

**ITEM:16**

**REPORT TO: WEST OF ENGLAND COMBINED AUTHORITY**

**DATE: 30<sup>th</sup> October 2017**

**TITLE: GOVERNANCE UPDATE**

**AUTHOR: JOHN MCCORMACK,  
INTERIM MONITORING OFFICER**

#### **Purpose of Report**

1 This report seeks approval to a number of amendments to the approved Constitution which are recommended for the purpose of clarity.

#### **Issues for Consideration**

##### **Constitution**

2.1 The Constitution was formally adopted at the meeting of 28<sup>th</sup> June 2017. The amendments that are recommended are as follows:

- i) Inclusion of an Employment and Appointments Sub Committee and approval of its terms of reference (Appendix 1)
- ii) Addition of Standing Orders to clarify arrangements for the taking of urgent decisions and call in provisions relating to urgent decisions

2.2 The link to the approved Constitution is included below.

<https://www.westofengland-ca.org.uk/wp-content/uploads/2017/07/WECA-Constitution-July-2017.pdf>

##### **Employment and Appointment Sub-Committee**

3.1 At the WECA Committee meeting on 15<sup>th</sup> September 2017 it was agreed that the Employment and Appointment Sub Committee will agree the process for, and appointment of, the Tier Two posts for the Combined Authority (including setting remuneration levels in line with pay policy)

3.2 It is proposed that the membership of the Sub-Committee consists of the members of the Combined Authority.

3.3 The proposed terms of reference for the Sub-Committee are attached as Appendix 1 to this report.

**Proposed Changes to Standing Orders:**

4.1 For the purpose of clarity, it is recommended that additional text is added to Standing Order A8 to confirm that the Combined Authority will publish details of decision to be taken (Forward Plan) and details of decisions decision, (Decision Schedule)

4.2 In order to ensure the business of the Combined Authority can be undertaken without undue delay, it is recommended that the Constitution is amended to include a provision to ensure urgent decisions can be taken. It is recommended that Standing Order A9 Extraordinary Meetings is amended and additional provisions are added to set out the procedure to be followed in relation to Urgent Decisions.

4.3 Amendment is also recommended to the Standing Orders relating to Call-In (Standing Order A.31) to enable urgent decisions to be implemented, but ensure the Overview and Scrutiny Committee is made aware of the decision, its reasons for urgency and retain the opportunity to undertake a post implementation review of the decision if it required. It is also recommended that the Standing Orders specifically includes the officer post within the Combined Authority to whom a requirement to call in a decision should be directed. These arrangements are generally consistent with urgency arrangements in the constitution of each of the constituent authorities.

4.4 The proposed revisions to Standing Order A8, A9 and A31 are set out in Appendix 2

**Consultation:**

5.1 A shadow Employment and Appointment committee was convened to facilitate the appointment of the Chief Executive, this report seeks to formalise the arrangements for future senior officer appointments as defined in the terms of reference.

5.2 There has been no specific consultation on the recommended amendments to the Constitution, however as stated above, the amendments in relation to urgent decisions are generally consistent with the constitutions of each of the constituent and this report is published in accordance with the constitutional requirements which provide an opportunity for any wider comments received to be considered.

**Other Options Considered:**

6 The recommendations are intended to provide greater clarity in relation to decision making, they broadly reflect existing arrangements, no other options have been considered to be appropriate.

**Risk Management/Assessment:**

7 The Combined Authority is required by law to unanimously adopt a Constitution, in the event it is not agreed, the Combined Authority will not be able to discharge its functions.

**Public Sector Equality Duties:**

8.1 The public sector equality duty created under the Equality Act 2010 means that public authorities must have due regard to the need to:

- Eliminate unlawful discrimination, harassment and victimization and other conduct prohibited by the Act.
- Advance equality of opportunity between people who share a protected

- characteristic and those who do not.
- Foster good relations between people who share a protected characteristic and those who do not.

8.2 The Act explains that having due regard for advancing equality involves:

- Removing or minimizing disadvantages suffered by people due to their protected characteristics.
- Taking steps to meet the needs of people from protected groups where these are different from the needs of other people.
- Encouraging people from protected groups to participate in public life or in other activities where their participation is disproportionately low.

8.3 The general equality duty therefore requires organisations to consider how they could positively contribute to the advancement of equality and good relations. It requires equality considerations to be reflected in the design of policies and the delivery of services, including policies, and for these issues to be kept under review.

