

COUNCIL:

17 MARCH 2022

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

CONSTITUTION UPDATE

Reason for this Report

1. To enable the Council to consider recommended changes to the Constitution in relation to:
 - (a) New legislative requirements introduced by the Local Government and Elections (Wales) Act 2021, in respect of:
 - (i) Multi-location meeting arrangements and electronic broadcast of full Council meetings;
 - (ii) Assistants to the Cabinet;
 - (iii) Job sharing for Cabinet Members;
 - (iv) A Guide to the Constitution;
 - (v) A Petition Scheme; and
 - (vi) The Statutory functions of the Chief Executive,
 - (b) The Council Meeting Procedure Rules on amendments to Notices of Motion, and
 - (c) Various legislative and other updates and drafting improvements.

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 28th February 2022 considered reports on Multi-Location Meeting Arrangements; Petition Scheme; Constitution Guide; and

a Constitution Update, and recommended a number of Constitution changes for approval by full Council.

Issues

5. The constitution changes recommended by Constitution Committee at its meeting on 28th February 2022 are as follows:

Multi-Location Meeting Arrangements and electronic Broadcast of Full Council meetings

6. As reported to full Council in May 2021, the Local Government and Elections (Wales) Act 2021 ('the 2021 Act'), Part 3, Chapter 4, requires local authorities to make and publish arrangements to ensure that all Council, Committee and Cabinet meetings may be attended remotely (that is, enabling persons who are not in the same place to attend the meeting) – also referred to as 'multi-location meetings'; and to broadcast full Council meetings. Associated changes are also made to public access rules in relation to meetings and documents, to allow the public to observe and participate, as appropriate, in multi-location meetings and requiring meeting documents to be made available electronically on the Council's website.
7. Meetings must be capable of being held virtually, but individual authorities must decide whether their meetings will be held fully virtually, partially virtually (where some participants are in the same physical location, whilst others join the meeting virtually, referred to as 'hybrid meetings') or as physical meetings (although authorities may not mandate physical attendance at meetings).
8. The arrangements to be made for Multi-Location Meetings in Cardiff have been developed having regard to statutory guidance issued by the Welsh Government ([Interim statutory guidance on multi-location meetings \(gov.wales\)](https://gov.wales/interim-statutory-guidance-on-multi-location-meetings)) and following consultation with all elected Members, co-opted and independent Committee Members and support officers, and a survey seeking views from members of the public and a range of groups and organisations.
9. In accordance with the statutory guidance, the arrangements are set out in a Multi-Location Meetings Policy (**Appendix A**), which was approved by Cabinet on 10th March 2022; with implementation scheduled from the 5th May 2022. It is proposed that a review of the arrangements will be undertaken after 12 months of operation.
10. Constitution amendments need to be made to reflect the agreed arrangements for multi-location meetings, specifically, the Remote Attendance Procedure Rule, the various meeting procedure rules, and the Access to Information Procedure Rules, found in Part 4 of the Constitution. The recommended amendments are set out in the Schedule of Recommended Constitution Amendments (**Appendix B**) and the Constitution, draft amendments (**Appendix C**).
11. As Cardiff already has in place arrangements for the electronic broadcast (webcast) of full Council meetings (under the Council Meeting Procedure Rules, Rule 32); and has adopted a Webcasting Protocol (in Part 5 of the Constitution) to guide and support these arrangements, only minor amendments are required to fully reflect the new statutory broadcasting requirements. These changes (which are included in

Appendices B and C, referred to in the paragraph above) do not represent any changes to Cardiff's current webcasting arrangements.

