

COUNCIL:

24 NOVEMBER 2022

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

CONSTITUTION AMENDMENTS

Reason for this Report

1. To seek the approval of Council to various constitution changes which have been recommended by the Constitution Committee, specifically in relation to:
 - (a) Cabinet Job Sharing;
 - (b) Governance and Audit Committee, Chair and Vice-Chair;
 - (c) Electronic signing and sealing of documents;
 - (d) Cardiff Bus Pension Scheme, delegated authority
 - (e) Strategic Estates delegations;
 - (f) Register of Members (Home addresses);
 - (g) All Party Council Groups, Officer support;
 - (h) Group Leaders rights to speak at Cabinet meetings; and
 - (i) The Community Councils Charter.

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.
5. At the Constitution Committee's last meeting, on 9th November 2022, the Committee considered reports setting out a number of potential changes to the Constitution ('Review of the Rules Relation to Council and Cabinet Meetings and the Constitution'; and 'Constitution Update'). The Committee decided to give further consideration to the rules governing full Council meetings; and agreed to recommend the changes set out in this report to full Council for approval.

Issues

Cabinet Job Sharing

6. Members will note that new statutory provisions (introduced under section 58 and Schedule 7 to the 2021 Act, with effect from 5th May 2022) enable two or more councillors to share an office on an executive, including the office of executive leader, referred to as 'Cabinet Job-Sharers'.
7. The new statutory provisions are reflected in the Constitution, Article 7 (The Cabinet) and the Cabinet Procedure Rules (in Part 4 of the Constitution), by virtue of amendments approved by full Council in March 2022, with effect from 5th May 2022.
8. The Council must have regard to any statutory guidance issued by the Welsh Government on this matter. However, at the time when the Council was last considering this matter, the Welsh Government had only made draft guidance available on an informal basis.
9. The Welsh Government has since formally issued draft guidance on job-sharing arrangements, within the draft Statutory Guidance: *Local Government Guidance for Principal Council Consultation document - (Final version), paragraphs 4.6 to 4.18 inclusive.
10. Whilst the draft Guidance is yet to be finalised, it is recommended that certain, mostly minor, amendments should be made to Article 7 and the Cabinet Procedure Rules to better reflect the draft Statutory Guidance; and also, to provide clear rules to deal with the scenario where one Cabinet Job Sharer may have a conflict of

interests, to clarify that the non-conflicted Job Sharer may cast their vote, but without having any preparatory discussions with their conflicted Job Sharing Partner (Cabinet Procedure Rules, new draft Rule 2.7(e)). The recommended amendments are shown in **Appendices A1 and A2**.

Governance and Audit Committee, Chair and Vice-Chair

11. Under the new statutory provisions of Chapter 2 of Part 6 of the Local Government and Elections (Wales) Act 2021, with effect from 5th May 2022:

- a) The Chair of the Governance and Audit Committee must be a lay person, ie. an independent member of the Committee; and
- b) The Deputy / Vice-Chair must not be a member of the Cabinet or an Assistant to the Cabinet.

12. Although the new legislation does not specifically require that the Deputy / Vice Chair must be an independent member, it is considered that this is best practice, as it can help to develop a potential future Chair. (Members may also wish to note that the Regulations governing Standards Committees require that both the Chairperson and Vice-Chairperson must be independent members of that Committee, and this is reflected in the Constitution, Article 9.2(f)). In line with best practice, the current Deputy / Vice Chair of the Governance and Audit Committee is an independent member.

13. The Constitution Committee noted that the Chair of Governance and Audit must be elected by the Committee and there is no automatic entitlement for the Deputy / Vice-Chair to become the Chair. However, the Committee agreed it would be best practice for the Deputy / Vice-Chair to be an independent member, and therefore to recommend the insertion of a rule in the Constitution to require this. At the same time, it was agreed that amendments should be made to reflect the statutory rule which requires the Chair to be an independent member; and for consistency, to reflect the same rule which is applicable to the Standards and Ethics Committee by amending Article 8.1 as shown in **Appendix B**.

Electronic Signing and Sealing of Documents;

14. In line with the Council's new hybrid working arrangements and general move towards digitalisation of processes to improve efficiency, the Council's Legal Services department has procured specialist software to enable the electronic signing and sealing of legal documents. The software is used by a number of other local authorities and private practice solicitors firms and incorporates appropriate security and authorisation requirements. Its reported benefits include increased efficiency, quicker execution, lower costs and a reduced carbon footprint.

