

CYNGOR SIR POWYS COUNTY COUNCIL.

**County Council
23 September, 2021**

REPORT AUTHOR: Head of Legal and Democratic Services

SUBJECT: Constitution

REPORT FOR: Decision

1. Purpose of Report

1.1 The Council is asked to consider possible revisions to the Constitution. The following recommendations were considered and approved at the meeting of the Democratic Services Committee on 14 September, 2021.

2. Possible Revisions to the Constitution

2.1 Section 4 – Full Council.

The following amendment is proposed to this section of the Constitution:

- The Standards Committee is required to make an annual report to Full Council from May 2022 in accordance with the Local Government and Elections Act 2021. (Rule 4.18.28)

Proposed Recommendation to the County Council:	Reason for Recommendation:
1. That the amendment to Rule 4.18.28 of the Constitution (Full Council) is approved as set out in the draft Section 4 attached to the report. 2. That the Monitoring Officer is authorised to make such other changes to the Constitution as may be required to reflect the change set out in Recommendation 1 above.	To review and amend the Constitution so that it aligns with the current requirements of the Council.

2.2 Section 11 – Officers.

The following amendments are proposed to this section of the Constitution:

- Updating Section 11 to correspond to the decision taken by Full Council in July 2021 in relation to the staffing structure proposed by the Chief Executive.
- Updating the functions and areas of responsibilities for Chief Officers and Deputy Chief Officers. (Rules 11.2 and 11.35)
- Updating the details of Statutory Officer. (Rule 11.3)
- The Monitoring Officer being able to make minor amendments in the Constitution. (Rule 11.16)

- Addition of the Functions of the Data Protection Officer. (Rule 11.33)
- Amendments to the appointment of Proper Officers. (Rules 11.36 to 11.39)
- Updating the format and details of Proper Officers. (Rule 11.40)
- Amendments to the Officer Employment Procedure Rules) (Rules 11.46 to 11.73 together with Appendices A and B)

Proposed Recommendation to the County Council:	Reason for Recommendation:
<p>3. That the amendments to Section 11 of the Constitution (Officers) are approved as set out in the draft Section 11 attached to the report.</p> <p>4. That the Monitoring Officer is authorised to make such changes to the Constitution as may be required to reflect the change set out in Recommendation 3 above.</p>	<p>To review and amend the Constitution so that it aligns with the current requirements of the Council.</p>

2.3 Governance and Audit Committee – Section 9 (Regulatory Committees).

2.3.1 Members are asked to consider an amendment to the membership of the Governance and Audit Committee from May 2022 arising from the Local Government and Elections (Wales) Act 2021.

Background

2.3.2 Section 116 of the Act makes requires the following amendments to the membership of the Committee with effect from May 2022:

- One third of the membership of the Governance and Audit Committee must be lay persons (Independent Members);
- The person appointed as Chair of the Governance and Audit Committee must be a lay person (Independent Members).

2.3.3 Whilst this change does not come into effect until May 2022, it is necessary for the Council to begin the process of recruiting Independent Members for the Governance and Audit Committee from May 2022. The Council needs to ensure that it starts the process sufficiently early to be able to draw from a wide pool of potential candidates for the role. It is hoped to commence the recruitment process during the Autumn if the proposed amendments to the Constitution are approved by Full Council in September 2021.

2.3.4 The reasoning for the Welsh Government's changes are set out in Paragraph 14.47 of the Explanatory Memorandum to the Local Government and Elections (Wales) Bill as follows:

"14.47 Lay members also bring a range of skills, perspectives, and experiences, which can strengthen the scrutiny an Audit Committee can provide. Welsh Government considers that Audit Committees with the statutory minimum of one lay member are less likely to gain these benefits".

- 2.3.5 Currently the Governance and Audit Committee comprises 14 Members plus and 1 Independent Member. To comply with the requirement for one third of members to Independent Members, we can either have a Committee of 3 (i.e. 2 Members plus 1 Independent members), a Committee of 6 (i.e. 4 Members plus 2 Independent members), a Committee of 9 (i.e. 6 Members plus 3 Independent, a Committee of 12 (i.e. 8 Members plus 4 Independent members) or a Committee of 15 (i.e. 10 Members plus 5 Independent members).
- 2.3.6 It is considered that a Committee of only 3 or 6 are wholly inappropriate due to the limited number of Council Members being on such a Committee. Similarly, having a committee of 12 or 15 would mean the Council would needing to attract 4 or 5 new Independent Members as the current Independent Members term of office expires in May 2022 and his position cannot be renewed. The recruitment of 4 or 5 new Independent Members with the required skills set may prove to be difficult, if not impossible.
- 2.3.7 It is therefore recommended that the Constitution is amended to provide for a Governance and Audit Committee consisting of 9 (6 Councillors and 3 Independent Members) which would satisfy the one third requirement of the 2021 Act.
- 2.3.8 The above recommendation has been considered and approved by Group Leaders, the Governance and Audit Committee and the Democratic Services Committee.

