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| Meeting: | Council |
| Meeting date: | Friday 25 May 2018 |
| Title of report: | 2018 Constitution Review |
| Report by: | Solicitor to the Council |

Classification

Open

Decision type

This is not an executive decision

Wards affected

(All Wards);

Purpose and summary

To consider amendments to the council's constitution recommended by the audit and governance committee.

Council approved a revised constitution which came into effect in May 2017. To ensure the new constitution was operating effectively Audit and Governance Committee established a member working group to review its operation and identify any areas where revisions may be helpful to ensure adherence to the design principles members had approved.

Audit and Governance Committee are recommending a number of changes designed either to improve clarity or improve the efficiency and effectiveness of the council's governance arrangements.

Recommendation(s)

That:

- a) the revised constitution at appendices 2-9 be adopted and implemented with immediate effect; and**
- (b) authority be delegated to the solicitor to the council to make technical amendments (grammatical, formatting, and consistency) necessary to finalise the revised**

constitution for publication.

Alternative options

1. To reject the recommended amendments and retain the current constitution and policies unamended: this is not recommended because the amendments have been proposed in order to either:
 - a) Improve clarity; or
 - b) Improve the efficiency and effectiveness of the council's governance arrangements
2. To propose alternative or additional amendments; it is open to Council to approve alternative or additional amendments. If changes are proposed to the Code of Conduct, because the Herefordshire Council code is also the adopted code for many parish councils in the county it would be necessary to carry out consultation with the parish councils before implementation.

Key considerations

3. Council approved a revised constitution which came into effect in May 2017. Audit and Governance Committee is responsible for maintaining an overview of the council's constitution and recommending any changes to Council. To ensure that the revised constitution was operating effectively and as intended, the committee established a member working group. Membership consisted of - Councillors Anderson, Bowen, Chappell, Harvey, James, Jinman, A Johnson, Newman, Norman, Swinglehurst and Wilcox.
4. The views of all elected members and staff were sought on how effectively the constitution was operating and any areas which would benefit from greater clarity. The review did not encompass the operation of the finance and contract procedure rules within the constitution. Council has delegated authority to approve these elements of the constitution to the Audit and Governance Committee and periodic reviews of the effectiveness of these rules are undertaken.
5. The working group met on seven occasions (18 December 2017, 16 February 2018, 12 March, 16 March, 28 March, 5 April and 23 April) to review the consultation responses and, in making their recommendations, had regard to the design principles approved by the Audit and Governance Committee for a revised constitution which seek to ensure that:
 - a) Members and officers perform effectively in clearly defined functions and roles
 - b) Member engagement and participation is maximised, including the involvement of all members in the development of key policies
 - c) Decision making is informed, transparent and efficient
 - d) The council welcomes public engagement and makes accountability real
6. The working group agreed suggested changes to the constitution which were considered by Audit and Governance Committee on 8 May and these were recommended for approval by full Council.
7. The changes recommended are summarised in appendix 1 and detailed in appendices 2-9 (shown as tracked changes).

8. In summary the main changes are;

(1) Public questions and members questions:

- i. Publication of answers to questions prior to the meeting
- ii. Supplementary questions asked “live” in meeting only
- iii. Word limit for a question increased to 140 words
- iv. Removal of limit on six public questions per municipal year
- v. Where a written response is required to a supplemental questions such reply to be provided normally within 10 days
- vi. Monitoring officer authorised to re-direct question to relevant committee
- vii. Questions required 3 days (rather than 2) before meeting

(2) Scrutiny

- i. All three scrutiny committees provided with function to scrutinise the budget and policy framework items relevant to their remits with General Scrutiny retaining whole budget oversight.

(3) Code of conduct

- i. Annual report on code of conduct complaints to audit and governance committee, to include details of unitary, town and parish council names
- ii. A new right of appeal to the standards panel for councillors found to have breached the code by the monitoring officer.
- iii. A new right of appeal to the standards panel for complainants where no breach found by the monitoring officer where new information is available.
- iv. A new function for the standards panel to undertake a sample review of monitoring officer decisions.

