

SUBJECT:	Constitution
MEETING:	Democratic Services Committee
DATE OF REPORT:	18 Jan 21
DIVISION/WARDS AFFECTED:	All

1. PURPOSE

- 1.1 To consider the revised and updated MCC Constitution.

2. RECOMMENDATIONS

- 2.1 The report is submitted to the Committee as part of the consultation leading to Full Council debate and decision in March 2021. No decision is required.

3. KEY ISSUES

- 3.1 Local Authorities operate under myriad laws and similarly exercise a raft of legal powers. The purpose of the Constitution is for Council to determine how it wishes the organisation to function.
- 3.2 Fundamentally that means Council setting out the standards that it expects, the ways in which business will be conducted, the architecture of the organisation and the delegation of the powers that the Council has.
- 3.3 The Constitution was last brought to Council in December 2017 and so is out of date in terms of some legal changes that have taken place since, and in terms of the senior staff positions and the powers and responsibilities that are delegated to them. It has not made the continued operation of the authority unlawful, but it is not an optimum document.
- 3.4 A review of the constitution started in August 2019, seeking views of Members and Officers alike and, at the point of near completion in February 2020, suffered a hiatus as first flooding and then Covid took precedence. That work has been picked up over the Christmas period and is now due to be finished for presentation to Council in March 2021.
- 3.5 This presentation at the Democratic Services Committee is part of a final consultation process with Members before that March meeting.
- 3.6 The review had 4 key aims:
- utility. The previous document was difficult to reference owing to the numbering and layout and so this document seeks to simply run consecutively through each different section from 1 to 43, with each heading hyperlinked in an index for ease of reference and use;
 - currency. A review of out of date information, Committee details, Officer roles and delegations has been undertaken;
 - decision making. Primarily contained at Part 3, this is the heart of any Constitution and so there is an increased degree of explanation in this section and articulation of where decision making powers lie;
 - lessons learned. This is based on the experience of Council meetings and representations made by Councillors regarding the functioning of the organisation, conduct of meetings etc. and seeks to address some of those concerns.

- 3.7 The result is a completely re-worked document and Enclosure 1 contains a draft version with all track changes recorded. While it has decreased from 354 to 282 (at the last count) pages, the word count has increased.
- 3.8 Appendix 1 contains a table that seeks to capture some of the more substantial changes that have been made throughout the process. It is not exhaustive, hence the need for the absolute clarity that Enclosure 1 provides – so that no change may go unhighlighted. Given the way that a track changed document presents, a ‘clean’ version is contained at Enclosure 2.
- 3.9 Appendix 2 attempts to capture a number of suggestions that were submitted and not included.
- 3.10 The editorial decisions throughout are that of the Monitoring Officer drawing upon observation of the activity of the organisation, consultation of the law, review of the model constitution commissioned by the Lawyers in Local Government and of a number of Constitutions of other Local Authorities. The final decision, where no ultra vires restrictions apply, has to be Council’s.
- 3.11 The document remains in draft. The full changes that the Local Government and Elections Act (due to receive Royal Assent January 2021), will introduce are not fully captured owing to ongoing work within working groups. Examples would be e-petitions and remote meetings.

4. EQUALITY AND FUTURE GENERATIONS EVALUATION (INCLUDES SOCIAL JUSTICE, SAFEGUARDING AND CORPORATE PARENTING)

- 4.1 Stylistically the new draft seeks to be gender neutral. Given the nature of the document is to create the framework for the organisation’s conduct and decision making, rather than a specific decision, there are no specific equality, socio economic or future generations impacts identified.

5. OPTIONS APPRAISAL

- 5.1 Council could continue to operate under the previous version but it contains incorrect information and would increase risk of legal challenge if not addressed.
- 5.2 A new model constitution may be drafted soon to incorporate the changes introduced by the Local Government and Elections Act; however, to wait on an uncertain timeline would not be optimum and any model constitution takes considerable work to shape into a locally relevant document and would not reduce effort and further delay changes.
- 5.3 The existing Constitution, for comparison purposes, is [here](#).

6. RESOURCE IMPLICATIONS

- 6.1 There are no costs identified as part of the review.

7. CONSULTEES

- 7.1 The process started with a request to all Members and Managers seeking submissions of proposed amendments and, in the drafting, has consulted the model constitution and a number of other Local Authorities’ constitutions.
- 7.2 In the final period leading to Council in March, the appendices will seek consultation from:

Democratic Services Committee
Group Leaders
Cabinet
All-Member seminar
SLT

8. AUTHOR

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Appendices:

1. The draft Constitution and key changes.
2. Additional submissions.

Enclosures:

