

Isle of Anglesey County Council	
Report to:	Democratic Services Committee, the Executive and full Council
Date:	28/06/2023, 18/07/2023, 12/09/2023
Subject:	Extending the terms of reference of the Democratic Services Committee
Portfolio Holder(s):	Councillor Carwyn Elias Jones (Corporate Business and Customer Experience Portfolio Holder)
Head of Service / Director:	Lynn Ball Director of Function (Council Business) / Monitoring Officer lynnball@ynysmon.llyw.cymru
Report Author: Tel: E-mail:	Mared Wyn Yaxley (Solicitor Corporate Governance) 01248 752568 maredyaxley@ynysmon.llyw.cymru
Local Members:	Not a local matter

A – Recommendation/s
<p><u>Recommendation:</u></p> <p>The purpose of this report is to seek agreement for the terms of reference of the Democratic Services Committee (the DSC) to be extended to include the following provision:</p> <p><i>“Where a discussion, a local choice decision or a response to consultation is required in relation to constitutional matters, such matters may be submitted by the Monitoring Officer, with the agreement of the Committee Chair, for the Committee’s consideration before any final recommendation is made to full Council or before any consultation response is sent (“the proposal”)</i></p> <ul style="list-style-type: none"> - The DSC is requested to make a recommendation to the Executive and full Council that the proposal be agreed; - The Executive is requested to make a recommendation to full Council on the proposal and the subsequent amendments required to the Council’s Constitution as a result of such a change; and - The full Council is requested to approve the proposal and the constitutional changes that must be made as a result of the amendment/addition to the DSC’s terms of reference.

A – Reason/s
<p><u>Reasons:</u></p> <p>1. <u>The current arrangements for changing the Constitution:</u></p> <p>1.1. Every Council is required to adopt and maintain a Constitution which must include</p>

A – Reason/s

prescribed information about the governance arrangements of the Council.

1.2. The Council's Constitution may only be changed in one of two ways:-

1.2.1. by full Council, following consideration of the matter by the Executive (section 2.15.2 of the [Constitution](#)) or

1.2.2. by the Monitoring Officer under the limited delegated authority afforded to them for making consequential amendments (Section 3.5.3.6.6 of the [Constitution](#)).

2. **The proposal:**

2.1. Some matters, which may lead to constitutional changes being approved by full Council, require a detailed discussion of options / benefits / disadvantages before the decision is made. This level of granularity is not possible at full Council.

2.2. The proposal is that, in the circumstances described in 2.1 above, the DSC undertakes this work on behalf of the Council. The DSC would also formulate responses to consultations involving constitutional matters.

2.3. Other options include setting up a separate task and finish group for each piece of work, or establishing a standing sub-committee of the Council. However, it is suggested that amending the terms of reference of the DSC is the most pragmatic solution, because:

(a) The DSC is a statutory requirement and is already established;

(b) It is a politically balanced Committee; and

(c) The proposal sits well alongside the DSC's statutory role.

3. **Legislative remit of the Democratic Services Committee:**

3.1. Under the [Local Government \(Wales\) Measure 2011](#), the Council must have a DSC.

3.2. The remit of the DSC is also included in legislation, and involves designating a Head of Democratic Services, reviewing the adequacy of provision by the Council of staff, accommodation and other resources to discharge democratic services functions, and making reports and recommendations to the Council in relation to such provision ([section 11 of the 2011 Measure](#)). There is a list of matters that are considered "democratic services functions" under [section 9 of the 2011 Measure](#).

3.3. The current terms of reference of the DSC is in [3.4.12 of the Council's Constitution](#).

4. **Extending the Terms of Reference of the Democratic Services Committee:**

4.1. The [Local Government Measure 2011](#), whilst requiring the Council to establish the

A – Reason/s

DSC, prohibits the allocation to it of functions over and above its statutory remit ([section 16](#)).

4.2. It is suggested that a reasonable, albeit broad interpretation, of the statutory responsibility of the DSC to “*review the adequacy of provision by the authority of staff, accommodation and **other resources** [my emphasis] to discharge democratic services functions*” sufficiently encompasses the proposal.

5. The proposed extended Terms of Reference of the Democratic Services Committee:

5.1. At **Enclosure 1** is the current terms of reference for the DSC, with the proposed changes noted as tracked changes

5.2. It is not envisaged that all constitutional changes require consideration or debate by the DSC; it will be limited to instances where a discussion or a local choice decision is needed or in order to agree a response to any consultation on matters affecting the Council’s Constitution. The decision on whether the DSC will review a particular matter will be made by the Monitoring Officer, but only with the agreement of the DSC’s Chair.