8.4 As a body exercising public functions the West of England Combined Authority is under an obligation to have regard to the public sector equalities duty (PSED) under section 149 of the Equality Act 2010 when exercising its functions. The immediate decisions primarily relates to the arrangements that are required to be in place to enable the Combined Authority to operate in an efficient and lawful manner rather than decisions that could be deemed to impact on the rights of groups or individuals with a protected characteristic or others protected under the PSED.

**Economic Impact Assessment:**

9. The approval of the Constitution is critical to the discharge of the functions of the Combined Authority as defined by the Order.

**Finance Implications:**

10. None that arise directly from this report.

(Advice given by: Tim Richens Interim Chief Financial Officer WECA)

**Legal Implications:**

11. The West of England Combined Authority Order 2017– Schedule 1(7) requires a unanimous vote in favour by the Mayor and all members of the Combined Authority of the Combined Authority’s Constitution and Standing Orders and any amendments to them.

(Advice given by: Gill Sinclair Interim Deputy Monitoring Officer, WECA)

**Land/Property Implications;**

12. None that arise directly from this report.

(Advice given by: Gill Sinclair Interim Deputy Monitoring Officer, WECA)

**Human Resources Implications:**

13. None that arise directly from this report.  
(Sue Evans HR Advisor WECA)

**Recommendation:**

The West of England Combined Authority:

- i) Confirms the amendments to the Constitution as set out in Appendices 1 and 2 to this report.
- ii) Gives delegated authority to the Interim Monitoring Officer to make all consequential amendments to the Constitution to give effect to 1 above.

**Report Author: John McCormack Interim Monitoring Officer**

**West of England Combined Authority Contact:**

**Background Papers**

Any person wishing to inspect the Background Papers, used in the preparation of this Report, should seek the assistance of the Contact Officer for the meeting, who is and who is available by telephoning Joanna Greenwood on 0117 35 76324. Writing to West of England Combined Authority Office, Engine Shed, Station Approach, Temple Meads, Bristol, BS1 6QH. Email: [Joanna.greenwood@westofengland.org](mailto:Joanna.greenwood@westofengland.org).



## **West of England Combined Authority Employment and Appointments Committee**

### **The Role of the Committee**

To exercise all powers and duties of the West of England Combined Authority under section 112 of the Local Government Act, 1972 relating to its role as an employer

To oversee appointments at Tier 1 and Tier 2 to the West of England Combined Authority

To hear staff appeals requiring Member level involvement, under accepted national or West of England Combined Authority conditions of service

To conduct investigatory hearings requiring Member level involvement under accepted national or West of England Combined Authority conditions of service

To determine on behalf of the Council its powers and duties as an employer relating to pensions

### **The Committee's Span of Responsibility**

All matters relating to the role of the West of England Combined Authority as an employer

Appointments at Tier 1 and Tier 2 to the West of England Combined Authority

All appeals or investigatory hearings requiring Member consideration

### **Membership**

The Committee when meeting to consider ordinary business, or as a hearing, will comprise the Mayor of the West of England Combined Authority and the Leaders of the 3 constituent authorities.

## Proposed Amendments to the Constitution

The proposed amendments are shown in bold italics

Publication of Proposed Decisions and Decisions Taken

***A8.3 All proposed decisions will be identified in the Forward Plan of the Combined Authority which shall be published at least 28 days in advance of the date the upon which the decision is to be taken.***

***A8.4 All Decisions taken will be published in a Decision Schedule as soon as reasonably practicable after the date on which the decision was taken. The Decision Schedule shall specify the date after which the decision (if not subject to call in in accordance with Standing Order A.31) is capable of implementation***

### **A.9 Extraordinary Meetings**

***A9.1 Subject to compliance with Standing Order A9.4 or A9.5 below (Urgent Decisions)*** An Extraordinary Meeting of the Combined Authority may be called in the following circumstances, :-

- a) by the Combined Authority resolution; or
- b) by the Chair of the Combined Authority at any time; or
- c) by the Head of Paid Service of the Combined Authority at any time, ; or
- d) all three Constituent members of the Combined Authority who have signed a requisition which has been presented to the Chair of the Combined Authority (the meeting is called if, after five clear days following the receipt of such a requisition, the Chair of the Combined Authority has refused to call a meeting).

