

CONSTITUTION COMMITTEE:

28 FEBRUARY 2022

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

CONSTITUTION UPDATE

Reason for this Report

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

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. The Local Government and Elections (Wales) Act 2021 ('the 2021 Act') introduces various changes to the legislative framework intended to 'provide local government with new ways to support and serve their communities' and to 'reinvigorate local democracy in Wales'. The new legislation is being brought into effect in stages; and the Committee has previously received reports on specific requirements already in force, such as requirements in relation to multi-location meeting arrangements.

6. Further parts of the 2021 Act are due to come into force on 5th May 2022; and this report outlines those provisions which need to be reflected in the Council's Constitution, to allow the Committee to consider appropriate amendments.

7. The Welsh Government is preparing statutory and non-statutory guidance on the new legislation. Draft guidance has been shared with the Monitoring Officer on an informal basis, prior to formal consultation on the guidance, which has been used to inform the proposed amendments. The Committee will be informed as and when the draft / final guidance is issued, so that this can be reviewed and further consideration given to any issues, as appropriate.

8. A Schedule of Recommended Constitution Amendments is attached as **Appendix A**. The key changes relate to the following:

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

9. As noted in the Committee's previous reports on Remote / Multi-Location Meeting arrangements, the 2021 Act, Part 3, Chapter 4, requires local authorities to broadcast full Council meetings and 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’.

10. Members will be aware that 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. Accordingly, only minor amendments are recommended to be made to the Council Meeting Procedure Rules and the Webcasting Protocol to fully reflect the new statutory requirements. These changes are for completeness only and do not represent any changes to Cardiff’s current webcasting arrangements.
11. The new legislative requirements and arrangements being made in respect of multi-location meetings are addressed in the separate report to this Committee, ‘Multi-Location Meetings Arrangements’. The Committee will note that Cardiff’s arrangements are to be set out in a Multi-Location Meetings Policy, subject to Cabinet approval.
12. In order to reflect the new legislative requirement that all Council, Committee and Cabinet meetings must be capable of being attended remotely; and associated changes to public access rules in relation to meetings and documents, various amendments are required to the Council’s meeting procedure rules, the Remote Attendance Procedure Rule and the Access to Information Procedure Rules, as indicated in the Schedule of Recommended Amendments (**Appendix A**) and shown in the marked up amendments to the Constitution (**Appendix B**).

Assistants to the Cabinet

13. 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).
14. 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.’
15. 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 WG 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.

16. 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. Accordingly, Article 7.5 of the Constitution currently makes the following provision:

'7.5 Assistants to Cabinet Members

The Cabinet may appoint Councillors to act as assistants to the Cabinet as the Cabinet considers reasonably necessary and appropriate. Their role will be:

- (a) to assist the Cabinet collectively;*
- (b) to liaise with the Chairs and members of relevant Scrutiny Committees; and*
- (c) to act as observers at meetings of the Cabinet or a committee of the Cabinet, in accordance with the detailed Role Description set out in Appendix A.*

Assistants to the Cabinet may not vote on any matters before the Cabinet, neither may they substitute for a Cabinet Member at a meeting of the Cabinet nor in any decision-making role.'

17. It is understood that 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).

18. Article 7.5 of the Constitution needs to be amended to reflect the new statutory provisions. It is recommended that the power to appoint any Assistants to the Cabinet should rest with the Leader, as the leader of the Cabinet, rather than full Council. The recommended amendments to Article 7.5 are shown below:

'7.5 Assistants to the Cabinet Members

The Cabinet Leader may appoint Councillors to act as aAssistants to the Cabinet as the Cabinet he/she considers reasonably necessary and appropriate. Neither the Lord Mayor nor the Deputy Lord Mayor may be appointed as Assistants to the Cabinet.

An Assistant to the Cabinet is not a member of the Cabinet. Their role will be:

- (a) to assist the Cabinet collectively; and*
- (b) to liaise with the Chairs and members of relevant Scrutiny Committees; and*
- (c) to act as observers at meetings of the Cabinet or a committee of the Cabinet, in accordance with the detailed Role Description set out in Appendix A.*

Assistants to the Cabinet may attend and speak at, any meeting of the Cabinet or a committee of the Cabinet, but may not vote on any matters before the Cabinet, neither

may they substitute for a Cabinet Member at a meeting of the Cabinet nor in any decision-making role.'

