

CARDIFF COUNCIL CYNGOR CAERDYDD

CONSTITUTION COMMITTEE : 6 NOVEMBER 2012 AGENDA ITEM:

REPORT OF THE CHIEF OFFICER, LEGAL & DEMOCRATIC SERVICES AND MONITORING OFFICER

Review of the Council's Constitution – Council Procedure Rules

Reason for the Report

1. The purpose of this report is to provide Committee Members with an options paper so they consider potential changes to the Council's Procedure Rules, and provide their views on any changes. These will be taken into account during the drafting stage of the new Council Procedure Rules.

Background

2. Constitution Committee Meeting on 20th September 2012 agreed a timetable to review the Constitution and to prioritise the areas for review. The Council Procedure Rules are the first area to be reviewed.
3. Appendix A to this report is an options paper which considers each element of the Council Procedure Rules, a brief update of the current position and suggestions/consideration for change. The suggestions are not intended as an exhaustive list of the amendments that could be made, nor are any recommended over any other variation; they are simply intended to provoke discussion.
4. Appendix B to this report contains a note with references to other local authority constitutions that have elements worthy of note in relation to the on going review of the Council Procedure Rules.

Legal Implications

5. The Local Government Act 2000 requires the Council to keep its Constitution under review and up to date. Article 14 of the Constitution provides for its review and revision

Financial Implications

6. There are no financial implications arising from this report

RECOMMENDATION

Committee is recommended to:

1. Note the contents of this report and contribute to the discussion on the review of the Council Procedure Rules.

MELANIE CLAY

Chief Officer, Legal & Democratic Services and Monitoring Officer
2 November 2012

Constitution Review - Council Procedure Rule

Options Paper

Set out in this document you will find a summary of various elements of the Council Procedure Rules, arranged by topic, together with suggested amendments that could be made to those rules. The suggestions are not intended to be an exhaustive list of the amendments that are available nor are any of them recommended over any other variation; they are simply intended to provoke discussion. Members of the Committee should feel free to voice any of their own suggestions or modifications in addition to those set out below.

This document considers the procedure rules in the context of full council meetings. It is not designed to specifically address procedures used by sub-committees. However it is anticipated that many of the amended rules will be transferrable to sub-committees. After the piloting of the rules at full council it is suggested that the amendments are evaluated and consultation be carried out with the public (in relation to those elements of the rules relating to public involvement), scrutiny, cabinet and others to establish whether the amended rules are appropriate for those other forums (and what exceptions or further modifications would need to be incorporated to make them work in those different contexts).

Issues that are coloured grey are considered to be less controversial in nature. Therefore it is anticipated that these sections will not be considered in detail at Constitutional Committee. Any comments from members relating to these sections are welcomed; however these may be better if given outside the committee meeting, or at the drafting stage, so that the committee can concentrate on the more substantial areas of debate.

Issue	Current Position	Suggestions/Considerations	Notes
Setting of Agenda	<p>Considered by Council's Business Committee 5 days prior to meeting (<i>in practice the setting of the has been delegated to the Lord Mayor in consultation with Leader</i>).</p> <p>– Items for consideration on the Council agenda are set out in Section 1A of the Constitution which lists the functions of the Council.</p> <p>These include:</p> <ul style="list-style-type: none"> • Matters under the Policy framework that require a Council decision • Standard reports e.g. appointing representatives to Outside Bodies; agreeing or amending Committee Terms of Reference. 	<p>Who should be consulted? (group leaders, whips, cabinet, leader, officers, Chair?)</p> <p>Should a small committee be established?</p> <p>Should the setting of the agenda become a standard item on the Cabinet agenda (as group leaders are generally in attendance)?</p>	<p>Committee may not be required as in practice there is sufficient opportunity for group leaders and whips to feed into the process of setting the agenda without creating another committee.</p>

