

Report of the Head of Democratic Services

Democratic Services Committee - 16 July 2014

AMENDMENTS TO THE COUNCIL CONSTITUTION & TO THE COUNCILLORS HANDBOOK

1. Introduction

1.1 Attached is a draft report for Council relating to the above.

2. Financial Implications

2.1 As identified within report.

3. Legal Implications

3.1 As identified within report.

4. Recommendations. It is recommended that:

4.1 The draft report be agreed and recommended by the Democratic Services Committee to Council for adoption.

Report Author:	Huw Evans
Finance Officer:	Carl Billingsley
Legal Officer:	Patrick Arran / Tracey Meredith

**Joint Report of the Presiding Member, Monitoring Officer and
Head of Democratic Services**

Council – 12 August 2014

**AMENDMENTS TO THE COUNCIL CONSTITUTION & TO THE
COUNCILLORS HANDBOOK**

Purpose:	To make amendments in order to simplify, improve and / or add to the Council Constitution / Councillors Handbook.
Policy Framework:	None.
Reason for Decision:	A decision of Council is required to change the Council Constitution / Councillors Handbook.
Consultation:	Finance, Legal
Recommendation(s):	It is recommended that:
1)	The recommendations listed in each of the appendices be approved and adopted: Appendix A - Family Absence for Councillors; Appendix B – Remote Attendance at Meetings; Appendix C – Lord Mayor and Deputy Lord Mayor Protocol.
Report Author:	Huw Evans
Finance Officer:	Carl Billingsley
Legal Officer:	Patrick Arran / Tracey Meredith

1. Introduction

1.1 In compliance with the Local Government Act 2000, the City & County of Swansea has adopted a Council Constitution. A number of issues have arisen since adoption and in order to maintain the aims, principles and procedures set out in Articles 1 and 15 of the Council Constitution, it is proposed that the amendments set out below should be made to the Constitution.

2. Delegated Minor Corrections to the Council Constitution

2.1 There are no delegated minor corrections to the Council Constitution.

3. Amendments to the Council Constitution

3.1 This report outlines a number of suggested amendments to the Council Constitution. The amendments are within the following areas of the Council Constitution:

- a) Family Absence for Councillors - Part 2 “Article 5 – Chairing the Council”; Part 3 “Scheme of Delegation”; Part 3 “Terms of Reference” and Part 4 “Council Procedure Rules”
- b) Remote Attendance at Meetings - Part 4 “Council Procedure Rules”.

4. Amendments to the Councillors Handbook

4.1 This report outlines a number of suggested amendments to the Councillors Handbook. The amendments are within the following areas of the Councillors Handbook.

- a) Election of Lord Mayor and Deputy Lord Mayor Protocol.

5. Equality and Engagement Implications

5.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

6. Financial Implications

6.1 There are no specific financial implications associated with this report.

7. Legal Implications

7.1 There are no specific legal implications associated with this report. The amended version of the Council Constitution will be available at www.swansea.gov.uk/Democracy

Background Papers: None.

Appendices:

Appendix A	Family Absence for Councillors
Appendix B	Remote Attendance at Meetings
Appendix C	Lord Mayor and Deputy Lord Mayor Protocol

Appendix A

FAMILY ABSENCE FOR COUNCILLORS

Purpose:	To inform Councillors of the implementation of new regulations which provide Councillors with an entitlement to 5 types of Family Absence. To amend the Council Constitution so as to support these new arrangements.
Policy Framework:	None.
Reason for Decision:	To comply with Part 2 “Family Absence for Councillors” of the Local Government (Wales) Measure 2011.
Consultation:	Finance, Legal.
Recommendation(s):	It is recommended that:
1)	A Family Absence Complaints Committee be established;
2)	The Committee consist of 3 Councillors (which cannot include the Chair of Council (Presiding Member)) and be politically balanced;
3)	The Terms of Reference of the Family Absence Complaints Committee as outlined in Appendix A2 of the report be adopted;
4)	The Terms of Reference of the Democratic Services Committee be amended to include the sentence as outlined in Appendix A2 of the report;
5)	The Council Procedure Rules be amended so as to add a new procedure relating to “41 Family Absence for Councillor” as outlined in Appendix A3 of this report and for the other Council Procedure Rules to be re-numbered accordingly;
6)	Any further required consequential amendments as outlined in Appendix A2 a result of Family Absence for Councillors be made to the Council Constitution;
7)	Delegated authority be granted to the Head of Democratic Services to carry out the duties required under the Regulations.
Report Author:	Huw Evans
Finance Officer:	Carl Billingsley
Legal Officer:	Tracey Meredith

1. Introduction

- 1.1 The Local Government (Wales) Measure 2011 “The Measure” introduced a system of Family Absence for Councillors to enable those who have babies or become responsible for looking after children to be able to continue as Councillors with a recognised and legitimate absence, in an open fashion, rather than be potentially subject to criticism for not fulfilling their duties. This report seeks to enable the Family Absence element of the Measure.
- 1.2 The Independent Remuneration Panel for Wales Supplementary Report - Family Absence – 11 March 2014 is shown in **Appendix A1** sets out a Councillors entitlement to receive salaries during periods of family absence.
- 1.3 The regulations aim to encourage a greater diversity of people seeking to stand for election.

2. Family Absence - Part 2 of the Local Government (Wales) Measure 2011

- 2.1 The Measure provides that a Councillor who is entitled to a period of family absence may be absent from meetings of the Council during that period. If the Councillor is a member of the Executive, the Councillor may be absent from meetings of the Executive during that period.
- 2.2 The Measure also provides that a period of family absence is to be disregarded for the purpose of calculating the 6 consecutive month absence period under Section 85 of the Local Government Act 1972, which provides for the automatic vacation of the office of Councillor due to a failure to attend a meeting of an Authority for a period of 6 months.
- 2.3 The Measure creates an entitlement to five types of family absence:
 - a) **Maternity absence** - For the mother of a child, granted up to a maximum of 26 weeks;
 - b) **Newborn absence** - For the parent of a child other than the mother, for a period of up to 2 consecutive weeks to be taken within a period of 56 days beginning with the birth of a child;
 - c) **Adopter’s absence** - For the adopter of a child (whether individually or jointly with another person) for a period of up to 2 consecutive weeks;
 - d) **New adoption absence** - For the partner of an adopter or supporting the person who is to adopt the child for a period of up to 2 consecutive weeks;

- e) **Parental absence** - For a Councillor who becomes responsible for a child (and does not meet the conditions for newborn absence, adopter's absence or new adoption absence), for a period of up to 3 months.

