



ANNUAL COUNCIL – 18TH MAY 2017

SUBJECT: CONSTITUTIONAL MATTERS

REPORT BY: INTERIM HEAD OF LEGAL SERVICES & MONITORING OFFICER

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 appoint the Lay Member of the Audit Committee.
- 1.3 To note and adopt the changes to the Planning Committee's Amended Terms of Reference and the Taxi and General Committee as a result of legislation.
- 1.4 To note and adopt the Monitoring Officer Protocol as set out in the report to the Standards Committee attached at Appendix 1.
- 1.5 To note and endorse the proposed changes to Part 3 of the Scheme of Delegation set out in the Council's Constitution as attached at Appendix 2 and marked in bold and italics.
- 1.6 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 changes to the Planning Committee's Terms of Reference, the Taxi and General Committees Terms of Reference, the appointment of the Lay Member of the Audit Committee and the adoption of the Monitoring Officer Protocol together with changes to the Scheme of Delegation.

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 and contributes to the following Well-being Goals within the Well-being of Future Generations Act (Wales) 2015 as it sets out how the Council operates, how decisions are made and the procedures which are followed to ensure that these are efficient, transparent and accountable to local people. It sets the framework for the decision making roles and responsibilities which will impact on future generations.

- A prosperous Wales
- A resilient Wales
- A healthier Wales
- A more equal Wales

- A Wales of cohesive communities
- A Wales of vibrant culture and thriving Welsh language
- A globally responsible Wales.

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 & Gambling Committee
4. Taxi & General Committee
5. Planning Committee
6. Policy and Resources Scrutiny Committee (includes Partnerships Scrutiny Committee)
7. Education for Life Scrutiny Committee
8. Health, Social Care and Wellbeing Scrutiny Committee
9. Regeneration and Environment Scrutiny Committee
10. Standards Committee
11. Investigating and Disciplinary Committee
12. Appeals Panel
13. Appointments Committee
14. Rights of Way Cabinet Committee

- 5.2 Other than the changes proposed to the Planning Committee's Terms of Reference and the Taxi and General Committee's Terms of Reference which are set out in Paragraph 6 of this report it is not proposed that any changes be made to the committee structure as set out above at this Annual Meeting. This includes the number of Members allocated to each Committee. Members are therefore asked to note the arrangements.
- 5.3 The composition of the committees is dealt with in a separate report. There is also a separate report on the appointment of Co-opted members onto the Council's Scrutiny Committee.
- 5.4 The nominations for the Members to each Committee will be reported verbally at the Council meeting.
- 5.5 To Appoint a Lay Member of the Audit Committee
- 5.5.1 The Council is required in accordance with the Local Government Measure 2011 to appoint an Audit Committee with a prescribed membership as follows:-
- (a) at least two-thirds of the members of the Audit Committee are members of the Council;
 - (b) at least one member is a lay member;
 - (c) no more than one member of the Committee is a member of the authority's executive (the Cabinet);

- (d) the senior member of the executive (the Leader) is not a member of the Audit Committee.

- 5.5.2 An act of an Audit Committee is invalid if the membership of the committee breaches the requirements set out in paragraph 5.5.1 above.
- 5.5.3 The Statutory Guidance from the Local Government Measure recommends that a lay member should not be appointed for more than two full terms of a local authority.
- 5.5.4 By way of background information, in 2012, the Council undertook a recruitment and interview process to appoint a Lay Member. Following an interview process a Panel of Members selected Mr Nigel Donald Yates as the independent member of the Council's Audit Committee for a term of office to run concurrently with the current administration, namely 2012 to 2017. This was endorsed by Council at its meeting on 26th September 2012.
- 5.5.5 As mentioned above if a Lay Member is not appointed the Audit Committee will be unable to exercise its functions. Whilst the Council may undertake a further recruitment process, the Statutory Guidance provides the Council with the option of a potential alternative reappointing the current Lay Member for a further term of office. This brings with it a number of advantages including:-
- (a) removing the time delay for the Council having a functioning Audit Committee following the election;
- (b) the Council not incurring the cost (both financial and time) of advertising the role and undertaking interviews, which will involve current Members;
- (c) the Council having a person with a proven track record in the role who has gained knowledge and experience of the Council and its operation and can therefore "hit the ground running".
- 5.5.6 The current Lay Member has been asked if he would be interested in continuing his role if the Council agreed to reappoint him to the role. He has confirmed that he would be interested in continuing as Lay Member, subject to the approval of the Council.
- 5.5.7 Council is therefore asked to endorse the recommendation that Mr Yates be reappointed as the Lay Member for the Audit Committee for a second and final term of office from the AGM on 18th May 2017 for a period of 5 years until the next Council elections in May 2022.

