

**COUNCIL:**

**22 MARCH 2018**

---

**REPORT OF THE DIRECTOR GOVERNANCE & LEGAL SERVICES R**

---

**CONSTITUTION AMENDMENTS**

**Reason for this Report**

1. To enable Council to consider changes to the Constitution recommended by the Constitution Committee in respect of:
  - (i) Recording of Council Meetings;
  - (ii) Ward Member Consultation;
  - (iii) All Party Council Groups;
  - (iv) Responsibility for Air Quality Management Functions; and
  - (v) The Contract and Finance Procedure Rules.

**Background**

2. The Constitution Committee is responsible for reviewing the Council's Constitution and making recommendations to Council in respect of amendments required.
3. At its meeting on 15<sup>th</sup> March 2018, the Constitution Committee considered reports on various constitutional issues and proposed amendments. The Committee approved certain amendments, falling within the Committee's terms of reference, and agreed to recommend a number of other constitutional changes to full Council for approval.

**Issues**

- (1) Recording of Council Meetings (Audio, Visual or Social Media)
4. Meetings of the Council and its Committees are public meetings; and elected Members and Council officers in public service can reasonably be expected to be held to account for their comments and votes in such meetings.
5. Councils are encouraged to webcast their meetings in the interests of open and transparent governance and accountability; and to improve public engagement in, and understanding of, local democracy. They are also urged to look favourably on public recording and broadcasting of Council meetings, provided those attending the meeting are aware of the recording and it

creates no disturbance or distraction of the meeting (Welsh Government's statutory Publicity Code, August 2014).

6. Members may also wish to note that in England, members of the public have a statutory right to make recordings of public Council and Committee meetings and to report on them, including through social media (pursuant to the Openness of Local Government Bodies Regulations 2014).
7. The Council has been webcasting full Council meetings since 2008; Planning Committee meetings since October 2016; and Scrutiny Committee meetings (on an ad hoc basis) since November 2017. However, aside from the official webcast, any other recording of Council or Committee meetings is prohibited, unless the meeting gives express authorisation, under the Council's procedure rules.
8. The Monitoring Officer has advised that this prohibition runs contrary to the openness and transparency now expected of local government and the increasing use of modern digital communication methods. In the context of modern mobile telephone technology, a prohibition on recording and social media use during Council and Committee meetings is extremely difficult, if not impossible, to enforce. Indeed it is questionable why the Council would wish to prohibit it when meetings are webcast.
9. The Constitution Committee has reviewed the Council's rules and made the following recommendations:
  - a) Adoption of the updated Webcasting Protocol attached as **Appendix A**, to apply to all meetings of the Council and its Committees which are webcast, in order to clarify the arrangements for webcasting and ensure the Council is compliant with its legal obligations (in particular the Data Protection Act 1998 and the Human Rights Act 1998). It is recommended that the Webcasting Protocol should be included within the Constitution.
  - b) Amendment of the Council's procedure rules as shown in **Appendix B**, to permit recording and use of social media during all public meetings of the Council, Cabinet and Committees, subject to the following conditions:
    - i. The recording or transmission must create no disturbance, disruption or distraction to the good order and conduct of the meeting.
    - ii. Notice must be given (on meeting agendas and signage outside meetings) so that everyone attending the meeting is made aware that they may be recorded and that by attending the meeting they are deemed to consent to this. (For webcast meetings, this may be included in the webcasting notices).
    - iii. Recording must be overt, not covert.
    - iv. There is to be no recording or transmission of proceedings dealing with any exempt or confidential information.
    - v. The Chair shall have discretion, subject to proper consideration of any relevant representations and legal advice, to prohibit a recording or exclude anyone reasonably considered to be in breach of these rules.

