

CONSTITUTION COMMITTEE:

19 NOVEMBER 2015

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

CONSTITUTION UPDATE

Reason for this Report

1. To inform the Committee of various amendments required 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

(delegated by the Constitution Committee on 8th September 2008).

Issues

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. Constitution provisions in respect of the following matters have been identified as requiring amendment:

Single Licensing Authority functions under Part 1 of the Housing (Wales) Act 2014

6. As Members may be aware, the City of Cardiff Council has been designated by Order of the Welsh Ministers as the Single Licensing Authority (SLA) for the whole of Wales for purposes of Part 1 of the Housing (Wales) Act 2014 ('the Housing Act'). Part 1 of the Housing Act (which is not yet fully in force) introduces a centrally administered scheme of registration and licensing of landlords and agents in Wales, branded as 'Rent Smart Wales' by the Welsh Government.
7. As the designated Licensing Authority, under Part 1 of the Act, Cardiff is responsible for administering and enforcing the scheme, which includes responsibility for the following:
 - To establish and maintain a register of landlords
 - To allow public access to information held on the register
 - To consider an application for registration within a prescribed period and notify a landlord of his registration and assign a number.
 - To revoke a registration in specified circumstances
 - To grant licences to landlords and/or managing agents involved in the letting and management of property.
 - Before granting a licence the SLA must be satisfied that the applicant is "fit and proper" and that the requirements for "training" will or have been fulfilled.
 - To stipulate appropriate licence conditions
 - To amend licence conditions in certain circumstances
 - To refuse or revoke a licence
 - To prosecute or apply other enforcement measures (Fixed Penalty Notices, apply for Rent Stopping Orders, or apply for Rent Repayment Orders)) for offences under Part 1 of the Act.
 - To establish a fee policy and charges for Part 1 provisions
 - To approve and ensure the quality of training providers and courses.
 - To deliver and / or procure training to landlords and agents to support compliance with the legislation.

8. Members may wish to note that local housing authorities (in other Welsh Councils) are also given enforcement powers in respect of alleged offences within their area; and the arrangements between Cardiff Council (as SLA) and the local housing authorities for the operation of the scheme will be set out in a Memorandum of Understanding.
9. The Cabinet considered a report on this matter at its meeting on 19th March 2015. Cabinet agreed to the designation of Cardiff as Licensing Authority and delegated authority to the Corporate Director with responsibility for Environment (in consultation with the Corporate Director Resources, the County Solicitor and the Cabinet Member, Environment), to address the responsibilities of Cardiff, as Single Licensing Authority; and to negotiate and conclude a Memorandum of Understanding with all other Welsh Local Authorities.
10. Cabinet resolved that the Monitoring Officer should be requested to make consequential amendments to the Scheme of Delegations. Accordingly, the Committee is invited to recommend to Council the amendment of the Scheme of Delegations by inserting a new delegation to the Director with responsibility for this matter, as follows:

“To make all necessary arrangements, in consultation with the Cabinet Member, Environment and with advice as necessary from the Corporate Director Resources and the Director Governance and Legal Services, to enable the Council to discharge its functions as Single Licensing Authority under Part 1 of the Housing (Wales) Act 2014.”

Webcasting of Council meetings

11. Members may recall that the Committee considered the matter of webcasting of Council and Committee meetings at its last meeting (in July). At that meeting the Committee noted that the Council Meeting Procedure Rules (Rule 32) do refer to the ‘official recording’ of Council meetings and do not require Members to expressly consent to such recording, but that in practice such consent had been customarily sought as a matter of courtesy. The Committee resolved to continue the webcasting (‘official recording’) of Council meetings without seeking express consent at each meeting, and this was approved by full Council on 23rd July 2015.
12. In order to reflect this position and for the avoidance of any doubt, it is recommended that the Council Meeting Procedure Rules, Rule 32 be amended by inserting text as follows:

“32 RECORDING OF MEETINGS OF THE COUNCIL

- (a) Council meetings shall be webcast (‘the official recording’). Other than the official recording, no recording shall be made of the proceedings of meetings of the Council whether audio or visual and by whatever method except with the express authorisation of the meeting.”

Councillor Resignation and Notice of Vacancy

13. Officers have noted that the Council's administrative arrangements for dealing with a Councillor's resignation and the resultant vacancy (in accordance with Part V of the Local Government Act 1972, 'the LGA 1972') are not correctly reflected in the Scheme of Delegations. Amendments are required to reflect the established arrangements, specifically to provide that a Member's resignation notice is to be delivered to the Chief Executive, as the Proper Officer of the Council for this purpose (pursuant to section 84 of the LGA 1972); and the Returning Officer then has responsibility for issuing the requisite Public Notice of Vacancy (required under section 87(2) of the LGA 1972) and receiving a notice calling for an election (under section 89(1) of the LGA 1972).

Appointments to Committees / Scrutiny Chairs

14. In the Scheme of Delegations (delegation reference LD17), the Council has delegated authority to the Monitoring Officer to make appointments to committee seats allocated to political groups in accordance with the wishes of the political groups. The Monitoring Officer routinely exercises this delegation to fill committee vacancies which arise during the municipal year. However, this delegation was not reflected in Article 4.1(e), which indicated that the function of making appointments to committees is reserved to full Council. This anomaly has been corrected under the Monitoring Officer's delegated authority to make minor amendments (set out in paragraph 3 of this report, paragraph (c) thereof), by amending Article 4.1(e) as follows:

Article 4.1 Functions reserved to Council

....

(e) agreeing and/or amending the terms of reference of committees, deciding on their composition and making appointments to them, ~~except as expressly and lawfully delegated;~~"

15. The Scrutiny Procedure Rules, Rule 6, makes provision regarding the appointment of Scrutiny Chairpersons. This Rule has been amended to refer to the legislative requirements of the Local Government (Wales) Measure 2011 (sections 66 to 75), which provides for a proportional allocation of scrutiny chairs and corresponding appointments to be made by the political groups. This amendment has been made under the Monitoring Officer's delegated authority to update the constitution to reflect legislative changes (paragraph (b) of the Monitoring Officer's delegated authority set out in paragraph 3 of this report), as follows:

"6. Chairperson

Scrutiny Chairpersons will be appointed ~~by the Council on a politically proportionate basis in accordance with the provisions of sections 66 to 75 of the Local Government (Wales) Measure 2011.~~

16. The Committee is invited to note the amendments made by the Monitoring Officer as set out in paragraphs 14 and 15 above.

Legal Implications

17. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.
18. Other relevant legal implications are set out in the body of the report.

Financial Implications

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

Recommendations

The Committee is recommended to:

1. agree the Constitution amendments set out in paragraphs 10, 12 and 13 of the report and recommend the same to full Council for approval; and
2. note the minor Constitution amendments set out in paragraphs 14 and 15 of the report, which have been made under the Monitoring Officer's delegated authority.

Marie Rosenthal

Director Governance and Legal Services (Monitoring Officer)

10 November 2015

Background papers

Cabinet report 'Cardiff Council Designation as Single Licensing Authority for Powers Contained in Part 1 of the Housing (Wales) Act 2014 - Welsh Agent and Landlord Licensing Scheme', 19 March 2015 and decision in respect thereof;

Constitution Committee report 'Webcasting of Council and Committee meetings', July 2015 and minutes thereof;

Council report, Constitution Committee, 23 July 2015 and minutes thereof