Assistants to the Cabinet

12. The 2021 Act makes new statutory provision enabling the Council's executive arrangements to make provision for councillors to be appointed to assist the executive (Cabinet) in discharging executive functions (section 57 of the 2021 Act, which amends the Local Government Act 2000 and comes into effect on 5th May 2022).
13. Prior to the 2021 Act, there was no statutory provision for Assistants to the Executive, but statutory guidance on executive arrangements (SI 2006/56, paragraph 4.29) made clear that they were permissible. Provision is made in Article 7.5 of Cardiff Council's Constitution for 'Assistants to Cabinet members', with an appended role description; and the Cabinet currently has 5 Assistants to Cabinet Members, with responsibility for the following areas: Citizen Engagement; Community Engagement; Local Environment; Private Sector Housing; and Building Prosperity (appointed by the Cabinet in July 2017 and September 2019).
14. The 2021 Act places Assistants to the Cabinet onto a statutory footing. Key points of the new legislative provisions include the following:
 - (a) An assistant to the executive is not a member of the executive, but is entitled to attend, and speak at, any meeting of the executive or of a committee of the executive.
 - (b) Assistants are to be appointed either by the Leader or the Council, but the power to appoint assistants may not be delegated.
 - (c) The executive arrangements may make provision for the number of assistants that may be appointed; their term of office; and their responsibilities.
 - (d) Assistants may not include the chairman and vice-chairman of the authority; may not be members of Scrutiny Committees; and are included for the purposes of counting the maximum number of Cabinet members who may be appointed to the Democratic Services Committee and the Governance and Audit Committee. The Welsh Government's draft statutory guidance indicates that the same rule applies also to the Standards and Ethics Committee.
 - (e) The Council must have regard to statutory guidance issued by the Welsh Government.
15. Statutory guidance on the new legislative provisions has not yet been finalised. However, the draft statutory guidance indicates that 'The aim is to support diversity by enabling members who might not be in a position to take up a full time executive role because of personal or other circumstances to have the opportunity to learn and develop. Whilst not members of the executive, assistants can attend and speak at executive meetings and could bring valuable diversity and insight into discussions.'
16. The Constitution Committee considered the new statutory provisions alongside the current provisions of Article 7.5 and the appended role description and agreed to recommend amendments in respect of the following points:
 - (i) Assistants are to assist the Cabinet collectively, rather than an individual Cabinet member, so amendments should be made to reflect this;

- (ii) Although Assistants are not members of the Cabinet and may not vote at Cabinet meetings, they have a statutory right to speak at Cabinet meetings, not just to observe;
 - (iii) To recommend that appointments should be made by the Leader, as the leader of the Cabinet; and
 - (iv) Assistants are regarded as if they were Cabinet members *only* for the purposes of the membership rules for scrutiny committees, the Governance and Audit Committee, Democratic Services Committee and the Standards and Ethics Committee (but not in any other respect).
17. The recommended amendments are shown in **Appendix B** (Schedule of Recommended Constitution Amendments) and **Appendix C** (Constitution, draft amendments).
18. The Committee also noted that the Independent Remuneration Panel for Wales Annual Report 2022/23 makes no specific provision for a senior salary to be paid to an Assistant to the Cabinet, although the Panel may consider payment of a salary on a case by case basis if an application is made by a Council.

Cabinet Job Sharing

19. The 2021 Act makes new statutory provision requiring the Council's executive arrangements to make provision enabling two or more councillors to share an office on an executive, including the office of executive leader (section 58 and Schedule 7 of the 2021 Act, which comes into effect on 5th May 2022). The Council must make provision for Cabinet job sharing, in accordance with the legislative requirements and statutory guidance, and set out the agreed arrangements in the Constitution.
20. Statutory guidance has not yet been finalised. However, the draft statutory guidance suggests that Councils 'should consider matters such as how this could increase the diversity in the executive to best reflect the diversity in the council's area, how will job sharing members be supported to ensure they can maintain a reasonable work life balance and opportunities for succession planning in the executive job sharing may offer. Job sharing arrangements must not be used solely as a means to increase the number of executive members.'
21. Key points of the new legislative provisions include the following:
- (a) If job-sharers are appointed, the statutory maximum number of Executive members is increased from 10 to 13, on the basis that:
 - if there are 13 Executive members, at least 3 must be job-sharers: and
 - if there are 11 or 12 Executive members, at least 2 must be job-sharers.The draft statutory guidance indicates that 'There is a statutory limit of three on the number of executive posts (including the executive leader) that can be filled on a job sharing basis. This is to ensure that in councils with a smaller number of members there are still sufficient members to provide proper scrutiny of the executive.'
 - (b) Where Cabinet Members share office under job sharing arrangements, for voting and quorum purposes at Cabinet meetings, they are treated as one member with one vote.

- (c) The IRPW's draft Annual Report for 2022/23 states that: 'Each job sharer will be paid an appropriate proportion of the salary group as set out in Table 3', which is understood to mean that the senior salary is to be split proportionally. The IRPW draft Annual report also says that 'for all job share arrangements the senior salary cap will be increased subject to the statutory maximum of 50% of the council's membership. Where the arrangements would mean that the statutory maximum would be exceeded the Panel would need to seek the approval of Welsh Ministers.'
- (d) Job sharing arrangements are to be made from May 2022 for Executive members only, but the Welsh Government may introduce Regulations to extend job-sharing arrangements to non-executive members.
- (e) The Council must have regard to any statutory guidance issued by the Welsh Government.

