor are executive functions. The Constitution provides for the appointment of the following committees:-

1. Audit Committee
2. Democratic Services Committee
3. Licensing Committee
4. Planning Committee
5. Policy and Resources Scrutiny Committee
6. Education for Life Scrutiny Committee
7. Health, Social Care and Wellbeing Scrutiny Committee
8. Regeneration and Environment Scrutiny Committee
9. Standards Committee
10. Investigating and Disciplinary Committee
11. Appeals Committee
12. Appointments Committee
13. Rights of Way Cabinet Committee

5.2 It is not proposed that any changes be made to the current committee structure as set out above at this Annual Meeting. This includes the number of Members allocated to each Committee. The current arrangements reflect a fair political balance. Members are therefore asked to note the existing arrangements.

5.3 The nominations for the Members to each Committee will be reported verbally at the Council meeting.

## **6. TERMS OF REFERENCE OF COMMITTEES**

6.1 It is proposed to make changes to the terms of reference for the Policy and Resources Committee, the Democratic Services Committee and the Standards Committee as set out below.

6.2 Members are therefore asked to note there are no changes to the existing Terms of Reference for the remainder of the Committees set out in Part 2 of the Constitution.

### **PROPOSED CHANGES – POLICY AND RESOURCES SCRUTINY COMMITTEE**

6.3 Following the implementation of the Future Generation (Wales) Act 2015 ("the Act"), the Local Authority, Local Health Board, South Wales Fire and Rescue Authority and National Resources Wales are required under the Act to formally collaborate as a Public Services Board (PSB) for the geographical area of the Local Authority and use the sustainable development principle to meet the well-being duty/goals under the Act. The statutory well-being goals/duty under the Act are:

- A sustainable Wales
- A prosperous Wales
- A healthier Wales
- A more equal Wales
- A Wales of cohesive communication
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales

The Caerphilly PSB's first meeting is due to take place in June this year.

- 6.3.1 The Act requires the Council to designate a Scrutiny Committee to scrutinise the work of the PSB. The guidance states that one Scrutiny Committee should take on the overview of the effectiveness of the PSB on behalf of the constituents of the Local Authority area. The functions of the Scrutiny Committee include the following:-
- Scrutinising the decisions and actions taken by the PSB;
  - Review or scrutinise the Board's governance arrangements;
  - Make reports or recommendations relating to the Board regarding its functions or governance arrangements;
  - Consider matters relating to the board as the Welsh Ministers may refer to it and report to Welsh Ministers accordingly;
  - Carry out other functions in relation to the Board that are imposed on it by the Act.
- 6.3.2 It is proposed that the Policy and Resources Committee when sitting as the Crime and Disorder Scrutiny Committee carry out this role. As Members will be aware the Crime and Disorder Scrutiny Committee is experienced at sitting as a partnership Scrutiny Committee. It is proposed that the Committee's terms of reference could be revised to enhance its role to consider the progress towards the local wellbeing objectives, performance against the wellbeing plan, and achievement of the wellbeing goals for the Local Authority area and re-named "Partnerships Scrutiny Committee".
- 6.3.3 Members are therefore asked to consider a recommendation that role of the Policy and Resources Committee be enhanced to include the Scrutiny of the PSB as outlined above and to delegate authority to the Council's Interim Head of Legal Services and Monitoring Officer to make the necessary amendments to the Committee's existing terms of reference as set out in the Council's Constitution.
- 6.3.4 Whilst it is proposed that Policy and Resources sit as the PSB Scrutiny Committee, it is also considered that there is an important role for a cross-party group of Elected Members to challenge, advise and make recommendations to the Local Authority and in meeting the aims of the Act, both as a constituent of the PSB and a public body in its own right.
- 6.3.5 The Sustainable Development Advisory Panel (SDAP) has been in existence since 2002 and sits to provide oversight of the environmental sustainability of Caerphilly. Whilst this is a key theme of at least two of the Wellbeing Goals, the Act has a much wider remit. It is recommended therefore that SDAP be formally re-established as a cross-party Future Generations Advisory Panel to steer and guide the work over the next two years and thereafter through planning delivery and into the next cycle of the statutory requirements.
- 6.3.6 It is also recommended that the new Panel be chaired by the Cabinet Member for Regeneration Planning and Sustainable Development and that the Cabinet Member be also designated as "Future Generations Champion".
- 6.4 **DEMOCRATIC SERVICES COMMITTEE**
- 6.4.1 Members will be aware from earlier Reports that the Council established a cross-party working group to review the Council's Constitution with a view to implementing the All Wales Model Framework Constitution which was a framework document prepared by lawyers in conjunction with the Welsh Local Government Association (WLGA) and the Local Government Lawyers Group (LLG).
- 6.4.2 The All Wales Framework document has not been implemented across the whole of Wales as a result of various difficulties including with the IT software package.