5.3. The DSC will only have power to make recommendations to Council in relation to proposed constitutional changes; having no legal power itself to make such changes.

6. Consequential amendments:

6.1. In addition to changing the terms of reference of the DSC, the Council’s Constitution must also be amended to reflect the additional role of the DSC in constitutional matters.

6.2. The proposed wording to reflect this change is in **Enclosure 2** to this report, with the suggested changes noted as tracked changes.

B – What other options did you consider and why did you reject them and/or opt for this option?

No change:

The current arrangement does not offer an opportunity for constitutional changes to be explored in detail; specifically where more than one option is available. It would be beneficial for such an opportunity to exist. Responding to consultations also requires much debate and this level of discussion is not possible within full Council meetings. In addition, the timing of consultation responses and Council meetings do not necessarily coincide. It would also be advantageous to the process that the DSC acquires expertise in constitutional matters.

Other options:

B – What other options did you consider and why did you reject them and/or opt for this option?

These have been addressed in section 2.3 above and include:

- setting up separate task and finish groups as required, or
- establishing a standing sub-committee of the Council.

However, amending the terms of reference of the DSC is considered the most pragmatic option on the basis that the DSC is already established as a statutory Committee, is politically balanced and the proposal sits reasonably within the DSC's current responsibilities.

C – Why is this a decision for the Executive?

Changes to the composition of the Council's Committees can only be made by full Council (Paragraph 3.2.3.5 of the Council's Constitution).

Changes to the Constitution will only be approved by full Council after consideration of the proposal by the Executive. (Paragraph 2.15.2 of the Council's Constitution).

Ch – Is this decision consistent with policy approved by the full Council?

The changes to the DSC's terms of reference, and thus the Council's Constitution, are in line with statutory and constitutional provisions.

D – Is this decision within the budget approved by the Council?

Yes

Dd – Assessing the potential impact (if relevant):	
1	How does this decision impact on our long term needs as an Island?
2	Is this a decision which it is envisaged will prevent future costs / dependencies on the Authority? If so, how?
3	Have we been working collaboratively with other organisations to come to this decision? If so, please advise whom.
4	Have Anglesey citizens played a part in drafting this way forward, including those directly affected by the decision? Please explain how.
5	Note any potential impact that this decision would have on the groups protected under the Equality Act 2010.
6	If this is a strategic decision, note any potential impact that the decision would have on those experiencing socio-economic disadvantage.
7	Note any potential impact that this decision would have on opportunities for people to use the Welsh language and on treating the Welsh language no less favourably than the English language.

1-7 Not directly relevant

E – Who did you consult?		What did they say?
1	Chief Executive / Leadership Team (LT) (mandatory)	Considered by LT on 26/6/2023
2	Finance / Section 151 (mandatory)	A member of the LT
3	Legal / Monitoring Officer (mandatory)	Author of the report
4	Human Resources (HR)	
5	Property	
6	Information Communication Technology (ICT)	
7	Procurement	
8	Scrutiny	
9	Local Members	
10	Other	The Monitoring Officer has presented the proposal to the Chair of the DSC, and the Group Leaders, all of whom were supportive of the suggested changes.

F - Appendices:
<p>Enclosure 1 – Current terms of reference for the DSC (as it appears in section 3.4.12 of the Council’s Constitution) with the proposed amendments to extend the remit, in accordance with the proposal put forward in this report, marked as tracked changes.</p> <p>Enclosure 2 – Section 2.15.2 of the Council’s Constitution (dealing with Changes to the Constitution) with amendments marked as tracked changes.</p>

Ff - Background papers (please contact the author of the Report for any further information):
None

Enclosure 1 - section 3.4.12 of the Council's Constitution (the Terms of Reference for the Democratic Services Committee) with amendments included as tracked changes

3.4.12 Democratic Services Committee

3.4.12.1 There is a requirement for all local authorities to appoint a committee of the Council to designate the Head of Democracy, oversee the work of Democratic Services, ensure that the work is adequately resourced and report to the full Council accordingly.

3.4.12.2 Membership

3.4.12.2.1 Nine members to be politically balanced.

3.4.12.2.2 Membership of the committee is limited to councillors.

3.4.12.2.3 In accordance with legislation no more than one member of the Council's Executive may be a member. There is a standing invitation to an executive Member to attend each Democratic Services Committee meeting. It would be advantageous for the Member Champion to be a member.

