



Standards and Constitutional Oversight Committee
Thursday, 10 September 2020

REPORT TITLE:	Draft Revised Constitution
REPORT OF:	Director: Law and Governance (Monitoring Officer)

REPORT SUMMARY

The Council has adopted a committee system of governance from the beginning of the 2020/21 municipal year. The forthcoming change to its governance arrangements necessitates a revised Constitution to be in place for the Annual Meeting in September 2020.

A Governance Member Working Group, appointed by the Standards and Constitutional Oversight Committee, has overseen the process of drafting the revised Constitution. Full Council originally requested that this be ready for adoption for its next meeting of 16th March 2020, following consideration of the draft by a meeting of this Committee in February 2020. With the outbreak of the Covid-19 pandemic, and subsequent disruption to the Council calendar of meetings, the Annual Meeting of Council was moved from 19th May 2020 to 28th September 2020, and ratification of the revised Constitution was rescheduled accordingly.

The Governance Member Working Group also felt it advisable to delay adoption to allow for a further period of consultation and for training. The elements of the attached draft revised Constitution underwent a further review by the Governance Member Working Group on 30th July and 24th August 2020.

RECOMMENDATIONS

That the Committee recommend to Council for adoption the draft revised Constitution (attached as Appendix A) at the Annual Meeting of Council to be held on the 28th September 2020.

SUPPORTING INFORMATION

1.0 REASON/S FOR RECOMMENDATIONS

- 1.1 To comply with the resolution of Council of 14th October 2019 (minute 75/2019 refers) and provide a draft revised Constitution prior to the Council moving to a committee system form of governance from the Council's Annual Meeting of 28th September 2020.

2.0 OTHER OPTIONS CONSIDERED

- 2.1 To recommend the draft revised Constitution according to Council's desire to adopt the revised Constitution for the 2020/21 municipal year as originally planned on 16th March 2020. - This had not been recommended as, without the further consultation that an extended timeline has allowed, Members would not have been able to fully consider the proposed draft
- 2.2 Various options and amendments have been discussed by the Member Working Group and key matters have been discussed by the Group Leaders. The variations, and reasoning for and against any alternative changes to the original draft based on existing and model documentation, are set out in the notes of the Member Working Group.
- 2.3 That the Council undergo a further round of consultation and update all or further elements.
- 2.4 This would not allow adoption of a revised Constitution to be adopted to facilitate and coincide with the change to a committee system as of the Annual Meeting, which would lead to the Council operating without a working constitution. Further consultation and an extended timeline would necessitate an extraordinary meeting of the Committee and of Council. The workings of the Constitution, once adopted however, can be reviewed as a result of its operation this coming and following municipal year.

3.0 BACKGROUND INFORMATION

- 3.1 Further to the decision of Council of 14th October 2019, this report updates the Committee on the considerations of the Member Working Group and presents a draft Constitution for consideration.
- 3.2 The Council meeting of 14th October 2019, at minute 75/2019, determined that

(1) Having considered:

- (a) the materials presented to the Governance Review Working Group; and*
- (b) the discussions held at the Working Group's meetings and subsequent Member sessions,*

Council is of the view that Wirral's residents will now be better served by the introduction of a more accountable and transparent way of conducting the

Council's business, policy formulation and decision-making. Council should now move to a Committee based structure to be designed, finalised and in place for the next Municipal Year.

Council notes that a range of costs have been put forward that apply to the revised arrangements. It is recognised however, that revisions to the existing Constitution have been under discussion for some time and that costs would have been incurred in that process. Council considers that the operational costs of the new system of governance should be the subject of regular reports and that in practice these costs should be minimised.