- 6.4.3 Members will be aware that the Constitution was thoroughly reviewed following the Report to Council in January 2014 and since that date routine reports have been presented to Council in relation to ad hoc changes to the Council's Constitution as a result of changes to legislation etc.
- 6.4.4 In light of the circumstances outlined above, it is recommended that:
- (i) the implementation of the All Wales Model Framework Constitution cease and that the Cross Party Constitution Working Party be formally disbanded;
  - (ii) the Council's Interim Head of Legal Services/Monitoring Officer provide six monthly updates to the Democratic Services Committee on the Council's Constitution;
  - (iii) the Terms of Reference of the Democratic Services Committee be revised to include the role of overseeing the Council's Constitution and that the Council's Interim Head of Legal Services/Monitoring Officer is given delegated authority to make the necessary amendments to the Democratic Services Committee existing Terms of Reference as set out in the Council's Constitution.

## **7. STANDARDS COMMITTEE**

- 7.1 Following technical consultation undertaken between 30th November 2015 and 10th January 2016 the Minister for Public Services signed The Local Government (Standards Committees, Investigations, Dispensations and Referral) (Wales) (Amendment) Regulations 2016.
- 7.2 These Regulations amended three Statutory Instruments as follows:
- 7.3 The Standards Committees (Wales) Regulations 2001.
- 7.3.1 A number of consequential amendments are made to these regulations following commencement of section 68 of the Local Government Democracy Act 2013 which enable two or more relevant authorities to establish a joint standards committee.
- 7.3.2 As a consequence of the postponement of the 2016 Local Government elections provision is made to enable a relevant authority to determine that local authority and community council Members of its standards committee who are in place on 1st April 2016 may continue to serve until the next ordinary election in 2017. In addition, the current four year restriction on the term of office of such a member is removed.
- 7.3.3 Provision is made to enable a standards committee to delay publication of agendas, records or information connected to its consideration of the report of a misconduct investigation until such time as the misconduct proceedings are concluded. However, the presumption remains that misconduct hearings will be held in public, unless there are particular reasons for some or all of the proceedings being held in private.
- 7.4 The Local Government Investigations (Functions of Monitoring Officers and Standards Committee) (Wales) Regulations 2001.
- 7.4.1 Provision is made to enable a standards committee or a monitoring officer with the prior written agreement of the Chairperson of the Standards Committee to refer the report of a misconduct investigation to another authority's standards committee for determination. This is to overcome any potential conflict of interest a standards committee may have in dealing with a report.

- 7.4.2 The wording of regulation 9 is amended to clarify that a period of suspension imposed by a standards committee is limited to a maximum of 6 months or if shorter the remainder of a member's term of office. This provision is in line with the comparable power of an Adjudication Panel for Wales.
- 7.4.3 A member seeking to appeal the determination of a standards committee will in future need to obtain the permission of the President or a nominated panel member of the Adjudication Panel for Wales.
- 7.5 Local Authorities (Grant of Dispensations) (Wales) Regulations 2001.
- 7.5.1 Provision is made to enable a standards committee or a monitoring officer with the prior written agreement of the Chairperson of the standards committee to refer a dispensation application to another authority's standards committee for determination. The Vice Chairperson may give permission in the absence of the Chair. Again this is primarily to overcome any potential conflict of interest. It may also enable an urgent application to be expedited.
- 7.5.2 A general category of dispensation is introduced. This will enable a standards committee to grant a dispensation if it considered it appropriate in all the circumstances to do so where it was not otherwise possible to make reasonable adjustments to accommodate a person's disability. A dispensation granted under this category which has ongoing effect is subject to annual review.
- 7.6 It is recommended that members note the information contained in this paragraph and delegate authority the Interim Head of Legal Services/Monitoring Officer to make the necessary changes to the Constitution to reflect the changes to the existing terms of reference of the Standards Committee.