- 2.4 The entitlement created by the Measure is subject to a Councillor satisfying conditions prescribed by Welsh Ministers in subsequent regulations. The Family Absence for Members of Local Authorities (Wales) Regulations 2013, "the Regulations", came into force on 5 December 2013.
- 2.5 The Explanatory Memorandum accompanying the Regulations explains that the Regulations enable the introduction of family absence entitlement for Councillors and that giving birth, adopting children or giving support to a partner in that position, is a legitimate reason for Councillors being unable to fulfil their duties and is an important equal opportunities reform.

3. Requirements to be satisfied when claiming Maternity Absence

- 3.1 *For the purposes of section 24(1) of the Measure, the prescribed conditions are that:*
 - (a) *No later than the end of 15 weeks before the expected week of childbirth, or, if that is not reasonably practicable, as soon as is reasonably practicable, the member has given written notice to the Head of Democratic Services of:*
 - (i) *That member's pregnancy;*
 - (ii) *The expected week of childbirth;*
 - (iii) *The date on which the member intends the maternity absence to start; and*
 - (iv) *The duration of the period of maternity absence the member intends to take, if less than 26 weeks;*
 - (b) *The member has, if requested to do so by the Head of Democratic Services, provided the Head of Democratic Services with a certificate from a registered medical practitioner or a registered midwife stating the expected week of childbirth;*
 - (c) *Where the member wishes to vary the start of the maternity absence which has been specified under paragraph (a)(iii), the member has given the Head of Democratic Services written notice of the new start date at least one week before the date specified under paragraph (a)(iii), or at least one week before the new date, whichever is the earlier, or, if that is not reasonably practicable, as soon as is reasonably practicable; and*

- (d) *Where the member wishes to vary the duration of the maternity absence, the member has given the Head of Democratic Services written notice of the new duration at least one week before the expected end of the period of absence in accordance with the duration specified under paragraph (a)(iv), or at least one week before the new intended end of the period of absence, whichever is the earlier, or if that is not reasonably practicable, as soon as is reasonably practicable.*

4. Requirements to be satisfied when claiming Newborn Absence

4.1 *For the purposes of section 25(1) of the Measure, the prescribed conditions are that the Member:*

- (a) *Is either:*
 - (i) *The child's father and has, or expects to have, responsibility for the upbringing of the child; or*
 - (ii) *Married to, the civil partner or the partner of the child's mother, but is not the child's father and has, or expects to have the main responsibility (apart from any responsibility of the mother) for the upbringing of the child; and*
- (b) *Gives the Head of Democratic Services written notice of the date the member intends the period of newborn absence to start.*
- (2) *A member is to be treated as having satisfied the condition in paragraph (1)(a)(ii) if that member would have satisfied the condition but for the fact that the child's mother has died.*
- (3) *A member is to be treated as having satisfied either of the conditions in paragraph (1)(a) if they would have satisfied the condition but for the fact that the child was stillborn after 24 weeks of pregnancy or has died.*

5. Requirements to be satisfied when claiming Adopter's Absence

5.1 *For the purposes of section 26(1) of the Measure, the prescribed conditions are that the Member:*

- (a) *Is the child's adopter; and*
- (b) *Gives the Head of Democratic Services written notice of the date the member intends the period of adopter's absence to start.*

6. Requirements to be satisfied when claiming New Adoption Absence

6.1 *For the purposes of section 27(1) of the Measure, the prescribed conditions are that the Member:*

- (a) *Is married to, the civil partner or the partner of the child's adopter;*
- (b) *Has, or expects to have, the main responsibility (apart from the responsibility of the adopter) for the upbringing of the child; and*
- (c) *Gives the Head of Democratic Services written notice of the date the member intends the period of adopter's absence to start.*

7. Requirements to be satisfied when claiming Parental Absence

7.1 *For the purposes of section 28(1) of the Measure, the prescribed conditions are that the Member:*

- (a) *Could not satisfy the prescribed conditions under Parts 2 to 4 of these Regulations;*
- (b) *Has, or expects to have, responsibility for the care of a child;*
- (c) *Provides the head of democratic services with written notice of:*
 - (i) *Their intention to take parental absence;*
 - (ii) *The date on which the member intends the parental absence to start;*
 - (iii) *The duration of the intended parental absence; and*
 - (iv) *Whether the absence is intended to be taken as a single period or as a series of absences;*
- (d) *If requested to do so by the Head of Democratic Services, provides the Head of Democratic Services with evidence in relation to the extent of the responsibility for the child; and*
- (e) *Where the parental absence is to be taken as a series of absences, gives the Head of Democratic Services advance written notice of the intended start date and duration of each period of parental absence.*

8. Record Keeping of Family Absence

- 8.1 The Head of Democratic Services must maintain a record for at least 10 years from the date it is made of all:
- a) Notifications made by Councillors of periods of family absence; and
 - b) Periods of family absence taken by Councillors.
- 8.2 The Head of Democratic Services must inform the Chair of Council (Presiding Member), Leaders of each Political Group and the Chair of Democratic Services Committee that a Councillor intends taking a period of family absence.

9. Cancellation of Family Absence

- 9.1 Paragraph 34 of the Regulations makes provision for the Council to cancel periods of family absence where the Head of Democratic Services has reasonable grounds to suspect that a Councillor is not entitled to the absence. In such circumstance, the Head of Democratic Services should inform the Local Authority and provide all relevant information so that the Authority can consider whether or not to cancel the Councillors period of family absence.
- 9.2 In order to satisfy this Regulation, it is proposed that the Democratic Services Committee be designated the body to determine whether or not the Councillors period of family absence should be cancelled.
- 9.3 If the Democratic Services Committee decides to exercise its power under Regulation 34, then the Head of Democratic Services must provide the Councillor with a written notice setting out:
- a) The decision to cancel or bring to an end a period of family absence; and
 - b) The date from which the Councillor must return from the period of family absence.
- 9.4 Where a Councillor has failed to return from a period of family absence on the date specified in the notice provided, the Authority may withhold that Councillor's Remuneration. It is proposed that this also be a matter for the Democratic Services Committee to consider.