Issue	Current Position	Suggestions/Considerations	Notes
Annual Meeting	Proscribed agenda – see rule 2.	<p>This must remain, but should be reviewed to only include those elements that really should be dealt with at annual meeting.</p> <p>To reduce the length of the rules and improve their “flow”, this could be made into a separate schedule to the rules.</p>	Some business is proscribed by statute, other business generally makes sense to be dealt with annually. Therefore a proscribed agenda for Annual meeting should remain.
Ordinary Meetings	Proscribed agenda – see rule 3.	<p>To reduce the length of the rules and improve their “flow”, this could be made into a separate schedule.</p> <p>Consider including a “standard” timetable allocating maximum times for each element that can only be extended at discretion of the Chair. This is done on an informal basis at the moment. A more proscriptive approach could be taken, for example:</p> <p>Opening 5.00-5.05 Public Questions 5.05-5.30 Member Questions – 5.30-6.30</p> <p>Consider whether it is appropriate for every cabinet member to report on their portfolio at every meeting? For example, each portfolio could report every two months or every quarter (<i>to be discussed later in relation to Frequency of Meetings below</i>).</p>	
Frequency of meetings	<ul style="list-style-type: none"> • Annual meeting required. • Ordinary meetings in accordance with timetable set at annual meeting (which in practice is 11 per year – including the Annual meeting). • Extraordinary meetings can be called by: <ul style="list-style-type: none"> - Council resolution - the Lord Mayor (LM) - any 5 councillors 	<p>Is it appropriate for every cabinet portfolio to be dealt with at every meeting? For example, each portfolio could report every two months or every quarter allowing a more focussed meeting.</p> <p>Consider 10 meetings a year (perhaps dropping January or December and/or in conjunction with considering the introduction of a “Public Council Meeting” – see below).</p> <p>Consider six-weekly cycle?</p>	<p>Need to consider the frequency of ordinary meetings. However this is set at annual meeting and retaining this flexibility to set the timetable for ordinary meetings on an annual basis is perhaps desirable. Therefore perhaps just consider amending what has been set.</p> <p>Feedback from Members indicate that they favour monthly meetings as this enables back benchers to engage in the democratic process.</p>

Issue	Current Position	Suggestions/Considerations	Notes
Time and place of meetings	Generally is for determination by Council, however the LM can request changes.	<p>Should a preference to a certain venue be given (if so, should it be City Hall or County Hall?) with an option to vary if required?</p> <p>Should this generally be at the discretion of the Chair?</p> <p>Should there be an indication that varying the location/time is preferable, or should a standard time and location (eg 4.30pm on the third Thursday of the month at City Hall) be given? What should this standard time/place be?</p> <p>Cambridgeshire – 9am Birmingham – 2pm Oxford – 5pm Belfast – 6pm</p> <p>Should a maximum time for the meeting (or any elements of it) be set. If business is not passed in this time the business would fail.</p> <p>NB. Welsh Government is pursuing trialling of remote attendance. This may be less relevant for Cardiff due to the relatively small geographic area covered by the authority.</p>	<p>Opinions of members seem to be split as to whether City Hall (which has the benefits of tradition and layout) or County Hall (with better acoustics) is the better location.</p> <p>Local Government Measure (LGM) shows WG's desire for meetings to more flexible.</p> <p>Feedback from members has generally show a preference for evening meetings (4.30pm has been relatively popular).</p> <p>Varying locations would increase costs and increases the risk of damage to the sound system. Need to consider that City Hall often provides the opportunity for fee paying conferences to increase income to Council.</p>
Charing	<p>Chair is proscribed by statute-elected Chair of Council.</p> <p>Imposes broad duty on Chair to ensure business is dealt with appropriately, effectively and with due regard for democratic process.</p>	Only tidy language to ensure Chair has appropriate remit and power to efficiently chair meetings.	
Quorum	¼ of Council.	Tidy language.	

Issue	Current Position	Suggestions/Considerations	Notes
Duration of meeting	LM can ask for an extension in relation to particular items of business.	<p>Set a total maximum time limit?</p> <p>Set a timetable with maximum times for each element, if not approved during that time business fails)?</p> <p>It seems sensible to retain a general discretion for the Chair to vary timing arrangements as they see fit. However may wish to change this from the current position that requires the Chair to take a vote of Council as to whether they consent to an extension. Perhaps this should just be in the general discretion of the Chair?</p>	Currently maximum times are set informally through whips. This seems to be the preferred option.
General business		<p>Could routine/administrative reports be passed as "unopposed" if circulated in advance and no Councillor has indicated to the Chair that they wish for the report to be dealt with orally at the meeting? The Chair could simply deal with all such reports in one sentence noting that the recommendations were approved.</p>	Such reports are normally dealt with relatively quickly at the moment. Therefore although this might save time, perhaps it is a complication best avoided.

