

Subject:	Constitution Review
Meeting:	Democratic Services Committee
Date:	13th January 2025
Divisions/Wards Affected:	All

1. PURPOSE:

- 1.1 For the Committee to consider the proposed changes to the Council's constitution as set out within this report and provide feedback to the Monitoring Officer prior to the consideration of a revised constitution at a meeting of Council.

2 RECOMMENDATIONS:

- 2.1 That the Democratic Services Committee consider the proposed amendments to the Council's constitution set out within this report and provide feedback to the Monitoring Officer.

3 BACKGROUND

- 3.1 Paragraph 17.1 of the Constitution places a duty on the Monitoring Officer to periodically review the content and operation of the Council's constitution to ensure that the aims and principles of the Constitution are given full effect.
- 3.2 Paragraph 3.5.1 requires that changes to the Constitution (other than those changes falling into paragraph 3.5.2) must be approved by a meeting of Council, following recommendations by the Monitoring Officer.
- 3.3 Historically such amendments have been first considered by the Democratic Services Committee, although currently this is not a requirement of the constitution. One of the proposed changes is to formally add this to the terms of reference of the Committee.
- 3.4 In addition to the above, the Monitoring Officer has delegated powers to make amendments that fall within the criteria set out at paragraph 3.5.2 of the constitution:

'Minor Changes. If, in the reasonable opinion of the Monitoring Officer, a change is:

- a) a minor variation; or*
- b) required to be made to remove any inconsistency, ambiguity or typographical correction; or*

c) required to be made so as to put into effect any decision of the Council or its committees or the Cabinet.'

3.5 No amendments have been made in accordance with paragraph 3.5.2, instead all proposed amendments are being put before the Committee for consideration.

4 KEY ISSUES:

4.1.1 The Monitoring Officer has conducted a review of the Council's constitution and has identified a number of proposed amendments for members to consider.

4.1.2 A draft copy of the Council's constitution with the proposed amendments shown in full in 'tracked changes' is attached at Appendix 1.

4.1.3 Some of the proposed changes are minor, relating to formatting, style, grammar, changes in legislation or have been included to remove ambiguity caused by previous wording. Some of these minor changes are self-explanatory from the tracked changes. Others require further context and explanation and are set out in in the body of this report or within the schedule attached at Appendix 2, which indicates the paragraph number, a description of the change and the reasons for the change.

4.2 Meeting Procedure Rules

4.2.1 The Constitution has a set of Council meeting procedure rules at paragraph 27. Currently the rules state that they apply to meetings of Full Council and *'where applicable, to other meetings conducted within the Council.'*

4.2.2 There is no further guidance on where they may or may not apply, or who is permitted to make such a determination. Further, paragraph 27.36.1 states:

'All of the Council Rules of Procedure apply to meetings of Full Council. None of the rules apply to meetings of the Cabinet, save as set out in the Executive Procedure Rules. Only Rules 27.6 to 27.9, 27.13 to 27.16, 27.26 to 27.35 (but not Rule 27.32.1) apply to meetings of committees and sub-committees.'

4.2.3 The current arrangements create ambiguity and has led to confusion in relation to which rules apply to meetings which are not meetings of Full Council. It is proposed that the situation be simplified with the adoption of separate procedural rules for full council, committee meetings and meetings of Cabinet.

4.2.4 The proposed amendments to the Council meeting procedure rules, including the proposed changes set out in this report are included within the tracked changes to the document at Appendix 1; at the following paragraph numbers:

- a) Council Meeting Procedure Rules – Paragraph 27
- b) Committee Meeting Procedure Rules – Paragraph 30
- c) Cabinet Meeting Procedure Rules – Paragraph 31

4.2.5 The proposed changes to the substance of the above rules are contained within the body of this report and in tracked changes at Appendix 1.