10. Complaints against a decision to cancel Family Absence

- 10.1 Regulation 35 makes provision for a Councillor to complain in writing to the Head of Democratic Services regarding a decision made to cancel a period of family absence.

- 10.2 The complaint must be received by the Head of Democratic Services within 28 days of the Councillor being notified of the Authority's decision.
- 10.3 The Head of Democratic Services must refer any complaint received within the period specified to the Chair of Council (Presiding Member).
- 10.4 Regulation 36 states that the Authority must appoint a Panel to determine any such complaints. The Panel must consist of 3 Councillors. The Chair of Council (Presiding Member) may not be appointed to the Panel.
- 10.5 It is proposed that a politically balanced, 3 member Family Absence Complaints Committee be established and that Council allows its membership to be determined by the relevant Political Group Leaders.
- 10.6 The Panel (Family Absence Complaints Committee) may:
 - a) Confirm the decision of the Local Authority (Democratic Services Committee); or
 - b) Substitute its own decision as to the Councillor's entitlement to a period of family absence in accordance with the Regulations;
- 10.7 The decision of the Panel (Family Absence Complaints Committee) is final.

11. Amendments to the Council Constitution

- 11.1 Regulations 37 and 39 require the Council to amend its Standing Orders (Council Constitution) covering the matters contained within both Regulations.
- 11.2 Regulation 38 provides that a Councillor must obtain the permission of the Chair of Council (Presiding Member) before attending any meeting or performing any duty when on maternity or parental absence. He in turn must inform the Leaders of each Political Group before granting permission.
- 11.3 A Councillor may complain in writing to the Head of Democratic Services regarding any refusal by the Chair of Council (Presiding Member). The Head of Democratic Services must refer a complaint to the Chair of Council (Presiding Member).
- 11.4 A Panel must be constituted to determine any such complaint.
- 11.5 It is proposed that the Family Absence Complaints Committee consider such complaints.

- 11.6 The Panel (Family Absence Complaints Committee) may:
- a) Confirm the decision of the Chair of Council (Presiding Member);
or
 - b) Substitute its own decision as to the Councillor attending any meeting or performing any duty.
- 11.7 The decision of the Panel (Family Absence Complaints Committee) is final.
- 11.8 Regulation 39 requires Standing Orders (Council Constitution) to make provision as to the extent of the duties, if any, which remain applicable to Councillors during a period of family absence.
- 11.9 The responsibilities of Councillors are complex, involving decision making and carrying out Scrutiny duties. In addition to their Council work, Councillors are often members of various other organisations such as School Governing Bodies, Community Centre Management Committees, other Public Sector Bodies, Third Sector Organisations and Community / Town Councillors. Councillors also undertake a significant amount of Electoral Division duties acting on behalf of local groups or representing residents etc. It is therefore extremely difficult to specify clearly which meetings or activities a Councillor could undertake.
- 11.10 For Maternity Absence or Parental Absence the duties applicable shall be those determined by the Chair of Council (Presiding Member) or the Family Absence Complaints Committee (in the event of an appeal). For all other types of Family Absence it shall be such duties as the individual Councillor concerned chooses to undertake in consultation with the Chair of Council (Presiding Member).
- 11.11 The proposed terms of reference of the Family Absence Complaints Committee are set out in **Appendix A1**.
- 11.12 The proposed amendments to the Council Procedure Rules are set out in **Appendix A2**.

12. Equality and Engagement Implications

- 12.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

13. Financial Implications

- 13.1 All costs associated with this report will be met from within existing budgets.

14. Legal Implications

14.1 None.

Background Papers:

- Local Government (Wales) Measure 2011

Appendices:

Appendix A1	Independent Remuneration Panel for Wales Supplementary Report - Family Absence – 11 March 2014.
Appendix A2	Amendments / Additions to the Council Constitution.
Appendix A3	Amendment to Council Procedure Rules – “41. Family Absence for Councillors”.

**Independent Remuneration Panel for Wales Supplementary Report
Family Absence – 11 March 2014**

Dear Colleague

1. This constitutes a final Supplementary Report of the Independent Remuneration Panel for Wales (the Panel) in accordance with Section 147 of the Local Government Measure (Wales) 2011 (the Measure). It relates to payments made to elected members of County and County Borough Councils who have been granted Family Absence by their respective local authority.
2. In November 2013 the National Assembly for Wales approved the regulations relating to Family Absence for elected members of principal local authorities in Wales. The Panel has considered the implications of these regulations on the remuneration of such members who are taking absence from their role as a member under the terms set out in the regulations. The Panel, after taking account of responses to the draft of this Report, has concluded that:
3. Generally, a decision taken by a principal authority under these regulations which relates to a member who is a basic salary holder is not a matter for the Panel, as the Panel considers that the current statutory position in respect of the absence of a member (the “six month rule”) coincides with the maximum period of absence set out in the regulations.

Therefore a member taking Family Absence would be entitled to retain the basic salary.

Nevertheless, there could be instances where the member concerned has already accumulated absences prior the commencement of an agreed Family Absence. The determinations set out below take account of such a situation.

4. However, the Panel considers that senior salary holders potentially would be affected by absences that are within the terms of the regulations. The determinations set out the arrangements in such cases.

Determinations

- a) A member is entitled to retain a basic salary when taking family absence under the regulations irrespective of the attendance record immediately preceding the commencement of the family absence.

- b) When a senior salary holder is eligible for family absence, he/she will be able to continue to receive the salary for the duration of the absence. It is a matter for the authority to decide whether or not to make a substitute appointment.
- c) The member substituting for a senior salary holder taking family absence will be eligible to be paid a senior salary, if the authority so decides.
- d) If the paid substitution results in the authority exceeding the maximum number of senior salaries which relates to it, as set out in the Panel's Annual Report, an addition to the maximum will be allowed for the duration of the substitution.