Issue	Current Position	Suggestions/Considerations	Notes
Questions by Councillors	See rule 10.	<p>Have two types of questions – “factual questions” and “policy questions”. Create a new procedure for factual questions to be answered in a different forum (eg in writing outside the meeting). Policy questions could then be dealt with in the normal way.</p> <p>If following this route it will be important to get a good definition of “factual”. This can be examined in more detail if this option is favoured, but for examples please refer to the attached sheet.</p> <p>Tighten criteria for questions and strengthen Chair’s ability to reject questions. Add an ability to refuse questions if answer is already in the public domain.</p> <p>Increase ability for questions to be ‘grouped’ and answered together, perhaps with the opportunity for a mini-debate on the subject of the grouping.</p> <p>Bring forward the deadline for submission of questions.</p> <p>Try to deal with as many questions as possible solely in writing. For example:</p> <ul style="list-style-type: none"> • Bring forward deadline for submission of written questions to 12 days before meeting. • Provide initial written responses 7 days before meeting. • Supplemental questions to then be submitted in writing 5 days before meeting and answered in writing 2 days before meeting. • All questions and responses are then noted as a single item at the meeting. • If the questioner still wants the matter to be raised orally at the meeting they can then apply to the Chair for a “mini debate”. Number of mini debates could be limited and proportional to group size, perhaps with favour being given to opposition groups. <p><i>Continued overleaf</i></p>	<p>It is important to note that the aim here is to produce a system that allows the time available to focus on:</p> <ul style="list-style-type: none"> • constructive debate • issues that are within the power of the Council to influence; and • real issues that concern citizens, not political point scoring or personal differences. <ul style="list-style-type: none"> • Recognised as an area of concern due to: officer resources • ability to produce translations in Welsh or braille (would ideally need two working days to produce) <p>Cabinet have expressed a view that the current system is not sustainable with regard to the time period available to answer questions and the number of questions received. Consideration needs to be given as to whether questions/answers should be submitted weeks ahead of meetings with written answers prepared and circulated ahead of the meetings. There could be an option for receipt of urgent questions with more strict criteria for these.</p> <p>Please also refer to note on procedures used by the National Assembly for details of the procedures used there.</p>

Issue	Current Position	Suggestions/Considerations	Notes
Councillor Questions (cont)		<p>Limit number of questions to be split proportionately between groups and/or limited by number of questions per member.</p> <p>Limit number of questions by portfolio.</p> <p>Vary time limits for responding to questions?</p> <p>Should more supplementary questions be allowed to encourage debate?</p> <p>Swansea operates a system under which those wishing to ask supplementary questions are entered into a draw and only the first few questions out of the draw are dealt with, ensuring that more time is spent on the supplementary questions. Is this desirable?</p> <p>Should questions and answers be read out so the public can follow them more easily? Alternatively they could be posted online before the meeting if revised deadlines provide sufficient time.</p>	

Issue	Current Position	Suggestions/Considerations	Notes
Public Questions	See rule 11	<p>Bring deadlines into line with Councillor questions?</p> <p>Produce separate guidance/FAQ leaflet to make it easier for the public to understand the process.</p> <p>Consider the option of holding a separate “Public Council Meeting” at which the sole purpose is public questions, public statements and debates flowing from petitions. For example see the “State of the County” debate held on an annual basis by RCT.</p> <p>Should public statements (a longer speech without a question) be allowed?</p> <p>Should elements that specifically involve the public (petitions and public questions) be moved to the start (so it is certain when they will be dealt with), end (so that people can make meetings after work) or another set time in proceedings (eg at as near to 7pm as other business will allow)?</p>	Need for a simplified system and improved information about the procedure on the web site has been identified.
Petitions	See rule 26. – basic provision for Councillors to present any petition for one minute.	<p>Consider proportional response depending on size of petition. For example:</p> <ul style="list-style-type: none"> • <20 signatures – dealt with by normal correspondence. • 20-50 signatures – petition noted at meeting and passed to relevant officer for consideration and a written response. • 51-500 signatures – petition noted and passed to Cabinet member for consideration and a written response. • >500 signatures – petition becomes the subject of a short debate or a public presentation? <p>Should an opportunity be given for the petition to be presented by an organiser of the petition rather than a member if desired?</p>	<p>Would encourage public engagement.</p> <p>There is a concern that currently there is no obviously publicised response to surveys. Therefore it is hard for the public to see how a petition is influencing policy.</p>

