

A CONSTITUTIONAL REVIEW GROUP 2020

REPORT OF: Solicitor & Head of Corporate Services (and Monitoring Officer)
Contact Officer: Tom Clark
Email: Tom.Clark@midsussex.gov.uk – Tel: 01444 477459
Wards Affected: All
Key Decision: N/A
Report to: Council
Date of meeting 29th January 2020

PURPOSE OF REPORT

1. To set up the Constitutional Review Group for 2020.

RECOMMENDATION

2. ***The Council is recommended to:***

set up a Constitutional Review Group composed of 8 Members politically balanced. The composition of the Group will be 5 Conservative Members, 2 Liberal Democrat Members and one Member from the Green/Independent Groups.

PURPOSE OF REPORT

1. Under article 15 of the Constitution, the Monitoring Officer has a duty to monitor and review the operation of the Constitution to ensure that the aims and principles of the Constitution are given full effect. This normally takes place annually with the assistance of a Constitutional Review Group of Members. This report requests that the Council agrees to establish a Working Group with the aim of reporting back to Council by 1st April 2020.
2. The Group will need to review the operation of the Constitution and, if necessary, consider any improvement needed in the light of changing requirements.
3. There are no significant changes in the legislative requirements that need to be taken into account this year. The present Constitution accords with statutory requirements and is the Constitution typically found in a district council with a majority Group.

BACKGROUND

4. The Constitution creates a governance framework to ensure good administration and decision-making. It sets out the separation of the duties of officers and members, accountability to Full Council, and the scrutiny and audit processes. Importantly, this framework has a number of checks and balances built in to safeguard against poor ethical standards and protect against impropriety. These arrangements are overseen by the officers of the Council and in particular the Monitoring Officer.
5. The formal structures of the Council provides the infrastructure to support effective governance. These mechanisms also work most effectively when there is a good understanding of the different roles of officers and members and when elected members have a solid skill set and experience. Members set the overall policy and

save for members of the executive have no powers individually to take decisions or commission officers to do work

6. Political group leaders and other key members also have an important leadership role to play. They set the tone for how new Councillors will engage with each other. They set expectations for how new Councillors will work with officers and ensure political groups understand the Constitution, for example by attending training and briefings. Leaders of political groups not only need to model high standards themselves but should be quick to address poor behaviour when they see it.

NATIONAL CONTEXT

7. The Local Government Act 2000 introduced a requirement for councils with a population of over 85,000 to introduce a Cabinet/Executive model. The Act also introduced recommended Standing Orders and the requirement to have a Constitution with some prescribed information. The 85,000 ceiling was removed by the Localism Act 2011 but Cabinet structure is found in most Councils because it does provide a model for decisions to be taken quickly subject to safeguards.
8. The reason for the Cabinet or Executive model was to improve the efficiency and effectiveness of decision taking. The previous committee system was slow and bureaucratic. The 2000 Act also provided for individual Cabinet Members to take decisions. All such Cabinet decisions are subject to a 5 day call in period to the relevant Scrutiny Committee. A Forward Plan highlights when decisions are likely to be made. There is also an Urgency Procedure, involving consultation with the Chairman of the relevant Scrutiny Committee, to ensure decisions can be made very quickly if necessary.
9. To complement the work of the Executive, Overview and Scrutiny Committees were also introduced. Their role can involve both policy formulation and scrutiny and the Act envisages a clear separation of roles between the Executive and Scrutiny Committees. Councils are required to have at least one Scrutiny Committee. Scrutiny Committees make recommendations but do not take decisions. They can enable back bench members to take a longer-term view of the work and responsibilities of the Council, through policy development and review.
10. Full Council is responsible for setting the Budget and Council Tax levels and the making of new policies. All functions, excluding planning and licensing, are the responsibility of the Executive unless specified otherwise. Planning and Licensing Committees deal with applications in those areas that require determination. Decisions can be challenged within a fixed time by the courts and not by any scrutiny process. The Audit Committee has a specific role in relation to the accounts and investments and reports to Council. The Standards Committee is charged with promoting high ethical standards and determining any Code of Conduct complaints.
11. Mid Sussex has operated the Cabinet system for 18 years. Cabinet decisions can be taken by the Cabinet or by individual Cabinet Members. In both cases the decisions are subject to call in. The call in period is 5 working days after the publication of the decision. Decisions are published in MIS on Wednesday or Friday.
12. A called in decision can either be referred back to the Cabinet, the relevant Scrutiny Committee or to Full Council. The Constitution sets out reasons for calling in decisions.

13. The Cabinet does not deal with planning, licensing and standards issues. At Mid Sussex these are dealt with by the Planning Committees, the Licensing Committees and the Standards Committee. Call in does not apply to these decisions and are not subject to internal review but can be reviewed by the High Court via the judicial review process or by statutory appeal to other courts.
14. The purpose of our Audit Committee is to provide independent assurance of the adequacy of the risk management framework and the associated control environment, independent scrutiny of the authority's financial and non-financial performance to the extent that it affects the authority's exposure to risk and weakens the control environment, and to oversee the financial reporting process.
15. The Council currently has three Scrutiny Committees. There is a direct relationship between them and the portfolios of Executive Members. They undertake the dual role of scrutinising activities within portfolios and supporting policy development. Scrutiny Committees can play a useful role in developing new policies or strategies. This can add a richness to the work of the Executive. They also scrutinise the effectiveness of the Council's work and can offer recommendations for improvement.
16. Our Standing Orders are common to most councils in the Country given they are based on the recommendations made by the Local Government Act 2000. Formal meetings of the Council are conducted in public and the papers published and accessible to the public. The Access to Information Act governs these processes.
17. Finally, it is essential that all the complementary components of governance operate efficiently and effectively. Compared to the private sector, they are resource intensive. As all our work is funded by local tax payers, it is essential that governance operates effectively, transparently and using the council's finite resources to very best effect.

FINANCIAL IMPLICATIONS

18. There are no direct costs associated with the setting up of this Working Group.

BACKGROUND PAPERS

19. None.