

POLICY AND RESOURCES SCRUTINY COMMITTEE - 10TH NOVEMBER 2009

SUBJECT: REVIEW OF COUNCIL'S CONSTITUTION

REPORT BY: MONITORING OFFICER

1. PURPOSE OF REPORT

- 1.1 To recommend to Members changes to the Council's Constitution in order to improve working practices.

2. LINKS TO STRATEGY

- 2.1 The Council is under a duty to keep under review its constitutional arrangements and approval of the recommendations in this Report supports that obligation.

3. THE REPORT

- 3.1 The Council's Constitution 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.

Some of the processes are required by the law and others are a matter for the Council to choose.

The current Constitution was adopted in May 2002 and revised in May 2003. Since that date further minor reviews have been undertaken to reflect changes to secondary legislation. The Constitution is divided into a number of Articles which set out the basic rules of the Council's business, and also includes rules, codes and protocols.

The Constitution is divided as follows:-

- Part 1 – Summary and explanation
- Part 2 – Articles of the Constitution
- Part 3 – Responsibility for Functions
- Part 4 – Rules of Procedure
- Part 5 – Codes and Protocols
- Part 6 – Members Allowance
- Part 7 – Management Structure

- 3.2 The terms of the current Constitution are generally considered to be effective, however it was considered timely to undertake a thorough review of the Constitution in order to assist in the continuous improvement of the democratic process and to improve current working practices.
- 3.3 The Monitoring Officer has therefore undertaken a consultation exercise with senior members and senior officers. Several areas were identified appropriate for review and they are listed in the Report, in no particular order of priority. Members are asked to consider the proposals

and approve the changes recommended.

- 3.4 Members should also be aware that currently two further reviews are in progress in relation to Standing Orders for Contracts and the Protocol for Disposal of Property and both will be the subject of a separate report to Council.

3.5 Proposed Changes

3.5.1 Questions By Members

3.5.1.1 The current procedure is set out in the Council's Rules of Procedure R10 (Part 4 of the Council's Constitution).

3.5.1.2 The current procedure does not include any guidance for Members on the basis upon which questions may be rejected, it is proposed therefore to include guidance on this issue within the rule. Members are asked to note that there is no proposal to vary the criteria for questions set out in R10(2)(a) namely that any question to be asked can be "in relation to any matter to which the Council have powers or duties or which affects the area of the Authority or part of it or the inhabitants of the area or any part of them".

3.5.1.3 It is recommended therefore that the Council's Rules of Procedure R10 be suitably amended to provide that the Chief Executive in consultation with the Monitoring Officer may reject a question if:-

- (a) it does not meet the criteria set out previously in R.10; (this is repeated in paragraph 3.5.1.2 above);
- (b) it is defamatory, frivolous or offensive;
- (c) it is substantially the same as a question which has been put at a meeting of the Council in the past six months;
- (d) it requires the disclosure of confidential or exempt information;
- (e) it relates to a matter which is the subject of legal or enforcement proceedings or an appeal to a Court or tribunal or to a Government Minister or the Welsh Assembly or an ongoing investigation by the Public Services Ombudsman or relates to a decision which has been made by the Council in exercise of its regulatory functions in respect of which there are legal rights of redress;
- (f) it relates to the personal circumstances or conduct of an officer or Councillor or to the conditions of service of individual employees;
- (g) it seeks to promote a political party or organisation;
- (h) it is a statement and not a genuine enquiry, or;
- (i) the preparation of the answer would require the expenditure of a disproportionate amount of time, public money or effort

The decision of the Chief Executive in the above matter shall be final and the reasons for rejection will be provided to the relevant Member in writing.

3.5.2 Motions On Notice

3.5.2.1 The current procedure set out in the Council's Rules of Procedure R11, (Part 4 of the Constitution) provide that a Notice on Motion shall after being presented be automatically referred to the appropriate overview and scrutiny committee whose recommendation will then be referred to the Council.

3.5.2.2 It is suggested that the current process adopted can cause delays in the decision making process as full Council only sits on a six weekly cycle and the current arrangements require the recommendation of the Overview and Scrutiny Committee in every instances to be referred to the Council.