3.4.12.2.4 The Leader of the Council's Executive may not be a committee member.

3.4.12.3 Chairing the Committee

3.4.12.3.1 The Chair will be appointed by the full Council

3.4.12.3.2 The Chair must not be a member of a group represented on the Executive (save in authorities where all political groups are represented on the Executive, in which case the Chair may not be a member of the Executive).

3.4.12.3.3 The Vice-chair will be elected by the Committee at its first meeting after the Council's Annual Meeting.

3.4.12.3.4 The chairs of any sub-committees will be appointed by the Committee.

3.4.12.4 Proceedings etc

Provisions governing the proceedings of the Democratic Services Committees, include:

3.4.12.4.1 That the Committee (and a sub-committee) may call witnesses (who will be under a duty to attend if they are members or officers of the authority, but a witness of any description will not be obliged to answer any question which they would be entitled to refuse to answer in, or in connection with, court proceedings in England and Wales);

3.4.12.4.2 That committee (and sub-committee) meetings, papers and minutes will be subject to the requirements regarding access, publication and inspection as are set out in Part VA of the 1972 Act.

3.4.12.4.3 In accordance with legislation the Committee will designate an Officer of the Council to be the Head of Democracy, which excludes the Chief Executive and Section 151 Officer.

3.4.12.5 Reports and recommendations by Democratic Services Committees

3.4.12.5.1 If a Democratic Services Committee prepares any report or makes recommendations about the provision of staff, accommodation and other resources provided by the local authority for the discharge of democratic service functions, a copy must be sent to each member of the authority

Enclosure 1 - section 3.4.12 of the Council's Constitution (the Terms of Reference for the Democratic Services Committee) with amendments included as tracked changes

who is not a member of the committee, as soon as practicable. A meeting of the full council must be held to consider such reports or recommendations within three months of their being sent to authority members.

3.4.12.6 Remit of the Committee:

3.4.12.6.1 The Committee's remit is in accordance with the relevant legislation and is extended to undertake responsibilities for the member training and development programme, including I.T. skills and support.

3.4.12.6.2 Where a discussion, a local choice decision or a response to consultation is required in relation to constitutional matters, such matters may be submitted by the Monitoring Officer, with the agreement of the Committee Chair, for the Committee's consideration before any final recommendation is made to full Council or before any consultation response is sent.

3.4.12.7 The Committee will hold three ordinary meetings in addition to its Annual Meeting each Municipal Year, with the right to arrange further meetings as required.

Enclosure 2 – Other Constitutional changes

2.15.2 Changes to the Constitution

2.15.2.1 Approval

2.15.2.1.1 The process for changing the Constitution differs depending upon the type of change to be made.

Subject to paragraph 3.5.3.6.6, and 3.4.12.6.2, changes to the Constitution will only be approved by the full Council after consideration of the proposal by the Executive.

Neither the Executive nor the Council shall consider any change/s to the Constitution which would disproportionately prejudice the rights or interests of any minority group/s within the Council without first having received and given due consideration to written recommendation/s from the Standards Committee. Any dispute as to whether proposed change/s will disproportionately prejudice the rights or interests of a minority group/s shall be decided by the Chief Executive.

2.15.2.1.2 Role of the Democratic Services Committee under paragraph 3.4.12.6.2

Where a discussion or a local choice decision is required in relation to constitutional matters, such matters may be submitted by the Monitoring Officer, with the agreement of the Democratic Services Committee Chair, for the Democratic Services Committee's consideration before any final recommendation is made to full Council in accordance with paragraph 3.4.12.6.2.

2.15.2.1.3 Role of the Monitoring Officer under paragraph 3.5.3.6.6

The Monitoring Officer is responsible for reviewing and updating the Council's Constitution from time to time and to make minor changes as detailed in accordance with paragraph 3.5.3.6.6.

2.15.2.2 Change to a mayoral form of executive or another form of executive or to alternative arrangements.

The Council must take reasonable steps to consult with local electors and other interested persons in the area when drawing up proposals and must hold a binding referendum if considering change to a Mayoral form of executive.

2.15.2.3 Change to the voting system for the election of Councillors to the Council

2.15.2.3.1 Two voting systems

(1) There are two systems for electing Councillors to the Council in polls at contested elections—

- (a) a simple majority system, or
- (b) a single transferable vote system.

2.15.2.3.2 A “simple majority system” means an electoral system where—

- (a) each voter may cast as many votes as there are offices to be filled;
- (b) in the case of an election for a single office, the candidate who receives the highest number of votes is elected;
- (c) in the case of an election to fill more than one office, the candidates equal to the

Enclosure 2 – Other Constitutional changes

number of offices to be filled who receive the highest number of votes are elected.