Issue	Current Position	Suggestions/Considerations	Notes
Public notice of agenda, minutes, rules etc	Published on website, however resources do not always permit this to happen as quickly as would be desirable. [Nicki – is this correct?]	Specific “Local Democracy” section on the website? Would contain guidance on how to access meetings, how to present petitions, ask questions etc?	
Notice of motion	Allocated between groups on proportionality basis.	<p>Consider:</p> <ul style="list-style-type: none"> • How to ensure the quality of Notices of Motion • Allocation of motions • Procedure for voting. <p>Should opposition have more opportunity to being NoMs?</p> <p>Consider the use of “themed debates” rather than or in addition to Notices of Motion?</p>	<p>Need more robust way for backbenches to bring matters forward for proper debate.</p> <p>A small group are to attend Welsh Government to observe their procedures. If this has happened prior to the meeting a short report on their findings will be given.</p> <p>Please also refer to note on procedures used by the National Assembly for details of the Individual Member Debate procedure.</p>
Quick/Short debates		<p>Consider quick/short debate format of WAG.</p> <p>Consider how would a short debate be triggered:</p> <ul style="list-style-type: none"> • Groups to have a number of opportunities per year? • The presenting of a petition with more than a certain number of signatures? • The asking of a certain number of questions relating to a particular subject? • The request of a certain number of members? 	<p>No voting, but used to inform/guide cabinet policy.</p> <p>These are not currently included in the Constitution but were asked for by a number of Members who felt they would encourage more interaction from back benchers and members of the opposition. It is envisaged that these would give the opportunity for short debates with no voting on topics. The contents of the debate would then inform but not bind future Cabinet/Council decisions.</p> <p>Please also refer to note on procedures used by the National Assembly for details of the procedures used for Short Debates.</p>
Voting	See 16. Presumption of electronic voting if available. In practice show of hands is used where possible.	<p>Remove general assumption that electronic voting will be used. Show of hands is often quicker.</p> <p>Clarify whether recorded vote is by calling out or whether electronic voting is sufficient as print outs with names provided by Whips. View that the calling out names puts on public record the way a Member has voted, but this can be achieved more quickly electronically.</p>	
Minutes	See 17	Review wording only.	

Issue	Current Position	Suggestions/Considerations	Notes
Exclusion of public	See 19	Review wording only.	
Councillors conduct	See 20	Review wording only.	Standards and Ethics may also want input on revised wording. See RCT wording.
Recording of Meetings	No recording made without permission.	Official recordings/broadcasts are now common place so should probably be permitted. May still want to restrict non-official recordings.	

NB – this note and the conversations it is intended to provoke only aim to cover the key elements of each rule. The detail will be considered at the drafting stage once the principles have been agreed.

Example definitions of “policy” and “factual” questions:

Following the deadline for questions to be submitted to Council the Chair shall determine whether questions are Policy Questions or Factual Questions in accordance with the following definitions. If a question is a Policy Question it shall be dealt with [orally at Council]. If the question is a Factual Question it shall be dealt with [by way of a written response].

Factual Questions are questions that:

- Seek the provision of factual information.
- Relate to the specific circumstances of an individual or small group of citizens.
- Relate to the diary or circumstances of any Member.

Policy Questions are questions that:

- Relate to the past or proposed strategy of the Cabinet.
- Relate to matters that either have impacted or will impact upon the citizens of the Council as a whole, a significant number of them or the whole of a group of them (such as children, the disabled or the elderly).
- Relate to matters that are within the remit of the Council to deal with.
- Should properly be dealt with by Council, rather than another forum (such as Scrutiny or Standards and Ethics).

