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AGENDA

Committee CONSTITUTION COMMITTEE

Date and Time of Meeting MONDAY, 11 FEBRUARY 2019, 5.00 PM

Venue COMMITTEE ROOM 2 - COUNTY HALL

Membership Councillor Goodway (Chair)
Councillors Berman, Burke-Davies, Carter, Jones, Goddard, Jones-Pritchard, Lister, Kelloway, McKerlich, Keith Parry and Wong.

1 Chairperson

To note that the Annual of Council at its meeting 24 May 2018 elected Councillor Goodway as Chair of this Committee for the Municipal Year 2018/19

2 Membership and Terms of Reference

To note that Council at its Annual Meeting on 24 May 2018 agreed the following Membership and Terms of Reference: -

Membership

Councillors Jennifer Burke-Davies, Rodney Berman, Joe Carter, Susan Goddard, Russell Goodway, Keith Jones, Mike Jones-Pritchard, Kathryn Kelloway, Ashley Lister, Rod McKerlich, Keith Parry and Peter Wong.

Terms of Reference

To review the Council's Constitution, and to recommend to Council and/or Cabinet 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).

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3 Apologies

To receive apologies for absence.

4 Declarations of Interest

To be made at the start of the agenda item in question, in accordance with the Members' Code of Conduct.

5 Minutes (Pages 5 - 8)

To approve as a correct record the minutes of 15 March 2018.

6 Draft Code of Corporate Governance (Pages 9 - 24)

Report of the Director of Governance & Legal Services.

7 Public Questions at Full Council (Pages 25 - 36)

Report of the Director of Governance & Legal Services.

8 Appointment of Substitute Committee Members (Pages 37 - 44)

Report of the Director of Governance and Legal Services.

9 Scrutiny Committees Size and Membership of Task and Finish Groups - Update (Pages 45 - 58)

Report of the Director of Governance & Legal Services.

10 Scrutiny Call-In Rules (Pages 59 - 74)

Report of the Director of Governance & Legal Services.

11 Planning Committee Delegations (Pages 75 - 82)

Report of the Director of Governance & Legal Services.

12 Forward Plan (Pages 83 - 86)

Report of the Director of Governance & Legal Services.

13 Future meetings

Davina Fiore

Director Governance & Legal Services

Date: Tuesday, 5 February 2019

Contact: Gill Nurton,

T: 20872432 Email g.nurton@cardiff.gov.uk

CONSTITUTION COMMITTEE

15 MARCH 2018

Present: Councillor Goodway(Chairperson)
Councillors Berman, Lister, Kelloway, McKerlich and Wong

22 : APOLOGIES

Apologies for absence were received from Councillor McEvoy, and from Councillors Goddard, Keith Jones and Jones-Pritchard as they were engaged in other council business.

23 : DECLARATIONS OF INTEREST

No declarations of interest were received.

24 : MEMBERSHIP OF COMMITTEE

The Chair welcomed Councillor Lister to the Committee.

25 : MINUTES

The minutes of the meeting of 8 January 2018 were approved as a correct record and signed by the Chairperson.

26 : RESPONSIBILITY FOR AIR QUALITY MANAGEMENT FUNCTIONS

The report recommended the transfer of responsibility for air quality management functions from the Public Protection Committee to Cabinet which would require an amendment to Section 3 of the Scheme of Delegations, the amendment would require the approval of full Council.

RESOLVED – That the Committee recommends to Council that the Air Quality Management functions of the Council be allocated as Cabinet functions and that the Scheme of Delegations, Section 3 be amended accordingly.

27 : CONTRACT AND FINANCE PROCEDURE RULES

The Chair welcomed Ian Allwood (Head of Finance), Liz Weale (Legal Services, OM Procurement and Partnerships) and Steve Robinson (OM Commissioning and Procurement) to the meeting.

The Committee was provided with a presentation which outlined the proposed revisions to both the Contract Standing Orders and Procedure Rules (CPR) and the Finance Procedure Rules (FPR).

There were no fundamental changes to the FPR, other than to clearly define the key risks and controls for the financial control environment of the Council; refresh rules on risk management, fraud and partnership working and each section is underpinned by improved guidance notes.

The main changes in the CPR relate to:

- Welsh Language Standards 76 – 80
- Increased emphasis on Community Benefits
- Changes to Advertising opportunities
- Changes to tendering thresholds
- Use of Single Tender and the exceptions to rules
- Introduction of electronic procurement
- Changes to the authority to approve variations of contract
- Enhanced Sections (Definitions and Interpretations; Procurement Planning, General Data Protection Regulation; Increased use of technology (aim to go paperless); Contract Management and Procurement Routes.

RESOLVED – That

1. The Committee approved the proposed changes to Contract Standing Orders and Procurement Rules and Financial Procedure Rules as shown in Annex A & B to the report and these be reported to Full Council for information prior to implementation on 1 July 2018;
 2. The Committee delegated authority to the Corporate Director Resources to amend the FPR and to the Director of Governance and Legal Services to amend the CPR to accord with any changes to legislation and to make any other amendments that may be required from time to time, which do not serve to materially alter the FPR or CPR.
- 28 : RECORDING OF COUNCIL MEETINGS (AUDIO, VISUAL OR SOCIAL MEDIA)

Further to discussion by this Committee at its meeting in October 2017, the Director of Governance and Legal Services' report providing an update on the Webcasting Protocol and amendments to the Council Meeting, Committee Meeting, Planning Committee Meeting and Access to Information Procedure Rules was submitted for approval and recommendation to Council. The amendments would bring the Council in line with the principles of openness and transparency best practice expected of local government.

RESOLVED – That

1. the current arrangements for recording of Council and Committee meetings as set out in the report were noted;
2. the Committee approved the updated Webcasting Protocol as set out in Appendix A, and that it be recommend it to full Council for inclusion within the Constitution, Part 5;
3. the Committee agreed to amend the Council Meeting, Committee Meeting, Planning Committee Meeting and Access to Information Procedure Rules, as shown in Appendix B to permit recording and use of social media during public meetings of the Council, Cabinet and

Committees; and

4. the amended procedure rules (agreed under 3 above) be recommended to full Council for approval.

29 : WARD MEMBER CONSULTATION

The Committee had requested that the Scheme of Delegations, Section 4A be updated to ensure that the requirement to consult Ward Members on significant issues affecting their wards is enshrined in the officer decision making processes of the Council. The Committee felt it was important that officers were aware of and implemented the guidance provided. However, it was also acknowledged that whilst there had been a reduction in officers the demands of Ward Members were increasing.

RESOLVED – That the Committee recommends to full Council the amendment of the Scheme of Delegations, Section 4A, paragraph 1.5 to incorporate the Ward Member consultation requirements detailed in the report.

30 : ALL-PARTY COUNCIL GROUPS

The Committee received the draft protocol for All Party Council Groups and agreed that, in the interest of clarity and transparency, the following arrangements as set out in the All Party Council Groups Protocol be recommended to Full Council: -

- the minimum number of member shall be 5;
- Groups be open to all members of all parties, including independent members;
- that the group must consist of members from more than one party group.

RESOLVED – That

- 1 the provision for the establishment of All Party Groups as set out in the report was approved; and
- 2 the incorporation of the All Party Groups Protocol set out in the Report within Part of the Constitution be recommended to full Council.

31 : SCRUTINY COMMITTEE SIZE AND MEMBERSHIP OF TASK AND FINISH GROUPS

Consideration of this item was deferred until the next meeting of the Constitution Committee.

32 : FORWARD WORK PLAN

The main work stream for the Committee in 17/18 had been to develop improvements to aspects of the Constitution, in particular in relation to making Council meetings more effective, giving greater transparency to how decisions are made and the way the Council and its officers function.

RESOLVED – That the Committee approves the Forward Work Plan 2017/18 and the areas considered as priorities as set out in Appendix A.

33 : FREQUENCY OF MEETINGS

The Committee discussed the frequency of meetings and agreed that there would be 2 regular meetings during the Municipal Year, unless it was necessary for a further meeting to be convened.

The meeting terminated at 6.05 pm

CONSTITUTION COMMITTEE

11 FEBRUARY 2019

REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES

DRAFT CODE OF CORPORATE GOVERNANCE

Reason for Report

1. The Council is taking the opportunity to regularise its governance arrangements by putting in place a Code of Corporate Governance.
2. In line with the Constitution Committee's Terms of Reference the Draft Code of Corporate Governance is being brought forward for discussion and subject to comments recommended for inclusion within the Council's Constitution.

Background

3. 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 the draft Code of Corporate Governance provides an opportunity to reaffirm how the governance framework of the Council operates.
4. The Code of Corporate Governance is 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'. 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.
5. In developing the Code there has been the opportunity to embrace several strands of current activity that form part of the Council's governance that had previously e.g. the Annual Governance Statement, which sits alongside the Statement of Accounts, and the introduction of a more 'enterprise' based risk management approach.

Issues

6. To ensure that 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

7. Part 1 sets out the seven good governance principles, and dealing with each in turn includes a statement of intent and an explanation of how the principle is applied in the Council.
8. Part 2 sets out the approach to gathering together the relevant information upon which to reach a corporate position of the health of governance in the Council. The output of this is the Annual Governance Statement (AGS) which itself comprises of three elements:
 - Assurance statements from Senior Management, the Internal Audit Manager and the Audit Committee
 - Significant Governance issues raised through the review
 - Supporting information mapped to the seven good governance principles
9. Part 3 sets out how the output of these are used to make any necessary improvements as a result of the assessment, to track these improvements, and ensure that functions of assurance have regard when undertaking assessments.

Consultation – Audit Committee

10. On 30th January 2018 the Draft Code of Corporate Governance was discussed at the Council's Audit Committee where the overall feedback on the Code and its purpose was very positive. A focused discussion took place in relation to strengthening the visibility and references to Fraud. As a result, specific references have been included to Part 1: Sections A and F of the version of the draft Code (**Appendix A**).

Legal Implications

11. There are no legal implications arising directly from the contents of this report.

Financial Implications

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

RECOMMENDATION

The Constitution Committee considers the draft Code of Corporate Governance and, recommends to full Council to agree that the Code is included in the Constitution.

DAVINA FIORE
Director of Legal, Governance and Monitoring Officer

The following Appendix is attached:

Appendix A – DRAFT Code of Corporate Governance

CYNGOR CAERDYDD
CARDIFF COUNCIL
Code of Corporate Governance.

Introduction

The Council has formalised a Code of Corporate Governance. This Governance Framework has adopted 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) 'Delivering Good Governance in Local Government Framework'.

The CIPFA / SOLACE framework principles of good governance form the basis of how we apply, assess and use our governance assessment for reporting and improvement purposes. The CIPFA / SOLACE framework utilises the International Framework definition of governance, as follows:

Governance comprises the arrangements put in place to ensure that the intended outcomes for stakeholders are defined and achieved.

Purpose

The Council is committed to effective governance as a means to delivering better stakeholder outcomes in an open approach which inspires confidence and trust.

This Code of Corporate Governance sets out:

- How the governance framework in which the Council operates
- How the annual assessment of governance is made using this framework
- How annual governance assessments will be used for to deliver improvement

The annual assessment meets the requirements Accounts and Audit (Wales) Regulations.

Good governance Principles

The Framework comprises two core principles and five supporting principles. Principles A and B run through the implementation of principles C to G but good governance is dynamic, and the Council as a whole is committed to improving governance on a continuing basis through a process of evaluation and review.

Core Principles

- A. Behaving with integrity, demonstrating strong commitment to ethical values, and the rule of law.
- B. Ensuring openness and comprehensive stakeholder engagement.

Supporting Principles

- C. Defining outcomes in terms of sustainable economic, social and environmental benefits.
- D. Determining the interventions necessary to optimise the achievement of intended outcomes.
- E. Developing the entity's capacity, including the capability of its leadership and the individuals within it.
- F. Managing risks and performance through robust internal control and strong public financial management.
- G. Implementing good practices in transparency, reporting and audit to deliver effective accountability.

The Code of Corporate Governance for Cardiff Council is separated into three parts.

1. [How we apply the principles of good governance](#)
2. [How we assess governance in Cardiff Council](#)
3. [How we use our governance assessment](#)

Part 1

How we apply the principles of good governance

A: Behaving with integrity, demonstrating strong commitment to ethical values, and the rule of law.

The Council has a strong commitment to integrity, ethical values and the law, and the Council's Corporate Values, Constitution and supporting policies and procedures centre on achieving this core governance principle.

We apply this core principle through the following.

- We maintain Corporate Values to guide our workforce and to communicate expectations to our stakeholders on conduct and behaviour.
- Our Members and officers are required to comply fully with Codes of Conduct as set out in the Constitution.
- We hold formal rules of procedure covering Cabinet, Committee, and officer responsibilities as set out in the Constitution.
- Induction and training processes are in place for all officers and Members to ensure awareness and understanding on a range of policies, procedures and regulations.
- The Section 151 Officer has overall responsibility for the financial administration of the Council.
- The Monitoring Officer has overall responsibility for ensuring that the Council, its Officers, and its Elected Councillors, maintain the highest standards of conduct
- The Standards and Ethics Committee monitors and scrutinises the ethical standards of the Authority, its Members, employees and any associated providers of the Authority's services.
- The Council has a Whistleblowing Policy through which staff and contractors are encouraged to speak out on misconduct or illegal behaviour within the organisation, which affects the public or other people (making a disclosure in the public interest).
- We maintain a zero tolerance attitude to fraud, bribery and corruption requiring staff and members to act honestly and with integrity at all times, and to promptly report concerns

B: Ensuring openness and comprehensive stakeholder engagement

The Council recognises that there is a need for openness about our activities as well as having clear channels for communicating and engaging with all stakeholders. We hold many public meetings, which are increasingly available via webcast, and opportunities are given to engage in the difficult choices being made by the Council, with increasing amounts of data published.

We apply this core principle through the following.

- We have open mechanisms for consultation, engagement and joint working with employees, citizens, communities and partners.
- We are open and honest about the difficult choices we face, and allow people to have their say on what's important to them and their communities.
- We publish increasing amounts of data, with a focus on making it more easily accessible and available to the public.
- Meetings of the Council, Cabinet and Committees are generally open to the public to attend except where confidential or exempt information is being discussed, as defined by the law.
- Full Council meetings include the opportunity for public questions, and the Council's Scrutiny Committees invite stakeholder contributions to their scrutiny programme.
- The public and other stakeholders are given the opportunity to tell the Council what they think about the services provided through the Council's Comments, Complaints and Compliments Policy.

C: Defining outcomes in terms of sustainable economic, social, and environmental benefits.

The Cabinet has published its vision, outcomes and priorities which underpin the corporate planning, performance management and risk management frameworks. There are formal and informal networks of officers, members, partners and stakeholders which contribute to delivering our outcomes.

We apply this principle through the following.

- We have a corporate planning process which focusses its approach on the delivery of Cabinet priorities and improvement objectives.
- Our performance and risk management frameworks focus on measuring, monitoring and reporting on the key measures of effective delivery of corporate outcomes and priorities.

- Our rolling three year Organisational Development Programme focusses on the delivery of strategic change and the re-shaping of services.
- We set a deliverable Budget Strategy for meeting the changes we must make to the shape of the organisation in order for it to remain operational and resilient.
- We are a partner in the Cardiff Capital Region (CCR) City Deal which aims to enhance development, infrastructure, land use, economic development and employment.
- We are a partner in the Public Service Board, which aims to improve economic, social, environmental and cultural well-being through stronger partnership working.
- We carry out equality impact assessments and consider implications on budget proposals, cabinet reports etc, and it forms part of either/both our ethical values or social outcomes.

D: Determining the interventions necessary to optimise the achievement of intended outcomes.

The Council takes action to identify the key risks to the delivery of our outcomes and to understand the areas where we need to develop and evolve. Our financial planning and monitoring arrangements are built on prudence and resilience, with strong performance and risk management arrangements supporting outcome delivery.

We apply this principle through the following.

- We systematically engage and consult with internal and external stakeholders on the services delivered and proposals for change.
- Our performance and risk management frameworks are aligned to the delivery of corporate priorities and outcomes.
- Our decision makers are well informed of the implications of proposals through business cases and reports.
- Financial planning arrangements use forecasting and risk assessments for prudent financial management and long term resilience.
- Business continuity and disaster recovery arrangements operate across Council services and functions.

E: Developing the capacity of the Council including the capability of its leadership and the individuals within it.

The Council takes action to develop and retain a management structure that provides leadership and enables staff to work effectively and efficiently in delivering Council objectives.

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We apply this principle through the following.

- We have set out decision making responsibilities and authority in the Council's Constitution.
- As a member-led authority, there is a commitment and focus on delivering strong leadership.
- Our Chief Executive (Head of Paid Service) is the most senior member of staff and leads responsibility for overall management and for the Senior Management Team.
- Our Cabinet is the part of the Council which takes responsibility for major decisions, and comprises the Leader and up to nine other Councillors, approved by Council.
- We communicate our values, objectives, policies and procedures to new staff and existing staff and Members through induction and engagement programmes.
- We have strategies to meet the learning and development needs of staff and Members.
- We hold personal performance reviews to support individual learning and development needs, and to align performance measures to Council outcomes and priorities.

F: Managing risks and performance through robust internal control and strong public financial management.

The Council takes action to manage risks and performance in order to deliver efficient and effective services. We understand that strong risk management, internal control and financial management are essential for us to achieve our objectives and we have put appropriate arrangements in place.

We apply this principle through the following.

- We incorporate risk management into strategic decision making, as a key element of business planning, budget setting and programme and project management.
- We maintain risk and performance management frameworks which cover all key business activities and functions which are supported by lead officers and networks.
- We escalate and report risks to Members and senior managers on a quarterly basis through application of our risk management framework.
- We report to Members and senior managers on performance information, against performance indicators which are aligned to corporate plan priorities.

- Our Audit Committee provides assurance on our governance, risk management, and internal control arrangements through a wide ranging programme of work.
- Our Scrutiny Committees are designed to support the cabinet in providing accessible, efficient and effective services for citizens.
- We have a Fraud, Bribery and Corruption Policy and an independent investigation team to investigate concerns. Frauds are reported to the Section 151 Officer and the Audit Committee.
- We maintain arrangements to safeguard personal data with governance arrangements led by our Senior Information Risk Owner.

G: Implementing good practices in transparency, reporting and audit to deliver effective accountability.

The Council takes steps to carry out its activities in an open manner and to ensure that those making decisions and delivering services are answerable for them. We communicate our plans and enable stakeholders to respond to them.

We apply this principle through the following.

- We report to the public and other stakeholders in a fair, balanced and understandable way.
- We have adopted the Information Commissioner's model publication scheme, and make appropriate information routinely available.
- Our Directors have overall accountability for reviewing the effectiveness of their governance, risk management and internal control arrangements, and completing an assurance statement twice a year.
- Our Senior Management Team are accountable identifying, managing and reporting on the Council's significant governance issues.
- Our internal audit service provides independent assurance on the governance, risk management and control.
- We publish our corporate risk register and corporate performance information on a quarterly basis.

Part 2

How we assess governance in Cardiff Council

We assess governance against each of the core and supporting governance principles as outlined above on an annual basis. This formal annual review of our governance arrangements results in the production of an Annual Governance Statement which we include as part of our financial statements each year. A diagram of the key components of the Annual Governance Statement is included in [Figure 1](#).

The Annual Governance Statement comprises three elements:

1. **Assurance Statements** from Senior Management, the Internal Audit Manager and the Audit Committee;
2. **Significant Governance Issues** identified by Senior Management in their review;
3. **Supporting Information** and evidence mapped to the core and supporting good governance principles.

These three elements when taken together represent the assessment of governance, from the perspectives of the Senior Management Team (SMT) the Audit Manager (Chief Audit Executive) and the Audit Committee.

Assurance Statements

- A self-assessment exercise is undertaken by each director and their senior management teams through which governance maturity is measured against 9 assurance categories as included in [Figure 1](#). This results in a Senior Management Assurance Statement being completed by each Director for their areas of responsibility. The results of each assurance statement are reviewed collectively by the Senior Management Team, following engagement with review / assurance support teams where applicable. This results in an overall Corporate Senior Management Assurance Statement from the Senior Management Team, which is included in the Annual Governance Statement.
- The Internal Audit Manager and Audit Committee Assurance Statements are independent assessments of the internal control environment. The Audit Committee's assessment is informed through the delivery of its terms of reference, with the Audit Manager opinion based on application of the Public Sector Internal Audit Standards. Both assurance statements are included within the Annual Governance Statement.

Significant Governance Issues

- As part of the senior management self-assessment process, Directors are required to review any significant governance issues which have impacted upon the assurances they, or the Council can give overall.

- The Action Plan of Significant Governance Issues is an open disclosure from the Senior Management Team of the significant governance issues affecting the organisation as summary actions to take forward and address.
- This Action Plan is held and owned by the Senior Management Team, and is used to inform risk management, business planning and internal control arrangements.

Supporting Information

- The Annual Governance Statement includes supporting information which has been mapped to the governance framework principles within the AGS. This is based on officer engagement and a review of correspondence and minutes of the Council, Cabinet and Committees of the Council. It is through this review and the Senior Management Assurance Statements that the external audit and regulatory assurance is captured and documented within the Annual Governance Statement.

Part 3

How we use our governance assessment

We use our governance assessment to publish an annual governance statement in our Statement of Accounts each financial year.

In addition to this formal disclosure, we use the outputs of our governance assessment to inform and make improvements to our risk management, business planning and internal control arrangements. This process is summarised in a process diagram in [Figure 2](#).

Risk management

- The assurance statements and the action plan of significant governance issues are reviewed for risk management purposes.
- The assurance statements are reviewed by the risk management team whilst also being used to target improvements in directorates, where required.
- The significant governance issues are used to identify any new or emerging risks and to challenge understanding of existing risks and the sufficiency of current mitigating actions.

Business planning

- The assurance statements and the action plan of significant governance issues are considered in directorate and corporate reviews and as part of the business planning process
- Business planning arrangements aim to ensure that recognised governance strengths are maintained and enhanced, and areas for improvement are targeted.

Internal control

- The assurance statements and the action plan of significant governance issues are reviewed within directorates themselves, with a view to enhancing internal controls where required.
- The Internal Audit function uses the assurance statements and the action plan to inform its risk-based audit plan, through gaining assurances where this is possible and reviewing identified governance issues and risks.

Figure 1. Annual Governance Assessment

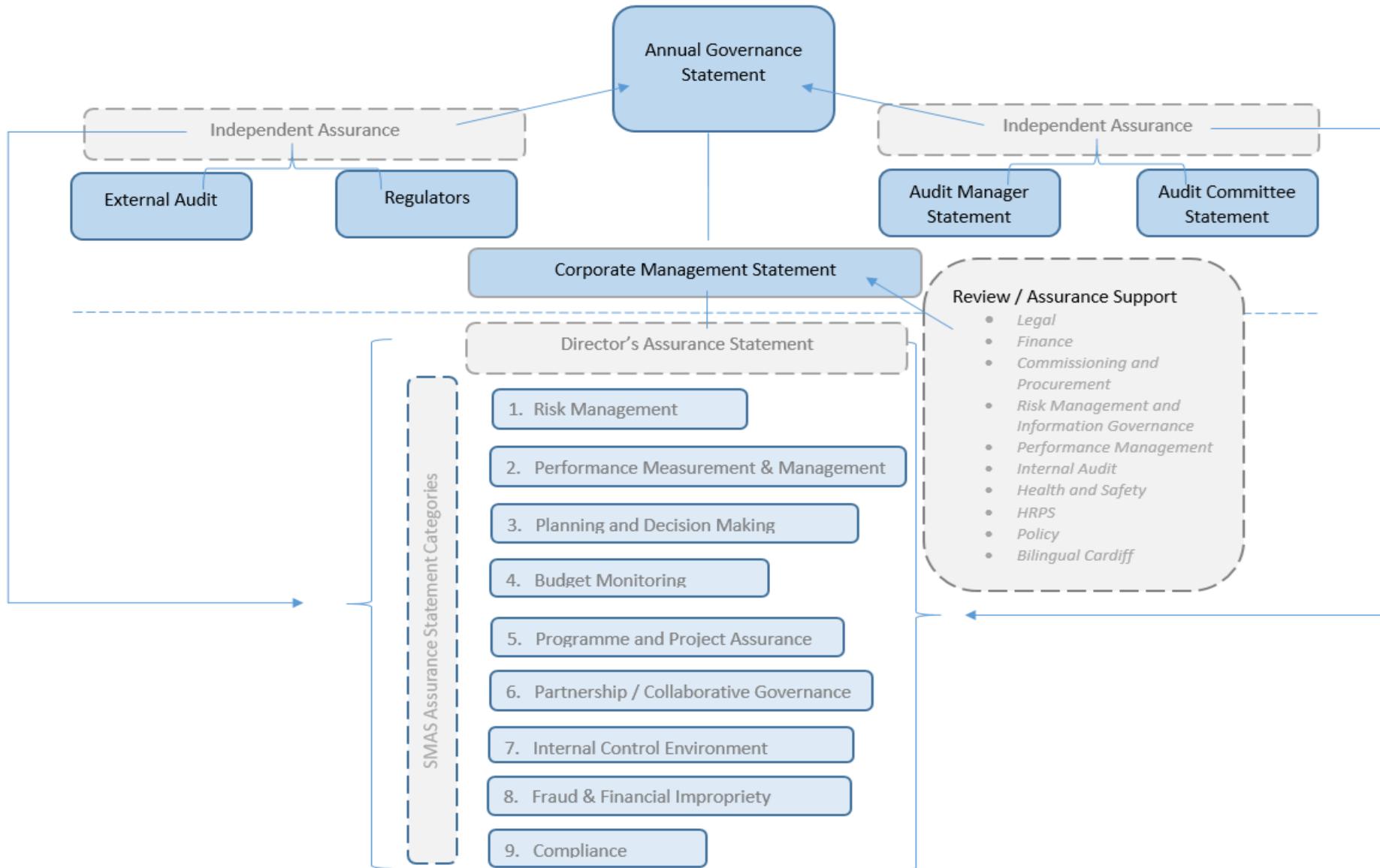
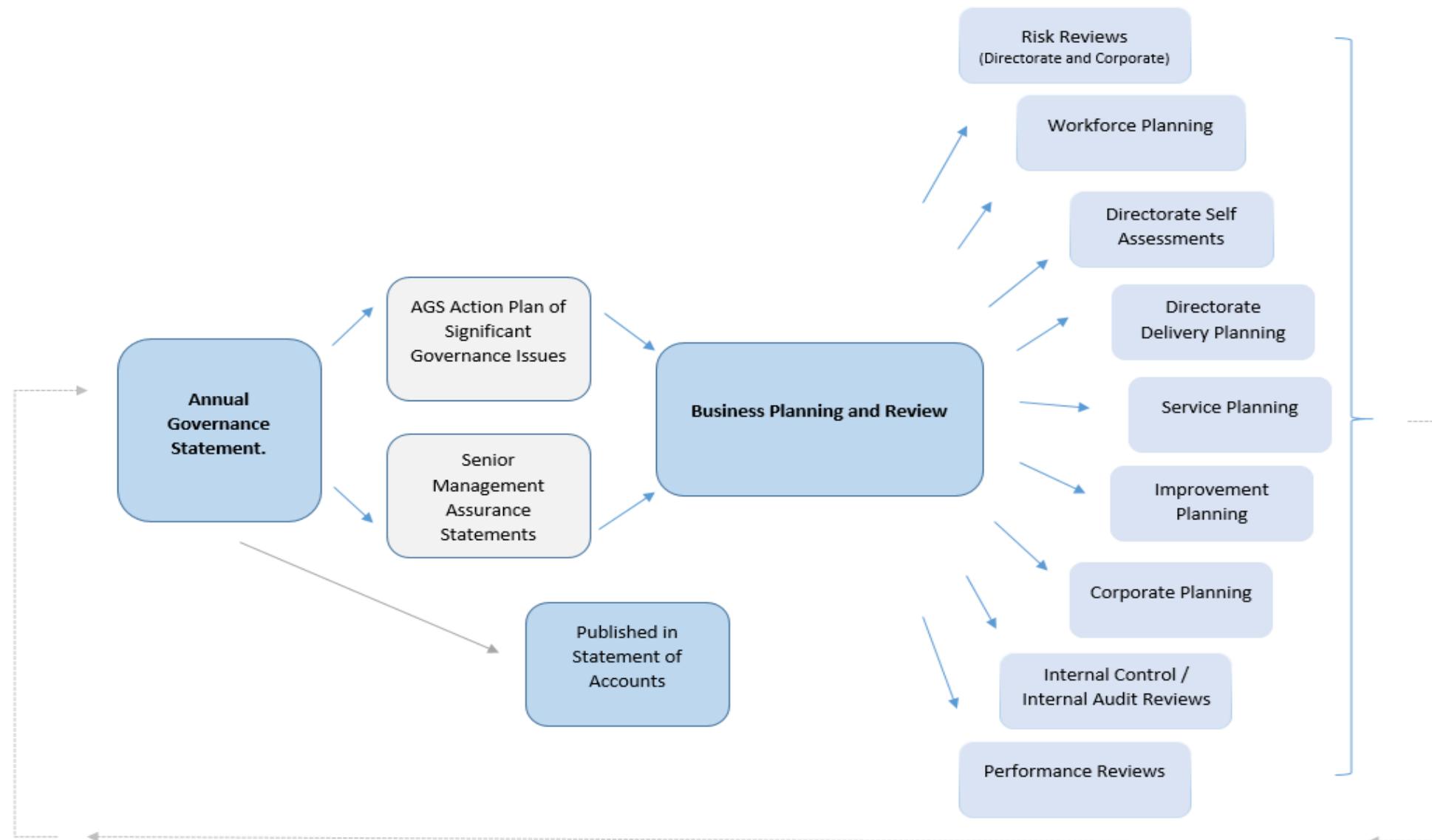


Figure 2. How Cardiff Council uses its Annual Governance Assessment



**CARDIFF COUNCIL
CYNGOR CAERDYDD**



CONSTITUTION COMMITTEE: 11 FEBRUARY 2019

REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES

PUBLIC QUESTIONS AT FULL COUNCIL

Reason for this Report

1. To allow the Committee to consider its current rules and a suggested change in relation to public questions at Council meetings.

Background

2. The consistent and effective engagement of citizens in democracy is recognised as a key challenge for local authorities across the UK. Allowing the public an opportunity to ask questions at decision making meetings is one important way to facilitate public engagement and improve decision making.
3. Cardiff's current arrangements provide an opportunity for any person who resides or works in Cardiff to ask a question of a Cabinet member or Committee Chairperson at meetings of full Council (Council Meeting Procedure Rules, Rule 18).
4. A suggestion has been received from a Member in relation to current arrangements for public questions at full Council.

Issues

Full Council

5. Cardiff's current arrangements allow 15 minutes at each Council meeting for any person who resides or works in Cardiff to ask a question of a Cabinet member or Committee Chairperson. The relevant provisions are set out in the Council Meeting Procedure Rules 18, 19 and 35, appended as **Appendix A**.
6. Key provisions of the Rules include:
 - the question must be submitted 6 working days prior to the day of the Council meeting;

- questions can be ruled out by the Chair if they are not relevant or appropriate (as defined and specified);
 - the question is circulated with the Council papers;
 - answers may be provided orally at the meeting or in writing after the meeting;
 - no more than 5 minutes is allowed for a response to any one question; and
 - 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.
7. The number of public questions asked at Council meetings over the last 2 years is shown below:
- | <u>Municipal year</u> | <u>No. of Public Questions</u> |
|-----------------------|--------------------------------|
| 2017/18 | 5 |
| 2018/19 (to date) | 12 |
- All of the public questions during this period were addressed to Cabinet members. For Members' information, further details of the questions are set out in the table appended as **Appendix B**.
8. 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.
9. A suggestion has been received 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 and so that the proceedings are clear and transparent, particularly to those watching on the webcast, and to demonstrate good democracy. It is recommended that a new paragraph should be added to CPR 18 to this effect: 'The questioner shall be given the opportunity to read their question orally.'
10. The Committee is invited to consider any other changes it may wish to make to the current rules for public questions at full Council.

Legal Implications

11. Under the Constitution Committee's terms of reference, the Committee is responsible for reviewing the Constitution and making recommendations on any appropriate changes to full Council (except for certain specified changes which the Committee may approve itself).
12. Any changes to the Council Meeting Procedure Rules require the approval of full Council.

Financial Implications

13. There are no financial implications arising from the report

RECOMMENDATIONS

The Committee is recommended to:

1. Agree to amend the Council Meeting Procedure Rules, Rule 18, as set out in paragraph 9 of this report and recommend the revised Rule to full Council for approval; and
2. Consider and agree any other changes it may wish to make in relation to the rules on public questions at full Council, and if so, recommend the same to full Council for approval.

**DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING
OFFICER**
5 February 2019

APPENDICES

Appendix A: Council Meeting Procedure Rules 18, 19 & 35
Appendix B: Public Questions at Council, 2017/18 & 2018/19

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PART 4 – RULES OF PROCEDURE

EXTRACT COUNCIL MEETING PROCEDURE RULES

18 PUBLIC QUESTIONS

- (a) A period of up to 15 minutes in each meeting shall be allowed for public questions.
- (b) Any person (other than Members) who resides or works in the area of the City and County of Cardiff may ask questions of Cabinet Members or of the chairpersons of committees of the Council at Ordinary Meetings of the Council.
- (c) A question may only be asked if notice has been given by delivering it in writing or by electronic mail to the mailbox set up by the Democratic Services Manager for such purpose no later than 5pm, 6 Working Days before the day of the meeting. Each question must give the name and address of the questioner and must specify the person to whom it is to be put (by name or title).
- (d) At any one meeting no person may submit more than one question and no more than one such question may be asked on behalf of one organisation.
- (e) The number of questions that an individual can ask in a municipal year shall be limited to two, with any further questions being accepted only at the discretion of the Chair.
- (f) The Chair may reject a question if it:
 - (i) is not related to Relevant Business (as defined in Rule 0);
 - (ii) is in relation to Inappropriate Business (as defined in Rule 0);
 - (iii) is substantially the same as a question which has been put at a meeting of the Council in the past six months;
 - (iv) relates to a matter which is the subject of legal or enforcement proceedings or an appeal to a court or tribunal or to a Government Minister or the National Assembly or an investigation by the Local Government Ombudsman;
 - (v) relates to the activities and aims of a political party or organisation;
 - (vi) relates to a Regulatory Decision or a matter which may result in a Regulatory Decision;
 - (vii) is a statement or otherwise is not a genuine enquiry; or
 - (viii) would require the expenditure of a disproportionate amount of time, money or effort to prepare the answer.

The ruling of the Chair in the above matters shall be final.

- (g) The Proper Officer will make a record of each question received and a copy of the questions to be asked at a meeting will be open to public inspection and circulated to Members prior to the meeting.

- (h) Questions will be asked in the order in which notice of them was received, except that the Chair may group together similar questions.
- (i) If the questioner is absent or fails to identify themselves then the question will be deemed to be withdrawn.
- (j) A questioner who has put a question in person may also put one supplementary question without notice to the Member who has replied to his or her original question. A supplementary question must relate to the original question or the answer given and be limited to one minute. The Chair may reject a supplementary question on any of the grounds set out in (f) above.

Answers

- (k) No more than five minutes will be allowed for a response to any one question.
- (l) Any question which cannot be dealt with during public question time, either because of lack of time or because of the nonattendance of the Member, to whom it was to be put, will be dealt with by a written answer and a copy of the answer will be recorded in the minutes of the meeting.

19 GENERAL PROVISIONS RELATING TO ANSWERS TO MEMBER AND PUBLIC QUESTIONS

- (a) An answer may take the form of:
 - (i) an oral answer given by the person to whom the question is addressed or another person nominated by them;
 - (ii) where the desired information is in a publication of the Council or other published work, a reference to that publication; or
 - (iii) where the reply cannot conveniently be given orally, a written answer circulated later to Members of the Council.
- (b) A person to whom a question is addressed may decline to answer provided that they state the reason for declining to answer.
- (c) The Monitoring Officer shall have discretion to instruct that a composite answer may be given to any questions which are closely related or on the same subject matter, wherever she considers this appropriate. This shall not prejudice any right to ask a supplementary question, which may be available under the Council Meeting Procedure Rules

35 INTERPRETATION

(a) In these Rules the following words shall have the following meanings.

“*Relevant Business*” means matters for which the Council has a responsibility and which substantially affect the well-being of the administrative area of the Council and/or the citizens (or a significant group of them) of the Council.

“*Inappropriate Business*” means matters that:

- (i) are not in relation to a matter for which the Council has a responsibility and which affects the administrative area or citizens of the Council;
- (ii) are defamatory, frivolous or offensive;
- (iii) require the disclosure of confidential or exempt information; or
- (iv) relate to the personal circumstances or conduct of any officer and Member or conditions of service of employees; or
- (v) relate to an individual, particular group or business or the questioner’s own particular circumstances; or
- (vi) are ultra vires the Council or unlawful.

“*Working Day*” means a normal working day in Wales when banks are open for normal business (for the avoidance of doubt, excluding weekends and public holidays).

(b) Any reference to “in writing” or “written” shall include email.

(c) The Chair’s ruling on the interpretation of these terms in relation to the application of these Rules shall be final.

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<u>Date</u>	<u>Question</u>	<u>Addressed to Cabinet member</u>
28 th September 2017	What is the Council going to do to help single parents and that of working families who are no longer eligible for free transport from Pentwyn to Llanishen as £420 a year and almost a 3 mile walk for an 11 year old is simply not affordable or safe?	Cllr Sarah Merry , CABINET MEMBER FOR EDUCATION, EMPLOYMENT AND SKILLS
26 th October 2017	What is the Council doing to ensure those having to move to Universal Credit will be well supported when making the transition, and won't be left in increased need through avoidable delay or errors?	Cllr Lynda Thorne, CABINET MEMBER HOUSING & COMMUNITIES
30 th November 2017	I would be grateful to understand what plans the Council have in place to alleviate the traffic congestion in the city of which there has been a marked increase over the past twelve months to the point that it is now taking me approximately 50 minutes to travel 5 miles from my home in Old St Mellons to my place of work in the city centre?	Cllr Caro Wild CABINET MEMBER PLANING & ENVIRONMENT
25 th January 2018	What direction has been given to Councillors and Council staff to ensure these objectives are met?	Cllr Huw Thomas LEADER
25 th January 2018	What energy consumption criteria and energy efficient systems have they specified for these developments in order to minimise such energy consumption and also to obtain best value for money for the residents of Cardiff?	Cllr Lynda Thorne, CABINET MEMBER HOUSING & COMMUNITIES

<u>Date</u>	<u>Question</u>	<u>Addressed to Cabinet member</u>
21 st June 2018	When will the Council be opening the secondary school promised in the Local Development Plan (ED 009.6) to cope with demand?	Cllr Sarah Merry, CABINET MEMBER FOR EDUCATION, EMPLOYMENT AND SKILLS
19 th July 2018	Can the Council supply a list of alternative Council venues where the Safe & Legal Exhibition can be displayed, together with the details of to whom we should apply to arrange this?	Cllr Lynda Thorne, CABINET MEMBER HOUSING & COMMUNITIES
27 th September 2018	Could the Council explain why it recently granted consent for the use of two residential roads in Thornhill, Cardiff as a bus thoroughfare, permitting the installation of three bus stops along these streets and a terminus outside the rear gardens of several residents?	Cllr Caro Wild CABINET MEMBER PLANING & ENVIRONMENT
25 th October 2018	What additional resources would be applied by the Council (if any) in terms of the enforcement of the dog control PSPO (Public Space Protection Order) and how will these be financed?	Cllr Michael Michael CABINET MEMBER CLEAN STREET, RECYCLING &ENVIRONMENT
25 TH October 2018	In an effort to reduce plastic waste and make Cardiff a more environmentally friendly city, would you consider installing drinking water fountains in the city centre?	Cllr Michael Michael CABINET MEMBER CLEAN STREET, RECYCLING &ENVIRONMENT
25 th October 2018	We would like to know the reason and rationale for these projects being asked to move out of the city centre and the formal justifications for this new change in policy and approach?	Cllr Lynda Thorne, CABINET MEMBER HOUSING & COMMUNITIES
29 th November 2018	What measures have Cardiff Council been taking to ensure overall community cohesion, ensuring opportunity for all?	Cllr Lynda Thorne, CABINET MEMBER HOUSING & COMMUNITIES
29 th November 2018	Fake News and false claims have largely taken over social media, how is Cardiff Council ensuring 'Fake News' isn't accidentally pushed by its social media feeds?	Cllr Huw Thomas THE LEADER
29 th November 2018	Why have the school buildings at Glan Yr Afon Primary School been allowed to deteriorate to such an extent that the Council justify this as one of the reasons why the school has to close?	Cllr Sarah Merry , CABINET MEMBER FOR EDUCATION, EMPLOYMENT AND SKILLS
29 th November 2018	Why should children at Glan Yr Afon an English Medium Primary School be sent to a Roman Catholic Primary School instead?	Cllr Sarah Merry, CABINET MEMBER FOR EDUCATION, EMPLOYMENT AND SKILLS

31 st January 2019	What did the Council do to encourage those visiting Cardiff, for Christmas shopping and other festive activities, out of their cars and onto public transport?	Cllr Caro Wild CABINET MEMBER PLANINNG & ENVIRONMENT
31 st January 2019	Can the Cabinet Member for Transport outline Cardiff Council's latest strategy for addressing potholes on the City's road network?	Cllr Caro Wild CABINET MEMBER PLANINNG & ENVIRONMENT

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CONSTITUTION COMMITTEE: 11 FEBRUARY 2019

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

APPOINTMENT OF SUBSTITUTE COMMITTEE MEMBERS

Reason for this Report

1. To enable Members to consider arrangements for the appointment of substitute Committee members when an appointed Member cannot attend.

Background

2. 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.
3. Following some previous uncertainty about the legality of substitution, 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.
4. Cardiff's Scheme of Delegations, delegation reference LD17 in Section 4E, authorises the Monitoring Officer:
'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.'

Issues

5. Cardiff's current arrangements authorise the Monitoring Officer to appoint substitute members to committees under her delegated authority (LD17, cited in paragraph 4 above), in accordance with the wishes of the relevant political group. However, the Council has no procedure rule governing the permitted appointment of substitutes.

6. It is recommended that the Council's arrangements for the appointment of substitutes should be set out within the Council's procedure rules and approved by full Council. The procedure should provide clarity and certainty over the appointment of substitutes and the membership of committees at any given time.
7. The Committee is asked to consider the draft procedure rule attached as **Appendix A**. Members will note that the draft procedure rule includes the following provisions:
 - i. To confirm that a request to appoint a substitute Member may be submitted to the Head of Democratic Services by an appointed member of a Committee who is unable to attend a committee meeting/s, provided that the substitute Member is from the same political group;
 - ii. A minimum notice requirement to ensure that requests are received no later than the day before the agenda and reports for a meeting are despatched, so that the substitution can be recorded in the agenda for the meeting, and to allow papers to be sent to the substitute member, with adequate time for them to be read;
 - iii. To require substitute Members for regulatory and quasi-judicial committees to have undertaken any current essential training in relevant procedures and the law, in line with the requirements of the committee's terms of reference;
 - iv. To confirm that, provided the procedure rule is complied with, the Monitoring Officer will exercise her delegated authority to appoint a substitute in accordance with the request, and arrange to inform the leader of the party group and the Chair of the Committee;
 - v. To confirm that the period for which the substitution shall last is the duration of the meeting/s in question, unless otherwise expressly requested by the original appointed Member and agreed by the Monitoring Officer;
 - vi. To provide that the substitute may only act if the Member who they are to replace is absent for the whole of the meeting;
 - vii. To confirm that a substitute Member attending a meeting must speak and vote in his or her own capacity (meaning they do not relinquish their own personal responsibilities or take on the mantle of the other Member), and is under the same obligations as any other Member in respect of declaring personal interests and complying with the Members' Code of Conduct and relevant procedure rules; and
 - viii. To note that a substitute Member may not, by law, be appointed to the Cabinet or the Planning Committee (as confirmed in the Constitution, Article 7.4 (The Cabinet) and Planning Committee Procedure Rule 1.1B).

Principles for Agreeing a Substitute Appointment

8. The draft procedure rule has been discussed with party group whips, who have requested that Committee members consider including principles for when it is appropriate for a substitution to be agreed by the Monitoring Officer. Examples, which Members may wish to consider, include where an appointed Member cannot attend a committee meeting/s due to serious illness or unavoidable work or family commitments for an extended period of time (not just one meeting), maternity and paternity leave, caring responsibilities etc. These examples have been inserted into the draft procedure rule at paragraph (e). Members are asked to discuss and agree principles for inclusion within the procedure rule.

Committee Chairs

9. The Constitution provides that Committee Chairs (and Deputy Chairs, where applicable) are elected by full Council (Committee Meeting Procedure Rules, Rule 1.2). In the absence of the appointed Chair or Deputy Chair, the Committee Meeting Procedure Rules provide that the Committee may elect a person to preside at the meeting (Rule 2(a)). The draft procedure rule for substitutions includes a paragraph (paragraph (j)) to reflect this and make clear that any substitute appointed by the Monitoring Officer on the request of a Committee Chair (or Deputy Chair) is to fulfil the role of Committee member only, and not to discharge the role of Chair (or Deputy Chair).

Members' Remuneration

10. Where a substitute is appointed to stand-in for a Member for a specific committee meeting, the substitute Member will not generally be entitled to any additional remuneration (although they may claim expenses, such as travel costs, on the basis of undertaking an 'approved duty' in accordance with the Members' Remuneration Schedule).
11. However, if a Member is taking Family Absence (under the Family Absence Procedure Rule set out in Part 4 of the Constitution), the Independent Remuneration Panel for Wales has determined that:
 - i. a Member taking Family Absence is entitled to retain their basic and any senior salary; and
 - ii. if a substitute is appointed for a senior salary holding Member, the Council may (but is not required to) agree to pay an additional senior salary to the substituting Member.

This is reflected in the Members' Remuneration Schedule 2018/19 paragraph 8. Members should note that, if the Council wishes to pay an additional senior salary to a substitute for a senior salary holding Member taking approved Family Absence, that decision will need approval by full Council.

Alternative substitute system

12. Members may also wish to note that an alternative system for substitutes operated by some Councils is for full Council to appoint substitute members for each committee, usually at the Annual Council meeting at the same time as the regular committee membership is decided. This method has the advantage of certainty in that the substitute membership is well publicised in advance, and the Members concerned are able to build up knowledge and expertise in the subject area of their particular committee and attend relevant training. However, this approach lacks the flexibility which is available when an appropriate officer is authorised to make substitutions.

New procedure

13. In order to provide a clear and transparent process for the exercise of the Monitoring Officer's current delegated authority (please see paragraph 4 above), it is recommended that the draft procedure rule at **Appendix A** (with any agreed amendments) should be recommended to full Council for adoption and incorporation within the Committee Meeting Procedure Rules and the Scrutiny Procedure Rules.

Legal Implications

14. Under section 102 of the Local Government Act 1972, Committees are appointed by full Council. Therefore, any appointment of substitutes should be approved by full Council.

15. Caselaw has confirmed that substitution, made in accordance with approved procedure rules, is legally permissible (The Queen on the Application of Doug Carnegie (On Behalf of the Oaks Action Group) v London Borough of Ealing v Action Regeneration Group Limited, 2014; and The Queen (on the application of Peter Higham) v Cornwall Council v A J Venning, Clean Earth Energy Wind Investments Ltd, 2015).

16. However, as noted in paragraph 3 of the report, substitution is not permitted for:

- (i) Cabinet Members (pursuant to the Local Government Act 2000). The statutory guidance on executive arrangements (SI 2006/56, paragraph 4.29) explains that 'A separate executive is designed to increase transparency and accountability. Allowing formal substitution could cloud accountability'; or
- (ii) Planning Committee members (pursuant to the Standing Orders (Wales) Amendment Regulations 2017). The Welsh Government explanatory memo (paragraph 4.4 – 4.6) notes that:

- 4.4 There are presently varying practices in relation to the use of substitute members. However, inconsistent membership of the committee through the use of substitute members can lead to an imbalance in the skills and knowledge of the committee due to substitute members not being trained to the same high standard as the formal members of the committee. Additionally, the use of substitute members can lead to inconsistent decision making.
 - 4.5 The use of substitute members hinders the development in Wales of planning committees consisting of an informed group of councillors with the necessary skills and knowledge to undertake better informed evidence-based decision making in the wider public interest.
 - 4.6 In the absence of a member of the planning committee, the Local Planning Authority is not permitted to appoint another member for a relevant meeting.
17. The statutory prohibition of substitutes on the Cabinet and the Planning Committee is reflected in the Constitution Article 7.4 (Cabinet) and Planning Committee Procedure Rules (Rule 1.1B).
18. In considering 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. The draft procedure rule appended at **Appendix A** is intended to clarify the arrangements and provide the necessary safeguards, having regard to the issues set out above.
19. The Constitution Committee is authorised to review the Constitution and recommend any changes to full Council for approval. The recommended changes to the Council's procedure rules will require the approval of full Council.

Financial Implications

20. There are no financial implications arising from the report

RECOMMENDATIONS

The Committee is recommended to:

1. Note the provisions relating to substitute Members as set out in the report;
2. Provide views on the principles which should be applied to decide if it is appropriate to agree a substitution (paragraph 8 of the report); and
3. Agree the draft procedure rule appended as **Appendix A**, subject to any agreed amendments, to be recommended to full Council for adoption and incorporation within the Committee Meeting Procedure Rules and the Scrutiny Procedure Rules within the Constitution.

DAVINA FIORE
**DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING
OFFICER**
5 February 2019

APPENDICES

Appendix A Appointment of Substitute Members – Draft Procedure Rule

Appointment of Substitute Members – Draft Procedure Rule

- (a) A member of a committee who is unable to attend a committee meeting may submit a request to the Head of Democratic Services to appoint a substitute Member, provided that the substitute Member is from the same political group.
- (b) A request to appoint a substitute Member must:
 - (i) State the name of the Member making the request and the name of the proposed substitute Member;
 - (ii) Specify the committee meetings (including the dates of the meetings) which the substitute Member is to attend;
 - (iii) Explain the reasons why the substitution is required (having regard to paragraph (e) below);
 - (iv) Confirm the agreement of the proposed substitute Member to attend the specified committee meetings as a substitute; and
 - (v) Be received by the Head of Democratic Services by no later than 9am on the fourth working day before the day of the meeting.
- (c) A substitute Member must:
 - (i) Be eligible for appointment to the committee under any other rules of the constitution or by law; and
 - (ii) for a regulatory or quasi judicial committee, have undertaken any current essential training in relevant procedures and the law, in line with the requirements of the committee's terms of reference.
- (d) Subject to compliance with this rule and provided she is satisfied that substitution is appropriate, the Monitoring Officer shall exercise her delegated authority to appoint a substitute in accordance with the request and arrange to notify the leader of the party group and the Chair of the committee of the substitution.
- (e) *For the purposes of this procedure rule, substitution will only be appropriate when an appointed Member is unable to attend specified committee meetings over an extended period of time (a period covering more than one committee meeting) due to one (or more) of the following:*
 - (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.
- (f) A substitute Member may attend a committee meeting in that capacity only:
 - (i) To take the place of the ordinary Member for whom they are the designated substitute; and
 - (ii) Where the ordinary Member will be absent for the whole of the meeting.
- (g) The substitution shall last for the duration of the specified meeting/s, unless otherwise expressly requested and agreed by the Monitoring Officer.
- (h) A substitute Member attending a meeting must speak and vote in his or her own capacity, and is under the same obligations as any other Member in respect of declaring personal interests and complying with the Members' Code of Conduct and relevant procedure rules.
- (i) A substitute Member may not be appointed to:

the Cabinet or the Planning Committee (as confirmed in the Constitution, Article 7.4 (The Cabinet) and Planning Committee Procedure Rule 1.1B)

- (j) A substitute appointed under this procedure rule by the Monitoring Officer upon the request of a Committee Chair (or Deputy Chair) is to fulfil the role of Committee member only, and not to discharge the role of Chair (or Deputy Chair), unless they are elected or appointed to that role by full Council or the Committee.

DRAFT

**CYNGOR CAERDYDD
CARDIFF COUNCIL**



CONSTITUTION COMMITTEE: 11th FEBRUARY 2019

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

SCRUTINY COMMITTEES SIZE AND MEMBERSHIP OF TASK AND FINISH GROUPS - UPDATE

Reason for this Report

1. To:
 - (a) report back to Committee following discussions with party group whips in relation to the report deferred from the last Committee meeting on Scrutiny Committees Size and Membership of Task and Finish Groups; and
 - (b) allow the Committee to consider recommended changes to the Scrutiny Procedure Rules to clarify and confirm the size of scrutiny committees and membership of task and finish groups.

Background

2. At its last meeting in March 2018, the Committee received a report on Scrutiny Committees Size and Membership of Task and Finish Groups. One of the recommendations of that report was to consider reducing the size of scrutiny committees from 9 (as currently) to 7 or 8 members. The Committee decided to defer consideration of that report until further discussions took place with party group whips.
3. Discussions have been held with party group whips and this report presents an update and the outcome of those discussions.

Issues

Size of Scrutiny Committees

4. 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.

5. Annual Council in May 2018 agreed there should be five Scrutiny Committees with nine Elected Members each (and four Co-Opted Members on the Children and Young People Scrutiny Committee). At the time of the report to the last Committee meeting, there were a number of vacancies on scrutiny committees. However, since then all vacancies were filled (and a more recent vacancy is expected to be filled at this month's Council meeting).
6. Discussions were held with Scrutiny Chairs and party group whips about potentially reducing the size of the scrutiny committees. However, opposition groups were not content to reduce their representation on scrutiny, so whips did not agree the proposals. It was agreed that the size of scrutiny committees should remain unchanged.
7. 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 by amending Rule 1 of the Scrutiny Procedure Rules as shown in **Appendix A** to this report.

Membership of Task and Finish Groups

8. As reported to the Committee's last meeting, 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.
9. 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.
10. The Constitution, 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 provision regarding the size or membership of Task and Finish groups.
11. 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 by amending Rules 1 and 2 of the Scrutiny Procedure Rules as shown in **Appendix A** to this report.

Legal Implications

12. The Local Government Act 2000 requires authorities to set up overview and scrutiny committees. The legislative provisions for overview and scrutiny committees for Wales have been amended and supplemented by the Local Government (Wales) Measure 2011 and Regulations made thereunder. In addition, other legislation imposes requirements regarding scrutiny of particular issues, for example, crime and disorder matters (the Police and Justice Act 2006); and Public Services Board functions (the Wellbeing of Future Generations (Wales) Act 2015). Subject to compliance with the relevant statutory provisions, the size of its scrutiny committees is a matter for each Council to determine.
13. Task and Finish groups may be set up by a Scrutiny Committee to carry out a detailed examination of particular topics and report back to the Committee. They are not authorised to exercise any formal scrutiny powers, which remain the responsibility of the Committee. There are no specific legal constraints on the size or membership of Task and Finish groups. However, a workable limit on the number of members and setting out the agreed membership arrangements in the Constitution (Scrutiny Procedure Rules) supports good governance.
14. The Constitution Committee is authorised to review the Constitution and recommend any changes to full Council for approval. The recommended changes to the Scrutiny Procedure Rules will require the approval of full Council.

Financial Implications

15. There are no financial implications arising from the report

RECOMMENDATIONS

The Committee is recommended to:

1. Note the information set out in the report; and
2. Recommend to Council that Rules 1 and 2 of the Scrutiny Procedure Rules be amended as shown in **Appendix A** to:
 - a) Set out the agreed size of each of the 5 Scrutiny Committees, as agreed at Annual Council;
 - b) 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
 - c) Confirm that non-Councillors may be invited to participate in Task and Finish inquiries as expert advisors to a Task and Finish group.

DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING
OFFICER
5 February 2019

APPENDICES

Appendix A Scrutiny Procedure Rules – draft showing proposed amendments

Background papers

Constitution Committee report ‘Scrutiny Committee Size and Membership’, March 2018

PART 4 – RULES OF PROCEDURE

SCRUTINY PROCEDURE RULES

1 Scrutiny Committees

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 of nine elected Members unless otherwise determined by the Council.

Scrutiny Committees may appoint "Task and Finish" Sub Committees comprised of up to nine elected Members, 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. A Scrutiny Committee may agree to invite one or more advisors with relevant expertise to participate in a Task and Finish group inquiry.

2 Members of Scrutiny Committees

All councillors, except members of the Cabinet, may be members of a Scrutiny Committee or a Task and Finish Sub Committee. However, no member may be involved in scrutinising a decision which he/she has been directly involved in taking.

3 Co-opted Members

The Children & Young People Scrutiny Committee shall include in its membership the following voting representatives:

- (a) 1 Church in Wales diocese representative;
- (b) 1 Roman Catholic diocese representative; and
- (c) 2 parent governor representatives.

When matters unrelated to education functions, which are the responsibility of the executive, fall to be considered by the Children & Young People Scrutiny Committee, these representatives shall not vote on those other matters, though they may stay in the meeting and speak.

4 Meetings of the Scrutiny Committees

Scrutiny Committees shall generally meet on a monthly basis. In addition, extraordinary meetings may be called from time to time as and when appropriate. A Scrutiny committee meeting may be called by the Chairperson

of the relevant Scrutiny Committee if he/she considers it necessary or appropriate.

Scrutiny Committee meetings will generally be held in public in accordance with the provisions of the Access to Information Procedure Rules.

5 **Quorum**

The quorum of a meeting will be one quarter of the whole number of members of that Scrutiny Committee/Sub Committee. During any meeting, if the Chairperson declares that there is not a quorum present, then the meeting will adjourn immediately. Remaining business will be considered at a time and date fixed by the Chairperson. If he/she does not fix a date, the remaining business will be considered at the next ordinary meeting of the Scrutiny Committee/Sub Committee.

6 **Chairperson**

Scrutiny Chairpersons will be appointed on a politically proportionate basis in accordance with the provisions of sections 66 – 75 of the Local Government (Wales) Measure 2011.

7 **Scrutiny Role and Conduct of Business**

Within their terms of reference, Scrutiny Committees:-

- (a) Will set their own work programmes and submit Annual Reports for consideration by the Council. Such reports will outline previous, and ongoing, investigations, and set out any known future work programme.
- (b) May make proposals to the Cabinet regarding policy and service development and scrutinise and review decisions made, or actions, taken in connection with the discharge of any Council functions.
- (c) May use the budgets allocated to them, relevant Council employees, advisers and assessors to assist them in fulfilling their role. They may go on site visits, conduct public surveys, hold public meetings, commission research and do all other things that they reasonably consider necessary to inform their deliberations. They may ask witnesses to attend to address them on any matter under consideration and may pay to any advisers, assessors and witnesses a reasonable fee and/or expenses for doing so. They must comply with the Council's procedures and keep within the budgets allocated to them in so doing.
- (d) As far as possible, will ensure that the objectives of any proposed business are set out in its programme.

8 **Agenda items**

- (a) Any member of a Scrutiny Committee may give notice to the Head of Democratic Services that he/she wishes an item relevant to the functions of that committee to be included on the agenda for a future meeting. On receipt of such a request, the Chairperson will ensure that it is included as an item on the next suitable agenda.
- (b) Scrutiny Committees shall respond, as soon as their work programme permits, to requests from the Council or the Cabinet, to review particular areas of Council activity. Where they do so, the Scrutiny Committee shall report their findings, and any recommendations, back to the Cabinet and/or Council, as appropriate.

9 Reports from Scrutiny Committees

- (a) Once it has formed recommendations following the conclusion, or part conclusion, of its deliberations on a particular topic, a Scrutiny Committee will prepare a formal report and submit it for consideration by the Cabinet (if the report relates to a Executive Decision or proposal) or to the Council (if the recommendation would require a departure from, or a change, to the agreed budget and policy framework).
- (b) If a Scrutiny Committee cannot reach unanimous agreement on the content of a report to the Council or Cabinet as appropriate, then any member of the committee may request that the points of difference between their view and that of the majority and the reasons for the difference in view be recorded in the Scrutiny Committee report and submitted for consideration by the Council or Cabinet as appropriate. Where a minority report is requested, it must be requested before the Committee's report on the topic under scrutiny is determined.
- (c) The Council or Cabinet shall give consideration to a formal report of a Scrutiny Committee and any minority report at an appropriate meeting. Where appropriate, the Scrutiny Committee shall receive a written response from the Cabinet to its formal report and any minority report, as soon as is practicable following the consideration of the report by the Cabinet. The appropriate Cabinet Member will also attend a future meeting of the scrutiny committee to present any response.
- (d) Where a scrutiny committee prepares a report for consideration by the Cabinet in relation to a matter where the decision making power has been delegated to an individual member of the Cabinet, then the Scrutiny Committee will submit a copy of their report to him/her for consideration. The member with delegated decision-making power must consider the report and respond in writing to the Scrutiny Committee. The member will also attend a future meeting of the Scrutiny Committee to present their response.

10 Rights of Scrutiny Committee members to documents

Members of Scrutiny Committees have the additional right to documents, and to notice of meetings as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

11 **Hearing evidence and receiving information**

- (a) Scrutiny Committees may receive written submissions or call witnesses to assist them in their examination of topics.
- (b) They may require any Cabinet Member and/or Council officer to attend to explain, in relation to matters within their remit:-
 - (i) any decision or series of decisions;
 - (ii) the extent to which actions taken implement Council policy; and/or
 - (iii) the performance of any Council service within their portfolio or management responsibility
 - (iv) and it is the duty of those persons to attend if so required.
- (c) Where any member or officer is required to attend a Scrutiny Committee under this provision, the Chairperson of that Committee, or an officer acting at their behest, will inform the member or officer in writing, giving at least ten calendar days notice of the meeting at which he/she is required to attend, except in cases of urgent necessity, when at least 48 hours notice will be given. The notice will state the nature of the item on which he/she is required to attend to give account and whether any papers are required to be produced for the Committee. Where the account to be given to the Committee will require the production of a report, then the member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- (d) Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the scrutiny committee shall, in consultation with the member or officer, arrange an alternative date for attendance, or may seek a written submission.
- (e) A Scrutiny Committee may invite anyone whom it believes can make a useful contribution to address it, discuss issues of local concern and/or answer questions. It may, for example, wish to hear from residents, stakeholders and members and officers in other parts of the public sector and can invite such people to attend.
- (f) Scrutiny Committees will programme their agendas as effectively as possible and will in particular give any witness called to appear before them a time by which they can expect their contribution to be completed. At the expiry of that time period, the witness can leave unless he/she agrees to remain longer.

12 Call-in Procedure

- (a) When an Executive Decision is made by the Cabinet, a Committee of the Cabinet, the Leader, a Cabinet Member, the Chief Executive, a Corporate Director or a Director exercising a Corporate Director or a Director delegation, the decision shall be published on the Council's Intranet Site, and shall be available at the main offices of the Council, normally within two working days of being made. Members of those Committees who request it (in respect of decisions falling within their Committee's terms of reference) and Chairpersons of all Scrutiny Committees will also be sent copies of the records of all such decisions within the same timescale by the proper officer.
- (b) The notice will bear the date on which it is published and will specify that the decision will be implemented on the expiry of seven clear working days after the publication of the decision ("the call-in period"), unless the decision is called in as set out below.
- (c) Any non Cabinet member of the Council (or a co-opted member of the Children and Young People Scrutiny Committee, in the case of a decision relating to an education matter) may call-in a decision of which notice has been given as set out above, by giving notice in writing to the Head of Democratic Services within the call-in period. The Head of Democratic Services shall then notify the Cabinet Office of the call-in. He/she shall call a meeting of the relevant committee on such date as he/she may determine, where possible after consultation with the Chairperson of the Committee, and in any case within five clear working days of the decision to call-in ("the scrutiny period"). At its meeting, the Scrutiny Committee may consider the called-in decision itself or decide to refer the issue to the Council for scrutiny, if the matter is of general significance and importance to the Council as a whole. A Council meeting to consider this issue must take place within ten clear working days of this referral ("the Council scrutiny period") unless otherwise agreed between the Leader and the Chairperson of the relevant Scrutiny Committee.
- (d) Having considered the decision, the Scrutiny Committee or the Council (if the decision has been referred to Council) may refer it back to the Cabinet or the decision maker for reconsideration, setting out in writing the nature of its concerns. The Cabinet or decision maker shall then reconsider the matter before adopting a final decision, arranging for the decision to be changed to reflect points made by the Scrutiny Committee, or formally deferring the matter for further consideration. The relevant Scrutiny Committee or Council as appropriate will be advised of the outcome at its next meeting.
- (e) If following a call-in, the matter is not referred back to the Cabinet or decision maker, the decision shall take effect on the date of the relevant Scrutiny Committee or Council meeting which considers the issue, or the expiry of the scrutiny period or the Council scrutiny period as appropriate, whichever is the later.

- (f) The role of Scrutiny Committees calling in a decision is:
- (i) To test the merits of the decision
 - (ii) To consider the process by which the decision has been formulated.
 - (iii) To make recommendations (to support the decision, change aspects of the decision, or to invite the decision making body to reconsider).
 - (iv) To suggest further steps before a decision is made (but not to try to carry out those steps in place of the decision making body).
 - (v) To come to a view in a relatively short time scale, so as not to compromise the speed and efficiency of the decision-making process.
- (g) In calling in a decision it is not sufficient for the Member requesting the call in to state that they wish to test the merits of the decision. A member requesting a call in shall specify precisely which aspects of the decision they wish to question or challenge.
- (h) The Head of Democratic Services may, in consultation with the Monitoring Officer, rule that a call in is not valid if:
- (i) The call in request has not been made within the seven working days allowed for call in;
 - (ii) It is not clear which Executive Decision is being called in;
 - (iii) The decision is exempt from call in on account of urgency provisions;
 - (iv) The call in request provides too little information to enable Committee members or the decision taker to adequately prepare for the call in meeting.
 - (v) The decision being called in, or broadly the same decision, has been called in during the last six months; or
 - (vi) The matter has already been scrutinised by the relevant Scrutiny Committee and there is no significant new or additional information which has not been previously considered by that Committee.

13 Exceptions: Call-in and Urgency

- (a) The call-in procedure set out above shall not apply where the decision being taken is urgent. A decision will be urgent if either the Head of Paid Service, the Monitoring Officer or the S151 Officer certifies that any delay likely to be caused by the call-in process could seriously prejudice the Council, or the public interest, and the Chair of the relevant scrutiny

committee or, in his/her absence, the Chair of the Council, or in both their absences, the Vice-Chair of the Council, agrees that the matter is urgent. The record of the decision and notice by which it is made public shall state whether the decision is an urgent one, and therefore not be subject to call-in. Decisions taken as a matter of urgency must be reported for information to the next available meeting of the Council, together with the reasons for urgency.

- (b) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

14 Procedure at Scrutiny Committee meetings

- (a) Scrutiny Committees shall consider the following business:
 - (i) minutes of the last meeting;
 - (ii) declarations of interest (to be made at the commencement of the agenda item in question);
 - (iii) consideration of any matter referred to the Committee for a decision in relation to call in of a decision;
 - (iv) responses of the Cabinet to reports of the Scrutiny Committee; and
 - (v) the business otherwise set out on the agenda for the meeting.
- (b) Where the Scrutiny Committee conducts investigations, the Committee may also invite people to attend to give evidence at committee meetings which are to be conducted in accordance with the following principles:
 - (i) that the investigation be conducted fairly and all members of the committee be given the opportunity to ask questions of those invited to give evidence, and to contribute and speak;
 - (ii) that those assisting the Committee by giving evidence be treated with respect and courtesy; and
 - (iii) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.
 - (iv) that members of the council acting in their constituency representative role be permitted to attend and give evidence in connection with ward specific matters provided they have first given notice to the Chair of the Scrutiny Committee.
- (c) Following any investigation or review, the Committee shall prepare a report, for submission to the Cabinet and/or Council as appropriate, and shall make its report and findings public, except that reports containing

confidential or exempt information need not be made public to the extent that such information would be disclosed.

15 Matters within the remit of more than one Scrutiny Committee

Where a Scrutiny Committee proposes to conduct a review, or scrutinise a matter, which also falls (whether in whole or in part) within the remit of another Scrutiny Committee, then the arrangements for the future scrutiny of this matter will be agreed by the relevant Scrutiny Chairpersons. This agreement will be reported to the next meeting of the appropriate Scrutiny Committees.

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CONSTITUTION COMMITTEE: 11 FEBRUARY 2019

REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES

SCRUTINY CALL-IN RULES

Reason for this Report

1. To allow the Committee to consider whether it wishes to make any changes to the rules governing scrutiny call-ins.

Background

2. Scrutiny Committees have statutory power to make reports or recommendations to the authority or the Cabinet with regard to the discharge of any functions which are the responsibility of the executive ('Executive Functions'); and to review and scrutinise decisions made, or other action taken, in connection with the discharge of such functions. This means they may review or scrutinise executive decisions before or after they are made. If a decision has been made but not yet "implemented", the Scrutiny Committee may recommend that the decision maker should reconsider it, or ensure that full Council reviews the decision (Section 21 of the Local Government Act 2000).
3. Cardiff's Scrutiny Procedure Rules (in Part 4 of the Constitution) reflect the statutory provisions and set out the relevant procedures.
4. At its meeting in January 2018, the Constitution Committee received information about call-ins considered since 2015/16 and approved a change to the call-in rules in relation to matters which had been subject to pre-decision scrutiny. The call-in rules were amended to provide that where a matter had been subject to pre-decision scrutiny, call-in of a decision should only be permitted if there is significant new or additional information, which had not been previously considered by the Scrutiny Committee, so as to avoid unnecessary duplication of work already undertaken.

Issues

5. 'Call-in' is a mechanism to hold to account the Cabinet and officers taking Executive decisions. It enables a Scrutiny Committee to consider whether a decision is appropriate, having regard to the relevant policy, financial and legal framework. The Scrutiny committee may question the decision-

taker on the decision and actions taken, and may decide to refer the decision back to the decision maker for reconsideration. A called-in decision cannot be implemented until it has been considered by the relevant Scrutiny Committee.

6. Rule 12 of the Scrutiny Procedure Rules deals with ‘Call-In’ (scrutiny of Executive decisions after they have been taken), and is set out at **Appendix A**.
7. Under Rule 12, any non-Cabinet member of the Council (or a co-opted member of the Children and Young People Scrutiny Committee in the case of a decision relating to an education matter), may call-in any Executive decisions made, but not yet implemented, by the Cabinet and designated senior officers, for scrutiny by the relevant Scrutiny Committee. The call-in request must be made in writing to the Head of Democratic Services within the call-in period (seven clear working days after publication of the decision).
8. The number of call-ins considered over the previous 3 municipal years is shown below:

Municipal Year	Number of Call-Ins
2015/16	5
2016/17	1
2017/18	2
2018/19 to date	0

Summary information about each of the above call-ins is appended as **Appendix B**.

9. In considering Cardiff’s call-in arrangements, Members may also wish to note the arrangements adopted by other local authorities. Outline information about the call-in arrangements operated in a number of other core cities and other Welsh authorities is set out in the table appended as **Appendix C**.
10. Members will note that many authorities require a call-in request to be supported by more than one Member. Some require support by Members from more than one political party; and some require support by the Chair / Vice-Chair of the relevant scrutiny committee. The arrangements adopted should facilitate good decision making by allowing the executive to be held to account in a reasonable and proportionate way. Call-in should not be used as a means of obstructing or slowing down the decision making process or for personal or political reasons.
11. Members may also wish to note that the Wales Audit Office (WAO) recently concluded a national, themed review of the scrutiny function, ‘Scrutiny – Fit for the Future’, to consider how Councils are responding to

current challenges. The WAO review concluded that Cardiff's Scrutiny arrangements are well-developed and supported by a culture that makes them well-placed to respond to current and future challenges, but put forward a number of proposals for the Council to be more innovative in how it undertakes scrutiny activity. The Policy Review and Performance Scrutiny Committee has considered the WAO proposals and developed an action plan to take this forward.

Legal Implications

12. Under the Constitution Committee's terms of reference, the Committee is responsible for reviewing the Constitution and making recommendations on any appropriate changes to full Council (except for certain specified changes which the Committee may approve itself). Any amendments to the Scrutiny Procedure Rules require the approval of full Council.
13. Other relevant legal provisions are referred to in the body of the report.

Financial Implications

14. There are no financial implications arising from the report

RECOMMENDATIONS

The Committee is recommended to consider whether it wishes to make any changes to the scrutiny call-in rules, and, if appropriate, request the Director of Legal and Governance to consult with the Scrutiny Chairs and provide a further report for consideration at its next meeting.

**DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING
OFFICER**
5 February 2019

APPENDICES

- | | |
|-------------|--|
| APPENDIX A: | Scrutiny Procedure Rules, Rule 12 'Call-In' |
| APPENDIX B: | Call-Ins 2015/16 to date – Summary Information |
| APPENDIX C: | Other Local Authorities' Call-In Arrangements |

Background papers

Constitution Committee report, 'Scrutiny Call-In Rules, 8th January 2018
Policy Review and Performance Scrutiny Committee report 'Fit for the Future?
WAO Review of Overview and Scrutiny', 3 October 2018

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EXTRACT SCRUTINY PROCEDURE RULES- CALL-IN

12 Call-in Procedure

- (a) When an Executive Decision is made by the Cabinet, a Committee of the Cabinet, the Leader, a Cabinet Member, the Chief Executive, a Corporate Director or a Director exercising a Corporate Director or a Director delegation, the decision shall be published on the Council's Intranet Site, and shall be available at the main offices of the Council, normally within two working days of being made. Members of those Committees who request it (in respect of decisions falling within their Committee's terms of reference) and Chairpersons of all Scrutiny Committees will also be sent copies of the records of all such decisions within the same timescale by the proper officer.
- (b) The notice will bear the date on which it is published and will specify that the decision will be implemented on the expiry of seven clear working days after the publication of the decision ("the call-in period"), unless the decision is called in as set out below.
- (c) Any non Cabinet member of the Council (or a co-opted member of the Children and Young People Scrutiny Committee, in the case of a decision relating to an education matter) may call-in a decision of which notice has been given as set out above, by giving notice in writing to the Head of Democratic Services within the call-in period. The Head of Democratic Services shall then notify the Cabinet Office of the call-in. He/she shall call a meeting of the relevant committee on such date as he/she may determine, where possible after consultation with the Chairperson of the Committee, and in any case within five clear working days of the decision to call-in ("the scrutiny period"). At its meeting, the Scrutiny Committee may consider the called-in decision itself or decide to refer the issue to the Council for scrutiny, if the matter is of general significance and importance to the Council as a whole. A Council meeting to consider this issue must take place within ten clear working days of this referral ("the Council scrutiny period") unless otherwise agreed between the Leader and the Chairperson of the relevant Scrutiny Committee.
- (d) Having considered the decision, the Scrutiny Committee or the Council (if the decision has been referred to Council) may refer it back to the Cabinet or the decision maker for reconsideration, setting out in writing the nature of its concerns. The Cabinet or decision maker shall then reconsider the matter before adopting a final decision, arranging for the decision to be changed to reflect points made by the Scrutiny Committee, or formally deferring the matter for further consideration. The relevant Scrutiny Committee or Council as appropriate will be advised of the outcome at its next meeting.

- (e) If following a call-in, the matter is not referred back to the Cabinet or decision maker, the decision shall take effect on the date of the relevant Scrutiny Committee or Council meeting which considers the issue, or the expiry of the scrutiny period or the Council scrutiny period as appropriate, whichever is the later.
- (f) The role of Scrutiny Committees calling in a decision is:
- (i) To test the merits of the decision
 - (ii) To consider the process by which the decision has been formulated.
 - (iii) To make recommendations (to support the decision, change aspects of the decision, or to invite the decision making body to reconsider).
 - (iv) To suggest further steps before a decision is made (but not to try to carry out those steps in place of the decision making body).
 - (v) To come to a view in a relatively short time scale, so as not to compromise the speed and efficiency of the decision-making process.
- (g) In calling in a decision it is not sufficient for the Member requesting the call in to state that they wish to test the merits of the decision. A member requesting a call in shall specify precisely which aspects of the decision they wish to question or challenge.
- (h) The Head of Democratic Services may, in consultation with the Monitoring Officer, rule that a call in is not valid if:
- (i) The call in request has not been made within the seven working days allowed for call in;
 - (ii) It is not clear which Executive Decision is being called in;
 - (iii) The decision is exempt from call in on account of urgency provisions;
 - (iv) The call in request provides too little information to enable Committee members or the decision taker to adequately prepare for the call in meeting.
 - (v) The decision being called in, or broadly the same decision, has been called in during the last six months; or
 - (vi) The matter has already been scrutinised by the relevant Scrutiny Committee and there is no significant new or additional information which has not been previously considered by that Committee.

13 Exceptions: Call-in and Urgency

- (a) The call-in procedure set out above shall not apply where the decision being taken is urgent. A decision will be urgent if either the Head of Paid Service, the Monitoring Officer or the S151 Officer certifies that any delay likely to be caused by the call-in process could seriously prejudice the Council, or the public interest, and the Chair of the relevant scrutiny committee or, in his/her absence, the Chair of the Council, or in both their absences, the Vice-Chair of the Council, agrees that the matter is urgent. The record of the decision and notice by which it is made public shall state whether the decision is an urgent one, and therefore not be subject to call-in. Decisions taken as a matter of urgency must be reported for information to the next available meeting of the Council, together with the reasons for urgency.
- (b) The operation of the provisions relating to call-in and urgency shall be monitored annually, and a report submitted to Council with proposals for review if necessary.

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SCRUTINY CALL-INS 2015/16 TO DATE (January 2019)
SUMMARY

2015- 16 Municipal Year (5)

- Re-declaration of additional licensing scheme in the Cathays ward of Cardiff - Cabinet Decision CAB/15/34 – (7 October 2015) - Members voted to not refer the item to Full Council or Cabinet for reconsideration but made a series of comments, observations and recommendations to the relevant Cabinet Member
- Welsh Medium Schools Catchment Areas - Cabinet Decision CAB/15/84 (17 May 2016) - - Members voted to not refer the item to Full Council or Cabinet for reconsideration but made a series of comments, observations and recommendations to the relevant Cabinet Member
- Infrastructure Services – Alternative Delivery Models - Cabinet Decision CAB/15/24 - Members voted to not refer the item to Full Council or Cabinet for reconsideration but made a series of comments, observations and recommendations to the relevant Cabinet Member
- New Household Waste Recycling Centre & Re Use Facility - Cabinet Decision CAB/15/25 (26th August 2015) – Members decided to refer back to Cabinet.
- Glamorgan County Cricket Club Loan Write-off and Restructuring. Cabinet Decision – CAB/14/105, (14 May 2015)- Members voted to not refer the item to Full Council or Cabinet for reconsideration but made a series of comments, observations and recommendations to the relevant Cabinet Member

2016-17 Municipal Year (1)

- Cardiff West Transport Interchange –Cabinet Decision – CAB/16/38 (8 February 2017) – Members decided to refer back to Cabinet

2017 -18 Municipal Year (2)

- Funding The New Bus Transport Interchange – Cabinet Decision CAB/17/11 – (13 September 2017) - Members voted to not refer the item to Full Council or Cabinet for reconsideration but made a series of comments, observations and recommendations to the relevant Cabinet Member
- Disposal of Wedal Road HWRC – Director decision SED/PR/29303 (April 2018) – Decision referred back to decision maker, with a list of specific concerns, for further consideration. Cabinet subsequently reconsidered and approved the decision.

SCRUTINY CALL-INS 2015/16 TO DATE (January 2019)
SUMMARY

SUMMARY OF OUTCOMES

Out of the 8 call-ins since 2015, 3 resulted in a decision being referred back to the decision maker for reconsideration. At the other 5 call in meetings the scrutiny committee decided to allow the decision to stand, but wrote to the Cabinet Member with comments, observations and recommendations.

Other Local Authorities' Call in Arrangements (January 2019)

Serial	City	Call in Period (after publication)	Number of Members	Notes
Core Cities				
1.	Birmingham	3 working days	At least two non-executive members	<p>The "Request for Call In" should state the reason for call-in. Call-in criteria are prescribed: Is the decision within existing policy? Is the decision well-founded? Has the decision been properly taken? Does the decision particularly affect a ward?</p> <p>The Chair of Co-ordinating O&S Committee will agree which Overview and Scrutiny Committee should hear the call-in. That Committee must meet to consider the request. The meeting should take place not later than 15 clear working days after the original publication of the decision. It is for the Committee to decide whether to Call In a decision or not</p>
2.	Bristol	5 working days	At least five non-executive members	<p>The proper officer will first satisfy themselves that the following requirements have been met:</p> <ul style="list-style-type: none"> (i) the <i>call-in</i> notice has been received within the prescribed time scales (ii) the decision taker's decision has been properly identified and described; (iii) the members seeking the <i>call-in</i> have identified those principles of Article 14 of the constitution which they believe have been breached. <p>If the requirements are met the proper officer will <i>call-in</i> the item and within five working days of the request, give notice as to the date on which the call-in will be considered by a call-in committee which will be held</p>

Serial	City	Call in Period (after publication)	Number of Members	Notes
				within 10 days of request for call in being approved by Proper Officer.
3.	<u>Cardiff</u>	7 working days	Any non Cabinet member of the Council (or a co-opted member of the Children and Young People Scrutiny Committee, in the case of a decision relating to an education matter) may call-in a decision	<p>The Head of Democratic Services may, in consultation with the Monitoring Officer, rule that a call in is not valid if:</p> <ul style="list-style-type: none"> (i) The call in request has not been made within the seven working days allowed for call in; (ii) It is not clear which Executive Decision is being called in; (iii) The decision is exempt from call in on account of urgency provisions; (iv) The call in request provides too little information to enable Committee members or the decision taker to adequately prepare for the call in meeting. (v) The decision being called in, or broadly the same decision, has been called in during the last six months; or (vi) The matter has already been scrutinised by the relevant Scrutiny Committee and there is no significant new or additional information which has not been previously considered by that Committee.
4.	<u>Edinburgh</u>			No executive arrangements
5.	<u>Glasgow</u>	6 working days	Five non-executive members	A decision which has been called-in will be placed on the agenda for the next meeting of the appropriate Scrutiny Committee. The Chief Executive will select the appropriate Scrutiny Committee.
6.	<u>Leeds</u>	7 working days	The decision may be called in by either;	Prior to submitting a Call In, the nominated signatory must contact the relevant officer or Executive Member to discuss their concerns and their reasons for wanting

Serial	City	Call in Period (after publication)	Number of Members	Notes
			<ul style="list-style-type: none"> • two non-executive elected Members (who are not from the same political group); or • five non-executive elected Members 	<p>to call in the decision. The nominated signatory must also ascertain the financial consequences to the authority of having the decision Called In. The outcome of this contact must be detailed on the Call In request proforma.</p> <p>Upon receipt of the request, the Scrutiny Officer will, in consultation with the Chair of the relevant Scrutiny Board, convene a special meeting of the relevant Scrutiny Board, to take place within seven clear working days of the Call In request being received..</p>
7.	Liverpool	4 working days	<p>The following members can call-in the decision for consideration by the relevant Select Committee:</p> <ul style="list-style-type: none"> (i) in the case of a City-wide issue, any five Members of the Council or all members of a political group; (ii) in the case of an issue affecting one specific area, any three voting Members of the relevant neighbourhood area; (iii) in the case of an issue affecting a single Ward, one Member for that Ward; (iv) In the case of decisions relating to a specific 	<p>As an alternative procedure, the Cabinet may direct that a decision be not implemented until it has been referred to and considered by the appropriate Select Committee. A decision that has been referred in this way shall be treated as though it had been called in. If a decision is called in, the Select Committee may</p> <ul style="list-style-type: none"> • Support the decision – in which case the matter is approved and inserted in the Register of Decisions and becomes operative from the date of the Select Committee meeting (unless the recommendation states otherwise). • Propose a minor amendment that is acceptable to the Cabinet Member/ Directors - in which case the recommendation, as amended is inserted in the Register of Decisions and becomes operative from that date. • Propose an amendment which significantly changes the decision which is acceptable to the Cabinet Member – in which case it is re-submitted to the Cabinet (as it is that body

Serial	City	Call in Period (after publication)	Number of Members	Notes
			portfolio area, the Chair or any three voting Members of the relevant Select Committee. This also includes the five co-opted voting Members serving on the Education and Children's Services Select Committee in respect of decisions relating to Children, Families and Adults only.	<p>which took the decision) and will be subject to the call in arrangements again as in reality it is a new decision.</p> <ul style="list-style-type: none"> • Refer it back to the Cabinet – the recommendation of the Select Committee and Cabinet is re-considered by the Cabinet who will consider it again, but a decision that has been referred back to the Cabinet once is not subject to further call in.
8.	Manchester	5 working days	By the Chair of the relevant Scrutiny Committee; or any five members of the Council	Where a decision has been called-in by five members of the Council and none of those members attend, the Committee may at its discretion determine not to scrutinise the decision.
9.	Newcastle	Until 10:00 am on the fifth working day after the date of publication	Either: <ol style="list-style-type: none"> (i) 7 non-executive members (which may include the statutory education representatives if the matter being called in is an education matter on which they would be entitled to vote), or (ii) the Chair and Vice-Chair of the relevant Scrutiny Committee and one other non-executive member 	Where a valid request for call-in is made, a meeting of the relevant committee shall be convened by the Proper Officer. The meeting will be held at 5:00 pm on the 7th working day after the call-in deadline (the first day is the first working day after the call in deadline).