A “single transferable vote system” means an electoral system where—

(a) in the case of an election to fill more than one office—

(i) voters express a first preference for one candidate and may express second and further preferences for other candidates;

(ii) a quota for election is calculated from the number of votes and offices to be filled;

(iii) the first preferences are counted and any candidate whose first preference votes equal or exceed the quota is elected;

(iv) if insufficient candidates are elected under sub-paragraph (iii), the proportion of an elected candidate’s votes above the quota is redistributed according to voters’ further preferences;

(v) candidates who then reach the quota are elected and the candidate with the fewest votes is excluded;

(vi) the excluded candidate’s votes are redistributed according to voters’ further preferences;

(vii) if insufficient candidates are elected under sub-paragraphs (iv) to (vi), the steps described in those sub-paragraphs are repeated until all offices are filled;

(b) in the case of an election for a single office—

(i) voters express a first preference for one candidate and may express second and further preferences for other candidates;

(ii) an absolute majority of votes for election is calculated from the number of votes;

(iii) the first preferences are counted and, if a candidate’s first preference votes equal or exceed the absolute majority of votes, that candidate is elected;

(iv) if no candidate is elected under sub-paragraph (iii), the candidate with the fewest votes is excluded, the excluded candidate’s votes are redistributed according to voters’ further preferences and a candidate who then reaches the absolute majority is elected;

(v) if no candidate is elected under sub-paragraph (iv), the steps described in sub paragraph (iv) are repeated until a candidate is elected.

2.15.2.3.2 The simple majority system provided for by local elections rules applies in the council, unless and until the council changes the voting system for the first time.

2.15.2.3.3. The Council may change the voting system that applies to the election of Councillors of the Council to the single transferable vote system. If, in the future, the voting system that applies to the Council for the time being is the single transferable vote system provided for by local elections rules, the Council may change it to the simple majority system.

2.15.2.3.4 The power to change the voting system ;

(a) is not to be the responsibility of an Executive of the Council under Executive arrangements

(b) is not a function to which section 101 of the 1972 Act (arrangements for discharge of functions by local authorities) applies.

2.15.2.3.5 Before the Council exercises its power to change its voting system it must consult—

(a) the persons entitled to vote as electors at a local government election in its area;

(b) each community council in its area;

(c) such other persons as it considers appropriate.

(4) After the Council has changed the voting system for the first time, the system to which

Enclosure 2 – Other Constitutional changes

the Council has most recently decided to change applies.

(5) If the Council changes its voting system, the change takes effect at the first ordinary election of Councillors that takes place after the Council passes the resolution and continues in effect unless and until the system is changed again.

(6) But in a poll for an election to fill a casual vacancy in the office of Councillor that takes place before the first ordinary election of Councillors after the Council passes the resolution, the voting system that applied at the last ordinary election applies

2.15.2.3.4 The Council may change the voting system that applies to the election of Councillors of the Council.

(1) If the voting system that applies to the Council for the time being is the simple majority system, the Council may change it to the single transferable vote system provided for by those rules.

(2) If the voting system that applies to a Council for the time being is the single transferable vote system, the Council may change it to the simple majority system provided for by those rules.

(3) The power to change the voting system under this section—

(a) is not to be the responsibility of an Executive of the Council under Executive arrangements (within the meaning of section 10 of the 2000 Act);

(b) is not a function to which section 101 of the 1972 Act (arrangements for discharge of functions by local authorities) applies.

(4) Before the Council exercises its power to change its voting system it must consult—

(a) the persons entitled to vote as electors at a local government election in its area;

(b) each community council in its area;

(c) such other persons as it considers appropriate.

2.15.2 3.5 The Council's power to change its voting system must be exercised by resolution of the Council

a resolution to exercise the power must be passed by at least two thirds of the total number of Councillor seats on the Council.

the resolution must be considered at a meeting specially convened for the purpose

written notice of the meeting must be given to all Councillors, and

the meeting must take place after the end of a period of 21 days beginning with the day on which notice is given.

2.15.2.3.6.1 A resolution to exercise the power must be passed before 15 November of the year that is three years before the year in which the next ordinary election of the Council is due to be held.

2.15.2.3.6.2 After the Council has exercised the power, a further resolution to exercise the power cannot be passed until two ordinary elections of the Council have been held under the voting system to which it was changed.

2.15.2.3.6.3 A resolution to exercise the power passed during the period between two consecutive ordinary elections of the Council has no effect if the Council has previously voted on a resolution to exercise the power during that period at a meeting held for that purpose.