19. Corresponding draft amendments have been made to the Cabinet Assistants' Role Description, which is appended as Appendix A to Article 7 of the Constitution, as shown in the marked up amendments to the Constitution (**Appendix B**).
20. The Committee may wish to consider whether the number of Assistants that may be appointed and their term of office should also be specified, or whether these matters should be left to the discretion of the Leader.

Cabinet Job Sharing

21. 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).
22. 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.'
23. 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.

24. With regard to voting, 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.'

25. The Monitoring Officer has sought clarification of the draft guidance on how Councils should deal with the situation where job sharing partners are unable to agree on how their vote shall be cast. It is suggested that if there is no agreement on how the vote should be cast, then no vote should be recorded.

26. Amendments to Article 7, The Cabinet, and the Cabinet Procedure Rules have been drafted to reflect the above, as shown in **Appendix B**.

Statutory Functions of the Chief Executive

27. 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.'

28. 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.

29. The revised title and functions of the post have been reflected in draft amendments to Article 11 of the Constitution, as shown in **Appendix B**.

Constitution Guide

30. As noted in the separate report to Committee under Agenda item 7, the Council is required to prepare and publish a constitution guide which explains the content of its Constitution in ordinary language ('the Constitution Guide'). The Constitution and Constitution Guide must be made available 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.

31. The new statutory requirements have been reflected in draft amendments to Article 15, attached as **Appendix B**.

Amendments to Notices of Motion (Council Meeting Procedure Rules)

32. At its last meeting on 13th December 2021, the Committee's Constitution Update report included consideration of certain changes to the Council Meeting Procedure Rules in respect of Ordinary Motions (Rule 22). The Committee agreed changes in relation to the selection of Ordinary Motions to be considered at each Council meeting; and the scope of Motions, which were subsequently approved by full Council in January 2022.

33. The Committee also considered the Rules on amendments to Ordinary Motions. It was noted that the rules (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 was noted that the rules were unclear on whether: (i) the amendment, as accepted, should be treated as carried; (ii) the amendment should be put to the vote, irrespective of its acceptance; or (iii) the accepted amendment should be regarded as an alteration of the proposers own Motion under Rule 22(q).

34. The Monitoring Officer advised that, unless an amendment was fundamentally inconsistent with the Motion, the acceptance of an amendment by the proposer of the Motion would, in the absence of any contrary provision in the rules, lead to the amendment becoming part of the substantive Motion. However, if the Chair ruled the amendment to be fundamentally inconsistent with the original Motion, then the amendment should be put to the vote. The Committee

considered the suggested insertion of an additional rule after Rule 22(u) to clarify the position, 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.’

35. After discussion, the Committee agreed that as long as the Lord Mayor made clear that an accepted amendment had become part of the substantive Motion, so that Members were clear on the terms of the Motion being voted upon, amendment of the Rules may not be necessary. It was agreed that this matter should be kept under review.

36. At the January 2022 Council meeting, doubts were raised once more over the rules in relation to accepted amendments to Motions; and it was agreed that the Constitution Committee should be asked to give this further consideration.

37. In line with the Monitoring Officer’s advice, it appears to be understood and agreed that accepted amendments (A) shall become part of the substantive Motion, without requiring a vote, unless the amendment is fundamentally inconsistent with the Motion. However, the uncertainty appears to arise in situations where 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) supercedes 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.

38. It is suggested that in future, 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 is invited to consider inserting a new rule into the Council Meeting Procedure Rules to this effect, 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 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.’

39. The proposed new rule 22(ua) has been included in the marked up copy of the Council Meeting Procedure Rules included in **Appendix B**.

Other Updates and Drafting Improvements

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

41. 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 (referred to in paragraph 3 above), 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
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

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

43. 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.

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

Financial Implications

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

Recommendations

The Committee is recommended to:

1. Consider and agree the Constitution amendments set out in this report and **Appendix B**, subject to any agreed changes;
2. Authorise the Monitoring Officer, in consultation with the Chair, to draft any further amendments to reflect the views of the Committee; and
3. Recommend the agreed Constitution amendments to full Council for approval.

Davina Fiore

Director Governance and Legal Services & Monitoring Officer

22 February 2022

Appendices

Appendix A

Schedule of Recommended Constitution Amendments

Appendix B

Constitution, marked up to show recommended amendments

Background papers

Constitution Committee report, 'Constitution Update', December 2021
Welsh Government Draft Statutory and Non Statutory Guidance, Part 4