However, this will not apply to the Isle of Anglesey or Merthyr Tydfil Councils if it would result in the number of senior salaries exceeding fifty percent of the Council membership. Specific approval of Welsh Ministers is required in such circumstances.

- e) When an authority agrees a paid substitution for family absence, the Panel must be informed, within 14 days of the date of the decision, of the details including the particular post and the duration of the substitution.
- f) The schedule of remuneration must be amended to reflect the implication of the family absence.

Yours sincerely

Richard Penn

Chair

Amendments / Additions to the Council Constitution

Part 2 - Article 5 “Chairing the Council”

Add the following to Paragraph 5.1 of Article 5.

“To undertake the requirements of Family Absence by Councillors in line with the Local Government (Wales) Measure 2011 and the Local Authorities (Wales) Regulations 2013”.

Part 3 - “Scheme of Delegation”

Add the following to Paragraph 1.3.13 “Local Choice Functions”.

No	Function	Provision of Act or Statutory Instrument	Delegated To
J10	Family Absence	Local Government (Wales) Measure 2011 and the Local Authorities (Wales) Regulations 2013	Council

Part 3 - Proposed Terms of Reference for the Family Absence Complaints Committee

- “i) To determine a complaint made by a Councillor regarding the cancellation or bringing to an end a period of family absence by the Authority;
- ii) To determine any such complaint in accordance with Regulation 36 of the Family Absence for Members of Local Authorities (Wales) Regulations 2013;
- iii) To determine a complaint made by a Councillor on maternity absence or parental absence regarding a decision made by the Chair of Council (Presiding Member) as to the Councillor attending any meeting or performing any duty;
- iv) To determine any such complaint in accordance with Regulation 38 of the Family Absence for Members of Local Authorities (Wales) Regulations 2013”.

Part 3 - Proposed Additions to the Terms of Reference of the Democratic Services Committee

- “5) To determine whether or not the Councillors period of family absence should be cancelled in accordance with Regulation 34 of the Local Government (Wales) Measure 2011.
- 6) To determine whether or not to withhold a Councillor’s Remuneration should they fail to return following period of family absence on the date specified in the notice provided”.

Amendment to Part 4 “Council Procedure Rules”

41. Family Absence for Councillors

The Local Government (Wales) Measure 2011 provides Councillors with legal entitlement to periods of Family Absence. The Local Authorities (Wales) Regulations 2013 require Local Authorities to have standing orders securing requirements contained within Regulations 38 and 39.

- a) A Councillor on maternity absence or parental absence may, subject to paragraphs 41b) to 41f) below:
 - i) Attend particular meetings;
 - ii) Attend particular descriptions of meetings;
 - iii) Perform particular duties; or
 - iv) Perform duties of a particular description.
- b) The Councillor must obtain the permission of the Chair of Council (Presiding Member) before attending any meeting or performing any duty.
- c) The Chair of Council (Presiding Member), must inform the Leaders of each Political Group of the Council before granting permission under paragraph 41b) above.
- d) A Councillor may complain in writing to the Head of Democratic Services regarding a refusal of permission under paragraph 41b) above.
- e) The Head of Democratic Services must refer a complaint under paragraph 41d) above to the Chair of Council (Presiding Member).
- f) The Family Absence Complaints Committee must determine a complaint made under paragraph 41d) above.
- g) The Family Absence Complaints Committee may:
 - i) Confirm the decision of the Chair of Council (Presiding Member) made under paragraph 41b) above; or
 - ii) Substitute its own decision as to the Councillor attending any meeting or performing any duty.
- h) For Maternity Absence or Parental Absence the duties applicable shall be those determined by the Chair of Council (Presiding Member) or the Family Absence Complaints Committee (in the event of an appeal). For all other types of family absence it shall be such duties as the individual Councillor concerned chooses to undertake in consultation with the Chair of Council (Presiding Member).

REMOTE ATTENDANCE AT COUNCIL MEETINGS

Purpose:	To inform Councillors of the provisions of Section 4 “Remote Attendance at Meetings” of the Local Government (Wales) Measure 2011 and to make any necessary amendments to the Council Constitution.
Policy Framework:	None.
Reason for Decision:	To comply with Section 4 “Remote Attendance at Meetings” of the Local Government (Wales) Measure 2011.
Consultation:	Finance, Legal.
Recommendation(s):	It is recommended that:
1)	The provisions of Section 4 of the Local Government (Wales) Measure 2011 and associated guidance be noted;
2)	The provision of Remote Attendance be not implemented at this time:
3)	The Head of Democratic Services in consultation with the Head of Legal, Democratic Services and Procurement and Presiding Member make all necessary amendments to the Council’s Constitution.
Report Author:	Huw Evans
Finance Officer:	Carl Billingsley
Legal Officer:	Tracey Meredith

1. Introduction

- 1.1 The Local Government (Wales) Measure 2011 “The Measure” introduced the possibility of remote attendance at Council meetings. This was intended to make it easier for those who, for instance, may have to travel long distances, those with domestic responsibilities and those in employment to attend.
- 1.2 Statutory guidance made under Section 4 of the Measure has now been issued. This guidance is shown at **Appendix B1**.

2. Section 4 “Remote Attendance at Meetings” of the Measure

- 2.1 Section 4 “Remote Attendance at Meetings” of the Local Government (Wales) Measure 2011 states:

- a) *Section 4 provides that attendance at a Council Meeting is not limited to a meeting of persons who are all present in the same place. By “Council meeting” the guidance includes any Committee or Sub Committee of the Council as well as the full Council itself. However, the section places certain limitations as to what constitutes remote attendance.*
- b) *Any Councillor attending a meeting remotely (“Remote Attendee”) must, when they are speaking, be able to be seen and heard by the Councillors who are attending the meeting at the place where the meeting is held (“Councillors in Actual Attendance”) and the Remote Attendee must, in turn, be able to see and hear those in actual attendance. In addition, a Remote Attendee must be able to be seen and heard by, and in turn see and hear any members of the public entitled to attend the meeting and who exercise a right to speak at the meeting. If there is more than one remote location, all the Councillors attending remotely must be able to hear, but not necessarily see the other Remote Attendees.*
- c) *Meetings can only take place remotely if not prohibited by the Local Authority’s Standing Orders / Rules of Procedure. It is therefore up to each Local Authority to decide whether it wishes to make Remote Attendance available. The Standing Orders / Rules must also secure that any meeting with Remote Attendees is not quorate if there are less than 30% of those eligible to attend present at the main meeting place. Authorities may set a higher quota for attendance at the main meeting place if they wish.*
- d) *Each Local Authority may make other Standing Orders / Rules in relation to Remote Attendance at Meetings and must have regard to any guidance given by Welsh Ministers. Our intention is to publish this guidance at the same time as the section of the Measure is brought into force.*

