

Meeting:	Audit and governance committee
Meeting date:	10 May 2017
Title of report:	Council constitution
Report by:	Solicitor to the council (monitoring officer)

Classification

Open

Key decision

This is not an executive decision.

Wards affected

Countywide

Purpose

To consider amendments to the council's constitution proposed by the governance improvement working group and the standards working group, and to agree recommendations to Council.

Recommendation(s)

THAT:

- (a) having regard to the further work undertaken by the governance improvement working group and the standards working group, the revised constitution be recommended to full Council for adoption, with implementation with effect from annual council in May 2017; 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.**

Alternative options

- 1 To reject the proposed amendments and retain the current constitution unamended: this is not recommended because the amendments have been proposed in order to either:

- a) Improve clarity;
- b) Ensure compliance with current legislative requirements; or

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- c) Improve the efficiency and effectiveness of the council's governance arrangements
- 2 To propose alternative or additional amendments; it is open to the committee to propose that consideration be given to alternative or additional amendments. However additional time may be required in order for the working group to assess the impacts of any such proposals and to consult with the wider member body as necessary.

Reasons for recommendations

- 3 The proposed amendments to the constitution reflect the principles agreed by the audit and governance committee and ensure that the council's governance will remain robust, compliant with legislative requirements, and transparent.

Key considerations

- 4 In December 2016 Council approved a revised constitution for implementation with effect from the annual council meeting in May 2017 and agreed arrangements for the completion of the outstanding elements of work which chiefly focussed on elements of the rules and codes within the constitution. Audit and governance committee has been delegated authority to approve the finance and contract procedure rules, and makes recommendations to full Council on the remaining elements. The work has been undertaken by two member-led working groups:
 - the standards working group – which has looked at the codes relating specifically to conduct and behaviours; and
 - the governance improvement working group – which has reviewed the remaining codes, and provided guidance in respect of the training and communications programme to support implementation of the new constitution.
- 5 The working groups have continued to have regard to the design principles for a refreshed constitution which were approved by audit and governance committee in November 2015, and which sought 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

Standards working group

- 6 Having sought comments from the parish councils, the working group reviewed the existing code, prepared a draft and consulted all Herefordshire Council members and all parish councils within the county (who may chose to adopt the Herefordshire Council code for their own parish council but may also choose to adopt their own code). Having regard to the outcome of the consultation the revised code the recommendation by a majority of the working group is attached at appendix 1; the main changes are:
 - a) The gifts and hospitality code has been incorporated within the member code of conduct and employee code of conduct;
 - b) The value at which offers of gifts or hospitality should be declared established as being £20.00;

- c) There is a new description of personal registrable interests known as schedule 2 interests.
 - d) The member use of resources code has been deleted and incorporated into the member code of conduct or the member officer relationships code as appropriate.
 - e) A separate set of working protocols are being developed to support effective working arrangements for members and a consultation with members is underway to inform the development of this;
- 7 The employee code of conduct is currently being revised and will be in line with the members' code of conduct. The draft will be consulted upon with staff and the employment panel with a decision being taken by the chief executive under delegated authority.

Governance improvement working group

- 8 As part of the review to inform the development of the annual governance statement, the working group was consulted on a revised code of corporate governance. This is included elsewhere on the committee agenda today.
- 9 The working group has reviewed revised contract and finance procedure rules, having regard to the advice of the chief finance officer (the council's section 151 officer) and the head of law and governance. Both of these documents are included elsewhere on the committee agenda today.
- 10 As agreed by Council in December the draft approved by Council has undergone a quality assurance review to proof read and ensure cross references were correct. During this process a number of minor amendments have been made and these are detailed at appendix 2. Members may view the tracked changes at: [Constitution Review](#) and the final draft is available at: [Constitution - May 2017](#). Examples of changes are:
- job titles made current;
 - added West Mercia Police and Crime Panel to list of joint committees;
 - individuals referred to as 'they' rather than 'he/she';
 - references added to relevant regulations;
 - definitions added and wording refined where meaning was unclear;
 - paragraph numbering streamlined and cross references updated as necessary; and
 - typographical errors corrected and consistent formatting applied.
- 11 The working group has also overseen the development of a training and communication programme for members and employees to support implementation of the new constitution.
- 12 Another matter considered by the group was the Constitution's rule that required separate meetings to consider the revenue and capital budgets. Following consultation with the chief finance officer and the fact that two meetings are not required by law, the proposal is to move to one budget setting meeting and one council tax setting meeting which removes the requirement for the December meeting and allowing for a redistribution of the meetings throughout the municipal years, the proposed full Council dates are as follows:

30 June 2017

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13 October 2017
26 January 2018
9 March 2018
25 May 2018

- 13 Finally as a result of the revised codes the working groups views have been sought on a revised protocol member and officer protocol which is found at appendix 3.

Community impact

- 14 The constitution 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 and content of the revised constitution should help make these arrangements clearer to understand, and show how the public can effectively engage with them.

Equality duty

- 15 Legislation requires that the council must, in the exercise of its functions, have due regard to the need to:
- a) eliminate discrimination, harassment, victimisation and any other conduct prohibited by law;
 - b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and
 - c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it.
- 16 The recommended changes to the constitution seek to ensure that, in its decision-making and its operations, the council fully complies with the public sector equality duty.

Financial implications

- 17 None arising from the recommendations. 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.

Legal implications

- 18 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. A checklist has been produced to demonstrate how the draft constitution complies with these minimum requirements, and is attached at appendix 4.

Risk management

- 19 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 and adoption of the revised constitution 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

- 20 The standards working group has consulted with all members, and with parish councils and the councils appointed independent persons and their views were taken into account. .
- 21 The outcome of the consultations is summarised at appendix 5.

Appendices

Appendix 1 – revised draft member code of conduct
Appendix 2 – schedule of changes to the constitution
Appendix 3 – Revised member and officer protocol
Appendix 4 – Local Government Act checklist
Appendix 5 – Summary of code of conduct consultation responses

Background papers

None identified