2.3.9 Recommendation:

Recommendation to the County Council:	Reason for Recommendation:
<p>5. That Council approves an amendment to the membership of the Governance and Audit Committee to become 6 Councillors and 3 Independent Members as from May 2022.</p> <p>6. That the Monitoring Officer is authorised to make such amendments to Section 9 of the Constitution as are required to implement recommendation 5 above.</p> <p>7. That the Lay Members are in place as near to the start of 2022 (January) as possible in order to ensure continuity and to provide training and transition time so that the new Committee can operate efficiently from May 2022.</p>	<p>To meet the requirement of the Local Government and Elections (Wales) Act 2021 that as from May 2022, one third of the membership of the Governance and Audit Committee must be lay persons.</p>

2.4 Finance Panel and Section 7 (Scrutiny Procedure Rules)

2.4.1 Members are asked to consider proposed revisions to the way that Finance Panel meetings are held until May 2022 and also revisions to the composition of the Panel from May 2022.

Background

- 2.4.2 A review of Scrutiny was undertaken by Audit Wales in 2021. One of the recommendations was that the Council should clarify the role and membership of the Finance Panel in relation to the Portfolio Holder for Finance being a member of the Panel rather than being an invitee.
- 2.4.3 Members will recall that in January 2019 when the scrutiny committee structure was revised, it was decided that meetings of the Finance Panel should be held in public. It is widely accepted that in hindsight this has not been helpful and in fact has hindered a full and open debate especially around the budget development process. In view of the Audit Wales recommendation, it is timely to review the composition of the Finance Panel and consider whether an alternative approach is appropriate.
- 2.4.4 Discussions have taken place with the Chair of the Finance Panel and the Chair of the Governance and Audit Committee it is suggested that a two phased approach be taken to improve the effectiveness of the Panel and address the concerns of Audit Wales.

The Way Forward.

- 2.4.5 Phase One would include the following to be implemented from September 2021:
- Splitting meetings of the Finance Panel between public meetings, to review budget monitoring reports for Revenue and Capital and any other monitoring and performance reports as appropriate, and closed confidential meetings to discuss the development of the budget, future planning and finance transformation, allowing a more frank, open and honest discussion, and providing an opportunity to consider proposals in closed session prior to formal inclusion in the budget and public engagement. These would be scheduled as separate meetings.
 - Introduction of Meetings between Finance and Opposition Group Leaders during the budget setting process, to keep them updated on funding information and offer advice and guidance should they wish to develop an alternative budget for consideration by Council
 - There would be no change to the current composition of the Panel other than the Portfolio Holder for Finance would be required to attend all meetings and other Portfolio Holders together with relevant officers would be invited to attend meetings as necessary. Portfolio Holders will not be formal Members of the Finance Panel and will not have voting rights.
- 2.4.6 Phase 2 would include the following to be implemented from May 2022:

- The Finance Panel should consist of 9 Members politically balanced plus an Independent Member nominated by the Governance and Audit Committee and having the best skills for the Finance Panel.
- As such, political groups would decide who is best placed to be on the Panel, considering the skills set of members to fulfil this role.
- Based on the current membership of the political groups the revised membership would be 3 Independent ; 2 Conservative ; 2 Liberal Democrats / Greens; 1 Labour ; 1 Action for Powys plus an Independent Member of the Governance and Audit Committee = 10 Members. However, this could change with changes in the Membership after the May 2022 elections.
- Public and private meetings of the Panel as set out on para 2.4.5 above to continue.
- Meetings between Finance and Opposition Group Leaders during the budget setting process to continue.
- The Portfolio Holder for Finance would be required to attend all meetings and other Portfolio Holders together with relevant officers would be invited to attend meetings as necessary. Portfolio Holders will not be formal Members of the Finance Panel and will have not have voting rights.

2.4.7 Recommendation:

Proposed Recommendation to the County Council:	Reason for Recommendation:
<p>8. That the revisions to the operation and composition of the Finance Panel in two phases as set out in Paragraphs 2.4.5 and 2.4.6 above be supported.</p> <p>9. That the revised Terms of Reference of the Finance Panel as set out in Rules 7.37 and 7.38 is approved and implemented with immediate effect.</p> <p>10. That the Monitoring Officer is authorised to make such changes to Section 7 of the Constitution as may be required to reflect the changes set out in Recommendations 8 & 9 above.</p>	<p>To review and amend the Constitution so that it aligns with the current requirements of the Council.</p>

Relevant Policy (ies):			
Within Policy:	Y	Within Budget:	Y

Relevant Local Member(s):	N/A
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Person(s) To Implement Decision:	Wyn Richards
Date By When Decision To Be Implemented:	

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Background Papers used to prepare Report: