

COUNCIL:

28 MARCH 2019

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

CONSTITUTION AMENDMENTS

Reason for this Report

1. To enable Council to consider changes to the Constitution recommended by the Constitution Committee in respect of:
 - (i) A new Code of Corporate Governance;
 - (ii) Public Questions at Full Council;
 - (iii) Substitute Committee Members;
 - (iv) Scrutiny Committees Size and Membership of Task and Finish Groups; and
 - (v) Planning Committee delegations.

Background

2. The Constitution Committee is responsible for reviewing the Council's Constitution and making recommendations to Council in respect of amendments required.
3. At its meeting on 11th February 2019, the Constitution Committee considered reports on various constitutional issues and proposed amendments. The Committee agreed to recommend a number of constitutional changes to full Council for approval.

Issues

- (I) A new Code of Corporate Governance
4. There are a number of documents and processes that set out the governance arrangements of the Council. These include the Constitution, Financial Procedure Rules, and performance frameworks. However, it is considered good practice to have an overarching document that details these arrangements and reaffirms how the governance framework of the Council operates.
5. A draft Code of Corporate Governance ('Code') has been drawn up, based on the seven good governance principles developed by the Chartered Institute

for Public Finance and Accountancy (CIPFA) and the Society of Local authority Chief Executives (SOLACE) in their publication 'Delivering Good Governance in Local Government framework'.

6. The Code has been developed to ensure that the Council has clarity on how to apply, assess and use a governance assessment for reporting and making improvements to the Council. The development of the Code has provided an opportunity to embrace several strands of current activity that form part of the Council's governance e.g. the Annual Governance Statement, which sits alongside the Statement of Accounts, and to introduce a more 'enterprise' based risk management approach.
 7. The Code is not purely a statement but is a benchmark that can be used to promote understanding and engagement in one of the key strands of local government. In order to achieve this the Code has been developed in three parts:
 - How we apply the principles of good governance
 - How we assess governance in Cardiff Council
 - How we use our governance assessment
 8. The draft Code has been discussed and agreed by Audit Committee (at its meeting on 30th January 2018).
 9. At its meeting in February 2019, the Constitution Committee considered the draft Code and resolved to recommend it (with one minor amendment) to full Council for adoption and inclusion within the Constitution, Part 5.
 10. The recommended draft Code of Corporate Governance is appended as **Appendix A** to this report.
- (II) Public Questions at Full Council
11. Under the Council Meeting Procedure Rules (Rules 18, 19 and 35), up to 15 minutes is allowed at each Council meeting for any person who resides or works in Cardiff to ask a question of a Cabinet member or Committee Chairperson.
 12. Key provisions of the Rules include:
 - a) the question must be submitted 6 working days prior to the day of the Council meeting;
 - b) questions can be ruled out by the Chair if they are not relevant or appropriate (as defined and specified);
 - c) the question is circulated with the Council papers;
 - d) answers may be provided orally at the meeting or in writing after the meeting;
 - e) no more than 5 minutes is allowed for a response to any one question; and
 - f) each questioner who attends the Council meeting is allowed one minute to ask a supplementary question (without notice) relating to the original question or the answer.

13. As with Members' oral questions, it is customary for public questions to be circulated prior to the Council meeting (but not read out at the meeting) and then to start with the reply to the question at the meeting. However, the rules make no specific provision in this regard.
14. The Constitution Committee has considered a suggestion that members of the public should be allowed to read out their question at the Council meeting, as a matter of respect for the questioner, so that the proceedings are clear and transparent, particularly to those watching on the webcast, and to demonstrate good democracy.
15. The Constitution Committee supported this proposal and has recommended that a new paragraph should be added to Council Meeting Procedure Rule 18 to confirm that: *'The questioner shall be given the opportunity to read their question orally.'*