**A9.2** Any requisition under clause A9.1 (d) will be addressed to the Monitoring Officer of the Combined Authority by being delivered to the offices of the Combined Authority. The requisition will indicate the business to be transacted at the meeting.

**A9.3** The date, time and location of any extraordinary meeting will be fixed by the Monitoring Officer after consultation with the Chair.

### **A9.4 Urgent Decisions**

***An extraordinary meeting may be called to enable the Combined Authority to take a u decision on an urgent matter subject to compliance with either:-***

#### **A9.4.1 General Exception Provision**

- i) Where it is impracticable to meet the 28 days' notice stated above and the matter would be a key decision, that decision shall only be made after the Chair of the Overview and Scrutiny Committee has been informed by notice in writing, of the matter about which the decision is to be made. A copy of that***

*notice to be published on the website. After 5 clear days have elapsed that decision may be taken. The notice should explain why non-compliance with the requirement for 28 days' notice is impracticable.*

- ii) The decision is within the Combined Authorities Budget and Policy Framework*
- iii) The decision is published under the publication procedure and is subject to post implementation review in accordance with the Call-In procedures*

**A9.4.2** *On each occasion an urgent decision is taken a report will be submitted by the Chief Executive or appropriate senior officer to the Chair of the Overview and Scrutiny Committee under cover of a completed "Urgent Decision Sheet"*

**Or**

#### **A9.5. Special Urgency Provisions**

**A9.5.1** *Where it is impracticable to meet the 28 days' notice and it is also not possible to achieve the 5 days General Exception provisions then we can use the special urgency provisions. The use of this provision requires the agreement of the Chair of the Scrutiny Commission that the making of the decision is urgent and cannot reasonably be deferred.*

**A9.5.2** *Such a notice must be published on the website setting out the reasons that the decision is urgent and cannot be deferred.*

**A9.5.3** *If the Chair of the Overview and Scrutiny Committee does not agree with the Special urgency then the 5 days General Exception Provision applies*

**A9.6** *All decisions taken will be published on the Decision Schedule*

**A10.1** *The call-in procedure set out in Standing Order A31.2 below shall not apply where the decision has been taken as an Urgent Decision. Standing Order A31.7 shall apply*

#### **Call in of Combined Authority or Mayoral Decisions**

##### **Publication of Decisions**

**A31.3** *When a decision is made by the Combined Authority or the Joint Committee, the decision will be published on the Decision Schedule*

*Unless justifiable reasons for urgency exist, no decision will be implemented until the expiry of 5 clear days after the date of publication.*

**A31.4** *Within 5 clear days of publication any member of:*

- (i) an overview and scrutiny committee,*
- (ii) sub-committee of an overview and scrutiny committee may refer any matter which is relevant to the functions of the committee,*
- (iii) the combined authority*

- (iv) any member of a constituent council of the combined authority may refer any matter which is relevant to the functions of the committee and is not an excluded matter

**is/are entitled to give notice to the [ ] of their requirement for a decision to be called in. Reasons for the call in must be given.**

A31.5 On receipt of a referral the Overview and Scrutiny Committee shall consider whether or not to exercise its powers in relation to the matter referred. If it decides not to exercise its powers, it must notify the member making the referral of-

- (a) its decision and  
(b) the reasons for it.

A31.6 The Overview and Scrutiny Committee shall have the power to review or scrutinise a decision made but not implemented (Call-in), this power includes:

- (a) the power to direct that a decision is not implemented while it is reviewed or scrutinised by the Overview and Scrutiny Committee for a period not exceeding 14 days from the date the decision was published and  
(b) power to recommend that the decision be reconsidered

#### **A31.7 Call In of Urgent Decisions**

***On rare occasion urgent decision will need to be implemented so urgently that pre implementation scrutiny will not be appropriate. The reason for urgency and requirement to implement immediately will be made clear when decisions are published.***

***In these circumstances, within 5 clear days of publication, any member entitled to call in a decision may signify in writing to [ ] their wish for the specified urgent decision to be considered by the Overview and Scrutiny Committee for post implementation review. Reasons for this referral must be given***

***In these circumstances, call in has no effect on the implementation of the urgent decision. The Overview and Scrutiny Committee shall determine whether it wishes to review the nature of the decision and the circumstances behind it. The outcome of any review undertaken shall be reported to the decision taker***