- (2) *There be a move from Leader and Cabinet Executive arrangements to a Committee System form of governance arrangements to take effect from the Annual Council Meeting in 2020; and*
- (3) *The Standards and Constitutional Oversight Committee accordingly prepare a draft revised Constitution to propose to the Council meeting of 16th March 2020.*

3.3 The Governance Member Working Group has met on several occasions to agree key factors and oversee the drafting of the Constitution to take effect post May 2020. The Governance Member Working Group consists of:

- Cllr Tony Cox, Chair (Conservative Group)
- Cllr Chris Cooke (Green Group)
- Cllr Phil Gilchrist (Liberal Democrat Group & Group Leader)
- Cllr Moira McLoughlin (Independent Group & Group Leader)
- Cllr Gill Wood (Labour Group)

Also invited and attending were:

- Cllr Pat Hackett, and latterly Cllr Janette Williamson, (as Labour Group Leaders)
- Cllr Ian Lewis (as Conservative Group Leader)

3.4 The Committee had adopted the recommendation of the Member Working Group that change of governance arrangements, and therefore the drafting of the Constitution, was to be to a Streamlined Committee System form of governance. This was considered to best meet the objectives set in its decision to adopt a committee system form of governance arrangements, which were:

- **Accountability** – responsibilities and accountability should be clear, within the Council and to residents;
- **Credibility** – governance should assist good decision making, which involve proper and early scrutiny;
- **Transparency** – the decision-making process should be open and transparent to Members and to the public;
- **Collaboration** - decision making should be collaborative across parties and less combative;
- **Timeliness** – decision making should be both quick and effective and, when necessary, allow for urgent decision making.

- 3.5 Key considerations in the drafting have been discussion to produce:
- (a) A committee structure of seven policy committees, together with regulatory, statutory and other committees, as described in the structure diagram and as more fully set out in the attached draft at Articles 6, 7 and 8 and Part 3(B).
 - (b) A set of Articles that enabled better description of the Council's working.
 - (c) An ability to enable Members to influence decision making, through the process for controversial decisions and decision review.
 - (d) Updated standing orders and processes of the constitution for the purposes of
 - (i) adapting them for the introduction of the committee system;
 - (ii) to correct anomalies and errors; and
 - (iii) to improve them through a process of identifying the differences between the model versions of documents (the 'factory setting') and the Council's current documentation, explaining those differences and then considering which version was preferable going forward.
- 3.6 There remain areas of the draft revised Constitution that are due or are mid-way through a process of being updated, but remain outstanding at the time of this report. These in particular are:
- (a) Member Code of Conduct – Included is an updated Member Code of Conduct which corrects an anomaly in the previous Code and aligns the Code to be common across the City Region and with the LCRCA. The Local Government Association is currently consulting on a new Model Code, which the Governance Member Working Group commented upon, and a version is due to be published later in the Autumn.
 - (b) Financial Regulations – These have been updated to accommodate the change to the Committee system but are due a further and complete review will be undertaken in coming months. This will seek to simplify the Financial Regulations and give consideration to shortening them, with day to day detailed material transferring to a Financial Handbook.
 - (c) Contract Procedure Rules (Standing Orders) – Minor amendments have been made and updates included, such as transposing the Social Value Policy into the rules, but a full review is required in due course.
 - (d) Whistleblowing Policy – This is a review, considered by the Audit and Risk management Policy, that is almost complete and a report is to come before Members shortly but has not yet been considered.
 - (e) The list of appointments to outside bodies will also require a review in due course.
- 3.7 This resulted in the draft revised Constitution attached for Members' consideration as **Appendix A**.
- 3.4 Discussion amongst Members earlier in the year led to the Committee's decision that further workshops and training should take place to enable further consultation and involvement before recommending a final version to Council. Workshops have since been held, alongside a training programme, led both internal and external providers assisted by the LGA and CfPS.

4.0 FINANCIAL IMPLICATIONS

- 4.1 There are direct costs associated with making the change from one system to another. The Centre for Public Scrutiny (CfPS) have reported that the Government has estimated that the costs of moving from one system to another can range from £70,000 to £250,000. The CfPS believes this estimate is rather high, as do the Council's officers, and consider a more accurate figure is likely to be in the tens of thousands.
- 4.2 The approach adopted has been to utilise in-house staff to re-draft the Constitution. The costs therefore being related to knock-on legal instructions due to staff unavailability, which have been managed within existing budgets. Direct costs are therefore limited to the purchase of external validation (critical friend) and are expected to be below £5,000. It should also be noted that the LGA have funded the CfPS training and workshops to be provided, which the Council will top up should further work be required.

