

Report to the Council

Committee: Constitution and Member Services Scrutiny Standing Panel

Date: 27 September 2012

Subject: Audit and Governance Committee – Review of Constitution Article 11

Chairman: Councillor M Sartin

Item: 13

Recommending:

(1) That the following alterations to the terms of reference of the Audit and Governance Committee as set out in Article 11 of the Constitution be approved:

(a) removal of the requirement for the three seats for councillors on the Committee to be allocated according to pro rata rules;

(b) inclusion of new membership requirements for the three Councillor seats, namely:

(i) that the seats should be allocated so they are not all drawn from one political group and are also open to Councillors who are not affiliated to any political group;

(ii) that the three Councillors concerned should be appointed on the basis of experience, aptitude and interest on the recommendation of the Council's Appointments Panel;

(iii) that formal attendance standards be operated in respect of the three Councillor members when re-appointment is under consideration by the Council's Appointments Panel;

(iv) that the Chairman and co-opted members of the Audit and Governance Committee be consulted informally about the appointment or re-appointment of Councillors at the appropriate time;

(c) appointment of the Chairman and Vice Chairman to be the responsibility of the Committee rather than the Annual Council meeting;

(d) the offices of Chairman and Vice Chairman of the Committee to be open to Councillors or co-opted members on an equal basis provided that where the Chairman is a Councillor, the Vice Chairman shall be one of the co-opted members and vice versa;

(e) co-opted members of the Committee to be subject to the same informal attendance and performance standards as apply to Councillor members of the Committee during their terms of office as set out in paragraph (b)(iii) above;

(f) co-opted members to serve for overlapping terms of three years subject to the following conditions:

(i) a maximum of two consecutive three year terms as of right subject to the attendance review set out in (e) above on an annual basis; and

(ii) re-appointment for a third and fourth term to be allowable subject to success in open competition following a public advertisement at the conclusion of the second three year term;

(g) determination of starting dates for the new three year terms of office for the existing co-opted members to be delegated to the Audit and Governance Committee;

(2) That the revisions to Article 11 of the Constitution relating to the Audit and Governance Committee (as set out in Appendix 1 to this report) be recommended to the Council for adoption and publication in the Constitution; and

(3) That the attention of the Council be drawn to the legal requirement under the Local Government and Housing Act 1989 for the adoption of recommendation (1)(a) above to be approved with no member of the Council voting against.

Report:

Introduction

1. On 16 July 2012 the Constitution and Member Services Scrutiny Standing Panel discussed Article 11 of the Constitution, regarding the Audit and Governance Committee (AGC). The Constitution of the Audit and Governance Committee is set out in Article 11 of the Constitution. Previously, the Panel were asked to look at the question of whether Portfolio Holder Assistants should be able, in view of their links with Cabinet responsibilities, to serve as members of the Audit and Governance Committee. The Panel submitted proposals on this subject a few months ago and these were adopted by the Council.

2. As part of our consultations with the Audit and Governance Committee over the position of Portfolio Holder Assistants, the Committee also indicated a wish to look at the operation of Article 11 as it is now some years since the Audit and Governance Committee was first established. With this in mind, the then Chairman of this Panel together with the Assistant to the Chief Executive and other officers attended a meeting of the Audit and Governance Committee in order to establish the points which that Committee wished us to review.

3. This report is a result of the Panel's consideration of the Audit and Governance Committee's ideas and we were assisted in this process by having the Chairman of the Audit and Governance Committee as a member of the Constitution and Member Services Scrutiny Standing Panel and by the attendance of Mr R Thompson, one of its co-opted members at the Panel meeting. The subjects covered in our review are set out below.

Balance between Councillor & Independent Members on the AGC

4. The first matter which we discussed and was the balance between co-opted

members and Councillors on the AGC. The Panel were asked to consider whether, bearing in mind the independent nature of the audit function, there should be a majority of co-opted members on the Committee. AGC told the Panel that they were not necessarily opposed to a change in the balance of membership but felt that the independence required was not a matter of political or non-political affiliation but depended on the personal integrity of Councillors and co-optees alike to be open minded, objective and constructive.

5. Neither the Panel nor the AGC could call to mind any instance where political sympathies had come into a debate and therefore we concluded that there was no case for changing the balance of membership.