(III) Substitute Committee Members

16. Many local authorities operate a substitute system, which allows a substitute Member to attend a committee or sub-committee meeting whenever an appointed Member cannot attend. A substitute system helps to preserve political balance on committees to give all groups the ability to ensure their views are properly and fully represented in the decision making process.
17. Caselaw has confirmed that substitution, made in accordance with Council approved procedure rules, is generally permitted. However, there are exceptions, in that substitutes are not legally permitted for members of the Cabinet or the Planning Committee.
18. Cardiff's current constitutional arrangements authorise the Monitoring Officer to appoint substitute members to committees under her delegated authority reference LD17 in Section 4E of the Scheme of Delegations:

'To appoint councillors or non-councillor members to committee seats allocated to political groups or nominating bodies (or to make changes, fill vacancies or give effect to temporary membership changes – "substitutions") in accordance with the wishes of political groups or member nominating body.'
19. However, the Council has no procedure rule governing the permitted appointment of substitutes.
20. In making provision for substitutes, it is important that there is certainty regarding the membership of committees at any given time. (Councils are required to maintain a register of committee and sub-committee membership pursuant to the Local Government Act 1972, 100G (1)). It is also important to ensure that substitute Members have undertaken any necessary training and have sufficient information to be able to take properly informed and reasoned decisions. It is best practice for the arrangements for substitutes to be set out in approved procedure rules.

21. Following consultation with party group whips, the Constitution Committee has recommended the draft procedure rule at **Appendix B** for adoption and incorporation within the Council's procedure rules (specifically, the Committee Meeting Procedure Rules and the Scrutiny Procedure Rules).
22. Members will note that the new Procedure Rule allows for substitutions at committee meetings *only* if a Member is unable to attend over an extended period of time (defined as a period covering more than one committee meeting) and due to one or more of the following reasons:
 - (i) Unavoidable family or work commitments;
 - (ii) Serious illness;
 - (iii) Maternity, paternity or adoption leave;
 - (iv) Other Family Absence, approved under the Family Absence Procedure Rules;
 - (v) Caring responsibilities; or
 - (vi) Some other good reason.
23. The draft procedure rule is intended to clarify the arrangements and provide the necessary safeguards, having regard to the issues set out above. The Head of Democratic Services would be responsible for making the necessary administrative arrangements.

(IV) Scrutiny Committees Size and Membership of Task and Finish Groups

24. The Constitution provides that: *'The Council will have the five Scrutiny Committees set out in Article 6 and will appoint to them as it considers appropriate from time to time. Scrutiny Committees will have a membership determined by the Council'* (Rule 1 of the Scrutiny Procedure Rules). The size of Scrutiny Committees is not specified in the Constitution.
25. The Constitution Committee has, in consultation with Scrutiny Chairs and Party Group Whips, considered whether the size of Scrutiny Committees should be reduced from 9 to 7 or 8 members. However, it has been agreed that the current size should remain unchanged.
26. In the interests of clarity and transparency, it is recommended that the agreed size of the Scrutiny Committees should be set out in the Constitution.
27. The Constitution Committee has also considered the current provisions relating to the size and membership of Task and Finish Groups.
28. The Scrutiny Procedure Rules currently provide that: *'Scrutiny Committees may appoint "Task and Finish" Sub Committees to be established for a fixed period, on the expiry of which they shall cease to exist. These will not exercise the formal powers associated with scrutiny (which are the preserve of the Committees), but can contribute to, or inform, the scrutiny process.'* (Rule 1).

There is no constitutional provision regarding the size or membership of Task and Finish groups.

29. The Council has previously agreed that all non-Executive Elected Members should be encouraged to participate in Scrutiny (as Committee members and / or as members of Task and Finish groups), subject to the maximum number of Members on a Task and Finish group being nine.
30. Scrutiny Officers have confirmed that non-Executive Elected Members (who are not Scrutiny Committee members) have participated in a number of Task and Finish Group inquiries; and that, where appropriate, non-Councillors have been invited to participate in Task and Finish inquiries on account of their particular expertise.
31. In the interests of clarity and transparency it is recommended that the agreed arrangements for membership of Task and Finish groups should be set out in the Constitution.
32. The recommended amendments to the Scrutiny Procedure Rules (Rules 1 and 2) are to:
 - i. Set out the agreed size of each of the 5 Scrutiny Committees (nine members), as agreed at Annual Council;
 - ii. Confirm that the membership of Task and Finish groups may include any non-Executive Elected Members, subject to a maximum of nine Members on each Task and Finish group; and
 - iii. Confirm that non-Councillors may be invited to participate in Task and Finish inquiries as expert advisors to a Task and Finish group,

as shown in **Appendix C**.