- vi. The person making the recording or transmission shall be solely responsible for complying with all applicable legal obligations arising from their actions.
10. Any elected Members who may wish to record or use social media during Council, Cabinet or Committee meetings should be mindful of their ability to concentrate on the business of the meeting and the public perception likely to be created. Additionally, Members of Regulatory Committees (such as Planning, Licensing and Public Protection), should note that the Council's Guidance for Councillors on Social Media (2016), issued by the Standards and Ethics Committee advises that:  
*'Use of social media by members of planning, licensing or other regulatory committees is not permitted during the course of such meetings.'*

This is because on these matters members are obliged by law to take all relevant considerations into account, and it is therefore important they listen to everything and take an informed view before reaching a decision. This is important because these matters are subject to statutory rights of appeal. These issues specifically relating to recording or social media use by Members are incorporated in the amended rules set out in **Appendix B**.

## (II) Ward Member Consultation

11. In order to properly discharge their role as Council representatives of their wards, local ward members must be aware of significant developments within their wards. In practice, local Members are routinely consulted on matters affecting their ward, however there have been occasional complaints from Members reporting that they were not consulted.
12. The Scheme of Delegations, Section 4A, Introduction to Officer Delegations, paragraph 1.5 currently states that:  
*'This Scheme includes the obligation on officers to keep Members properly informed of activity arising within the scope of these delegations.'*  
However, the Constitution contains no further rules, guidelines, or protocols on this issue.
13. Having considered this matter, the Constitution Committee has recommended that requirements for consultation with ward members on significant issues affecting their wards should be enshrined in the officer decision making processes within the Constitution.
14. It is recommended that the Scheme of Delegations, Section 4A paragraph 1.5 be amended by inserting the additional wording below:  
*'This Scheme includes the obligation on officers to keep Members properly informed of activity arising within the scope of these delegations. Officers should also inform Members of any significant delays to agreed schemes or projects.'*

- (a) *When taking, or considering taking, delegated decisions all officers must have regard to the following questions:*
- i. Does the decision involve significant expenditure to the service budget, or wider Council budget?*
  - ii. Does the decision affect the reputation of the service and/or Council?*
  - iii. Is the decision significant with regard to one or more wards?*
  - iv. Does the decision carry a significant risk to the service or wider Council?*
  - v. Does the decision impact reputationally or financially on service users, partner organisations or committees outside the Council?*

*(b) Officers must consider the above and, where the answer to any of the above questions is yes, prepare a delegated officer decision using the pro forma, which must be presented to the relevant Cabinet member to consult with them on the decision (this can be done via email).*

*(c) 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).*

*(d) 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.*

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

### (III) All Party Council Groups

15. An All Party Council Women's Group, has been established to promote and support any elected Member who identifies as a woman, and to provide advice, guidance and networking opportunities for any elected Member who has identified as a woman. This Group had its first meeting in December 2017.
16. All Party Council Groups are intended to provide a forum for Members to discuss and promote specific issues within the Council's corporate and service priorities and increase opportunities for non-Executive Members to contribute towards policy development. They are informal working groups, not intended to exercise any formal decision making powers.
17. The Constitution Committee has recommended that, in the interests of clarity and transparency, the arrangements for All Party Council Groups should be agreed and set out in the Constitution, Part 5. The following draft Protocol is recommended for approval by full Council:

## ALL PARTY COUNCIL GROUPS – PROTOCOL (draft)

### Purpose

The purpose of an All Party Council Group (“an APCG”) is to provide opportunities for debate and promote specific issues within the Council’s corporate and service priorities and increase opportunities for non-Executive Members to contribute towards policy development.

### Subject matter

The subject matter for an APCG must relate to a matter for which the Council has responsibility or to the role of members or member development.

### Powers / Functions

An APCG is not intended to have any formal decision making powers, but may (if it wishes) make suggestions or recommendations by letter to a relevant Cabinet member or Committee Chair; or seek to secure a debate at Council by way of a Motion promoted by a party group. (Any such Motion would count as one of the Motions allocated to the relevant party group.)

### Membership

- i. The minimum number of members for an APCG shall be five members.
- ii. Membership must be open to all members of all party groups, including Independent members.
- iii. Each APCG must consist of members from more than one party group.