4.3 Eligibility to vote

- 4.3.1 There have been a number of instances at meetings of the Council and its Committees where the issue of a member's eligibility to vote on an item has been raised when they have missed the introduction or part of a debate on an item of business.
- 4.3.2 The constitution is currently silent on this point. Further, there is no statutory requirement in law that a member must be present for the whole debate. Paragraph 39 of Schedule 12 of the Local Government Act 1972 merely requires that a member must be present in order to vote. However, there is a risk of legal challenge on public law grounds if a member misses information which is material to the debate or discussion of an item of business, i.e. the decision could be judicially reviewed on the grounds that it was 'Wednesbury unreasonable'. This is of heightened importance in relation to the exercise of quasi-judicial functions.
- 4.3.3 Therefore, the Council's procedure rules should contain provisions in relation to a member's attendance and ability to vote. It is proposed that each of the meeting procedure rules referred to above provide that members should be present for the entirety of the introduction or debate of an item of business in order to vote. If a member misses information which is material to the decision being made, the Chair may exclude the member from voting.
- 4.3.4 Where the Council or its Committees are exercising quasi-judicial functions, where there is a heightened risk of legal challenge, it is proposed that the rules require that members must be present for the entirety of the introduction and debate of an item in order to vote.

4.4 **Call-in**

- 4.4.1 The Council operates a system for the call-in of decisions taken by the executive as set out at paragraph 13.14 of the constitution. However, there is no established process in place to allow members to call-in significant decisions made by relevant officers under the Council's scheme of delegations.
- 4.4.2 Given the broad powers given to the Chief Officers who are members of the Council's Strategic Leadership Team under the Council's scheme of delegations, the Monitoring Officer recommends that the constitution should include provisions that allow certain decisions taken by those officers under the scheme of delegations to be subject to the established call-in procedure.
- 4.4.3 It is proposed that the Council's scheme of delegations be amended so that decisions taken by those officers that involve the exercise of an executive function under delegation are categorised as either 'Key Decisions' or 'Operational Decisions', with Key Decisions being subject to call-in.
- 4.4.4 Under these proposals Key Decisions would be defined as a decision which is likely:
- a) to result in the Council incurring expenditure or making savings which are significant; or
 - b) to be significant in terms of its effects on the well-being of individuals living or working in the Council's area.
- 4.4.5 Key Decisions could not be implemented until the period for call-in had expired. This would allow members the ability to call-in these decisions if desired. Operational Decisions would be defined as decisions which do not fall within the above definition, and includes routine day to day decisions taken by officers. Operational Decisions would continue to take effect immediately.

4.4.6 In accordance with these proposals, if a Chief Officer intended to take a 'Key Decision', this would be subject to the Council's established call-in procedure.

4.4.7 Further, the current constitution states (at paragraph 31.14.10) that the Monitoring Officer may 'veto' a request for call-in. This wording is inappropriate and there are no rules on applicability other than the urgency provisions which are contained in a separate section. It is therefore proposed to amend this section so that the following decisions are excluded from the rules on call-in:

- a) matters that are substantially similar to those that have already been considered by a Scrutiny Committee prior to the decision being made or have been the subject of a previous call-in within the last six months, unless there has been a material change in circumstances;
- b) urgent decisions (as defined in the constitution);
- c) operational decisions by officers;

4.5 **Attendance of Group Leaders at meetings of Cabinet**

4.5.1 Paragraph 5.4.2 of the constitution states:

'Members of the Council are entitled to attend any formal meeting of the Council, its committees or sub-committees or the Cabinet at the discretion of the Chair of the body.'

4.5.2 Therefore, whilst any member can observe any meeting of the above bodies, they are not able to attend and participate in them, unless they have the permission of the chair.

4.5.3 However, a convention has developed over time in that opposition Group Leaders have attended Cabinet and have been able to submit questions in relation to the items on the agenda for that meeting. However, as this has arisen by convention there are no formal procedures or rules in place, which has led to confusion.

4.5.4 Therefore, the Monitoring Officer proposes that this arrangement is formalised in the constitution so that Group Leaders (as defined by Local Government (Committees and Political Groups) Regulations 1990) may attend a meeting of Cabinet as a matter of right, without the need for the chair's permission, and that certain procedural rules are put in place to deal with attendance, substitutions and questions.

4.5.5 It is proposed that the Cabinet meeting procedure rules contain provisions to ensure Group Leaders are permitted to:

- a) attend Cabinet meetings as of right;
- b) ask up to two questions in relation to each Cabinet report (to be submitted to the chair by 5pm one clear day before the Cabinet meeting); and
- c) appoint a substitute member if they are unable to attend.