6. TERMS OF REFERENCE OF COMMITTEES

Planning Committee

- 6.1 As a result of recent changes to legislation details of which are set out below, Council is required to make specific changes to the terms of reference for the Planning Committee and the Council's Standing Orders.
- 6.2 The Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017 ("the Regulations") have been made by the Welsh Ministers which bring into effect and provide the detailed interpretation for Section 39 of the Planning (Wales) act 2015, so far as it relates to the size and composition of committees discharging functions.
- 6.3 The Regulations require Planning Committees (and any sub-committee) in Wales to be structured and operated in accordance with the following requirements:-
- **The Planning Committee must contain no fewer than 11 members and no more than 21 members, but no more than 50% of the authority members (rounded up to the nearest whole number).**

- **Where wards have more than one elected member, only one member may sit on the planning committee, in order to allow other ward members to perform the representative role for local community interests.**

Note: This does not apply to a local authority that comprises solely of multiple member wards due to the need to maintain political balance on the committee.

- 6.4 Members will be aware that the current membership of the Planning Committee is 20 which is within the requirements set out in paragraph 6.3 above and as such it is proposed that the membership remains at this level.
- 6.5 Council is advised that failure to adhere to the requirements of the aforementioned Regulations will affect the validity of decisions taken by the Planning Committee. It is therefore necessary for the relevant parts of the Council's Constitution to be amended in accordance with the Regulations and, following the May 2017 local government elections, the Planning Committee must be appointed in accordance with these requirements prior to making decisions.
- 6.6 In addition the Local Authorities (Standing Orders) (Wales) (Amendment) Regulations 2017 ("the Amendment Regulations") have been laid before the National Assembly for Wales and also come into force on 5th May. The Amendment Regulations require the following:-
- **Each meeting of the planning committee must have a quorum of 50% to make decisions.** Based on the proposed membership set out in paragraph 6.4 above the quorum for the Planning Committee will be 10 members; **and**
 - **The use of substitute members is prohibited.**
- 6.7 Members are therefore asked to note the changes to the existing Terms of Reference for the Planning Committee endorse the proposal that the current membership remains at 20 members, with a quorum of 10 members and note the composition of the Committee. Council is also asked to delegate authority to Interim Head of Legal Services & Monitoring Officer to make necessary changes to the Constitution.

Taxi & General Committee

- 6.8 Part 2 of the Mobile Homes (Wales) Act 2013 ("the 2013 Act") introduced new site licensing provisions for residential mobile home sites. Prior to the 2013 Act being implemented, residential mobile home sites were regulated and licensed under the Caravan Sites and Control of Development Act 1960 ("the 1960 Act") and the Caravan Sites Act 1968 ("the 1968 Act"). The functions under the 2013 Act have been exercised as a Cabinet function and a report was presented regarding the provisions in 2015.
- 6.9 However as a result of Mobile Homes (Wales) Act 2013 (Consequential Provisions) Order 2016 consequential amendments to three pieces of secondary legislation have been made one of which relates to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (S.I. 2007/339 W. 45). This amendment makes the functions exercised under the Mobile Homes (Wales) Act 2013 a Council function in that it is not to be the responsibility of an Authority's executive.
- 6.10 In view of the changes set out above, it is recommended that the functions under the Mobile Homes Wales Act 2013 are added to Schedule 1 Heading B of the Scheme of Delegation and also included within the Terms of Reference of the Taxi and General Committee. In addition to delegate authority to the Interim Head of Legal Services and Monitoring Officer to amend the Constitution as necessary.

