

COUNCIL:

27 JANUARY 2022

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

CONSTITUTION AMENDMENTS

Reason for this Report

1. To enable Council to consider recommended changes to the Constitution in respect of the:
 - (i) Council Meeting Procedure Rules on Ordinary Motions; and
 - (ii) Officer delegations for regrading applications submitted by Operational Managers.

Background

2. The Council is required to keep its Constitution up to date and fit for purpose.
3. 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).
4. The Constitution Committee at its meeting on 13th December 2021 considered a Constitution Update report and recommended certain changes for approval by full Council.

Issues

5. The constitution changes recommended by Constitution Committee at its meeting on 13th December 2021 are as follows:

Council Meeting Procedure Rules - Ordinary Motions

6. The Committee considered 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

7. Under the rules, 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).
8. Council Meeting Procedure Rules 22(g) and (h) set out the rules for the allocation of Ordinary Motions amongst the political groups.
9. Rule 22(i) sets out how the Motions for each Council meeting are to be selected:

‘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.’

10. The Committee reviewed the factors to be considered in selecting Motions, and agreed 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. The Committee also noted that 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. It was agreed that the rules should be amended accordingly.
11. The Committee was also advised that under the common law and the Council Meeting Procedure Rules (Rule 7(b)), the Chair has a wide discretion in relation to the fair and effective conduct of the meeting and may use this discretion to increase the number of Motions permitted at a particular Council meeting, if the Chair considers it fair and appropriate to do so in all the circumstances, having particular regard to the factors set out in the rules and following consultation with party groups. It was emphasised that this discretion would be used sparingly and only where the Chair considered it fair and reasonable to do so in all the circumstances.

12. In order to clarify the points set out in paragraphs 10 and 11 above, the Committee agreed to recommend the amendment of Rule 22(i), as 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.’

Scope of Ordinary Motions

13. The Committee considered the current rules on the scope of Ordinary Motions, which state that:

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

“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. [Rule 35]

14. 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.

15. 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. However, the Committee was concerned that this was too wide, because valuable Council time may then be taken up discussing matters without a real likelihood of achieving a practical outcome. The Committee acknowledged that the Council does have a legitimate role in lobbying national government and other responsible bodies, and may wish to call for the Council to be given powers in relation to certain matters. The Monitoring Officer was asked to draft amendments to widen the current rules on the scope of Motions accordingly, for consideration and approval by Council.

16. Council is invited to consider and approve the following suggested amendments to the definitions 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 take, or refrain from, some specific action in relation to the powers or responsibilities of the Council;~~ 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.

Accepted Amendments to Ordinary Motions

17. 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)).

18. After some discussion and in line with advice from the Monitoring Officer, the Committee agreed that an accepted amendment would be incorporated into the substantive Motion (unless the amendment is fundamentally inconsistent with the Motion); and that the Chair should draw the meeting’s attention to the

fact they will be voting on the amended substantive Motion before a Motion is voted on, for the avoidance of any doubt. The Committee agreed to recommend no changes to the rules, but to keep this issue under review.

Regrading Applications of Operational Managers

19. Members may recall that in June 2021, full Council approved amendments to the Employment Conditions Committee (ECC) terms of reference to clarify that the ECC's remit in relation to regrading applications of Chief Officers and Deputy Chief Officers (as statutorily defined) does not apply to an Operational Manager who fell within the statutory definition of a Deputy Chief Officer because, exceptionally, they may report directly to a Chief Officer. It was noted that staffing matters in relation to staff below Chief Officer level, including Operational Managers, fall within the statutory responsibility of the Chief Executive, as Head of Paid Service.
20. In accordance with the recommendations agreed by Council in June 2021, further consideration was given by the Constitution Committee to monitoring and oversight of the Chief Executive's use of delegated powers to determine a regrading application of an Operational Manager who falls within the statutory definition of a Deputy Chief Officer. The Committee agreed that this would be achieved by including this within the Pay Policy Statement submitted annually to Cabinet and Council.
21. In order to reflect the approved amendments to the ECC's terms of reference, and clarify and simplify officer delegations in respect of the regrading of Operational Managers, the Committee agreed to recommend 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.

Legal Implications

22. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.
23. The recommended Constitution amendments set out in this report require the approval of full Council.
24. Other relevant legal provisions are set out in the body of the report.

Financial Implications

25. 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

Council is recommended to approve the Constitution amendments set out in paragraphs 12, 16 and 21 of this report, and ask the Monitoring Officer to update the Constitution accordingly.

Davina Fiore

Director Governance and Legal Services & Monitoring Officer

20 January 2022

Background papers

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

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