

CONSTITUTION COMMITTEE:

9 NOVEMBER 2022

**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

CONSTITUTION UPDATE

Reason for this Report

1. To enable the Committee to consider recommended constitution changes in relation to:
 - (a) Cabinet Job Sharing;
 - (b) Governance and Audit Committee, Chair and Vice-Chair;
 - (c) Electronic signing and sealing of documents;
 - (d) Cardiff Bus Pension Scheme, Delegated Authority
 - (e) Strategic Estates delegations;
 - (f) Register of Members (Home addresses);
 - (g) Planning Committee membership (Multi-member wards); and
 - (h) All Party Council Groups, Officer support.

Background

2. The Constitution Committee's approved Terms of Reference are:

To review the Council's Constitution, and to recommend to Council and/or Executive any changes, except that the Committee will have authority (subject to the Monitoring Officer's advice) to make the following changes on behalf of the Council:-

- (a) Drafting improvements to enhance clarity and remove minor anomalies.
- (b) Updating to reflect legislative changes and matters of record.
- (c) Amendments to the Financial, Contracts and Land Procedure Rules (subject to the advice of the S.151 Officer being sought).

3. The Monitoring Officer has delegated authority to make minor amendments to the Constitution, to include:

- (a) amending typographical and minor drafting errors;
- (b) updating to reflect legislative changes and matter of record; and
- (c) drafting improvements to enhance clarity and remove minor anomalies

(Scheme of Delegations, Section 4E reference LD16A).

4. The Council is required to keep its Constitution up to date and fit for purpose, and the Constitution Committee has responsibility for considering any necessary amendments in line with its terms of reference, set out in paragraph 2 above.

Issues

Cabinet Job Sharing

5. The Constitution Update report presented to the last meeting of the Committee (in February 2022) included information about the new statutory provisions (introduced under section 58 and Schedule 7 to the 2021 Act, with effect from 5th May 2022) enabling two or more councillors to share an office on an executive, including the office of executive leader, referred to as 'Cabinet Job-Sharers'.
6. The Committee agreed to recommend amendments to the Constitution, Article 7 (The Cabinet) and the Cabinet Procedure Rules (in Part 4 of the Constitution) to reflect the new statutory provisions in this regard; and these amendments were subsequently approved by full Council on in March 2022, with effect from 5th May 2022.
7. It was noted that the Council must have regard to any statutory guidance issued by the Welsh Government, and the draft guidance which had been made available on an informal basis at that time was duly taken into account.
8. The Welsh Government has now formally issued draft Statutory Guidance for consultation: *Local Government Guidance for Principal Council Consultation document - (Final version), which includes guidance on job-sharing arrangements (in paragraphs 4.6 to 4.18 inclusive). Whilst the Guidance is yet to be finalised, it is recommended that certain, mostly minor, amendments should be made to Article 7 and the Cabinet Procedure Rules to better reflect the draft Statutory Guidance. Also, to provide clear rules to deal with the scenario where one Cabinet Job Sharer may have a conflict of interests, to clarify that the non-conflicted Job Sharer may cast their vote, but without having any preparatory discussions with their conflicted Job Sharing Partner (Cabinet Procedure Rules, new draft Rule 2.7(e)). The recommended amendments are shown in **Appendices A1 and A2**.

9. As more experience is acquired in relation to job-sharing arrangements in due course, further consideration may be given to developing, in consultation with the Cabinet, a protocol or code of practice setting out agreed arrangements for the operation of job sharing arrangements.

Governance and Audit Committee, Chair and Vice-Chair

10. Chapter 2 of Part 6 of the Local Government and Elections (Wales) Act 2021 introduced certain changes in relation to the membership and proceedings of Governance and Audit Committees, including the following new requirements, which took effect from 5th May 2022:
 - a) The Chair must be a lay person, ie. an independent member of the Committee; and
 - b) The Deputy / Vice-Chair must not be a member of the Cabinet or an Assistant to the Cabinet.
11. Although the new legislation does not specifically require that the Deputy / Vice Chair must be an independent member, it is considered that this is best practice, as it can help to develop a potential future Chair. (Members may also wish to note that the Regulations governing Standards Committees require that both the Chairperson and Vice-Chairperson must be independent members of that Committee, and this is reflected in the Constitution, Article 9.2(f)).
12. In line with best practice, the current Deputy Chair is an independent member. The Committee is invited to consider whether to introduce a rule into the Constitution requiring that the Governance and Audit Committee Vice-Chair must be an independent member (and at the same time, reflect the statutory rule which requires the Chair to be an independent member; and for consistency, reflect the same rule which is applicable to the Standards and Ethics Committee) by amending Article 8.1 as shown in **Appendix B**.