Examples of recent questions that might fall as either “policy” or “factual” questions under these definitions:

Policy	Factual
Can the Cabinet Member update us on how the Council plans to tackle waste issues in inner city areas such as Cathays?	Can you please outline the procedure that Members of Council should follow if they wish to refer a planning application to Committee for determination?
Can you explain the rationale behind Cardiff Council’s decision to pay more than 2,000 of our staff ‘a living wage’, nearly £1.12 above the minimum wage?	Who took the salute on Armed Forces Day on behalf of the Council?
Could the Cabinet Member for Finance please explain the administration’s long term plans on appropriation?	Will the Leader accept my invitation to attend a public meeting of Save Our City on the next 2 weeks?
What measures are being taken to ensure that adequate leisure and youth work opportunities are available to young people through the medium of Welsh?	Could you tell me how many motorists have been caught throwing litter out of their car windows between May and September this year?
Can the Cabinet Member give an update on the action the Council is taking to improve the standards of Houses of Multiple Occupation?	Could a separate path/walkway be introduced for pedestrians to take their rubbish to the site in Wedal Road?
Will you investigate the possibilities of light rail for Cardiff?	Please advise the total cost of refurbishing Radyr Library and also the quantum of contributions from S106 money, Welsh Assembly grant and all other grants.
Why was Cardiff’s congestion charge proposal dropped?	How many times did the Cabinet Member met with Cardiff and Co to discuss the WBC Convention 2013?
Can you outline the measures that are in place to ensure that all Pupil Premium funding is being appropriately targeted in Cardiff’s schools?	What work interests are listed in Cllr Huw Thomas’s member’s interests?

It is accepted that some of the questions listed as “Factual” do have implied policy/political content. However, separating them this way would force the questioner to be more explicit, leading to a more focused debate.

Review of Procedure Rules

Note containing references to clauses from other constitutions

The following table contains references to constitutions of various other authorities. It intends to summarise and contain references to elements of those constitutions that are worthy of note in relation to the ongoing review of the Council's Procedure Rules.

Topic	Summary of potential procedure/Point of interest	Where found
General layout	<p>Basic procedure rules stand alone. Separate appendixes deal with specific elements (such as Members Questions, Public Questions etc).</p> <p>So for example, a member of the public can read the general rules and see that they have a right to ask questions. They can then refer to the 1 or 2 page stand alone document that explains the detail of their ability to do so.</p>	<p>http://www.cambridgeshire.gov.uk/council/democracy/constitution/constitution-part4.htm</p>
Substitute Committee Members	<p>For committee appointments, substitute members are also appointed from each party. When a committee member is unable to attend a meeting, the substitute from the relevant party can stand in for them.</p>	<p>Cambridgeshire, CPR, Para 4.</p> <p>http://www.cambridgeshire.gov.uk/NR/rdonlyres/31525709-6EE2-47F9-9FE0-F407AD9D7471/0/p41.pdf</p> <p>Essex – page 86</p> <p>http://www.essex.gov.uk/Your-Council/Local-Government-Essex/Pages/ECC-Constitution.aspx</p>
Member Questions	<p>Good basic procedure.</p> <p>Given the volume of questions, perhaps this sort of policy could be supplemented with a system for weeding out 'non-policy' questions that could then be dealt with in a different forum.</p>	<p>Cambridgeshire appendix on members' questions.</p> <p>http://www.cambridgeshire.gov.uk/NR/rdonlyres/6C995A3D-A349-4359-9991-80200D8D2DA5/0/p41annexB.pdf</p>

