

**CONSTITUTION COMMITTEE: 11 FEBRUARY 2019**

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

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**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