

CONSTITUTION COMMITTEE:

13 DECEMBER 2021

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

CONSTITUTION UPDATE

Reason for this Report

1. To enable the Committee to give further consideration to the Council Meeting Procedure Rules in relation to Ordinary Motions; and officer delegations in respect of any regrading application submitted by an Operational Manager, to ensure the Constitution remains up to date and fit for purpose.

Background

2. The Constitution Committee's approved Terms of Reference are:

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).
3. The Monitoring Officer has delegated authority to make minor amendments to the Constitution, to include:
 - (a) amending typographical and minor drafting errors;
 - (b) updating to reflect legislative changes and matter of record; and
 - (c) drafting improvements to enhance clarity and remove minor anomalies

(Scheme of Delegations, Section 4E reference LD16A).

4. The Council is required to keep its Constitution up to date and fit for purpose, and the Constitution Committee has responsibility for considering any necessary amendments in line with its terms of reference, set out in paragraph 2 above.

Issues

5. At its last meeting on 21st June 2021, the Committee considered a report on certain aspects of the Council Meeting Procedure Rules, which included rules relating to Ordinary Motions; and a Constitution Update report, which included consideration of delegations in respect of regrading applications submitted by Operational Managers. This report provides Committee with an update in relation to both of these matters.

Council Meeting Procedure Rules - Ordinary Motions

6. The current Council Meeting Procedure Rules are attached as **Appendix A**, for Members' information and reference. The rules on Ordinary Motions are set out in Rule 22(a) to 22(x).
7. The Committee is requested to give further consideration to the rules in relation to:
 - (i) the maximum number of Ordinary Motions which may be considered at each Council meeting;
 - (ii) the scope of Ordinary Motions; and
 - (iii) amendments to Ordinary Motions.

Maximum Number of Motions

8. The maximum number of Ordinary Motions is limited to a maximum of 2 motions at each Council meeting (with the exception of the Annual Council and Budget Council meetings, and excluding Urgent Ordinary Motions and Ordinary Motions at any Extraordinary Council Meeting) – Rule 22(f).
9. Under Rule 22(g) 'Ordinary Motions will be allocated amongst the political groups in proportion to their representation on the Council and as agreed between the political groups, subject to:
 - (i) No political group recognised by the Council shall be allocated less than one Ordinary Motion in a municipal year. If necessary, the maximum number of Ordinary Motions at a Council meeting (set under paragraph (f) above) may be increased to accommodate this.
 - (ii) Cabinet Green Papers (debated at full Council under Rule 21) shall be deducted from the number of Ordinary Motions allocated to the leading group.

- (iii) Cabinet Members and Assistants to Cabinet Members shall be disregarded in the calculation of political proportionality for the purposes of the allocation of Ordinary Motions under this Rule.'

10. The allocation of Motions to each political group is to be reviewed annually by the leaders of the political groups in consultation with the Chair (Rule 22(h)).

11. Rule 22(i) provides that:

'If more than the maximum number of Motions permitted under paragraph (f) above are submitted for a particular Council meeting, the Chair shall decide which Motions are to be taken, following consultation with the party groups.

Factors to be considered in selecting Motions shall include the urgency of the Motion (whether it may reasonably be taken at a later meeting); any policy, budget or other significance to the Council; and the number of Motions from the relevant group which have already been considered by full Council during that municipal year. The Chair's decision shall be final.'

12. The Committee has been requested to give further consideration to the factors to be considered in selecting Motions, specifically, 'the number of Motions from the relevant group which have already been considered by full Council during that municipal year'. It has been submitted that, in considering the number of Motions previously taken by a relevant group, account should also be taken of the number allocated to that group. It is understood that this means that it should be the *proportion* of a group's allocated number of Motions which should be considered, rather than simply the number. The Committee is invited to consider amending Rule 22(i) to this effect.

13. Other factors which are, in practice, considered if more than the maximum number of Motions are submitted, include the order in which the Motions are submitted and whether a Motion has been put back at the previous Council meeting. The Committee is recommended to add these factors to the list set out in Rule 22(i).

14. Under Rule 7(b) "The Chair shall have discretion to conduct the meeting to secure proper full and effective debate of business items". The Monitoring Officer has advised that this rule, and the wide discretion given to the Chair of a meeting under the common law, allows the Chair the discretion to increase the maximum number of Motions at a particular Council meeting, if the Chair considers it appropriate to do so in all the circumstances, having particular regard to the factors set out and following consultation with party groups. It is recommended that the Chair's discretion in this regard should be explicitly set out within Rule 22(i) for the avoidance of any doubt.

15. The suggested amendments referred to in paragraphs 12 to 14 above are shown below:

'If more than the maximum number of Motions permitted under paragraph (f) above are submitted for a particular Council meeting, the Chair shall decide which Motions are to be taken, following consultation with the party groups.