3. What is Remote Attendance?

- 3.1 Remote Attendance allows Councillors to attend a Council Meeting without having to be present at the published meeting place. This is achieved by a form of video conferencing subject to certain limitations. In particular, any Councillor attending a meeting remotely must, when speaking, be able to be seen and heard by those Councillors in actual attendance. In addition, members of the public taking part in a Committee meeting must be able to be seen and heard by the remote attendees and vice versa. Finally, if Remote Attendees are at more than one remote location, all the Councillors attending remotely must be able to at least hear the other remote attendees.

- 3.2 In practice, the Remote Attendance requirements are very specific and will be technically difficult to achieve. The Welsh Government acknowledges that there are technical and staffing implications associated with the implementation of Remote Attendance as Councillors could attend remotely from a Council Office or any other location with the correct IT equipment and sufficient broadband connection.
- 3.3 The need to recognise equality between the Welsh and English languages also has great significance when considering Remote Attendance. If the City and County of Swansea chose to utilise the provision of Remote Attendance then it would have to ensure that its use was in compliance with the Welsh Language Scheme.

4. Is Remote Attendance at Meetings relevant within the City and County of Swansea?

- 4.1 As stated above, the Measure introduced the possibility of remote attendance at Council meetings. The issue of Remote Attendance at Meetings is discretionary. This was intended to make it easier for those who, for instance, may have to travel long distances, those with domestic responsibilities and those in employment to attend.
- 4.2 Remote Attendance may be of particular interest to large rural local Authorities such as Ceredigion and Powys where Councillors are required to travel long distances to attend Council Meetings. For geographically Large Authorities, Remote Attendance will allow a significant reduction in travel time and expenses for Councillors and, in the longer term, may encourage under represented groups to consider standing as a Councillor.
- 4.3 However, the City and County of Swansea does not have significant geographical challenges. The Authority is relatively geographically small with good road and rail links. Councillors are able to travel to the Civic Centre within a reasonable time regardless of their home address. Therefore, there appear to be little benefit for Swansea to utilise Remote Attendance balanced against the cost of implementing it and maintaining it.
- 4.4 Additionally, there is currently no known demand for Remote Attendance by Councillors of the City and County of Swansea.

5. Amendments to the Council Constitution

- 5.1 The final Statutory Guidance from Welsh Government provides that *“Meetings can only take place remotely if not prohibited by the Local Authority’s Standing Orders / Rules of Procedure. It is therefore up to each Local Authority to decide whether it wishes to make Remote Attendance available.*

5.2 It is therefore proposed that a paragraph be added to the Council Procedure Rules stating that the Authority prohibits Remote Attendance at Meetings.

6. Equality and Engagement Implications

6.1 The principles of remote attendance fit well with equalities requirements by allowing Councillors, who may fall under one or more of the protected characteristics, greater access to meetings, as noted in section 4 above.

6.2 Due to the City and County of Swansea not having significant geographical challenges, as the Authority is relatively geographically small with good road and rail links. Councillors are able to travel to the Civic Centre within a reasonable time regardless of their home address. In addition to this, Councillors generally have a very high attendance level, therefore, there appear to be little benefit for Swansea to utilise Remote Attendance balanced against the cost of implementing it and maintaining it.

6.3 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

7. Financial Implications

7.1 All costs associated with this report will be met from within existing budgets.

8. Legal Implications

8.1 The recommendations within the report comply with the requirements of Section 4 of the Local Government (Wales) Measure 2011.

Background Papers:

- Local Government (Wales) Measure 2011 and associated guidance.

Appendices:

Appendix B1	Statutory guidance made under Section 4 of the Measure.
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Statutory Guidance made under Section 4 of the Local Government (Wales) Measure 2011 - Remote Attendance at Council Meetings

1. Part 1 of the Local Government (Wales) Measure 2011 (“the Measure”) was intended to strengthen local democracy by, in particular, introducing reforms which support councillors outside of the executive or executive members when acting in a non-executive capacity. One of these reforms, at section 4 of the Measure, was the introduction of the possibility of remote attendance at council meetings. This was intended to make it easier for those who, for instance, may have to travel long distances, those with domestic responsibilities and those in employment to attend.
2. This guidance is statutory guidance under section 4(6) of the Measure, to which a local authority must have regard, in relation to meetings of an authority attended remotely in accordance with section 4.

What section 4 of the Measure says

3. Section 4 provides that attendance at a council meeting is not limited to a meeting of persons who are all present in the same place. By “council meeting” we include any committee or sub-committee of the council as well as the full council itself. However, the section places certain limitations as to what constitutes remote attendance.
4. Any member attending a meeting remotely (“remote attendee”) must, when they are speaking, be able to be seen and heard by the members who are attending the meeting at the place where the meeting is held (“members in actual attendance”) and the remote attendee must, in turn, be able to see and hear those in actual attendance. In addition, a remote attendee must be able to be seen and heard by, and in turn see and hear any members of the public entitled to attend the meeting and who exercise a right to speak at the meeting. If there is more than one remote location, all the members attending remotely must be able to hear – but not necessarily see – the other remote attendees.
5. Meetings can only take place remotely if not prohibited by the local authority’s standing orders/rules of procedure. It is therefore up to each local authority to decide whether it wishes to make remote attendance available. The standing orders/rules must also secure that any meeting with remote attendees is not quorate if there are less than 30% of those eligible to attend present at the main meeting place. Authorities may set a higher quota for attendance at the main meeting place if they wish.