3.5.2.3 It is recommended that the Council's Rules of Procedures R11 be suitably amended to provide that a Notice of Motion shall after being presented be automatically referred to the appropriate Overview and Scrutiny Committee whose recommendation will then be referred to the Council or the Executive dependant on who has responsibility for the decision making function in relation to the subject matter of the Notice of Motion. Members are asked to note that there is no proposal to limit the ambit of a Notice of Motion, this will remain, as "Every motion shall be relevant to some matter in relation to which the Council have powers or duties or which affects the County Borough".

3.5.3 Presentation Of Petitions

3.5.3.1 The current procedure is set out in the Council's Rules of Procedure, R28(3) (Part 4 of the Constitution).

3.5.3.2 R2.8(3) provides that a petition shall be "presented" only to the Chairman of Council by the Local Ward Member and by any Member authorised by that Ward Member".

3.5.3.3 There have been occasions in the past where individuals have made a request to present a petition personally to the Chief Executive who for the purpose of the Council's Procedure Rules is also referred to as "the Proper Officer". Technically this is not permitted under the existing rules.

3.5.3.4 It is also noted that within the current rules there is no mechanism for formally recording the receipt of petitions and there is no definition of a petition.

3.5.3.5 Furthermore there is no provision in the rules for the acceptance of petitions received in the post.

3.5.3.6 It is therefore recommended that the Council's Rules of Procedure R.28 be suitably amended to provide that:-

- (a) A petition may at the request of the lead petitioner be handed directly to the Chief Executive.
- (b) A petition may be posted to the Chief Executive Officer at the offices at Penallta House, Tredomen Park, Ystrad Mynach, Hengoed, CF82 7PG.
- (c) Following receipt of a petition, received either at Council, Committee or by the Chief Executive or by post the Petition will be submitted to the Proper Officer for entering onto a register kept for the purpose. The Proper Officer shall then refer it to the appropriate Director who will follow the procedure set out in R.28(5) of the Council's Procedure Rules.
- (d) The Procedure Rule shall apply to a petition containing greater than 30 signatories. A petition containing less than 30 signatories shall be dealt with as a standard service request and be referred to the appropriate Director. (This definition echoes the approach adopted by other Welsh Authorities and the internal process of the engineering division).

3.5.4 Protocol On Elected Members Rights Of Access To Information

3.5.4.1 Part 5 of the Council's Constitution includes several codes and protocols.

3.5.4.2 The protocol on Elected Members Rights of Access to Information sets out in detail the rights of Elected Members to access information. The justification for the change recommended below is aimed at strengthening the relationship between constituents and their elected ward representatives.

3.5.4.3 Members are also asked to note that Members questioned with the Monitoring Officer the necessity of obtaining the letter of consent referred to in the Protocol. On balance it is considered that this consent letter is necessary on the basis that it affords members protection from allegations in relation to possible breaches of the Data Protection Act. Furthermore it should be noted that one signed letter of consent as set out in the Protocol will permit a member to consult with the relevant cabinet member (para (b) of the consent letter refers).

3.5.4.4 It is recommended that a change should be made to the protocol, namely:-

Paragraph 1.12 (together with any associated amendments) to be amended to reflect the fact that a Members requests for information can range from general information about an aspect of the Council's work to specific requests for information on behalf of the constituent. (The reference to 'a member of the public' contained in the existing protocol be deleted)

3.5.5 Scheme Of Delegation

3.5.5.1 It is impossible to summarise in this Report the detailed breakdown of the functions and the split between those that by law must belong purely to the Council, those which belong purely to the Executive and those which can be allocated to the Council or to the Executive. They are however set out in full in Part 3 of the Council's Constitution in three categories.

- (a) Responsibility for local choice functions (i.e. those which the Council can opt to be dealt with either by the Executive or by the Council).
- (b) Responsibility for Council functions (regulations made by the WAG detail those areas which must be dealt with by the Council or one of its statutory committees such as planning or licensing).
- (c) Executive functions which broadly comprise of 'everything else' with a limitation that if the proposed decision cuts across the Authority's policy framework or approved budget, then the matter would require a reference to Council.

3.5.5.2 This part of the Constitution also includes an extensive scheme of delegation to Officers. This scheme enables Officers to take decisions on behalf of the Authority. Without such a scheme the whole business of Local Government would grind to a halt since each and every decision would require reference to a formal meeting (Council, Cabinet or Committee).