(V) Planning Committee Delegations

33. The Planning Committee in March 2018 reviewed its officer delegations and, having regard to Welsh Government guidance, approved revised delegations (which are appended at **Appendix D1**).
34. The revised delegations aim to provide an effective, clear and transparent scheme of delegations for the discharge of the Council's planning functions. Members will note that the Planning Committee has granted a general delegation to the Head of Planning (exercisable in consultation with the Chair of Planning in cases involving objections) with a list of excepted matters which are reserved for decision by the Planning Committee. The matters reserved for decision by the Planning Committee are broadly major developments, policy issues or controversial cases.
35. In order to ensure the Council's arrangements for the discharge of its planning functions are transparent, clear and accessible, the Planning Committee has asked the Constitution Committee to consider incorporating its approved delegations within the Scheme of Delegations in the Constitution.
36. The Constitution Committee considered this matter at its meeting in February 2019 and resolved to recommend the incorporation of the Planning Committee's delegations (set out in **Appendix D1**) within the Constitution.

37. The Constitution Committee also considered the Planning Committee's previous delegations (made in June 2013) in respect of various highways powers, which had been delegated to the Chief Officer (or equivalent) responsible for highways - listed in **Appendix D2**. For consistency and transparency, the Committee resolved to recommend that these delegations should also be incorporated within the Constitution.
38. The Council is required by law to maintain a list of all powers delegated to officers (pursuant to section 100G of the Local Government Act 1972). Inclusion of officer delegations within the Constitution promotes openness and transparency of the Council's decision making arrangements. However, once incorporated within the Constitution, any changes to the delegations will require the approval of full Council.

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. The recommended changes to the Constitution set out in this report require the approval of full Council, pursuant to Article 14.2(a) of the Constitution.
40. Other relevant legal implications are set out in the body of the report.

Financial Implications

41. There are no direct financial implications arising from this report.

Recommendations

The Council is recommended to approve the following Constitution amendments:

1. The draft Code of Corporate Governance attached as **Appendix A** to be approved and incorporated within Part 5 of the Constitution;
2. The amendment of Council Meeting Procedure Rule 18 'Public Questions', as set out in paragraph 15 of the report;
3. The Appointment of Substitute Members – draft Procedure Rule attached as **Appendix B** be approved and incorporated within the Committee Meeting Procedure Rules and the Scrutiny Procedure Rules;
4. The Scrutiny Procedure Rules 1 and 2 be amended as set out in **Appendix C**; and
5. The Planning Committee delegations in respect of planning functions (set out in **Appendix D1**) and highways functions (**Appendix D2**) be incorporated within the Scheme of Delegations in Part 3 of the Constitution.

Davina Fiore

Director Governance and Legal Services and Monitoring Officer

20 March 2019

Appendices

Appendix A	Draft Code of Corporate Governance
Appendix B	Appointment of Substitute Members – draft Procedure Rule
Appendix C	Scrutiny Procedure Rules – draft amendments to Rules 1 and 2
Appendix D1	Planning Committee delegations (planning functions)
Appendix D2	Planning Committee delegations (highways functions)

Background papers

[Constitution Committee reports, 11 February 2019, 'Draft Code of Corporate Governance'; 'Public Questions at Full Council'; 'Appointment of Substitute Committee Members'; 'Scrutiny Committees Size and Membership of Task and Finish Groups – Update'; and 'Planning Committee Delegations'](#)