## **8. ADOPTION OF A REVISED CODE OF CONDUCT FOR ELECTED MEMBERS**

- 8.1 On 27th January, 2016 the Minister for Public Services signed the Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 ("the Order", which came into force on 1st April, 2016.
- 8.2 The Order amends the Model Code of Conduct for Local government Members set out in the Local Authorities (Model Code of Conduct) (Wales) Order 2008 which are summarised as follows:
- 8.2.1 The Local Government (Democracy) (Wales) Act 2013 transferred responsibility for maintaining the register of interests of Members of Community Councils from the monitoring officer of the principal Local Authority for the rear to the "proper officer" of each community council, with effect from 1st May, 2015. A number of consequential amendments are made to the Model Code to reflect this change, so that in relation to a community council, a reference to a monitoring officer is replaced with reference to the proper officer of the community council.
- 8.2.2 Paragraph 15 of the Model Code, dealing with the register of member's interests is amended to clarify that any interest disclosed for the first time must be entered in the register. This is not a change of policy but clarifies the original intention. The exemption for community councillors from the requirement to register certain financial and other interests upfront is maintained.
- 8.2.3 The obligation on a member to report a potential breach of the Code of Conduct by another member to the Public Services Ombudsman for Wales under paragraph 6(1) ( c ) is omitted from the Code.

- 8.2.4 Paragraph 10(2)(b) has been removed from the Code. This is to overcome unintended difficulties in the practical application of this paragraph in relation to participation in business relating to constituency interests. A member participating in the consideration of a ward matter is nonetheless under an obligation to act objectively and in the wider public interest in accordance with paragraph 8 of the Code.
- 8.2.5 In addition to the changes made by the above Order minor changes have been made to the Code in accordance with the Co-Operative And Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments) Regulation 2014, which are also incorporated as track changes in bold, italics in Appendix 1.
- 8.2.6 The Council is required to consider the amendments and adopt the Model Code within six months of the date on which the Order was made. As the Order was made on 27th January, 2016, a revised Code must be adopted by 26th July, 2016.
- 8.2.7 The Model Code of Conduct attached at Appendix 1 is the Council's current Code of Conduct with the amendments made under the Order track changed in bold italics. Council is therefore asked to consider and adopt the changes to the code which are set out in bold italics in Appendix 1 to this report.
- 8.2.8 Members are asked to note that there is no requirement to provide fresh undertakings to abide by the revised Code as the current undertaking includes any amendments.
- 8.3 It is recommended that Council:-
- (i) note the amendments made to the Code of Conduct for Elected Members as set out above in paragraph 8 of this report;
  - (ii) resolve to formally adopt the revised Code of Conduct for Elected Members;
  - (iii) authorise the Council's Interim Head of Legal Services/Monitoring Officer to undertake the necessary steps to formally adopt the amended Code and update the Council's Constitution.

## **9. POLITICAL BALANCE – ANNUAL REVIEW**

- 9.1 The Annual Meeting is required to decide the allocation of seats to political groups in accordance with the Political Balance Rules contained in the Local Government and Housing Act 1989 and the Local Government (Committees and Political Groups) Regulations 1990 as amended.
- 9.2 The basis of the statutory requirements provide that committee seats should be allocated to political groups in so far as practicable in the same proportion as these groups have in relation to the total membership of the Council.
- 9.3 There has been no change to the political balance of the Authority and Members are asked to note that the current allocations remain as present.

## **10. SCHEME OF DELEGATION**

- 10.1 There is no proposal to vary the current Scheme of Delegation and Members are asked to note the existing scheme as set out at Part 3 of the Council's Constitution.

## **11. EQUALITIES IMPLICATIONS**

- 11.1 There are none arising from the contents of the Report.

## **12. FINANCIAL IMPLICATIONS**

- 12.1 There are none arising from the contents of the Report other than the advertising costs in conjunction with the adoption of the amended Code of Conduct, which will be met from existing budgets.

## **13. PERSONNEL IMPLICATIONS**

- 13.1 None arising from the content of this Report.

## **14. RECOMMENDATIONS**

- 14.1 Members are asked to note the information contained in this Report.
- 14.2 Members are asked to approve the recommendations that are set out at paragraphs 5.2, 6.2; 6.3.3; 6.3.5; 6.3.6; 6.4.4, 7.6, 8.3, 9.3 and 10.1 of the Report.

## **15. REASONS FOR THE RECOMMENDATIONS**

- 15.1 To comply with the relevant legislation and the Council's Constitution.

## **16. STATUTORY POWERS**

Local Government Act 2000.

The Local Authorities (Model Code of Conduct) (Wales) (Amendment) Order 2016 (No 2016/84).

Co-Operative and Community Benefit Societies and Credit Unions Act 2010 (Consequential Amendments Regulations 2014) (no. 2014/1815)

The Local Government Standards Committee Investigations Dispensations and Referral Wales Amendment Regulation 2016.

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Appendices:

Appendix 1 Amended Code of Conduct for members

The Council's Constitution is available on the website