Factors to be considered in selecting Motions shall include the urgency of the Motion (whether it may reasonably be taken at a later meeting); the order in which Motions were lodged; whether a Motion has been put back from a previous Council meeting; any policy, budget or other significance to the Council; and the proportion of the allocated number of Motions from the relevant group which have already been considered by full Council during that municipal year. The Chair has the discretion to increase the number of Motions permitted at a particular Council meeting if s/he is satisfied, having regard to all relevant factors, that it is appropriate to do so; and the Chair's decision shall be final.'

16. The Committee is also invited to consider any further changes it may wish to make to the rules on the number of Motions, such as, inserting any additional factors to be taken into account when selecting Motions for a particular Council meeting if there are more than the maximum number of two Motions submitted.

Scope of Ordinary Motions

17. At its last meeting in June 2021, the Committee considered the scope of Ordinary Motions and noted that the current rules say that:

'Ordinary Motions must be in relation to Relevant Business and must not be Inappropriate Business (as defined in Rule 35)' – Rule 22(j).

18. Rule 35 says:

"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.

19. The Committee noted that, under the current rules, if a Motion is submitted which relates to a matter for which the Council does not have responsibility, it would fall outside of the permitted scope for a Motion and would not be allowed.

20. At its last meeting, the Committee considered whether the scope should be widened, by amending the definition of Relevant Business to mean matters for which the Council has responsibility OR which substantially affect the well-being of Cardiff, so that motions over which the Council has no responsibility

would be allowed if they related to matters which substantially affect the well-being of Cardiff or a significant group of its citizens.

21. After discussion of different views on this issue, the Committee agreed that, in recognition of the Council's legitimate role in lobbying national government and other responsible bodies in relation to matters within their respective competence, the permitted scope of Motions should be widened to reflect this. The Monitoring Officer was asked to draft amendments to the rules for consideration by the Committee.

22. The Committee is invited to consider the following suggested amendments to the definitions of Relevant Business and Inappropriate Business in Rule 35:

"Relevant Business" means:

- (i) ~~_____~~-matters for which the Council has a responsibility or which call on central government or another responsible body to do or not do something which is within their powers or responsibility; and
- (ii) ~~_____~~ 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~~Cardiff.

"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~~Relevant Business;
- (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.

Amendments to Ordinary Motions

23. The rules on amendments to ordinary motions (set out in Rule 22(r) to (x)) currently make no provision for amendments which may be (submitted in accordance with the rules and) *accepted* by the proposer of a motion. Specifically, it seems unclear whether:

- (i) the amendment, as accepted, should be treated as carried; or
- (ii) the amendment should be put to the vote, irrespective of its acceptance (unless it constitutes an alteration of the proposer's own Motion, made by the proposer with the consent of the meeting under Rule 22(q)).

24. In order to clarify the position, Members are invited to consider inserting an additional rule after Rule 22(u), as follows:

'(ua) If the proposer of a Motion accepts a proposed amendment (of which notice has been duly given in accordance with Rule 22(r)), the amendment shall become part of the substantive Motion, unless the Chair rules that the

amendment is fundamentally inconsistent with the Motion, in which case, the amendment shall be put to the vote.'

Regrading Applications of Operational Managers – Monitoring and Oversight of Chief Executive's delegated power

25. At its last meeting, the Committee considered the Scheme of Delegations provisions for the determination of regrading applications submitted by officers, namely:
- (a) for officers at Operational Manager level and below, applications would be determined under officer delegations (by the Chief HR Officer or the Chief Executive, under the Scheme of Delegations, Section 4E delegations reference HR1 and CE5 respectively); and
 - (b) for Chief Officers and Deputy Chief Officers (as statutorily defined), applications would be determined by the Employment Conditions Committee (ECC) under its approved terms of reference.
26. However, in a couple of exceptional cases, where an Operational Manager may report directly to a Chief Officer, this would technically bring them within the statutory definition of a Deputy Chief Officer (defined as any officer who reports directly, or is directly accountable, to a chief officer, except for secretarial, clerical and support staff).
27. This meant that for most Operational Managers, a regrading application would be determined under officer delegations by the Chief Executive or the Chief HR Officer, within the current remuneration framework for Operational Managers; but for any Operational Manager who reports directly to a Chief Officer, their regrading application would need to be determined by the ECC.
28. In order to clarify that that the ECC's responsibility for deciding regrading requests of Chief Officers and Deputy Chief Officers (as statutorily defined) does not include Operational Managers, whose applications may be determined under the Chief Executive's delegated authority, the Committee agreed that this anomaly should be corrected by amending the ECC's terms of reference, as follows:
- '(a) to consider and determine policy and issues arising from the organisation, terms and conditions of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders) (Wales) Regulations 2006), together with any other category of employee specified in Regulation from time to time where this is necessary, subject to the approval of Council in respect of any determination or variation of the remuneration of Chief Officers;*
- (b) to decide requests for re-grading of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders) (Wales) Regulations 2006), except for Operational Managers deemed to be classed as Deputy Chief Officers, whose applications may be determined under Chief Executive officer delegation within the remuneration framework for Operational Managers, together with any other category of employee specified in Regulation from time to time, whether by way of appeal by an*

employee against a decision to refuse a re-grading application or to decide applications for re-grading which are supported, subject to the approval of Council in respect of any determination or variation of the remuneration of a Chief Officer.