22. The Constitution Committee has considered the requirements of the new legislation in respect of Cabinet Job Sharers. In considering voting arrangements, the Committee noted that the draft statutory guidance indicates that:

'Should two or more of the members in a job sharing arrangement attend a meeting in their capacity as an executive member they may both be recorded as having attended and they may both speak at the meeting but should the meeting require a vote to be cast they must decide amongst them who will cast the vote, if they cannot agree on the vote then they must make the chair of the meeting aware they have not agreed a position.'

If one member of a job sharing arrangement attends a meeting in their capacity as a member of the executive and the meeting requires a vote then the attending member must cast their vote in agreement with the other members of their job sharing arrangement. The chair of the meeting should establish whether this is the case and if agreement has not been reached then the job sharing member attending the meeting must make the chair aware no agreement has been reached. Councils will wish to consider what arrangements they put in place where a member of a job sharing arrangement casts a vote at a meeting they have attended which is not in agreement with their job sharing partners.'

23. The Committee were advised that the Monitoring Officer had sought clarification of the draft guidance on how Councils should deal with the situation where job sharing partners may be unable to agree on how their vote shall be cast. The Committee agreed that if there is no agreement on how the vote should be cast, then no vote should be recorded.
24. In order to reflect the new legislative requirements, the Constitution Committee agreed to recommend amendments to Article 7, 'The Cabinet', and the Cabinet Procedure Rules, as shown in **Appendix B** (Schedule of Recommended Constitution Amendments) and **Appendix C** (Constitution, draft amendments).

Guide to the Constitution

25. The 2021 Act places a new duty on Councils to prepare and publish a constitution guide which explains the content of its Constitution in ordinary language ('the Constitution Guide'). The Constitution Guide must be made available, along with the

Constitution, at the Council's principal office for inspection by members of the public at all reasonable hours; and copies of both must be supplied upon request, either free of charge or at a charge representing no more than the cost of providing the copy.

26. The new legislative requirements are set out in section 45 of the 2021 Act, which amends section 37 of the Local Government Act 2000, and comes into effect on 5th May 2022. In considering the new duty, the Council must have regard to any statutory guidance issued by the Welsh Government.
27. Statutory guidance has not yet been finalised. However, the draft statutory guidance indicates that: 'Preparing an effective constitution guide should form part of the council's strategy on encouraging participation in decision making by the council prepared under sections 39, 40 and 41 of the Local Government and Elections (Wales) Act 2021. Councils could speak to local people, and to voluntary organisations representing local people, to understand what it would be most helpful to put in the constitution guide.'
28. The Welsh Local Government Association and Lawyers in Local Government have produced a model guide to the constitution. A draft Constitution Guide, based on the model guide and adapted to reflect Cardiff's constitutional arrangements (**Appendix D**) was considered by the Constitution Committee. It was noted that a public engagement and consultation process was to be undertaken to seek feedback on the draft Guide. The Committee authorised the Monitoring Officer, in consultation with the Chair, to make any appropriate changes to the draft Guide to reflect consultation feedback, before recommending it to Cabinet for approval, as part of the Council's public participation strategy.
29. The Constitution Committee agreed to recommend that Article 15 of the Constitution should be amended to refer to the Constitution Guide, as shown in **Appendix C** (Constitution, draft amendments).

Petition Scheme

30. The 2021 Act places a new duty on Councils to make and publish a Petition Scheme setting out how the Council intends to handle and respond to petitions (including electronic petitions). The new duty, imposed under section 42 of the 2021 Act, comes into force from 5th May 2022.
31. The Petition Scheme must set out:
 - (a) how a petition may be submitted to the Council;
 - (b) how, and by when, the Council will acknowledge receipt of a petition;
 - (c) the steps the Council may take in response to a petition received by it;
 - (d) the circumstances (if any) in which the Council may take no further action in response to a petition;
 - (e) how, and by when, the Council will make available its response to a petition to the person who submitted the petition and to the public.
32. The Council also has a duty to review its Petition Scheme from time to time and, if the Council considers it appropriate, to revise the Scheme. If the Council revises or replaces a Petition Scheme, it must publish the revised or new scheme.