Electronic Signing and Sealing of Documents:

13. In line with the Council's new hybrid working arrangements and general move towards digitalisation of processes to improve efficiency, the Council's Legal Services department has procured specialist software to enable the electronic signing and sealing of legal documents. The software is used by a number of other local authorities and private practice solicitors firms and incorporates appropriate security and authorisation requirements. Its reported benefits include increased efficiency, quicker execution, lower costs and a reduced carbon footprint.
14. In order to reflect the new arrangements being introduced for electronic signing and sealing of legal documents, it is recommended that express reference should be made within the Constitution, for the avoidance of any doubt. Recommended amendments to Article 13.4 (Authentication of documents);

Article 13.5 (Common Seal of the Council); and the Contract Standing Orders and Procurement Rules, Rule 24.8 are set out in **Appendices C1 and C2**.

Cardiff Bus Pension Scheme – Delegated Authority

15. Cardiff Bus is a private company limited by shares (Company Ref 02001229) and is wholly owned by the Council. Cardiff Bus was constituted as a Public Transport company within the meaning of Section 72 of the Transport Act 1985 and its main purpose is to carry out the business of a public transport company.
16. Cardiff Bus is the Statutory and Principal employer in a defined benefit pension scheme. This means it is legally responsible under legislation to meet the funding objectives and to fund the liabilities of the Scheme (Statutory Employer) and is the “main” employer for the purposes of the Scheme rules, having certain decision making powers relating to the running of the Scheme (Principal Employer).
17. In October 2020, the Council approved certain interventions proposed to achieve the key principles of resolving immediate risks to the viability of the company and protecting the current and future entitlement of members of the Cardiff Bus Pension Scheme, including a delegation to the Corporate Director Resources in respect of discharging the responsibilities of the Statutory and Principal Employer under the Cardiff Bus Pension Scheme: Ag. Item 9 Cardiff Bus Cover Report.pdf (moderngov.co.uk)
18. The Corporate Director Resources has advised that this delegation is to be exercised on an ongoing and permanent basis, and it is therefore recommended that this delegation should be incorporated in Section 4E of the Scheme of Delegations in the Constitution, in the interests of clarity and transparency. The proposed new delegation is shown marked up in **Appendix D**.

Strategic Estates delegations

19. Officer delegations for property matters are set out in the Scheme of Delegations, Section 4F, and reflected in the Land Procedure Rules, Rule 2. The current delegations authorise the Director of Economic Development to acquire or dispose of interests in land, subject to various conditions designed to secure best value and compliance with the Land Procedure Rules, up to a threshold of £1 million. Any proposal which does not satisfy all of the conditions or exceeds £1 million requires Cabinet approval. Delegated authority is also granted to the Corporate Property and Estates Manager for transactions up to a threshold value of £100,000, again subject to compliance with various conditions designed to secure best value.
20. Following the restructure of the Council’s Strategic Estates service area, certain changes are recommended to update the officer delegations, reflect the new management structure, which now includes an Assistant Director for County

Estates and a Head of Property (OM1), and ensure decision making is efficient and effective.

21. The proposed changes include:

- a) delegated authority for the Assistant Director to approve transactions up to a threshold of £500,000, subject to all the same conditions in relation to securing best value and compliance with the Land Procedure Rules; and
- b) assigning the delegations of the former Corporate Property and Estates Manager to the Head of Property, with an increase in the financial threshold from £100,000 to £250,000.

22. No substantive change is proposed to the delegated authority of the Director of Economic Development or the type of transactions which require Cabinet approval.

23. The proposed amendments to the officer delegations in the Scheme of Delegations Section 4F (and corresponding amendments to the Land Procedure Rules, Rule 2) are shown in **Appendices E1 and E2**.

Register of Members (Home addresses)

24. Under the statutory rules on public access to information, Councils have been required to maintain a public Register of Members, showing certain specified information including each Member's name, address and ward (Local Government Act 1972, section 100G and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, Regulation 12). (It should be noted that this is a separate register to the Members' Register of Interests, maintained under the Local Government Act 2000, section 81, for which the Ombudsman's guidance confirms that Members' home addresses are not required and that a street name or postcode is sufficient for describing a Members' home address.)

25. The Welsh Government has indicated that it considers the protection of Members addresses should be a priority for councils to support their members' well-being and promote diversity of membership (draft Statutory Guidance for Principal Councils, paragraph 2.31). It has therefore introduced legislation (the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022) to amend the public access to information rules by removing the requirement to make Members addresses within the register of Members available for public inspection.

26. The Access to Information Procedure Rules, Rule 19, requires amendment to reflect the legislative amendment which provides that Members' addresses within the register are now not to be open to public inspection. The recommended amendments are shown in **Appendix F**.