1. Track changed constitution.
2. 'Clean' draft constitution.

Appendix One - The Draft Constitution Explained and Key Changes

Format

1. The revision seeks to provide a continuous and reference-friendly format with a hyperlinked contents page.
2. The Constitution is split into 6 'Parts':
 - a. Part 1 – Introduction. What the constitution is, how it should be used, and how to get involved;
 - b. Part 2 – Articles of the Constitution. The architecture – Councillors, Committees, roles and everything that makes up the organisation;
 - c. Part 3 – Responsibility for Functions. Where decision making powers lie and how they are delegated;
 - d. Part 4 – Rules of Procedure. How are meetings conducted, how is information accessed, budget and policy setting, the rules applicable to the Executive and to Select Committees and financial, contractual and employment rules;
 - e. Part 5 – Codes and Protocols. Code of Conduct, standards expected of Officers, bribery and corruption, disclosure of information, whistleblowing etc;
 - f. Part 6 – Schedule of Members' Remuneration.
3. Each part is split into sections, subsections, paras and sub-paras split thus:
4. Section.
 - 4.1 Sub-section.
 - 4.1.1 Para.
 - (a) Sub-para.
 - (i) Sub-para.
 - (1) Sub-para.
5. Sections and sub-sections are hyperlinked in the contents page.

Key Changes

6. The table below seeks to set out some of the key changes, ie. changes that are not simply editorial or mandated in law, or raise questions on some inclusions. Given the scale not just of the change in the redrafting, but also the amount of legislation or policy that sits behind much of the Constitution, it is a best effort at capturing the changes, but for certainty Enclosure One should be referred to.

Section, Subsection or Para	What	Notes
2-4	Introduction Sections	Redrafted to try and make the Constitution more user friendly and accessible to constituents.
3.5	Amendments	Duty to report non-Council changes within 6 months of the date of change.
4	Getting Information and Getting involved	Moved out of Articles and into opening paras as per the intention above to make it more user friendly.
4.2.1	Speaking at meetings	Clarification that Public Open Forum is an agenda item for Select Committees, whereas in Council, Cabinet etc the format is for Public Questions as per the procedure Rules in Part 4
4.2.1(e)	Petitions	Working group discussions are ongoing as to how e-petitions, as set out in the LG and Elections Act, will operate.
6.2.1	Council Plans	
6.3.1.(i)	What is a personal bill?	
8.3.4	Select reports to Council	Are these required?
8.3.7	Co-optees	Are they all non-voting and why is it 5 (leaving 4 elected members potentially?)
8.3.10	Chairs	Expand on the legislation
9.3.2	Term of Office of the Leader	New criteria entered to better reflect the circumstances for removal
9.4.1	Term of Office of Deputy Leaders	New criteria as above
10.1.1	Regulatory and Other Committees	New table inserted to set out all such Committees SACRE added Investment Committee added Joint Advisory Group added
10.1.1	Investment Committee	https://democracy.monmouthshire.gov.uk/ieListDocuments.aspx?CId=143&MIId=2366&Ver=4
10.1.1	Does Joint advisory go here?	
10.2	Audit	Will become Audit and Governance after LGE Act 21?
11.2	SC TORs	Whistleblowing and corporate complaints removed to avoid duplication with Audit Cttee.
13	Joint Arrangements	May need review in light of CJs within the LGE Act 21
14.3.9 and 14.5.7	MO	Restriction on MO being Head Dem Services removed by LGE Act 21.
16.5.1	Seal	Reduced from 2 people to one iaw with other LA practice and the practicalities experienced throughout CV.
17.1.2	Addition – Review of Financial Procedure Rules	Responsibility lies with s151
PART 3	Redrafting	This Part has required the most work as part of the review. This is because:

		<p>1. It aims to explain at each section who the decision maker is and what they can do.</p> <p>2. It aims to explain the nature of an Executive Council.</p> <p>3. A number of roles and responsibilities have changed since the last Constitution was approved and portfolios readjusted so there has been a lot of moving parts.</p>
19	Introduction to Functions and Part 3	A new section to just seek to set out and explain what Part 3 is all about. The old version somewhat charged into it in a very unstructured and difficult to navigate way.
19-	Part 3	<p>Completely new lay out to this section. Previously the contents page did not tally with the content, and tables were used for some functions whereas prose was used for others (officers). There was no distinguishable order/form to how the officer delegations were laid out nor any contents signposting allowing you to find the officer or function without scrolling through the whole document.</p> <p>This section draws a little on the model though it is largely silent on this part of the const as it makes it a local decision.</p> <p>This section has consulted Cardiff, Flintshire and Newport Consts, all of which differ in construct, for guidance.</p>
20	Council Function	Functions only with Council
21	Committees	Functions that have to be Council but can be delegated to committees. Now includes Investment and SACRE
22.1.3	Appeals Panel	Mentioned but I don't think it is defined elsewhere.
"	There are a number of legacy delegations here	Would welcome Council's views on the relevance of some of these.
23	Exec functions	The list at 23.3 is taken from the previous constitution (table 3 of Part C).
23.4	Exec functions	<p>This list is taken from the absence of such in the model constitution and so is modelled on Cardiff's - needs to be scrutinised by Cabinet and the Council.</p> <p>Note recent CJC consultation response not covered by Const.</p>
25.2.3	Ex gratia payment	Upped to £1,000 following recent experience (dogs)
26	Officer Delegations	<p>There is a lot of change in this section and so each named officer will need to carry out a check of the listed functions and the delegations.</p> <p>Clearly, anything delegated to a Chief Officer maybe delegated further - it is not intended to capture these standing delegations in the constitution but each Chief Officer should capture this locally in some way.</p> <p>This is also relevant to the deputy roles in the proper officer schedule.</p>
26.9	Planning Delegations	Work in progress
27.7.1	Summons	Need to consider sequencing this to allow for public questions
27.8.1	Chair	Consultation with MO to avoid accusation of unfettered action
27.11.3	Public Question	Reduced to 3 days' notice to allow the public to see the agenda first (5 days before) and then frame questions on the basis of that.
27.13	Reports	Inserted given that the constitution is silent on the matter and there can be confusion regarding reports when it comes to amendments. It is a more complex matter than a motion (which by its nature is short), as a report often