3.5.5.3 The scheme requires certain officer decisions to be included on the Information Bulletin on the Intranet, namely:-

- a. Matters which are not within approved budgets or within the Council's approved policies;
- b. Matters relating to the development of policy or budgets for the Authority;
- c. A matter which materially impacts upon the delivery of a service in respect of which a decision has been taken;
- d. Matters on which consultation produced responses which are contrary to the decisions taken by the Officer;
- e. The sale, purchase or lease or other disposal of land or property where the protocol for disposal of property requires a report.

3.5.5.4 The current scheme is drafted widely and permits delegation to the Chief Executive, or any Director or any Head of Service

3.5.5.5 It is considered that the delegation to **any** 'Head of Service' is too wide, since in theory this would enable the Chief Engineer as a Head of Service to authorise decisions made within the Education Directorate.

3.5.5.6 It is therefore recommended that the wording of the current scheme be amended, inserting (where appropriate) the additional word 'relevant' to all references to Head of Service' throughout the scheme.

3.5.5.7 In my view this minor change will not impact on the Authority's desire to operate an efficient and flexible decision making process. However it will ensure that decisions can only be made by the relevant professional officers with the appropriate expertise.

3.5.6 **Scheme Of Delegation - 'Local Choice Function'**

3.5.6.1 Paragraph 20 of the Local Choice Functions includes the power to make payments or provide other benefits in cases of maladministration etc. The decision making body is listed as the Council acting through the Standards Committee (Standards Committee may approve payments of up to £5,000 total in any one case).

3.5.6.2 This process can cause undue delay in dealing with matters, due to the fact that Full Council only sits on a six weekly cycle. However it is possible to call together the Standards Committee at very short notice. For this reason it is considered that an increase in the level of compensation that can be authorised by the Standards Committee be increased to £10,000 would improve efficiency.

3.5.6.3 It is recommended that the £5,000 payment that can be recommended by the Council be increased to £10,000.

3.5.7 **Scheme Of Delegation - General**

3.5.7.1 The current format of the Scheme of Delegation is considered to be difficult to follow and lacks clarity. A practical problem is that in its current format it is necessary to consider several separate pages of the Scheme in order to ascertain who has the decision making power i.e. Council or Cabinet and whether any delegation to officers exists.

3.5.7.2 It is recommended therefore that this Part of the Constitution should be simplified by re-formatting the presentation so that all of the relevant information appertaining to a specific function is clearly set out in tabular format. In addition the Monitoring Officer should prepare simple general guidance which will be incorporated as a formal introduction to this part of the Constitution.

3.6 **The Future**

Members are asked to note the following issues:-

3.6.1 The Welsh Assembly are in the early stages of consultation on proposals to vary the Regulations that govern the discharge of the functions of local authorities. These regulations are likely to come forward in the Autumn. Consequently a separate Report will be issued when the timetable for the implementation of the Regulations has been issued.

3.6.2 The Welsh Assembly are also in the process of reviewing the operation of local government scrutiny. This topic has been the issue of a previous Report. It is anticipated that further Reports will be forthcoming and some of the recommendations

of the Welsh Assembly may require changes to be made to the Council's Constitutional arrangements.

- 3.6.3 The Council is currently awaiting the statutory guidance in Wales in relation to Crime and Disorder Scrutiny and the associated 'Councillor Call for Action' in relation to sections 19 and 20 of the Police and Justice Act 2006, which is due to come into force in Wales on 1st October 2009. This topic has also been the subject of a previous report, and again it is anticipated that further reports will be forthcoming. These legislative changes may also require changes to be made to the Council's Constitutional arrangements.

4. FINANCIAL IMPLICATIONS

- 4.1 There are none.

5. PERSONNEL IMPLICATIONS

- 5.1 There are none.

6. CONSULTATIONS

- 6.1 There are no consultation responses which have not already been reflected in the body of this Report.

7. RECOMMENDATIONS

- 7.1 That the various recommendations set out in paragraphs 3.5.1 to 3.5.7 be approved and the terms of the Council's Constitution be suitably amended by the Monitoring Officer.

8. REASONS FOR THE RECOMMENDATIONS

- 8.1 In order to keep under review the requirements of the Council's Constitution.

9. STATUTORY POWER

- 9.1 Local Government Acts 1972 and 2000. This is a Council function.

Author: Daniel Perkins, Head of Legal Services/Monitoring Officer
Consultees: Stuart Rosser; Nigel Barnett; Sandra Aspinall; Anthony O'Sullivan; Albert Heaney; Councillor A. Pritchard, Councillor C. Mann

Background Papers: A copy of the existing Constitution is available on the Council's Intranet Website