5.0 LEGAL IMPLICATIONS

- 5.1 What forms of governance and governance arrangements the Council may operate, and how or whether it may vary them, is determined by Local Government Act 2000 (as amended by the Localism Act 2011) ('the Act').
- 5.2 Under Section 37 of the Act (Local authority constitution), the Council must prepare and keep up to date a document, referred to as their constitution, which contains a copy of the authority's standing orders for the time being, a copy of the authority's code of conduct for the time being, and such other information (if any) as the authority consider appropriate.
- 5.3 The additional requirement to comply with a Direction of the Secretary of State as to what information a constitution must contain has been repealed (for England) since the last Council Constitution was drafted. The original Direction remains a useful checklist, however, containing as it does some eighty-two items of information that should be available to the public through a council's constitution.
- 5.4 The Constitution therefore contains a mixture of those standing orders and requirements that are a matter of choice for the Authority and those that are mandatory, including those pursuant to the now applicable Local Authorities (Committee System) (England) Regulations 2012.
- 5.5 In drafting a Constitution, the Council must also have regard to the Guidance issued by the Secretary of State under section 38 (now section 9Q) of the Act. The Guidance on "Modular constitutions for English local authorities" as issued has now been archived but remains extant and relevant, so must therefore be had regard to so far as it has not been superseded by later legislation. The proposed draft Constitution is considered to be in accordance with that Guidance, except for elements detailed below. In this regard the Guidance, states:

"9.7 The Secretary of State considers that in the context of local governance arrangements the terms efficient, transparent and accountable should be taken to mean the following:

- *efficient: the local authority's arrangements for making decisions include the capability for decisions to be made quickly in response to changing circumstances and the developing needs and aspirations of local communities;*
- *transparent: anyone who has dealings with the local authority can easily determine who is responsible for decisions in respect of the matters with which they are dealing with the local authority and that they can also easily determine how best to make representations to that;*
- *accountable: the local authority's governance arrangements enable people to find out about decisions which have been taken and include the capability for review and scrutiny of any decision made in respect of any of the local authority's functions by members of the local authority who were not directly involved in making the decision in question.*

“9.8 The Regulations and this guidance provide that alternative arrangements take the following broad form:

- *the full council of the local authority sets the policy framework and approves the budget, proposals for which would in general be presented to it from one or more committee(s) of the local authority;*
- *no more than five committee(s) (excluding regulatory committees, area committees and joint committees) of the local authority with delegated functions from the full council to implement the policy framework and to put proposals to the full council for future policies and budgets;*
- *one or more overview and scrutiny committee(s) to hold the policy committees to account in public, assist them in policy development and review and examine matters of wider local interest, involving local stakeholders in their deliberations; and*
- *a Standards Committee (and any sub-committees for parish councils) appointed in accordance with Part III of the Act.*

“9.9 In this chapter "policy committee" means any committee appointed under section 102(1)(a) which is not a regulatory committee or an area committee within the meaning of regulation 16A of the Local Government (Committees and Political Groups) Regulations 1990. In this chapter "regulatory committee" means any committee established exclusively to discharge any of the functions mentioned under headings A (development control), B (licensing and registration), C (health and safety at work), H (pensions) and I (miscellaneous) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Therefore policy committees include neither committees appointed to discharge 'quasi-judicial' functions such as planning and licensing nor joint-committees on which the local authority is represented.”

5.6 The proposed draft committee structure for the Council differs in containing seven policy committees, exceeding the maximum of five set out in the Guidance. Other councils that have moved to the committee system it was noted have policy committees between three and seven. The Member Working Group considers that it has had regard to the Guidance but nonetheless recommends seven as a reasonable

accommodation as it is felt to better meet the needs of Wirral Borough Council and is also within the range adopted by other authorities in a similar position.