### Procedure

- i. The members proposing to establish an APCG must notify the Monitoring Officer so that the Group is included on a register of APCGs.
  - ii. Each APCG must meet at least three times each year.
  - iii. If the APCG wishes to raise any issues formally, it may do so by writing to the relevant Cabinet portfolio holder or committee chair.
  - iv. Each APCG must produce an annual report to be circulated to all members of the Council (but not to be discussed at full Council).
  - v. In all other respects, the procedure and regulation of meetings shall be a matter for Members.
  - vi. Officer support for APCG meetings shall be limited, due to resource constraints, to booking rooms for meetings, and will not cover clerking or other administrative support (such as agenda planning or minute taking).
18. Members should note that the statutory access to information rules applicable to decision making meetings of the Council (under Part VA of the Local Government Act 1972) will not apply, which means there is no requirement for APCG meetings and documentation to be open to the public.

## (IV) Responsibility for Air Quality Management Functions

19. Local Air Quality Management (LAQM), a regime established by Part IV of the Environment Act 1995, requires Local Authorities to monitor air quality having regard to the standards and objectives set by the Welsh Government; to identify areas non-compliant with the national air quality objectives; designate those non-compliant areas as Air Quality Management Areas (AQMA’s); and

develop and implement local air quality action plans for AQMA's designed to ensure compliance with the national objectives (sections 82-84 Environment Act 1995).

20. Air quality management functions are, by law, a Local Choice Function, which the Council has allocated under its current Scheme of Delegations to the Public Protection Committee. This means that currently, responsibility for air quality management rests with the Public Protection Committee.
21. The Public Protection Committee has received technical monitoring reports, but it is understood that action plans have often not been aligned with other corporate initiatives which highlight the immediate and long-term health benefits to be gained by reducing pollution exposure across the entire population as well as taking action on localised pollution hotspots.
22. In June 2017, the Welsh Government issued new policy guidance to local authorities in Wales in relation to local air quality management. Local authorities must have regard to this guidance when carrying out their local air quality management duties under the 1995 Environment Act. At the heart of the new guidance is a requirement for local authorities to follow the 5 ways of working, set out in the Well-being of Future Generations (Wales) Act 2015, when carrying out local air quality management. This means planning for the long term, integrating policies which can impact on air quality, involving people, collaborating with others and preventing problems from getting worse or from arising in the first place. In order to comply with the policy guidance, the exercise of air quality management functions must be properly joined up with the management of land use and transport planning, as well as with the carrying out of any other activities, which have a bearing on local air quality.
23. The Cabinet is currently developing a Clean Air Strategy aiming to keep levels of air pollution as low as reasonably practicable across the City, an area wider than individual Air Quality Management Areas AQMAs. Such a strategy cannot operate in isolation from other policy areas, but must be integrated with land use and transport planning, public health, active travel, green infrastructure, road safety and climate change. Responsibility for these other functions rest with the Cabinet.
24. The Public Protection Committee was advised of the proposed transfer of responsibility for this function at its meeting on 7th November 2017. Members expressed concern that the transfer of the monitoring function from the Public Protection Committee to Cabinet could generate a conflict of interest if air quality metrics worsened and considered that it should remain an independent function. Members suggested that the Public Protection Committee should receive progress reports before submission to Cabinet and also receive feedback after Cabinet.
25. In considering the appropriate allocation of responsibility for air quality management functions, it is important to carefully consider the exact nature of the functions involved. As set out in paragraph 19 above, the Council is required to monitor air quality having regard to the standards and objectives set by Welsh Government and must designate any area which does not

comply with those standards and objectives as an Air Quality Management Area (AQMA). In discharging these 'monitoring functions', the Council does not have any significant discretion. However, the development of action plans designed to improve air quality in AQMAs is a strategic function, responsibility for which may properly be allocated to the Cabinet. As the action plans will need to be informed by the assessments made (in discharging the monitoring functions), it is suggested that it is appropriate to allocate responsibility for all air quality management functions to the Cabinet.

26. The Welsh Government's Statutory Guidance on Executive Arrangements (SI 2006/56) confirms that it is appropriate for Councils to allocate responsibility for air quality management functions to the Executive, except for any regulatory (direct regulation of individual persons), consent or enforcement decisions. Currently, there are no such regulatory, consent or enforcement functions in respect of air quality management applicable in Cardiff.
27. Having regard to the above, the Constitution Committee recommended the transfer of responsibility for air quality management functions from the Public Protection Committee to the Cabinet, in order to support better integrated policy development. The recommended change will require an amendment to the Council's Scheme of Delegations, Section 3 'Local Choice Functions', which requires the approval of full Council.