6. Each local authority may make other standing orders/rules in relation to remote attendance at meetings and must have regard to any guidance given by Welsh Ministers. Our intention is to publish this guidance at the same time as the section of the Measure is brought into force.

Supporting remote attendance

7. The Welsh Government accepts that there are technical and staffing implications connected with the introduction of remote attendance. Where a number of councillors are expected to attend remotely at the same location, probably though not necessarily in a different council office from the place where the meeting is held, there may be a need for an officer to be present, both to support the members attending remotely but also to ensure that the equipment needed for remote attendance to function is operating correctly.
8. Local authorities will need to decide whether or not they wish to permit members of the public to be able to be present at a remote location. If so, an officer presence may be required to make arrangements for them.
9. There will clearly be a need to provide appropriate training for officers who might become involved in remote attendance, both to familiarise them with the requirements of the legislation and to cover the practical issues involved. The WLGA should be able to assist in this process.
10. The need to recognise equality between the Welsh and English languages has great significance when considering remote attendance. Local authorities will have their own Welsh language schemes but it is likely that facilities will exist – or could be made available – to cater for members who are unable to understand Welsh. It will be for each authority to ensure that any use of remote attendance is in keeping with their Welsh Language Scheme.
11. It is also important for authorities to ensure that the needs of any disabled members are taken into account when considering the practicality of a remotely attended meeting.
12. It is proposed that standing orders should contain a provision that members should, whenever possible, be able to participate at a remotely attended meeting in either Welsh or English. However, it is the Welsh Government's policy that remote attendance should not be permitted if, for technical or other reasons, it would not be possible to provide simultaneous interpretation for non-Welsh speakers attending a meeting where both Welsh and English will be used. As such, local authorities may wish to ask members to note their language preference (in terms of speaking at meetings) and whether or not they would require simultaneous interpretation should any other participant speak in Welsh.

13. The Welsh Government does not take for granted that local authorities will possess the equipment or technological know-how to make remote attendance work to suit everyone. Someone attending remotely at home or work may have bandwidth limitations which affect their ability to take part fully. Local authorities will need to decide for themselves the extent to which they will invest or assist members to have the necessary facilities to attend remotely.
14. There are times when council meetings are not open to the public, when confidential, or “exempt” issues – as defined in Schedule 12A of the Local Government Act 1972 – are under consideration. It would be important to ensure that there are no members of the public at remote locations able to hear or see the proceedings during such meetings. Any member in remote attendance who failed to disclose that there were in fact persons present who were not so entitled would be in breach of their Code of Conduct responsibilities.
15. Local authority standing orders can determine which types of meetings can be attended remotely. In the first instance, practical issues might dictate that the number of meetings which could enjoy this facility would be quite limited, though over time it would be hoped that the number of meetings where remote attendance were possible would increase.
16. The Measure requires that, for a remotely attended meeting to be quorate, a certain proportion of councillors must be in actual attendance at the meeting. Should this be disturbed by members in actual attendance at the main meeting place leaving the meeting before it is finished, bringing about a higher than permitted proportion of councillors attending remotely, the chair would have no choice but to close the meeting.
17. Standing orders should also make provision about what should happen if a technical difficulty results in the breakdown of the communications facility. Such occurrences are not unknown in video conferenced meetings. If this occurred, it is the Welsh Government’s view that the chair should declare a recess while the fault is addressed. If necessary, the meeting would have to be abandoned and the meeting should not continue without the involvement of the remote members. Standing orders could, however, make different provision for different types of meetings etc., for example that a meeting taking an urgent decision or one which is time-limited, might either not be allowed to take place with remote attendees or that the meeting would proceed in the event of a communications failure, so that those attending remotely would be aware and accept that the meeting would continue and a vote would be taken without their attendance in the event of a communications failure.

18. Finally, there is the issue of voting. Local authorities will have to build into standing orders arrangements to provide for voting to take place simultaneously at the main and remote location(s). It may not always be possible for remotely attending members to vote electronically even if that is the norm in council meetings. Standing Orders will need to cover this issue so that chairs of meetings are aware of the correct procedure to follow.

Appendix C

LORD MAYOR AND DEPUTY LORD MAYOR PROTOCOL

Purpose:	To ensure that there are clear procedures in place for most aspects relating to the Lord Mayor and Deputy Lord Mayor.
Policy Framework:	None.
Reason for Decision:	To clarify procedure relating to Lord Mayor and Deputy Lord Mayor.
Consultation:	Legal, Finance.
Recommendation:	It is recommended that:
1)	The Lord Mayor and Deputy Lord Mayor Protocol as outlined in Appendix C1 of the report be approved and adopted and be placed within the Councillors Handbook;
2)	The Election of Lord Mayor and Deputy Lord Mayor Protocol be deleted and removed from the Councillors Handbook.
Report Author:	Huw Evans
Legal Officer:	Patrick Arran
Finance Officer:	Carl Billingsley
Access to Services:	Euros Owen

1. Introduction

- 1.1 The “Election of Lord Mayor and Deputy Lord Mayor Protocol” has been in place for some years and has only had some light touch improvements over that period.
- 1.2 Following a recent root and branch review of the Protocol, a number of areas have been added, so as to ensure that the Protocol covers a wider range of issues that may arise in relation to the Lord Mayor and Deputy Lord Mayor.
- 1.3 Those issues relate to:
- i) Adding the Letters Patent which granted Swansea Lord Mayor Status;
 - ii) An eligibility paragraph for becoming Lord Mayor / Deputy Lord Mayor;

- iii) A protocol for determining who becomes Lord Mayor / Deputy Lord Mayor when Councillors share the same period of service;
- iv) A section ensuring that in the year of a Local Government Election, additional names are considered for appropriateness;
- v) An addition to the Terms of Deferment of a term of Office;
- vi) A section on the behaviour of the Lord Mayor / Deputy Lord Mayor;
- vii) A section on the behaviour of the Lord Mayors Consort / Deputy Lord Mayors Consort or Lady Mayoress / Deputy Lady Mayoress.

2. Equality and Engagement Implications

- 2.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

3. Financial Implications

- 3.1 There are no financial implications associated with this report.