15. In order to reflect the new arrangements being introduced for electronic signing and sealing of legal documents, the Committee agreed to recommend that express reference should be made within the Constitution, for the avoidance of any doubt. Recommended amendments to Article 13.4 (Authentication of documents); Article

13.5 (Common Seal of the Council); and the Contract Standing Orders and Procurement Rules, Rule 24.8 are set out in **Appendices C1 and C2**.

Cardiff Bus Pension Scheme – Delegated Authority

16. Members will be aware that Cardiff Bus is a private company limited by shares (Company Ref 02001229), constituted as a Public Transport company within the meaning of Section 72 of the Transport Act 1985, and is wholly owned by the Council.
17. Cardiff Bus is the Statutory and Principal employer in a defined benefit pension scheme. This means it is legally responsible under legislation to meet the funding objectives and to fund the liabilities of the Scheme (Statutory Employer) and is the “main” employer for the purposes of the Scheme rules, having certain decision making powers relating to the running of the Scheme (Principal Employer).
18. In October 2020, the Council approved certain interventions proposed to achieve the key principles of resolving immediate risks to the viability of the company and protecting the current and future entitlement of members of the Cardiff Bus Pension Scheme, including a delegation to the Corporate Director Resources in respect of discharging the responsibilities of the Statutory and Principal Employer under the Cardiff Bus Pension Scheme: Ag. Item 9 Cardiff Bus Cover Report.pdf (modern.gov.co.uk)
19. On the basis that the Corporate Director Resources has advised that this delegation is to be exercised on an ongoing and permanent basis, the Constitution Committee agreed to recommend that the Corporate Director’s delegation should be incorporated in Section 4E of the Scheme of Delegations in the Constitution, in the interests of clarity and transparency. The proposed new delegation is shown marked up in **Appendix D**.

Strategic Estates delegations

20. Officer delegations for property matters are set out in the Scheme of Delegations, Section 4F, and reflected in the Land Procedure Rules, Rule 2. The current delegations authorise the Director of Economic Development to acquire or dispose of interests in land, subject to various conditions designed to secure best value and compliance with the Land Procedure Rules, up to a threshold of £1 million. Any proposal which does not satisfy all of the conditions or exceeds £1 million requires Cabinet approval. Delegated authority is also granted to the Corporate Property and Estates Manager for transactions up to a threshold value of £100,000, again subject to compliance with various conditions designed to secure best value.
21. Following the restructure of the Council’s Strategic Estates service area, certain changes are recommended to update the officer delegations, reflect the new management structure, which now includes an Assistant Director for County Estates and a Head of Property (OM1), and ensure decision making is efficient and effective.

22. The proposed changes include:

- a) delegated authority for the Assistant Director to approve transactions up to a threshold of £500,000, subject to all the same conditions in relation to securing best value and compliance with the Land Procedure Rules; and
- b) assigning the delegations of the former Corporate Property and Estates Manager to the Head of Property, with an increase in the financial threshold from £100,000 to £250,000.

23. No substantive change is proposed to the delegated authority of the Director of Economic Development or the type of transactions which require Cabinet approval.

24. The Constitution Committee agreed to recommend amendments to the officer delegations in the Scheme of Delegations Section 4F (and corresponding amendments to the Land Procedure Rules, Rule 2) to reflect the changes set out in paragraph 22 above, as shown in **Appendices E1 and E2**.

Register of Members (Home addresses)

25. Under the statutory rules on public access to information, Councils have been required to maintain a public Register of Members, showing certain specified information including each Member's name, address and ward (Local Government Act 1972, section 100G and the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, Regulation 12). (It should be noted that this is a separate register to the Members' Register of Interests, maintained under the Local Government Act 2000, section 81, for which the Ombudsman's guidance confirms that Members' home addresses are not required and that a street name or postcode is sufficient for describing a Members' home address.)

26. The Welsh Government has indicated that it considers the protection of Members addresses should be a priority for councils to support their members' well-being and promote diversity of membership (draft Statutory Guidance for Principal Councils, paragraph 2.31). It has therefore introduced legislation (the Local Authorities (Amendments Relating to Publication of Information) (Wales) Regulations 2022) to amend the public access to information rules by removing the requirement to make Members addresses within the register of Members available for public inspection.

27. The Constitution Committee noted that the Access to Information Procedure Rules, Rule 19, requires amendment to reflect the legislative changes referred to in paragraph 26 above, to make clear that Members' home addresses are now not to be open to public inspection. The recommended amendments are shown in **Appendix F**.

All Party Council Groups – Officer Support

28. The Council has agreed arrangements for All Party Council Groups (APCG), 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. A Protocol for All Party Council Groups, setting out the purpose, subject matter, powers and functions, membership and procedure for an All Party Council Group, was adopted by full Council in March 2018 and is incorporated within Part 5 of the Constitution.
29. Officer support for APCG meetings is limited due to resource constraints, and this is addressed within the Protocol, paragraph 5(vi) as follows:
- ‘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).’
30. The Constitution Committee considered a suggestion that the position regarding officer support should be clarified further in relation to questions raised by APCG members, and officers' attendance at APCG meetings. It was agreed that APCG members should use normal channels for raising enquiries, such as the members' enquiry system or by submitting policy related questions to the relevant Cabinet member; and that officers should not be required to attend APCG meetings.
31. The Committee also discussed the issue of membership of APCG's and agreed to clarify that membership should be restricted to Members of the Council, although other organisation representatives and individuals may attend APCG meetings as witnesses or speakers.
32. The recommended amendments are shown marked up in **Appendix G**.

Cabinet Meetings

33. The Committee noted the provision made for group leaders to speak at Cabinet meetings (set out in the Cabinet Procedure Rules, Rule 1.6(e)), and agreed to recommend an amendment to clarify that their speaking rights are on 'related policy matters', so ward issues are not to be raised, by amending Cabinet Procedure Rule 1.6(e) as follows:
- ‘A Councillor being the Leader of a political group in accordance with the Local Government (Committees and Political Groups) Regulations 1990 shall have the right (such right to be exercised reasonably and not so as to interfere with the proper conduct of business) to speak on a related policy matter at any meeting of the Cabinet or a committee of the Cabinet even though he/she is not a member of the Cabinet or Cabinet committee as the case may be. In the absence of the Leader of such political group the Councillor designated as the Leader's deputy may exercise this right. This right may not be exercised in the following cases:

(i) where the Councillor is required to declare an interest and withdraw from the meeting under the Members' Code of Conduct;

(ii) where the Cabinet or any committee of the Cabinet exercising a quasi judicial function have asked the members of the public and the parties to withdraw whilst they deliberate before reaching a decision;

(iii) where the Monitoring Officer or his/her representative advises that as a matter of law or to protect the Council's interest non-members of the Cabinet or the committee of the Cabinet (as the case may be) should withdraw;'

Community Councils Charter

34. The Committee noted that the Welsh Government draft Statutory Guidance for Principal Councils: Local Government Guidance for Principal Council Consultation document - (Final version), includes revised guidance on constitutions and a draft revised Constitution Direction setting out the prescribed contents of council constitutions (Guidance Annex 3).

35. The Committee was pleased to note that the Council's Constitution largely complies with the draft revised Guidance and Constitution Direction. However, it was noted that, within the list of matters which Councils should consider including in their constitution (draft Guidance, Annex 3 paragraph 1.11) there is reference to 'The working arrangements and relationship with community and town councils in the council's area'.

36. The Council has, in accordance with Welsh Government guidance, agreed 'A Shared Community: Charter between Cardiff Council and Community Councils in Cardiff', January 2019 (**Appendix H**), setting out how the councils would work together for the benefit of their communities. The Constitution Committee agreed to recommend that, in order to comply with the draft revised Guidance, the Community Councils Charter should be incorporated within the Constitution.

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. 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. All other substantive Constitution amendments 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 recommendations 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 recommended Constitution amendments set out in this report and its appendices, and ask the Monitoring Officer to update the Constitution accordingly.

Davina Fiore

Director Governance and Legal Services & Monitoring Officer

16 November 2022

Appendices

Appendix A1	Article 7, Cabinet, draft amendments
Appendix A2	Cabinet Procedure Rules, draft amendments
Appendix B	Article 8, Regulatory and Other Committees, draft amendments
Appendix C1	Article 13, draft amendments
Appendix C2	Contract Standing Orders and Procurement Rules, draft amendments
Appendix D	Scheme of Delegations, Section 4E, draft amendments
Appendix E1	Scheme of Delegations, Section 4F, draft amendments
Appendix E2	Land Procedure Rules, draft amendments
Appendix F	Access to Information Procedure Rules, draft amendments
Appendix G	Protocol for All Party Council Groups, draft amendments
Appendix H	Community Councils Charter, January 2019

Background papers

Constitution Committee reports, 'Review of the Rules Relation to Council and Cabinet Meetings and the Constitution'; and 'Constitution Update', 9th November 2022

Council report, 'Constitution Update', 17 March 2022

Welsh Government, Consultation on draft Statutory Guidance for Principal Councils, March 2022:
*Local Government Guidance for Principal Council Consultation document - (Final version)

Council report, 'Cardiff City Transport Services Limited (trading as Cardiff Bus)', 22 October 2020

Council report, 'Constitution Amendments', 22 March 2018

Cabinet report, 'Community Councils Charter', 13 December 2018