(4) Health and Wellbeing Board

- i. Additional membership with full voting rights
- ii. Updated the functions to align with the terms of reference of the board

(5) Planning committee

- i. Consideration of redirection requests will have the ward member involved in discussion
- ii. A redirection decision will be provided in writing

(6) Council procedure rules

- i. Re-introduction of limit on motions to three per council meeting
- ii. Personal explanation to include misquoted

(7) A gender neutral constitution

9. The effectiveness of these changes will be reviewed as part of preparing the annual governance statement and annual code of conduct report.

Community impact

10. Corporate governance is the term used to describe the systems, processes, culture and values Herefordshire Council has established to ensure we provide the right services, to the right people in a timely, open, and accountable way. Good corporate governance encourages better informed longer-term decision making using resources efficiently, and being open to scrutiny with a view to improving performance and managing risk.

11. The constitution is a key part of the council's governance arrangements and 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. The format of the content of any amendments to the constitution should help make these arrangements clearer to understand and how the public can effectively engage with them.

Equality duty

12. Under section 149 of the Equality Act 2010, the 'general duty' on public authorities is set out as follows:

A public authority must, in the exercise of its functions, have due regard to the need to -

- (a) eliminate discrimination, harassment, victimisation and any other conduct that is prohibited by or under this Act;
 - (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it;
 - (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
13. The public sector equality duty (specific duty) requires us to consider how we can positively contribute to the advancement of equality and good relations, and demonstrate that we are paying 'due regard' in our decision making in the design of policies and in the delivery of services. The constitution sets out the decision-making principles the council has adopted which include having regard to the public sector equality duty and respect for natural justice and human rights.

Resource implications

14. The council already makes provision within its existing budgets to enable publication of the constitution on its website and to ensure that members and officers have the training necessary to ensure awareness and understanding of the requirements within the constitution.
15. The increase in functions of the standards panel will create a new resource implication, which will include democratic support officer time and expenses for panel members. It is estimated that nine meetings of the panel may be required during a municipal year but this can be accommodated within existing staff resources and budgets, but it will have to be kept under review.

Legal implications

16. The council must prepare and keep up to date a constitution in accordance with s37 of the Local Government Act 2000. The minimum requirements for the content are set out in The Local Government Act 2000 (constitutions) (England) Direction 2000 which have been complied with when preparing the amendments.

Risk management

17. If the council's constitution is not accurate, up to date and understood then there is a risk that governance arrangements are not clear and robust leaving the council open to judicial

review, contractual challenge or financial risk. The proposed amendments seek to mitigate that risk. In addition the audit and governance committee will continue to maintain oversight of the constitution, once adopted, and should any further amendments be necessary will make recommendations to full Council accordingly.

Consultees

18. All elected members and officers were consulted on whether there were any issues following the implementation of the revised constitution in May 2017. The working group considered the issues raised and a summary of the working group's responses which have resulted in a recommended change is attached at appendix 1.
19. The appointed independent person has previously raised concerns about the annual code of conduct report and this concern has been addressed with the names of the council's where breaches have been found during the year being named and reported to audit and governance in the annual code of conduct report. However a further question has been raised about naming individual councillors who have been found to have breached the code by the monitoring officer. Audit and Governance Committee has determined that these are not published. However if the monitoring officer could not resolve the complaint and referred the matter to the standards panel for determination this would be published in accordance with the access to information rules.

Appendices

Appendix 1 - Schedule of changes to the constitution

Appendix 2 - Draft Part 2 Article 8

Appendix 3 - Draft Part 3 Section 1 Council Functions

Appendix 4 - Draft Part 3 Section 4 Scrutiny Functions

Appendix 5 - Draft Part 3 Section 5 Other Functions

Appendix 6 - Draft Part 4 Section 1 Council and Committee Meeting Rules

Appendix 7 - Draft Part 4 Section 8 Planning Rules

Appendix 8 - Draft Part 4 Section 9 Employment Rules

Appendix 9 - Draft Part 5 Section 8 Public participation guide

Background papers

None identified.