7. ADOPTION OF MONITORING OFFICER PROTOCOL

- 7.1 At its meeting on 23rd February 2017 the Standards Committee considered the report attached at Appendix 1 which sought member's views on a proposed revised Monitoring Officer Protocol, prior to its presentation to the Annual Meeting of Council for adoption.
- 7.2 Members noted that Section 5 of the Local Government and Housing Act 1989 requires every principal authority to designate one of its Officers as the Monitoring Officer and the report provided details of the main functions of the Monitoring Officer which are set out in Part 2 Article 12, paragraph 12.03 of the Council's Constitution.
- 7.3 The Standards Committee was advised that the Lawyers in Local Government have a Sub Group consisting of all the Monitoring Officers of the principal councils in Wales, as well as the Fire and Rescue Authorities and National Parks. That Sub Group has developed a Monitoring Officer Protocol which is recommended for adoption by Councils across Wales. The Protocol, as attached to the report, incorporates changes to reflect local arrangements and is intended to replace the existing Monitoring Officer Protocol which is currently in the Council's Constitution.
- 7.4 In noting that the Protocol will provide clear guidance and understanding to Members and Officers as to the role of the Monitoring Officer, the Standards Committee unanimously agreed and resolved that the content of the Monitoring Officer Protocol as set out at Appendix 1 of the report be approved and a report be presented to the Annual Meeting of Council seeking adoption of the Protocol and for the Interim Head of Legal Services and Monitoring Officer to be authorised to amend the Council's Constitution to include the revised Protocol.
- 7.5 Council is therefore asked to endorse the Protocol as set out in the Appendix to the Report presented to the Standards Committee attached at Appendix 1 and delegate authority to Interim Head of Legal Services & Monitoring Officer to amend the Constitution to as necessary to include the revised Protocol.

8. SCHEME OF DELEGATION

- 8.1 Following consultation with all Heads of Service, minor changes are proposed to the Scheme of Delegation set out in Part 3 of the Constitution and which for ease of reference is attached to this report at Appendix. The changes represent changes and updates regarding legislation, together with job titles and inclusion of relevant functions.
- 8.2 Council is therefore asked to note and endorse the track changes identified in bold and italics in Appendix 2 to this report and to delegate authority to the Interim Head of Legal Services and Monitoring Officer to amend the Constitution as necessary.

9. WELL-BEING OF FUTURE GENERATIONS

- 9.1 This report contributes to the Well-being Goals as set out in Links to Strategy above. It is consistent with the five ways of working as defined within the sustainable development principle in the Act in that the Constitution sets out a clear framework for how the Council operates in particular the decision making responsibilities, which will consider the positive and negative impacts on future generations, long term resilience, economic, environmental and social capital.

10. EQUALITIES IMPLICATIONS

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

11. FINANCIAL IMPLICATIONS

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

12. PERSONNEL IMPLICATIONS

12.1 None arising from the content of this Report.

13. RECOMMENDATIONS

13.1 Members are asked to note the information contained in this Report.

13.2 Members are asked to approve the recommendations that are set out at paragraphs 5.2, 5.5.7, 6.7, 6.10, 7.5, and 8.2.

14. REASONS FOR THE RECOMMENDATIONS

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

15. STATUTORY POWERS

Local Government Measure 2011

The Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017

The Local Authorities (Standing Orders) (Wales) Amendment Regulations 2017

Mobile Homes (Wales) Act 2013

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Appendices:

Appendix 1 Report to Standards Committee – 23rd February 2017 Adoption of Monitoring Officer Protocol

Appendix 2 Part 3 of the Council's Constitution

Background papers:

Report to Special Council – 26th September 2012 Appointment of Lay Member – Audit Committee

Report to Cabinet – 4th March 2015 – Adoption of Policies in relation to the Mobile Homes Wales Act 2013.

The Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017

The Local Authorities (Standing Orders) (Wales) Amendment Regulations 2017

The Council's Constitution is available on the website