(c) All Members of the Committee will be required to undertake relevant training to enable them to properly discharge their duties.'

29. The Committee noted that the Trade Unions had been consulted about the change to the Employment Conditions Committee's terms of reference, and had raised no concerns.
30. The Committee also noted that the Head of Paid Service has statutory responsibility for appointments, dismissals and taking disciplinary action for all Council staff, except for chief officers and deputy chief officers (under the Local Authorities (Standing Orders)(Wales) Regulations 2006).
31. However, some Members requested that suitable monitoring and oversight arrangements should be put in place to ensure the Chief Executive's delegated power is only used sparingly.
32. The amendments to the ECC terms of reference were therefore agreed by Committee, and subsequently approved by full Council in June 2021. It was also agreed that arrangements would be put in place in relation to monitoring and oversight of the exercise of delegated powers for regrading applications of Operational Managers falling within the statutory definition of a Deputy Chief Officer (set out in paragraph 26 above).
33. Further consideration has been given to appropriate monitoring and oversight arrangements, and the recommendation of the Monitoring Officer, in consultation with the Chair of this Committee and the Chief HR Officer, is that this may be achieved by providing for the regrading of any Operational Manager deemed as a Deputy Chief Officer to be reported in the Pay Policy Statement (required under section 38 of the Localism Act 2011) which is reported annually to both Cabinet and Council.
34. As Members may be aware, the Pay Policy Statement sets out the authority's policies in relation to the pay of its chief officers and may include any additional relevant information. It should be noted, however, that the Pay Policy Statement sets out general principles underpinning decisions on pay, not specific numerical data on pay and reward (information on the remuneration of senior officers is included in notes to the Council's Statement of Accounts, under the Accounts and Audit (Wales) Regulations 2014).
35. In order to reflect the amendments to the ECC's terms of reference, and clarify and simplify officer delegations in respect of the regrading of Operational Managers, it is recommended that the officer delegations (set out in Section 4E of the Scheme of Delegations) should be amended as follows:

- (i) To insert a new delegation for the Chief Executive, making specific provision for regrading applications of Operational Managers, using the currently unused delegation reference CE8, as follows:

'CE8 ~~[Not used]~~ To determine any application for re-grading of an Operational Manager, within the approved remuneration framework'

- (ii) To amend the Chief HR Officer's delegation reference HR1, to reflect the Chief Executive's delegation in respect of Operational Managers, as follows:

'HR1 Amendments to Establishment – To approve the proposals of Chief Officers to:

- Determine any applications for re-grading at of staff below Operational Manager Level ~~and below~~ (CIS 4.C.134)
- Vary their establishment by:- (CIS 4.C.238)
 - o Deleting posts
 - o Creating posts (CIS 4.C.217)
 - o Re-designating and redefining existing posts.

36. Members may wish to note that enquiries were also made with the Audit Manager about whether this issue should be reported to the Governance and Audit Committee. However, as it was clear that this is not within the terms of reference of the Committee, the Audit Manager's view was that the Governance and Audit Committee's work focuses on seeking assurance that there are effective arrangements for compliance and control across the Council, and the Committee does not normally scrutinise individual decisions. This option has therefore not been pursued.

Legal Implications

37. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.

38. The recommended Constitution amendments set out in this report require the approval of full Council.

39. Other relevant legal provisions are set out in the body of the report.

Financial Implications

40. There are no direct financial implications arising from the recommendation of this report. When delegations are exercised, they are accompanied by detailed financial and legal advice and are to be contained within the budget framework.

Recommendations

The Committee is recommended to:

1. Recommend that any regrading applications of Operational Managers who fall within the statutory definition of a Deputy Chief Officer are to be reported within the annual Pay Policy Statement considered by Cabinet and approved by full Council; and
2. Agree the Constitution amendments set out in this report and recommend the same to full Council for approval.

Davina Fiore

Director Governance and Legal Services & Monitoring Officer

7 December 2021

Appendices

Appendix A Council Meeting Procedure Rules (Constitution, Part 4)

Background papers

Constitution Committee report, 'Council Meeting Procedure Rules', 21st June 2021

Constitution Committee report, 'Constitution Update', 21st June 2021

Council report, 'Constitution Amendments', 24th June 2021

Pay Accountability in Local Government in Wales, Welsh Government Guidance, May 2017