

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

REVIEW OF THE CONSTITUTION

Reason for this Report

1. To provide an opportunity for the Committee to consider potential areas of change to the procedure rules for meetings of full Council, and other areas of the Constitution.

Background

2. The Council's Constitution sets out the fundamental principles on which the Council is governed. It includes information on how the Council operates, how lawful decisions are made and the procedures to follow to ensure that the Council conducts business efficiently and is transparent and accountable to local people.
3. The current Constitution first came into effect in May 2002 to take account of the requirements of the Local Government Act 2000, which separated the functions of Executive and Scrutiny from Council functions. Since this time it has been periodically reviewed and amended to reflect changes agreed by Council, legislative updates and other minor amendments.
4. The business of the Council is diverse and the Constitution needs to take account of this to ensure governance arrangements for relevant activities are appropriately covered. It is currently divided into eight parts with fifteen articles, and more detailed procedures and codes of practice.
5. The Constitution Committee has responsibility, in accordance with its approved terms of reference, for reviewing the Constitution and recommending any changes to full Council for approval.
6. Since the election of the new Administration, the Chair of the Constitution Committee has had initial discussions with the Leader of the Council and met with Group Leaders and Whips to discuss constitutional arrangements, primarily the Council Meeting Procedure Rules, and possible changes for consideration by the Committee. It has been suggested that changes should be introduced to meetings of full Council to allow more opportunities for opposition Members and backbench members of the leading group to influence the direction of Council.

7. At its last meeting (on 31st August 2017), the Committee considered a report on proposed changes to the Council Meeting Procedure Rules proposed by the previous Committee and referred back to this Committee by the Annual Council meeting. The Committee agreed to receive a report providing examples of Council agendas from other Core Cities and comparable Welsh authorities; and instructed the Director of Governance and Legal Services to arrange for consultation with party groups on potential changes to the Council Meeting Procedure Rules. This report provides the Committee with information on work undertaken following the last Committee meeting.

Issues

Council Meeting Procedure Rules

8. A Consultation Document, setting out key issues and questions in relation to meetings of the full Council has been circulated to Party Groups, as requested by the Committee, and is attached as **Appendix A**. For Members reference, a copy of the current Council Meeting Procedure Rules is attached as **Appendix B**. The feedback from Party Groups will be reported at the Committee meeting.
9. Members are invited to provide their views on the broad themes and specific questions set out in the Consultation Document appended at **Appendix A**.
10. In order to allow sufficient time for proposals to be researched and drafted, and discussed with party groups prior to approval, it is suggested that any substantial proposed changes to the Council Meeting Procedure Rules should be implemented from the Annual Council Meeting in May 2018. However, more minor changes may be implemented straight away, if this is agreed. One such change is the removal of the second supplementary oral question (Council Meeting Procedure Rule 17(d)). This change may be recommended to full Council with immediate effect.
11. As the time available for Council meetings is limited, and in order to avoid creating offence by refusing individual members the right to speak, members may also wish to consider whether to cease the practice of presenting eulogies at Council meetings, and to simply receive an announcement from the Lord Mayor. This is currently a matter for the discretion of the Lord Mayor, but it is recommended that express provision for eulogies be included in the procedure rules.
12. In considering arrangements for Council meetings, Members asked for examples of Council agendas from various other Core Cities and comparable Welsh authorities. These are set out in **Appendix C** (specifically, Birmingham, Bristol, Glasgow, Leeds, Nottingham, Newport, Swansea and Wrexham). Members should note that individual Councils will have adopted full Council meeting arrangements to suit their particular political composition and local requirements and preferences; and that only limited information about the arrangements in each authority can be

gleaned from looking at the agenda from one particular meeting. For Members' information, the political composition of the various benchmarked authorities is set out in **Appendix D**.

Recording / Filming of Council Meetings

13. Members are also recommended to review Cardiff's rules regarding filming of Council meetings. The current rules refer to the official webcasting of Council meetings and prohibit any other recording of the meeting without the express authorisation of the meeting (Council Meeting Procedure Rules, Rule 32). This prohibition runs contrary to the openness and transparency now expected of local government and the increasing use of modern digital communication methods. The Welsh Government's statutory guidance to local authorities (set out in the Code of Recommended Practice on Local Authority Publicity in Wales, August 2014, paragraph 54) urges local authorities to look favourably on public recording and broadcasting of Council meetings, provided those attending the meeting are aware this is happening and other members of the public are not distracted or unduly disturbed by it. (In England, members of the public have a statutory right to make recordings of public Council meetings, pursuant to the Openness of Local Government Bodies Regulations 2014). It is recommended that the Committee's review of the Council Meeting Procedure Rules should include making provision for public filming and recording of Council meetings, including any necessary supporting arrangements such as giving notice to all persons attending the meeting. Similar changes should also be considered in respect of meetings of Committees, as the Committee Meeting Procedure Rules, Rule 18, contain parallel provisions.

Questions to Cabinet Members

14. In addition to matters relating specifically to meetings of full Council, the Committee will note that the Consultation Document (**Appendix A**) refers to other associated issues, such as the option of allowing public questions at Cabinet meetings. Another suggestion which Members may wish to consider is to provide a separate session, outside of full Council, for questions to the Leader.

Cross-Party Member Working Groups

15. Members will recall that at the last Committee meeting, when considering the constitutional provision for Member Champions, it was suggested that consideration should instead be given to establishing cross-party member groups to look at specific issues within the Councils corporate and service priorities. Such groups would have no formal decision making powers, but may, if they wish, make suggestions or recommendations by letter to a relevant Cabinet member or Committee Chair. All parties, including independent Members, must be invited to take part in any such working groups, but the procedure and regulation of such meetings would be a matter for Members. Members should note that officer support for such

meetings would need to be limited, due to resource constraints, to booking rooms for meetings, and would not cover clerking of such meetings.

