

MEETING	Governance and Audit Committee
DATE	7 September 2023
TITLE	Review of the Constitution
PURPOSE OF THE REPORT	To seek support for the proposed amendments to the Constitution
RECOMMENDATION	That the Committee supports the proposed amendments to the Constitution and recommends to the Full Council that they be adopted.
AUTHOR	Iwan Evans – Monitoring Officer

1. Introduction

- 1.1 The Committee will remember that I reported to the meeting on 25 May 2023 that I intended to review the Constitution partly, to complete the updating from the Local Government and Elections (Wales) Act 2021 but also to take the opportunity to review more widely. It has been a period that has seen several changes to the Constitution as the Act has become into force but the remaining changes are a matter of bringing the house to order. However, there are other elements of the Constitution that need updating either because of legal changes or that arrangements or circumstances warrant a change.
- 1.2 The issues in this report are the elements of the Constitution which are required to be adopted by the Full Council. Others which inevitably result from a change in the law are matters within my delegated rights. Others are made by amending the Delegation Scheme of Delegation which are matters that can be undertaken by the Leader. Changes made through delegated arrangements still need to be reported to the Full Council for information.

2. Functions of the Full Council

- 2.1 Under Cabinet arrangements statute allocates responsibilities for functions between the Full Council and the Cabinet. According to Section 13 of the Local Government Act 2000 the established principal is that all functions are in the hands of Cabinet unless reserved to the Full Council and its committees by regulations. The main regulations in this context are the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007. This is the basis of the current Constitution and allocates a range of functions to the Full Council or partly to the Full Council and Cabinet etc. However, barring one technical change regarding Corporate Joint Committees these regulations have not been updated since 2007. This means that several statutory issues in the list of Full Council functions have been repealed or replaced. Meanwhile the Council's arrangements have also changed, new laws such as the Wellbeing of Future Generations (Wales) Act 2015 have created new frameworks, and the Local Government and Election (Wales) Act 2021 in itself has led to new arrangements specifically Part 6 which is about performance arrangements.

2.2 I have highlighted the changes recommended for Part 4 of the Constitution in **Annex 1 Part A**. The recommendation is the result of these factors and are a means of providing greater clarity about the matters which will be considered by the Full Council. I also note an element that is becoming more prevalent namely circumstances in which Statutory Guidance rather than legislation requires a matter to be considered by the Full Council. Such guidance is inevitably followed e.g the Annual Report of the Director of Social Services or the State of the Market Report and it is right that this is addressed in the Constitution.

The current Section 4 can be found on this link:

[Section-4---Full-Council.pdf \(llyw.cymru\)](#)

3. Part 6 of the Local Government and Elections (Wales) Act 2021

3.1 The Committee will be aware of the new provisions relating to the management and reporting of the performance of principal councils in Part 6 of the Act. One of these is the performance review by an independent Panel. It is a statutory requirement that the Council undertake such a performance review once during a Council's term. This is described in the statutory guidance (Appendix 2) on performance arrangements and in the following terms:

“ . 3.10 The panel performance assessment will assess, as the council does through self-assessment, the extent to which the council is meeting the performance requirements. It is not about checklists, it is not a form of inspection, and it is not an audit. It is about supporting the council to achieve its aspirations through developing and deepening its understanding about how it is operating, and how it can ensure it is able to offer effective services for the long term.

3.11 The panel are not responsible for holding the council to account but should offer an external view of how the council is operating. This does not replace auditors, inspectors, or regulators' assurance role. This is about supporting councils to understand how they can improve the extent to which they are meeting the performance requirements.

3.12 It is for the council to determine how to make the most effective use of the panel performance assessment, and ensure its findings are used alongside other sources in determining its approach to corporate performance, governance and improvement.”

3.2 There are three statutory duties attached to the conduct of a panel assessment.

- (a) appoint a performance assessment panel
- (b) respond to a performance assessment report by a panel
- (c) respond to recommendations about responding to a panel report.

The Act allows the Council to allocate these functions either to the Full Council or the Cabinet. But there is no scope to further delegate of these primary matters. You will note in Appendix 2 that there is detailed statutory guidance on the appointment of a Panel. However, when appointed and given terms of reference the Panel will then go on to conduct its work and prepare a report. With this in mind and given the nature of the work

of establishing the Panel within the statutory guidelines it is recommended to share these duties. The function of organising and appointing a panel be given to the Cabinet but that the response to the report and recommendations be retained to the Full Council. This would be compatible with current performance reporting arrangements but enable the establishment of the process to be moved forward in a timely manner. You will also note that this Committee has a role in considering the Panel's report and providing comments and recommendations on the report. The amendments can be found in Appendix 1 Part B.

4. Notice of Members Questions

4.1 The notice period for service of notice of questions by members to the full Council is currently 2 clear days. This means there are two working days from receiving the question to prepare and share the response. A request has been made to extend this time to 3 working days which would enable the question to be delivered before the end of the previous week and to give additional time to deal with questions that can be on technical and detailed matters.

“A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the Head of Democratic Services no later than midday 3 clear days before the day of the meeting.”

5. Sealing Contracts

5.1 The Constitution requires that certain contracts are provided under seal. This is based on a financial threshold which requires the Council seal to be placed on contracts worth more than £50,000. This threshold has not been reviewed for quite a number of years. My recommendation would be to increase the threshold to £100,000 overall where we ask to seal or execute contracts on the basis of this value. This would enable a range of smaller contracts to be executed without the formality of sealing.

Recommendation

That the Committee supports the proposed amendments to the Constitution and recommends to the Full Council that they be adopted.