Planning Committee membership (Multi-Member wards)

27. Statutory rules on membership of the Planning Committee provide that only one Member from a multiple Member ward may sit on the Planning Committee, in order to leave other ward Members to carry out the ward representative role (Regulation 6 of the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017). However, there is an exception in the statutory rules stating that this does not apply to authorities comprised solely of multi-member wards.
28. The Planning Committee Procedure Rules, Rule 1.1A reflects the statutory rules. However, the exception to the rule was not initially included as it was not applicable to Cardiff at that time
29. Since the electoral changes made the Local Democracy and Boundary Commission for Wales took effect in May 2022, Cardiff Council has become solely comprised of multi-member wards, with the effect that the statutory rule that no more than one ward Member may sit on the Planning Committee is no longer applicable in Cardiff.
30. In June 2022, in recognition of the difficulties in filling seats on the Planning Committee, due in part to the substantial demands of the role, the Monitoring Officer, in consultation with the Chair of the Constitution Committee exercised her delegated authority to make a minor amendment to Rule 1.1A of the Planning Committee Procedure Rules to delete the rule that no more than one ward Member may sit on the Planning Committee, to reflect the statutory exception.
31. The Planning Committee Procedure Rules, Rule 1.1A currently provides as follows:
 - 1.1A **Size and Composition**

The planning committee must contain no fewer than 11 members and no more than 21 members, but no more than 50% of the authority members (rounded up to the nearest whole number).¹
32. It was agreed that this matter would be reported to the next Constitution Committee for the Committee to note the amendment made to the Rules under delegated authority.
33. In considering this matter, Members may wish to note that the Head of Democratic Services has confirmed that there is currently one vacancy on the Planning Committee and to date, it has proved difficult to make an appointment to this position. The Head of Planning has indicated that he has no strong views

¹ Except in the case of a local authority which is comprised solely of multiple member wards, only one Member from a multiple member ward may sit on the planning committee, in order to allow other ward Members to perform the representative role for local community interests (Regulation 6 of the Size and Composition of Local Planning Authority Committees (Wales) Regulations 2017). As Cardiff is currently comprised solely of multiple member wards, this rule is not currently applicable to Cardiff.

on this matter, but has emphasised the importance of having all seats filled, in the interests of good governance and representation.

All Party Council Groups – Officer Support

34. The Council has agreed arrangements for All Party Council Groups (APCG), to provide opportunities for debate and promote specific issues within the Council's corporate and service priorities and increase opportunities for non-Executive Members to contribute towards policy development.
35. The Constitution Committee received a report on this issue in March 2018 and recommended a Protocol for All Party Council Groups, which was subsequently adopted by full Council and incorporated within Part 5 of the Constitution. The Protocol sets out the purpose, subject matter, powers and functions, membership and procedure for an All Party Council Group.
36. Due to resource constraints, officer support for APCG meetings is limited and this is addressed within the Protocol, paragraph 5(vi) as follows:

'Officer support for APCG meetings shall be limited, due to resource constraints, to booking rooms for meetings, and will not cover clerking or other administrative support (such as agenda planning or minute taking).'
37. It has been suggested that further clarification on this would be helpful. Members are invited to consider adding text to clarify the position as follows:

'Officers will, if given reasonable notice and resources permit, provide written answers to factual queries raised by an APCG. Officers shall not be required to attend an APCG meeting, unless agreed by the relevant Cabinet member.'
38. The proposed amendments are shown marked up in **Appendix G**.

Legal Implications

39. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.
40. Minor legislative updates and drafting improvements may be approved by the Constitution Committee under its approved terms of reference or under the Monitoring Officer's delegated authority. All other substantive Constitution amendments require the approval of full Council.
41. Other relevant legal provisions are set out in the body of the report.

Financial Implications

42. There are no direct financial implications arising from the recommendations of this report. When delegations are exercised, they are accompanied by detailed financial and legal advice and are to be contained within the budget framework.

Recommendations

The Committee is recommended to:

1. Consider and agree the Constitution amendments set out in this report and **Appendices A to G**, subject to any agreed changes;
2. Authorise the Monitoring Officer, in consultation with the Chair, to draft any further amendments to reflect the views of the Committee; and
3. Recommend the agreed Constitution amendments to full Council for approval.

Davina Fiore

Director Governance and Legal Services & Monitoring Officer

3 November 2022

Appendices

Appendix A1	Article 7, Cabinet, draft amendments
Appendix A2	Cabinet Procedure Rules, draft amendments
Appendix B	Article 8, Regulatory and Other Committees, draft amendments
Appendix C1	Article 13, draft amendments
Appendix C2	Contract Standing Orders and Procurement Rules, draft amendments
Appendix D	Scheme of Delegations, Section 4E, draft amendments
Appendix E1	Scheme of Delegations, Section 4F, draft amendments
Appendix E2	Land Procedure Rules, draft amendments
Appendix F	Access to Information Procedure Rules, draft amendments
Appendix G	Protocol for All Party Council Groups, draft amendments

Background papers

Constitution Committee report, 'Constitution Update', 28 February 2022

Council report, 'Constitution Update', 17 March 2022

Council report, 'Cardiff City Transport Services Limited (trading as Cardiff Bus)', 22 October 2020

Council report, 'Constitution Amendments', 22 March 2018

Welsh Government, Consultation on draft Statutory Guidance for Principal Councils, March 2022

Monitoring Officer's emails dated 27/06/2022 confirming minor amendment to Planning Committee Procedure Rules to be made under the MO's delegated authority