4. Legal Implications

- 4.1 There are no financial implications associated with this report.

Lord Mayor and Deputy Lord Mayor Protocol

1. Introduction

1.1 On 22 March 1982, HM Queen Elizabeth II graciously granted to the City of Swansea letters patent which elevated the status of the Mayor to that of Lord Mayor. The Unitary Authority of the City and County of Swansea which came into being on 1 April 1996 was successful in having both the City and Lord Mayor status re-bestowed on 29 March 1996.

1.2 The actual wording of the letters patent is shown below:

“Elizabeth the Second by the Grace of God of the United Kingdom of Great Britain and Northern Ireland and of our other Realms and Territories Queen Head of the Commonwealth Defender of the Faith To all to whom these presents shall come, Greeting. Know ye that our will and pleasure is and We do hereby declare and ordain that from and after the date of these presents the Mayor of the City of Swansea and his successors in office shall be styled entitled and called LORD MAYOR OF SWANSEA And we do hereby authorise and empower the Mayor of the City of Swansea and his successors in office henceforth at all times to assume and use and to be called and to be named by the style title and appellation of Lord Mayor of Swansea and to enjoy and use all and singular the rights privileges and advantages to the degree of a Lord Mayor in all things duly and or right belonging. In witness whereof we have caused these our letters to be made patent. Witness Ourselves at Westminster the twenty second day of March in the thirty first year of our reign”.

1.3 The Lord Mayor and Deputy Lord Mayor Protocol aims to cover all aspects relating to the eligibility, nomination and behaviour of the Lord Mayor / Deputy Lord Mayor.

2. Eligibility to be Lord Mayor / Deputy Lord Mayor

2.1 For the period that a person is elected as Lord Mayor / Deputy Lord Mayor, they must remain a Councillor of the City and County of Swansea.

2.2 From the moment that the person ceases to be a Councillor of the City and County of Swansea, they automatically also cease to be the Lord Mayor / Deputy Lord Mayor.

3. Formal Procedure and Criteria for the Nomination of Lord Mayor and Deputy Lord Mayor

3.1 Councillors must satisfy the following criteria prior to being nominated as Deputy Lord Mayor / Lord Mayor.

- i) Candidates for the position of Lord Mayor and Deputy Lord Mayor must be members of the Council.
- ii) Councillors shall be elected to the position of Deputy Lord Mayor and Lord Mayor based on their total length of service with the City and County of Swansea Council and its predecessor Authorities. **Appendix D** (The List) highlights the “Councillors Total Length of Service with the City and County of Swansea and each of its predecessor Authorities” (As at Date Printed on **Appendix D**). **Please Note that Appendix D is not appended.**
- iii) Simultaneous service on more than one of the City and County of Swansea Council’s predecessor Authorities will count as one period of service i.e. If a Councillor was an Elected Member with Lliw Valley Borough Council and West Glamorgan County Council during 1990-1994, only 4 years would be counted towards the Councillors total length of service during that time.
- iv) If a Councillor has broken service with the City and County of Swansea Council or any of its predecessor Authorities, then the time of each of the periods of service will be added together in order to establish the total length of service. For details of a Councillors Period(s) of Service with the City and County of Swansea and its predecessor Authorities, please refer to www.swansea.gov.uk/councillors
- v) If a Councillor has accrued service with another Authority, then that time will not be counted, as the time has not been spent representing the people of the City and County of Swansea Council.
- vi) A Councillor would only be honoured with the title Deputy Lord Mayor and Lord Mayor once.

3.2 If there are more than 1 Councillors with exactly the same length of service, then the nomination will be determined as follows:

- i) Between the Councillors involved;
- ii) The drawing of lots between the Councillors involved.

4. Consultation with Political Group Leaders and their Deputies

4.1 The Head of Democratic Services shall consult with the Political Group Leaders and their Deputies via e-mail asking them to:

- i) Determine whether candidates meet the criteria set out in Paragraph 3 above;
- ii) Discuss the appropriateness of the candidates nominated for the role of Deputy Lord Mayor and Lord Mayor.

4.2 If the Head of Democratic Services receives:

- i) A unanimous decision that the Candidates meet the criteria set out in Paragraph 3 above and that the Candidates are suitable for the role of Lord Mayor or Deputy Lord Mayor then the Head of Democratic Services shall present a report to Council outlining this view recommending their Election as Lord Mayor Elect and Deputy Lord Mayor Elect accordingly;
- ii) A split decision that one or both Candidates do not meet the criteria set out in Paragraphs 3 above and / or that one or both Candidates are not suitable for the role of Lord Mayor or Deputy Lord Mayor then a meeting of the Constitution Working Group be arranged to consider the issue. This only applies to the Candidate found not to meet the criteria or found not to be appropriate for the role of Lord Mayor Elect and Deputy Lord Mayor Elect.”

5. The Constitution Working Group subject to Paragraph 4 above will:

5.1 Determine whether candidates meet the criteria set out in Paragraph 3 above;

5.2 Discuss the appropriateness of the candidates nominated for the role of Deputy Lord Mayor and Lord Mayor.

5.3 If a candidate is deemed appropriate for the role of Deputy Lord Mayor / Lord Mayor then the Constitution Working Group shall present a report to Council recommending one candidate for the role of Deputy Lord Mayor and one candidate for the role of Lord Mayor based on the total length of time served by a Councillor.

5.4 If a candidate is deemed inappropriate for the role of Deputy Lord Mayor / Lord Mayor, the Constitution Working Group shall discuss what (if any) sanctions that will be imposed based on the following questions:

- a) Was the Councillor found in serious breach of the Councillors Code of Conduct?

If yes, then the exclusion from holding the office of Deputy Lord Mayor / Lord Mayor will be for a minimum mandatory period of 5 years or permanent removal from “the list”. The Constitution Working Group may extend this period if it deems the severity of the breach such. The period cannot be shortened.

- b) Was the Councillor found in minor breach of the Councillors Code of Conduct or carried out general inappropriate action(s) not involving a breach of the Councillors Code of Conduct?

If yes, the Constitution Working Group will decide on the severity and relevance of the breach of the Councillors Code of Conduct or the degree of inappropriate action.