Ward Member Consultation

16. Arrangements for ward member consultation have also been identified as an area for review, arising from complaints received from local Members who had not been consulted on significant issues affecting their ward. The Scheme of Delegations currently refers to there being an obligation on officers to keep Members properly informed of activity arising within the scope of officer delegations. However, the Constitution contains no further rules, guidelines, or protocols on this issue. It is therefore proposed that requirements for consultation with ward members on significant issues affecting their wards should be enshrined in the decision making processes within the constitution.
17. It is recommended that an amendment be made to the Scheme of Delegations, Officer Delegations, Section 4A, to incorporate provisions such as:

'When taking, or considering taking, delegated decisions all officers must have regard to the following questions:

- Does the decision involve significant expenditure to the service budget, or wider Council budget?
- Does the decision affect the reputation of the service and/or Council?
- Is the decision significant with regard to one or more wards?
- Does the decision carry a significant risk to the service or wider Council?
- Does the decision impact reputationally or financially on service users, partner organisations or committees outside the Council?

Officers must consider the above and, depending upon the level of significance, prepare a delegated officer decision using the pro forma, which may be presented to the relevant Cabinet member to consult with them on the decision (this can be done via email).

If the matter impacts specifically on one or more wards (i.e. it is a local issue rather than council wide) *and* it is considered to be significant then the officer should consult ward member(s) (and consider the need to consult with any relevant Community Council).

For highly significant or sensitive matters, officers must consider, in consultation with the relevant Cabinet member, whether in fact a Cabinet report should be prepared instead and the matter entered on the Cabinet Forward Plan.

Day to day routine management decisions do not need to be subject to formally recorded decision procedures.'

18. The Committee may wish to seek the views of the Cabinet on any such proposed amendment, prior to approval by the Committee (and full Council).

Scrutiny Functions

19. A recommendation has been made by the scrutiny chairs to amend the current Call-In rules in relation to matters which have been subject to pre-decision scrutiny. The recommendation is that in such cases, call-in of a decision should only be permitted if there is significant and relevant new or additional information which has not been previously considered by the relevant Scrutiny Committee, so as to avoid unnecessary duplication of work already undertaken. It is recommended that the Monitoring Officer be asked to prepare a report on the necessary amendments to the Scrutiny Procedure Rules for approval by Committee.
20. Under Cardiff's current rules, an Executive decision may be called-in by any non-Cabinet Member. A number of authorities require a call-in request to be supported by more than one Member and some authorities require the request to have cross-party support. Members may wish to consider reviewing Cardiff's rules in this regard.
21. The Wales Audit Office (WAO) is about to commence a national themed review of Cardiff's scrutiny function, 'Scrutiny – Fit for the Future'. The draft project brief is attached as **Appendix E**. Members will note that the purpose of the review is to consider how Councils are responding to current challenges, including the Well-being of Future Generations Act and scrutiny of public service boards. It will also examine how well placed the Council is to respond to future challenges including continued pressure on public finances and possible moves towards more regional working between local authorities; and review progress made in addressing WAO's earlier recommendations. Any recommendations relating to constitutional issues which may arise from WAO's review will be reported to the Constitution Committee for consideration in due course.

Other Constitutional Issues

22. Members are invited to provide views on any other areas they would like the Constitution Committee to consider as part of this review. This work will need to be programmed into the Committee's Forward Plan by the Monitoring Officer, allowing sufficient time for proposals to be developed, approved and implemented, having regard to time and resources available.

Legal Implications

23. By virtue of article 14 of the Constitution the making of amendments to the Constitution is reserved to Council unless otherwise delegated. The Committees terms of reference set out the Committee's delegated authority:

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

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

24. Any amendments to the Constitution that may be proposed as a result of the review and which do not fall within the above remit will require the approval of full Council.

Financial Implications

25. There are no financial implications arising from the report

RECOMMENDATIONS

The Committee is recommended to:

1. recommend to Council the removal of provision for a second supplementary question at Council meetings (Council Meeting Procedure Rules, Rule 17(d), with immediate effect;
2. provide views on the issues and areas of the Constitution which the Committee wishes to amend or review;
3. delegate authority to the Monitoring Officer, in consultation with the Chair, to submit any agreed changes to full Council for approval; and
4. request the Monitoring Officer to prepare further reports on any other potential changes (with reference to the issues identified under Recommendation 2 above) for consideration by the Committee at a suitable future meeting.

DAVINA FIORE
DIRECTOR OF GOVERNANCE AND LEGAL SERVICES AND MONITORING OFFICER

17 October 2017

APPENDICES:

- APPENDIX A: Consultation Document 'Review of Council's Constitution'
- APPENDIX B: Council Meeting Procedure Rules
- APPENDIX C: Examples of Agendas from Other Core Cities and Comparable Welsh Authorities
- APPENDIX D: Table showing political composition of the benchmarked authorities included in Appendix D.
- APPENDIX E: Wales Audit Office, 'Overview and Scrutiny – Fit For the Future? The City of Cardiff Council'
Audit year: 2017-18
Date issued: September 2017
Document reference: 128A2017-18

Background papers

Constitution Committee meeting 31st August 2017, draft minutes
Welsh Government's Code of Recommended Practice on Local Authority
Publicity in Wales, August 2014