- 5.7 The proposed draft committee structure also differs in its approach to the Overview and Scrutiny Committee(s). The Council is now able, under the later changes introduced by the Localism Act 2011 and the 2012 Regulations, to not conduct overview and scrutiny in this way. Rather than as set out in the Guidance, however, it is proposed to retain a process of decision review for councillors who are not members of the responsible policy committee to hold decision makers to account. A specified single committee has been created to approach the Council's remaining role in terms of statutory scrutiny functions and scrutiny of external bodies, a Partnerships Committee. Other forms of overview and scrutiny, the policy development and review of implementation, however, are proposed to be undertaken by the policy and services committees themselves.
- 5.8 The Council is required to operate a committee system form of governance as of the Council's Annual Meeting of 2020. The Council must now conduct itself under amended governance arrangements, which are included within the draft Constitution.
- 5.9 The ability for the Council to change from one of the permissible forms of governance arrangements of a local authority to another is provided for by Chapter 4 of the Local Government Act 2000. Once the decision has been taken to move from one system to another, as has now been the case for Wirral Council, the local authority may not then pass another resolution that makes a change to another of the permissible forms of governance arrangements 'before the end of the period of 5 years' beginning with the date the first resolution is passed, unless that change is by way of referendum. Any change then takes effect from the following Annual Meeting.

6.0 RESOURCE IMPLICATIONS: STAFFING, ICT AND ASSETS

- 6.1 There are significant implications for the Council in changing its decision making structure to a new form of governance. Across the Council, the change to potentially different ways of working and briefing with Members will require greater and different input from officers. The extent of these resource implications in the longer term will vary dependent on a number of factors. This is being addressed as part of the project planning approach and includes an extensive training programme, support measures and dedicated online system and intranet mini-site.

7.0 RELEVANT RISKS

- 7.1 A change in the form of arrangements will represent a key and integral element of the overall organisational vision of the Council and also how it interacts with other stakeholders. That process of change will raise a number of associated risks which will need to be identified and managed as part of the ongoing process of implementation and practice post September 2020.
- 7.2 A key risk to the objectives of the decision made by Council is that a change to the form of governance arrangements fails to bring with it the desired change in culture. The ongoing training and workshop programme for Members and officers together with the approach of the Constitutional drafting, in including role descriptors, improved working protocols and mandatory training, will assist in mitigating this risk.

8.0 ENGAGEMENT/CONSULTATION

8.1 Following the engagement prior to the decision of Full Council, the committee design and process was subject to consideration by the Governance Review Working Group. As per the pre-decision engagement, the Constitution drafting has involved each member of the Working Group consulting with their own Political Groups. This has been supplemented by a meeting offered to be held by the Director of Governance with each Political Group individually before Christmas 2019. This process has then enabled further work to be undertaken by the Member Working Group in refining the proposed structure in readiness for the drafting process and the draft Constitution proposal attached to this report. Additional training and briefing sessions were held for all Members in June/July 2020

8.2 Whilst there is no legislative requirement to consult on the proposed changes, the Council's current Constitution at Article 15.3(ii) states:

“Change from a Leader and Cabinet form of Executive to alternative arrangements - The Council must take reasonable steps to consult with local electors and other interested parties in the area when drawing up proposals.”

The public notice on the change also linked to the creation of a dedicated webpage to allow interested members of the public to comment upon the proposed committee design.

8.3 Further engagement through the recommended extension to the timeline, which would allow publication of the Appendix as a draft for consultation as well as workshops with Members and further meetings of the Member Working Group, is discussed above.

9.0 EQUALITY IMPLICATIONS

9.1 Wirral Council has a legal requirement to make sure its policies, and the way it carries out its work, do not discriminate against anyone. The work detailed in the report does not require an Equality Impact Assessment to be undertaken.

10.0 ENVIRONMENT AND CLIMATE IMPLICATIONS

10.1 There are no Environment and Climate implications arising from this report.

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APPENDICES

Appendix A – Draft Constitution

BACKGROUND PAPERS

Notes of the Governance Member Working Group
Notes of the Group Leaders' Meetings (Committee)
Notes of the Project Group (Committee Cell) and Project Plan

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Standards and Constitutional Oversight Committee	11 Jun 2019 26 Sept 2019 26 November 2019
Council	25 February 2020 14 May 2019 14 October 2019