Number of AGC Members

6. The Panel next considered the number of AGC members. AGC was happy with the present number but emphasised that as there were only a total of 5, there was a need for all to play a full part and show a good attendance record. The Panel agreed with AGC that the number of members was correct and supported their comments about the need for a full and active involvement and attendance by its members. In consultation with AGC members, the Panel were attracted to the idea of setting informal attendance and performance standards to address the importance of full involvement in a small Committee. The Panel also have reservations about increasing the number of members in that the importance of an informed and focussed approach is in the Panel's view better served by a small and involved membership.

7. The Panel therefore made proposals in our revisions to Article 11 for an informal attendance and performance standard to be introduced, both for Councillors and the co-opted members. The Panel are proposing that there should be an opportunity for the co-opted members to comment on these matters to the Appointments Panel which deals with various Committee appointments each May. Our view is that if Councillors or co-opted members cannot give the necessary commitment, we think the Appointments Panel should have the opportunity to deal with any concerns when dealing with appointments.

Independence of the AGC

8. AGC was concerned about the public perception of their role as part of an independent audit function. They expressed concern to us about the way in which the appointment system for the three Councillor seats currently operates. The Panel were advised that this is dealt with under the pro rata provisions of the Local Government and Housing Act 1989. AGC favoured a new system which did not rely on the pro rata procedure, and, instead gave more weight to experience, aptitude and interest. They felt that this would be the best way of achieving the levels of attendance and involvement that the work of the Committee demands. The Panel agreed that the pro rata process could result in appointment of Councillors to the AGC being purely on the basis of filling political group entitlements and this could be seen as a risk factor for the effectiveness of that Committee.

9. The Panel are recommending that Article 11 should be amended so that the three Councillors will be appointed on the basis of their personal qualities rather than by simply relying on pro rata entitlements. In making this recommendation, the Panel have been asked to stress both to the Overview and Scrutiny Committee and the Council that waiving the pro rata requirement on these appointments will require no member of the Council to vote against. If a member votes against the proposal to

waive pro rata, our proposal would fall. The Panel are asking the Committee and the Council to bear this in mind in considering this report

AGC Chairman and Vice Chairman

10. The Panel have reviewed the way in which the Chairman and Vice Chairman of the Committee are appointed. Currently both are appointed by the Council. There is also a rule which requires that the Chairman must be a Councillor and the Vice Chairman must be one of the co-opted members. AGC also felt that there was no clear reason why the Chairman should not be an co-opted member and, by the same token, that there was no real reason why the Vice Chairman should not be a Councillor. The Panel also felt that the Council should avoid both the Chairmanship and Vice Chairmanship being held by a Councillor or co-opted member.

11. Members discussed whether it would be preferable for the Chairman and Vice Chairman to be appointed by the Committee itself at its first meeting each year rather than at the Annual Council. The Panel favour the former as this would emphasise the independence of the Committee, particularly as it could permit an independent member to be Chairman. The Panel are therefore proposing an amendment to Article 11 with this in mind.

Separation of the Audit and Governance Functions

12. The Panel looked at whether there were advantages in separating the audit and governance roles of AGC into separate Committees. At an earlier stage, the Panel carried out a survey of the practice of other Councils in Essex. The Panel also bore in mind that the Government's proposals for statutory Audit Committees are still under consideration in Parliament. Although some Councils have separate Committees for some or all these responsibilities, none of them really convinced the Panel that there was a case for this kind of change.

13. AGC members doubted that there was a sufficient workload to justify two committees, that such a system would add to costs and require the recruitment of additional co-optees. The Panel support their view and think that the present linkage between audit and governance is operating well and should not be changed until the Council has to review this in the light of statutory changes which the Government is planning.

Co-opted Members – Terms of Office

14. There was a concern that currently there is no restriction on the number of terms of office which can be undertaken by co-opted members. It is usual to set some kind of limit on the number of terms of office to ensure that the independent membership is "refreshed" over time. AGC suggested to us a three year term of office and that any co-optee should serve a maximum of two such terms as of right. The question arose about the third or fourth term and the Panel have concluded that there should be allowable under Article 11 but only if the person concerned is successful after external competition takes place. Thus each co-opted member would submit themselves to public competition after each period of two three year terms.

15. There are two co-opted members at present and if our recommendation is accepted, the Panel recommend that their terms of office should be made to overlap to ensure that if one of them was to leave, continuity would be achieved through the other co-opted member.

The Panel are proposing that the Audit and Governance Committee itself should consider how the terms of office of the two existing members can be made to overlap in future years.

Article 11 – Proposed Amendments

16. The Appendix sets out the proposed revisions to Article 11. This are indicated in bold type and underlined. If the Overview and Scrutiny Committee support these proposals, they should report to the Council recommending adoption of the changes before they are published in the Constitution.