Topic	Summary of potential procedure/Point of interest	Where found
Member Questions	Procedure by which all questions are answered in writing in the summons. Those that may require a supplemental question are subject to a lottery. Those that are first drawn from the lottery can then be the subject of follow up questions at the meeting.	Swansea – see para 23-26 in the CPR http://www.swansea.gov.uk/media/pdf/l/r/Council_Constitution_Sept_2012.pdf
Public Statements and Questions	Separate “Open Government Council” meetings where public can ask questions (if oversubscribed a lottery is held to select questions) and present statements,	RCT – see page 20 onwards http://www.rhondda-cynon-taff.gov.uk/en/relateddocuments/publications/legaldemocraticservices/councilconstitution/part4rulesofprocedure.pdf
Public Statements	Mechanism for public to make statements at meeting.	Swansea – see para 27 of the CPR http://www.swansea.gov.uk/media/pdf/l/r/Council_Constitution_Sept_2012.pdf
Petitions	Response that is proportionate to the size of the petition.	Essex response to petitions: See page 74 http://www.essex.gov.uk/Your-Council/Local-Government-Essex/Pages/ECC-Constitution.aspx
Ordinary meetings	Standard timetable for ordinary meetings	Birmingham Council Procedure Rules – Standing Order B1.1 http://www.birmingham.gov.uk/cs/Satellite/constitution?packedargs=website%3D4&rendermode=1-
State of the County Debate	Provision for a wide ranging debate (including workshops and other small discussion groups) on an annual basis to discuss delivery of the Council’s services generally.	RCT Para 13 http://www.rhondda-cynon-taff.gov.uk/en/relateddocuments/publications/legaldemocraticservices/councilconstitution/part4rulesofprocedure.pdf

Topic	Summary of potential procedure/Point of interest	Where found
Member conduct	Interesting wording of prohibited conduct:	<p>RCT</p> <p>Para 19.3</p> <p><i>The Mayor shall check a member for irrelevance, tedious repetition, failure to address the chair, unbecoming language, or reflections of a personal character on another member.</i></p>
Separate "Guide to the Constitution"	See their summary and explanation document as it is easy to read, especially the para outlining the rights of members of the public.	<p>Bristol</p> <p>www.bristol.gov.uk/page/constitution</p>
Member conduct	Interesting paragraph on conduct during meetings to maintain order!	<p>Swansea</p> <p>Para 5 of CPR</p> <p>Smoking/Refreshments/Mobile Phones</p> <p>5.1 Smoking is prohibited by Law in all Council premises.</p> <p>5.2 Members shall refrain from refreshments other than water unless under the direction of the Chair of Council.</p> <p>5.3 Councillors shall refrain from using mobile phones or similar devices for verbal communication during meetings. However, Councillors may use mobile phones, mobile internet devices or similar devices for internet access during meetings provided they comply with any rules in place by legislation or by the Council. These devices must be set to silent.</p> <p>5.4 Should a Councillor require the use of a noise emitting devise based on medical grounds during a meeting, then the Chair of Council must be informed of the necessity.</p> <p>5.5 Councillors and Officers are reminded that a 'voluntary' contribution to the Lord Mayor's Fund is expected where a noise emitting device disrupts the meeting without a prior dispensation from the Chair of Council.</p>

Topic	Summary of potential procedure/Point of interest	Where found
General	To the right is a list of links to the “better” constitutions that have been reviewed as part of the process of putting together this note. Other constitutions have also been reviewed, but were not considered to contain useful material.	<p>RCT: http://www.rhondda-cynon-taff.gov.uk/en/relateddocuments/publications/legaldemocraticservices/councilconstitution/part4rulesofprocedure.pdf</p> <p>Swansea: http://www.swansea.gov.uk/media/pdf/l/r/Council_Constitution_Sept_2012.pdf</p> <p>Cambridgeshire: http://www.cambridgeshire.gov.uk/council/democracy/constitution/</p> <p>Bristol: http://www.bristol.gov.uk/page/constitution</p> <p>Hull: http://www.hullcc.gov.uk/portal/page?_pageid=221,107131&_dad=portal&_schema=PORTAL</p> <p>Camden: http://www.camden.gov.uk/ccm/content/council-and-democracy/decision-making/the-constitution.en;jsessionid=854942C6469178109BF96351105FB916.node2</p> <p>Essex: http://www.essex.gov.uk/Your-Council/Local-Government-Essex/Pages/ECC-Constitution.aspx</p> <p>Leicester: http://www.leicester.gov.uk/councillors-democracy-and-elections/our-constitution/</p> <p>Manchester: http://www.manchester.gov.uk/info/10058/decision_making/2446/manchester_city_councils_constitution/1</p> <p>Birmingham: http://www.birmingham.gov.uk/constitution</p> <p>Newport: http://www.newport.gov.uk/dc/index.cfm?fuseaction=democratic.constitution</p>