33. In considering its Petition Scheme, the Council must have regard to any statutory guidance issued by the Welsh Government. Statutory guidance has not yet been finalised. However, the draft guidance indicates that the Petition Scheme should be linked to the Council's public participation strategy and should be developed not just to ensure a fair and robust process, but also to provide a helpful and positive experience for those people who take the time to submit and promote petitions.
34. The Constitution Committee noted that the Council's current arrangements for petitions are set out in the relevant meeting procedure rules in the Constitution: Rule 20 of the Council Meeting Procedure Rules; Rule 14.2 of the Committee Meeting Procedure Rules; and Rule 14.2 of the Planning Committee Procedure Rules.
35. The Committee also noted that, in response to the Covid pandemic, full Council in September 2020 agreed, as an interim measure pending the introduction of a new petition scheme, that references to petitions in the Council Meeting Procedure Rules should be read as including electronic petitions, and agreed arrangements for electronic petitions to be submitted to Council. The Planning Committee also adopted arrangements to accept electronic petitions on an interim basis, confirmed in a planning protocol. However, the interim arrangements were not incorporated into the Constitution, pending the adoption of a new Petitions Scheme.
36. At its meeting in February 2022, the Constitution Committee considered a draft new Petition Scheme, developed on the basis of the interim arrangements adopted in September 2020 and operational experience, the new legislative requirements and the draft statutory guidance; and corresponding amendments to the Constitution.
37. The Committee noted that the proposed new Petition Scheme includes provision allowing a Lead Petitioner (the individual responsible for initiating and promoting the petition), to present their petition to Council and speak for one minute, as an alternative to submitting the petition through a Member under the current rules. The Committee was advised that this proposal had been discussed with party group whips and agreed on the basis that it would promote public participation in the Council's democratic processes. The Constitution Committee was content to support this proposal, but wished to ensure that it did not undermine the legitimate representational role of elected Members or lead to a disproportionate amount of time being taken up at full Council meetings. Accordingly, the Committee agreed to recommend that a minimum of 50 signatories should be required for a petition to be presented to full Council by a Lead Petitioner; but a lower threshold of 20 should be retained for an elected Member to present a petition to Council.
38. The Committee also discussed the requirement for petition signatories to live, work or study in Cardiff and agreed that this should be widened to include those who may live close to Cardiff, but may also be affected by the Council's decisions.
39. The Committee authorised the Monitoring Officer, in consultation with the Chair, to amend the draft Petition Scheme and the Constitution to reflect the issues referred to in paragraphs 30-38 above, for approval by Council. It recommended that the new Petition Scheme should be adopted with effect from 5th May 2022 and reviewed after 6 months of operation, with a public consultation as part of the development of the Council's public participation strategy and to take account of statutory guidance which should be finalised by that time.

40. In considering the Council's public sector equality duties under the Equality Act 2010, the Committee noted that no adverse equality impacts had been identified from the extension of the current interim arrangements and that a full Equalities Impact Assessment would be undertaken as part of the consultation on the public participation strategy.
41. The Committee also agreed that Members, as the Council's decision makers, should be able to inspect petitions, including details of petition signatories, in order to understand the petitioners' interests in the matter and inform the Council's decision making processes. The Monitoring Officer advised that this should be permissible under data protection laws, provided this is made clear in the [Council's Privacy Notices](#). It was also suggested that the Council may wish to consider the provisions of the Senedd's petition scheme for reference when the Council's Petition Scheme is reviewed, bearing in mind the limited resources available to the Council.
42. The recommended draft Petition Scheme is attached as **Appendix E**; and the corresponding draft amendments to the Constitution are shown in **Appendix F**.

Statutory functions of the Chief Executive

43. The statutory provisions relating to the designation and functions of the Head of Paid Service have been amended by section 54 of the 2021 Act. The Explanatory Notes to the 2021 Act note that 'The statutory role of head of paid service is often exercised by the officer more usually referred to as the chief executive or managing director. Whilst these terms are widely used to denote the head of a council's administration throughout local government in Wales, neither title is found in local government legislation.'
44. The new legislation redesignates the Head of Paid Service as the Chief Executive, restates the functions previously assigned to this post and expands the list of functions to include those relating to performance and governance; namely financial planning, asset management and risk management, in order to bring the responsibilities of the Chief Executive into line with modern governance practices.
45. The revised title and functions of the post have been reflected in draft amendments to Article 11 of the Constitution, as shown in **Appendix C** (Constitution, draft amendments).