4.6 **Petition Scheme**

4.6.1 The Council adopted a petition scheme in accordance with Local Government and Elections (Wales) Act 2021 as set out in paragraph 4.3 of the constitution. However,

the Council's pre-existing petition scheme at paragraph 27.30, which contains provisions that are contradictory, were not changed at this time.

4.6.2 The petition scheme at paragraph 4.3 of the constitution, permits a scrutiny committee to refer a petition for a debate at a meeting of full council. The rules at paragraph 27.30 do not provide for a debate, and consequently they do not set out what action Council may take following such a debate.

4.6.3 This was recently dealt with at Council by a member moving a motion without notice under paragraph 21.15 of the constitution to refer the petition to Cabinet. The Monitoring Officer proposes that the provisions for the presentation of petitions at Council be harmonised with Council's adopted petitions scheme and that the following provisions are included within the scheme to provide structure and clarity to the process:

- a) Members presenting the petition have 10 minutes to read, outline or summarise the petition and indicate the number of signatories;
- b) Following a debate of the petition, Council may:
 - i) refer the petition to the relevant body or individual;
 - ii) note the petition and take no further action.

4.7 **Appointments Committee**

4.7.1 The Local Authorities (Standing Orders) (Wales) Regulations 2006 require that chief officers (as defined by Local Government & Housing Act 1989) are appointed by Council or a committee of Council.

4.7.2 The above legislation and the Council's constitution requires the Chief Executive to be appointed by a meeting of Council. In addition, currently all appointments to the Council's Strategic Leadership Team ("SLT") are also made by Council.

4.7.3 It is proposed that the arrangements above continue to apply, but in addition, recruitment to chief officers post that sit outside SLT are approved a committee of members, entitled the Appointments Committee.

4.7.4 It is proposed that this new committee of the Council is established with the following terms of reference:

'To discharge the functions of the Council in respect of the appointment and dismissal of Chief Officers and Deputy Chief Officers (as defined in the Local Authorities (Standing Orders) (Wales) Regulations 2006) other than the Chief Executive and Chief Officers who are part of the Authority's Strategic Leadership Team, in accordance with the Council's policies and procedures.'

4.7.5 Paragraph 4(2) of Schedule 3 of the Local Authorities (Standing Orders) (Wales) Regulations 2006 require that at least one but not more than half of the members of the committee, may be a Cabinet member. The Committee is also required to be politically balanced.

4.7.6 Under these proposals Council would continue to be responsible for the appointment of the Chief Executive, as this is a legislative requirement, and for the appointment of Chief Officers who will be members of the Council's Strategic Leadership Team. The

Appointments Committee would be responsible for approving the appointment of all other chief officer posts below that structure.

4.8 Amendments to Officer Delegations

4.8.1 The Council operates a scheme of delegations which enables officers to take certain decisions, these are set out at paragraphs 24 – 26 of the constitution.

4.8.2 Recent changes to the composition of the Strategic Leadership Team, the departure of officers and the subsequent reallocation of responsibilities necessitates changes to the Council's scheme of delegations as set out within the tracked changes.

4.8.3 These changes also include delegations of statutory powers required by law which were previously missing, namely in respect of enforcement powers in relation to public protection legislation and sustainable drainage.

4.9 Incorporation of the Planning Code of Practice into the constitution

4.9.1 The Council publishes a Planning Code of Practice which prescribes rules and procedures for the meetings of Planning Committee. This should be included in the Council's constitution.

4.9.2 A revised version has been approved by Planning Committee and is attached at Appendix 3. If approved, it will be incorporated into the Council's constitution at Part 4 – 'Rules and Procedures.'

6. RESOURCE IMPLICATIONS

6.1 N/a

7. WELLBEING OF FUTURE GENERATIONS IMPLICATIONS (INCORPORATING EQUALITIES, SUSTAINABILITY, SAFEGUARDING AND CORPORATE PARENTING)

7.1 N/a

8. BACKGROUND PAPERS

Appendix 1 – Draft Constitution
Appendix 2 – Schedule of Changes
Appendix 3 – Planning Code of Practice

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