		contains a lot of information within in thus making the debate of amendments difficult. Further, reports to Council are circulated in advance of the agenda so there is an opportunity for questions to be made of the author.
34	Contract Procedure Rules	Completely rewritten by Scott James
35.1.3	Recruitment of Chief Officers	Power of Council to nominate appropriate officers to short list (rather than Council having to do it)
35.1.5	As above	Inclusion of stat officers in the definition of Council appointments and inclusion of non-stat officers as well
35.5	Stat Chief Officers	Deleted s151 from this section as it appears later
35.5	Chief Officers	Deleted from definitions as seemed incorrect/tautological
37.9.4	Politically Restricted Posts	Deputy Chief Officers – not all DRs to Chief Officers – those specifically designated thus.
38	Whistleblowing	May need to review this entire section
38.19.1	Whistleblowing Review	MO reports changed to Head of People
38.19.2	Whistleblowing Review Reporting	SLT changed to Chief Officer
40.9.1	Disclosure of confidential information	Amended the ability to pass to a third party to potentially require a NDA via the MO
40.12.1	Limitations on employees	Note the LG Bill may change this
43.3	Members' Remuneration	Specific, annual statement removed as it is publically available on MCC and IRPW websites (links now included)
	Organisation Diagram	Removed as it updates too frequently to be included in the Constitution

Appendix Two – Other Submitted Change Proposals

1. The following table contains the additional proposals submitted throughout the period leading up to submission of the Constitution.
2. Only proposals not incorporated have been included.
3. The reason for being in this list will vary. Omissions may be for reasons of legality, practicality, for further examination or because determination would lie elsewhere (eg some Cabinet functions will be the preserve of the Leader, not Council).

Subject	Proposal	Issue
Committee Membership	Include lists of all Members on all Committees and bodies within the Constitution	Frequency of Change would result in too great a churn in Constitution and subsequent reporting to Council
Hyperlink	Include internal hyperlinks to all referenced sections within the document	Remains an aspiration when time permits
CPR	Remove CPR and make a standalone document	Model constitution and practice in other LAs is to keep it embedded
Joint Groups	Some joint groups (JAG) are covered by Constitution and others not (transport)	Need to examine this matter further
Motion	Criteria for withdrawal	
Cabinet	Questions by Members by right	Leader's discretion Questions and attendance are already permitted
Council Petitions	Feedback process	Need to examine this in line with the e-petition work being conducted under LGE Act 21
Cabinet	Call in periods to be extended to incorporate school holidays	Impractical – decision making would be crippled in the summer
Planning Committee	Too large leading to issues with quorum	Seats have been allocated since an issue with quorum at one meeting. This remains open to discussion though
Planning Committee	Written submissions by absent Members	In appropriate (especially given advances in remote attendance). Members need to either attend or not.
Council	Chair must have voted already to then use a casting vote	Logical, but would require a recorded vote each time
Staffing-based reports to Cabinet	The need for restructures etc to be presented to Cabinet	Cabinet legally prohibited from dealing with appointments/dismissals. Will, however, deal with virement impacts
Rights of Ways	Powers changed from Cabinet to Licensing	Need to examine further
Organisation Diagram	Use of a simplified Diagram	Still too prone to change – would be better hosted on the website
Remuneration	Payment per attendance not flat salary	Not within power of Constitution
Stat Role	Inclusion of DPO	Needs to be actioned
Remote attendance	Improve the provision for remote attendance	Need to get outcome of LGE Act 21 and working group discussions
Confidentiality	Members should be required to sign up to an overarching confidentiality agreement to prevent leaks etc	It is part of the Code of Conduct and a normal responsibility of public office so not deemed necessary
Countryside	Lots of work done here to update the legislative basis within the Constitution	Need to continue this conversation to ensure accuracy and practicality
Officer Delegations	Inclusion of specific matters delegated to heads of Service and below	Delegations are made to Chief Officers and then it is for them within DMTs to record what is delegated and how decision making is to be conducted iaw the additional information in the revised Part 3.