Serial	City	Call in Period (after publication)	Number of Members	Notes
10.	<u>Nottingham</u>			No executive arrangements
11.	<u>Sheffield</u>	4 working days	Five Members, including two from the relevant Scrutiny Committee must give notice to call-in a decision for scrutiny.	<p>Not more than two notices of call-in will be accepted for any individual decision, but other Members may be able to register an interest in the item with the relevant Scrutiny Committee Chair</p> <p>A proforma produced in respect of calling in a decision shall be signed by the five Members. Telephone calls, e-mail or fax messages from Members shall be accepted for call-in purposes but these shall be required to be supported by a signed statement from the Member(s) concerned before the item is considered by the Scrutiny Committee.</p>
Other Cities/Authorities				
12.	<u>Swansea</u>	3 working Days	The Chair and / or Vice Chair of the Scrutiny Programme Committee or any 4 Councillors may Call In a decision	<p>The decision is exempt from Call In on account of urgency provisions as set out below and also where:</p> <ul style="list-style-type: none"> (i) The decision being called in is the same, or broadly the same, as a previous Call In within the last six months; (ii) The decision has been subject to pre-decision scrutiny and there is no material change in relevant information/evidence; (iii) The Call In does not specify precisely which aspects of the decision is to be challenged or provides too little information.
13.	<u>Bridgend</u>	3 working days	Any 3 Members of a scrutiny committee and a Scrutiny Chair may call-in a decision by giving notice in writing	In order to ensure that call-in is neither abused, nor causes unreasonable delay, certain limitations are to be placed on its use. These are:

Serial	City	Call in Period (after publication)	Number of Members	Notes
				<ul style="list-style-type: none"> (i) Overview and Scrutiny may only call-in a total of six decisions per year; (ii) three Members of an Overview and Scrutiny Committee and a Scrutiny Chair are needed for a decision to be called in; (iii) the Proper Officer may veto any request for call-in if it falls outside the remit of this scheme.
14.	Newport	5 working days	Any single member of the Council who is not a member of the Cabinet	
15.	Conwy	5 working days	3 non-executive members	The Proper Office shall call a meeting of the committee after consultation with the chairman of the committee, and in any case within 20 working days of the decision to call-in
16.	Wrexham	5 working days	Five non-executive members	

**CARDIFF COUNCIL
CYNGOR CAERDYDD**



CONSTITUTION COMMITTEE 11 FEBRUARY 2019

REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL SERVICES

PLANNING COMMITTEE DELEGATIONS

Reason for this Report

1. To allow the Committee to consider inclusion of officer delegations approved by the Planning Committee within the Constitution Scheme of Delegations.

Background

2. The Planning Committee is a standing committee established by full Council to discharge the town and country planning and development control functions of the authority in accordance with its terms of reference, which are set out in the Scheme of Delegations in Part 3 of the Constitution.
3. Under section 101 of the Local Government Act 1972, where any functions of a local authority may be discharged by a committee, then, unless the local authority otherwise directs, the committee may arrange for the discharge of any of those functions by an officer of the authority.
4. In March 2018, the Planning Committee reviewed its officer delegations, and having regard to Welsh Government guidance, approved new delegations and resolved to ask the Constitution Committee to consider incorporating the Planning Committee's approved delegations within the Scheme of Delegations in the Constitution.

Issues

5. An effective, clear and transparent scheme of delegations is essential for good governance within local government.

6. 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).
7. The powers delegated by the Planning Committee to the Head of Planning (and Operational Managers with responsibility, in his absence) in March 2018 are appended as **Appendix A**. Members will note that the 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 (broadly major developments, policy issues or controversial cases).
8. Incorporation of the Planning Committee's approved delegations (**Appendix A**) within the Scheme of Delegations in the Constitution will ensure the Council's arrangements for the discharge of its planning functions are transparent, clear and accessible. Once incorporated within the Constitution, any changes to the delegations recommended by the Planning Committee would require the approval of full Council.
9. The Planning Committee has also previously delegated various highways powers to the Chief Officer responsible for highways (or equivalent). These highways powers, delegated in June 2013 are listed in **Appendix B**. For consistency and transparency, it is recommended that these delegations should also be incorporated within the Constitution.

Legal Implications

10. Under the Constitution Committee's terms of reference, the Committee is responsible for reviewing the Constitution and making recommendations on any appropriate changes to full Council (except for certain specified changes which the Committee may approve itself).
11. Any changes to the Council's Scheme of Delegations require the approval of full Council.
12. Other relevant legal provisions are referred to in the body of the report.

Financial Implications

- 12 This report has no direct financial implications.

RECOMMENDATION

Committee is recommended to:

1. Agree to incorporate within the Scheme of Delegations in Part 3 of the Constitution:
 - (i) the planning delegations approved by Planning Committee on 15 March 2018 set out in **Appendix A**; and
 - (ii) the highways delegations approved by Planning Committee on 12 June 2013 as set out in **Appendix B**,
Subject to the approval of full Council.
2. Authorise the Monitoring Officer to draft the appropriate Constitution amendments for approval by full Council.

DAVINA FIORE

DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING OFFICER

5 February 2019

APPENDICES

Appendix A Planning delegations approved by Planning Committee in March 2018

Appendix B Highways delegations approved by Planning Committee in June 2013

Background papers

Planning Committee report, 'Planning Committee Delegations', 15 March 2018

Planning Committee report, 'Discharge of Various Highways Functions', 12 June 2013

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Development Management
Delegations Scheme

The Head of Planning has authority to determine all matters which are delegated to the Planning Committee under the Council's constitution and to carry out any functions under Planning legislation, subject to consultation with the Chair of the Planning Committee (or in his or her absence, the Vice Chair) in any case where written objections on valid planning grounds have been submitted and remain unwithdrawn, EXCEPT for the following matters which are reserved for determination by the Planning Committee:

1. Planning applications submitted by current Elected Members of the Council, Directors and Assistant Directors.
2. An Elected Member of the Council has requested in writing to the Chair of Planning Committee within the statutory consultation period (being 21 days from the commencement of the formal public consultation) that an application be referred to Planning Committee for consideration giving valid planning reasons, except in cases where the Head of Planning, in consultation with Chair of Planning Committee (or in his or her absence, the Vice Chair) determines at his discretion that the application should be determined as a delegated decision.
3. The Director of Planning, Transport and Environment or the Head of Planning considers that the application should be determined by Planning Committee by virtue of the application raising significant policy and material considerations/concerns and/or widespread local concerns.
4. Approval of the application would represent a significant departure from policies contained within the approved Local Development Plan.
5. Cardiff Council is the applicant and the scheme is not of a 'minor' nature in the opinion of the Director of Planning, Transport and Environment or Head of Planning.
6. Applications where the decision would conflict with an objection received from a statutory consultee and the objection has not been withdrawn or has been unable to be resolved by negotiation or by imposing a planning condition on any consent issued, except in cases where the Head of Planning, in consultation with Chair of Planning Committee (or in his or her absence, the Vice Chair) determines at his discretion that the application should be determined as a delegated decision.
7. Applications where a valid petition has been submitted in accordance with the Council's Planning Committee Procedure Rules.

In the absence of the Head of Planning, this delegation shall be exercisable by either of the Planning Operational Managers. In the case of a senior management re-organisation, any officers with similar duties to the officers and the job titles specified in this scheme will have the powers assigned to the officers and the job titles in this scheme.

In the absence of the Chair of Planning Committee, the authority passes to the Vice Chair of Planning Committee.

Reports will be prepared for all delegated applications outlining the material issues for consideration together with a recommendation. Each report is to be signed by the report author, the Head of Planning or either of the Planning Operational Managers and where written valid planning objections and/or concerns have been submitted, or as otherwise considered appropriate by the Head of Planning, also to be following consultation with, signed by, the Chair of Planning Committee (or in his/her absence, the Vice Chair).

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HIGHWAYS FUNCTIONS DELEGATED BY PLANNING COMMITTEE June 2013

To the Chief Officer responsible for highways:

The functions contained in the following provisions of Part IX of the Highways Act 1980 (lawful and unlawful interference with highways and streets)—

- (i) section 130 – protection of public rights;
- (ii) sections 139 – control of builders' skips;
- (iii) section 140 – removal of builders' skips;
- (iv) section 140A(1) – builders' skips: charges for occupation of the highway;
- (v) section 142 – licence to plant trees, shrubs etc in a highway;
- (vi) section 147 – power to authorise erection of stiles etc on footpath or bridleway;
- (vii) section 147ZA(1) – agreements relating to improvements for benefit of persons with mobility problems;
- (viii) section 149 – removal of things so deposited on highways as to be a nuisance etc;
- (ix) section 169 – control of scaffolding on highways;
- (x) section 171 – control of deposit of building materials and making of excavations in streets;
- (xi) section 171A(2) and regulations made under that section – works under s169 or s171: charge for occupation of the highway;
- (xii) section 172 – hoardings to be set up during building etc;
- (xiii) section 173 – hoardings to be securely erected;
- (xiv) section 178 – restriction on placing of rails, beams etc over highways;
- (xv) section 179 – control of construction of cellars etc under street;
- (xvi) section 180 – control of openings into cellars etc under streets, and pavement lights and ventilators;'

To the Chief Officer, or the officer otherwise responsible for the performance of this function:

The function of making Legal Event Modification Orders (pursuant to section 53(2)(b) and 53(3)(a)) .

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CYNGOR CAERDYDD CARDIFF COUNCIL

CONSTITUTION COMMITTEE:

11 FEBRUARY 2019

REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES

FORWARD WORK PLAN

Reason for this Report

1. To receive, consider and approve the Constitution Committee Forward Work Plan for 2019 as detailed in **Appendix A** to this report.

Background

2. The Constitution Committee is responsible for reviewing the Council's Constitution, recommending any changes to Council and/or Cabinet. It has 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 Forward Work Plan gives notice of, and transparency to, matters under review and for decision during the municipal year and reflects the Committees objective to improve and enhance governance of the Council; to have effective outcomes; and to ensure that it complies with legal obligations and identifies potential risks.
4. The Forward Work Plan needs to reflect the time commitment required for Committee Members and the resources available within the Council to meet the Committee's ambitions.

Issues

5. The main work stream for the Committee in 2018/19 has been to develop improvements to aspects of the Constitution, in particular in relation to making Council meetings more effective, giving greater transparency to how decisions are made and the way the Council and its officers function.

Legal Implications

6. There are no direct legal implications arising from the content of this report.

Financial Implications

7. There are no direct financial implications arising from this report, provided the work can be met from within existing resources.

RECOMMENDATION

The Committee is recommended to consider and approve the Forward Work Plan 2019, and the areas considered as priorities as set out in **Appendix A**.

Davina Fiore

Director of Governance & Legal Services and Monitoring Officer

5 February 2019

CC/DF/V1.0

Appendices

Appendix A – Constitution Committee Forward Work Plan 2019

Background Papers

CONSTITUTION COMMITTEE – FORWARD PLAN 2019

APPENDIX A

TOPIC	OBJECTIVE/OUTCOME	WHO IS RESPONSIBLE?	PRIORITY	REPORT TO COMMITTEE
(1) Scrutiny Committee Size and Membership	To review the size of Scrutiny Committees and membership of Task and Finish groups	Director of Governance and Legal Services	Medium	On Agenda
(2) Planning Delegations	To note the updated Planning Committee delegations and consider corresponding amendments to the Scheme of Delegations	Director of Governance and Legal Services	Medium	On Agenda
(3) Code of Corporate Governance	To consider a draft Code of Corporate Governance (on recommendation of the Audit Committee)	Director of Governance and Legal Services / Corporate Director Resources	Medium	On Agenda
(4) Council Petition Scheme	To consider the adoption of a Petition Scheme setting out how the Council shall respond to petitions.	Director of Governance & Legal Services	Medium	Next meeting (date tbc)
(5) Council Meeting Procedure Rules	To review the changes to the arrangements for meetings of full Council, which were implemented from Annual Council in 2018	Director of Governance & Legal Services	High	Spring 2019

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