Amendments to Notices of Motion (Council Meeting Procedure Rules)

46. As requested at the full Council meeting in January 2022, the Constitution Committee has given further consideration to the Council Meeting Procedure Rules in respect of amendments to Ordinary Motions (Rule 22), specifically in relation to any amendments which may be accepted by the proposer of the Motion.
47. The Committee noted that uncertainty appears to arise in situations where there are two or more amendments, when one amendment (A) is accepted by the proposed of

the Motion, and a second amendment (B) is carried following a vote, the question being whether:

- (i) both amendments (A, the one which was accepted; and also B, the one which was carried by a vote) are incorporated into the substantive motion, which is then voted upon; or
- (ii) the second amendment (B, which was carried by a vote of the Council) supersedes A, the amendment which was accepted by the proposer of the Motion, so that the substantive Motion becomes the Motion as amended, B, which is then voted upon.

48. After further discussion it was agreed to resolve this uncertainty by inserting a new rule to say that where there are two amendments, either both amendments have to be accepted without a vote, or both amendments have to be voted on. The Committee agreed to recommend inserting the following rule into the Council Meeting Procedure Rules to this effect:

‘(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 without a vote, unless:

- (i) The Chair rules that the amendment is fundamentally inconsistent with the original Motion, in which case the amendment shall be put to the vote; or
- (ii) Two or more amendments to the Motion are moved, in which case, either all amendments must be accepted, or all amendments must be put to the vote.’

49. The recommended new rule 22(ua) is included in the marked up copy of the Council Meeting Procedure Rules in **Appendix C** (Constitution, draft amendments).

Other Updates and Drafting Improvements

50. In reviewing the Constitution, a number of other minor amendments and drafting improvements have been identified and are included in the Schedule of Recommended Constitution Amendments appended as **Appendix B**, with a brief explanation of the reason for the change. The recommended amendments are shown using tracking in **Appendix C** (Constitution, draft amendments).

51. The Committee may wish to note that there are also a number of minor updates required throughout the Constitution, which may be made under the Monitoring Officer’s delegated authority for minor amendments, including the following:

CURRENT REFERENCE	PROPOSED AMENDMENT
Commission for Local Administration	Public Services Ombudsman for Wales
National Assembly for Wales	Senedd Cymru / Welsh Ministers, as appropriate

CURRENT REFERENCE	PROPOSED AMENDMENT
Local Government Boundary Commission for Wales	Local Democracy and Boundary Commission for Wales
Scheme of Members' Allowances / Members' Allowances Scheme	Members' Remuneration Schedule
Head of Paid Service	Chief Executive
European Convention on Human Rights	Human Rights Act 1998
Chief Operating Officer	Corporate Director
Democratic Services Manager	Committee and Member Services Manager
Data Protection Act 1998	Data Protection Act 2018
Chief Officer Legal and Democratic Services	Director of Governance and Legal Services

Legal Implications

52. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.
53. Minor legislative updates and drafting improvements may be approved by the Constitution Committee under its approved terms of reference or under the Monitoring Officer's delegated authority (Section 4E of the Scheme of Delegations, reference LD16A). All other substantive Constitution amendments require the approval of full Council.
54. Other relevant legal provisions are set out in the body of the report.

Financial Implications

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

Recommendations

Council is recommended to:

1. Note the information set out in the report and appendices;
2. Approve the Constitution amendments set out in **Appendix C** (Constitution – draft amendments), to take effect on the specified dates, and request the Monitoring Officer to update the Constitution accordingly.

Davina Fiore
Director Governance and Legal Services & Monitoring Officer
11 March 2022

Appendices

Appendix A	Multi-Location Meetings Policy (approved by Cabinet)
Appendix B	Schedule of Recommended Constitution Amendments
Appendix C	Constitution – draft amendments
Appendix D	Constitution Guide (draft)
Appendix E	Petition Scheme (draft)
Appendix F	Constitution, draft amendments in relation to Petitions

Background papers

Constitution Committee reports, 'Multi-Location Meeting Arrangements', 'Petition Scheme', 'Constitution Guide', and 'Constitution Update', February 2022
'Multi-Location Meetings Policy', March 2022
Welsh Government guidance on Multi-Location Meetings [Interim statutory guidance on multi-location meetings \(gov.wales\)](#)
Welsh Government Draft Statutory and Non Statutory Guidance, Parts 3 and 4 of the Democracy Handbook
Council report, 'Governance', September 2020