#### (V) Contract and Finance Procedure Rules

28. The Constitution Committee approved proposed changes to the Contract Standing Orders and Procurement Rules ('CPR') and the Financial Procedure Rules ('FPR'), both contained within Part 4 of the Constitution. Amendments to the CPR and FPR, in accordance with the advice of the section 51 Officer, fall within the authority of the Constitution Committee and are reported here to full Council for information.
29. The Rules have been updated following consultation with officers from different directorates and the Audit Committee. The revised Rules are to take effect on 1st July 2018.

#### Contract Standing Orders and Procurement Rules

30. The key changes to the CPR include:
  - (a) the move to electronic tendering, with more self-service by client service areas;
  - (b) increased emphasis on Community Benefits;
  - (c) changes to the advertising and tendering thresholds, and
  - (d) changes to the authority to approve variations.
31. The changes to advertising and tendering thresholds are set out in the tables below. Works contracts tend to be of higher value than contracts for goods and services and for this reason, higher thresholds are proposed for works contracts:

Current thresholds
Goods, Services and Works
Up to £3k – one quote
£3k to £10k – two quotes
£10k to £100k – advertise or three written tenders
£100k to OJEU threshold – advertise or four written tenders
OJEU threshold and above – Comply with EU requirements

Revised thresholds	
Goods and Services	Works
Up to £10k – minimum of one quote *	Up to £10k – minimum of one quote *
£10k to £25k – three quotes	£10k to £75k – three quotes
£25k to OJEU – advertise or four tenders	£75k to OJEU – advertise or four tenders
OJEU - Comply with EU requirements	OJEU - Comply with EU requirements

(\* There is a requirement to ensure that the way forward represents value for money and competition is encouraged.)

32. The revised Contract Standing Orders and Procurement Rules are appended as **Appendix C**.
33. Supporting guidance and training sessions (both in a classroom environment and on-line) are to be provided to assist with the implementation of the revised Rules.

#### Financial Procedure Rules

34. The Financial Procedure Rules ('FPR') have been reviewed and updated to ensure that the key risks and controls for the financial control environment of the Council are fully covered.
35. The revised Financial Procedure Rules are appended as **Appendix D**.

#### **Legal Implications**

36. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date. The recommended changes to the Constitution set out in paragraphs 9, 14, 17 and 27 of this report require the approval of full Council, pursuant to Article 14.2(a) of the Constitution.
37. Other relevant legal implications are set out in the body of the report.



## Financial Implications

38. There are no direct financial implications arising from the recommendations of the report.

## RECOMMENDATIONS

The Council is recommended to:

1. Approve the Constitution amendments recommended by the Constitution Committee in respect of:
  - (i) the recording of Council meetings, as set out in paragraph 9 of the report and **Appendices A and B**;
  - (ii) ward Member consultation requirements, as set out in paragraph 14 of the report;
  - (iii) All Party Council Groups, as set out in paragraph 17 of the report; and
  - (iv) responsibility for air quality management functions, as set out in paragraph 27 of the report.
  
2. Note the revised Contracts Standing Orders and Procurement Rules and Financial Procedure Rules approved by the Constitution Committee, appended as **Appendices C and D** respectively.

**Davina Fiore**

**Director Governance and Legal Services and Monitoring Officer**

16 March 2018

## Appendices

Appendix A	draft Webcasting Protocol (updated)
Appendix B	draft amendments to Procedure Rules (Council Meeting, Committee Meeting, Planning Committee Meeting and Access to Information)
Appendix C	Contract Standing Orders and Procurement Rules (revised)
Appendix D	Financial Procedure Rules (revised)

### Background papers

[Constitution Committee reports, 15<sup>th</sup> March 2018](#) 'Recording of Council Meetings (Audio, Visual or Social Media)'; 'Ward Member Consultation'; 'All Party Council Groups'; 'Responsibility for Air Quality Management Functions'; 'Contract and Finance Procedure Rules'