It shall apply such deferral of office as it, in its absolute discretion, considers appropriate. As a guide such deferral of office may include exclusion from holding the office of Deputy Lord Mayor / Lord Mayor for any period up to 4 years.

- c) Was the Councillor found to have carried out inappropriate actions or other serious misbehaviour regarding the office of Lord Mayor / Deputy Lord Mayor not involving a breach of the Councillors Code of Conduct?

If yes, then the exclusion from holding the office of Deputy Lord Mayor / Lord Mayor will be for a suggested period of 4 years. The Constitution Working Group may increase or decrease this period if it deems appropriate.

- 5.5 What is a serious or minor breach of the Councillors Code of Conduct will be a matter to be determined by the Constitution Working Group on the facts of each particular case.

- 5.6 The exclusion period will be for the period starting with the final determination of the breach of the Councillors Code of Conduct for paragraphs 5.4 a) and 5.4 b) and the determination of the Constitution Working Group for paragraph 5.4. c).

- 5.7 If a Councillor has acted in the role of Deputy Lord Mayor and is deemed to be inappropriate prior to commencing the role of Lord Mayor, then s/he shall serve the exclusion period outlined above and at the end of the period undertake the role of Lord Mayor.

- 5.8 Once a Councillor has completed a period of suspension they will be placed on “the list” in accordance with their seniority.

- 5.9 In the **year of a Local Government Election**, it is possible that the next Councillor in line for the role of Lord Mayor / Deputy Lord Mayor either chooses not to stand for re-election or fails to get re-elected. In order to attempt to overcome this, the Constitution Working Group shall apply the appropriateness test to the next 5 Councillors in the list (**Appendix D**) who have confirmed that they intend standing in order to seek re-election. **Please Note that Appendix D is not appended.**
- 5.10 The appropriateness test for these other Councillors will only be a measure of their appropriateness at this current point in time. They will be the subject of a further appropriateness test if they are not elected to the role of Lord Mayor / Deputy Lord Mayor.

6. Constitution Working Group Report to Council

- 6.1 Council shall receive the report of the Constitution Working Group regarding nominations for the Deputy Lord Mayor and Lord Mayor. The report shall nominate one Councillor for the role of Deputy Lord Mayor and one Councillor for the role of Lord Mayor.
- 6.2 In the year of a **Local Government Election**, there will be a third and fourth recommendation seeking a resolution to name the next 5 Councillors as being eligible should the initial nominations fail to be re-elected. These additional 5 Councillors shall be appointed in line with the Protocol.
- 6.3 When a Councillor is elected to the position of Deputy Lord Mayor, then that person would become Lord Mayor the following municipal year, subject to Paragraph 5.4 b) and 5.4 c) above.

7 Role of Council

- 7.1 Council will receive the report of the Constitution Working Group regarding nominations for the Deputy Lord Mayor and Lord Mayor. It shall consider whether to accept the recommendations of the Constitution Working Group or not.
- 7.2 In the year of a **Local Government Election**, Council shall also be asked to accept the nominations of the next 5 Councillors under the Protocol in order to have an automatic fall-back position should the initial nominations fail to be re-elected. The automatic fall-back would mean that the next eligible Councillor who had been subjected to and passed the appropriateness test by the Constitution Working Group would be elected to the position of Lord Mayor / Deputy Lord Mayor as necessary.

7.3 Should Council not accept the recommendations of the Constitution Working Group, then the matter should be deferred to either the next Ordinary meeting of Council or to an Extraordinary meeting of Council in order for the appropriateness test to be considered for the next Councillor in line based on length of service by the Constitution Working Group.

8. Deferment of Term of Office

8.1 If a Councillor chooses to defer their term of office, then it would only be allowed in exceptional circumstances and subject to approval from all Political Group Leaders e.g. in the case of illness of the Councillor or close member of their family.

8.2 If the Leader of the Council is scheduled to be Lord Mayor then the Leader of the Council shall have the opportunity to defer his / her term of office for as long as they deem necessary.

9. Behaviour of Lord Mayor / Deputy Lord Mayor during their Term of Office

9.1 Should the behaviour of the Lord Mayor / Deputy Lord Mayor be brought into question during their term of office, then the behaviour should be reported to either, the Chief Executive, the Monitoring Officer, the Head of Democratic Services or to the relevant Political Group Leader.

9.2 However, if the alleged behaviour is considered to be a breach or potential breach of the Councillors Code of Conduct then the complainant should refer the matter to the Public Services Ombudsman for Wales or Police as appropriate.

9.3 The allegation will be passed to the Constitution Working Group for them to consider whether it requires any immediate action to be taken. The Group may also determine any sanction to be imposed (if any) pending the outcome of the Ombudsman's or Police investigation (if any).

10. Suspension from Office as a Councillor

10.1 Should a Councillor be suspended from the Office of Councillor for a period of time following a breach of the Councillors Code of Conduct, the following actions are to be followed:

10.1.1 Suspension is for a period **Less** than the remaining term of office of the Lord Mayor / Deputy Lord Mayor

i) The issue shall be automatically referred to the Constitution Working Group for it to consider what action, if any should be taken.

10.1.2 Suspension is for a period **Longer** than the remaining term of office of the Lord Mayor / Deputy Lord Mayor

i) The Councillor will cease to serve as Lord Mayor / Deputy Lord Mayor with immediate effect.

10.2 The Constitution Working Group reserves the right to amend the sanction as it sees fit.

11. Behaviour of Lord Mayor's Consort, / Deputy Lord Mayor's Consort, Lady Mayoress / Deputy Lady Mayoress during their Term of Office

11.1 Should the behaviour of the Lord Mayor's Consort, / Deputy Lord Mayor's Consort, Lady Mayoress / Deputy Lady Mayoress be brought into question during their term of office, then the behaviour should be reported to either, the Chief Executive, the Monitoring Officer, the Head of Democratic Services or to the relevant Political Group Leader.

11.2 The allegation(s) will be passed to the Constitution Working Group for them to consider whether it requires any immediate action to be taken. Action could include suspending the individual for a period of time or seeking a Council resolution to remove the individual from Office.

**Huw Evans – Head of Democratic Services
25 June 2014**