

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

Council – 27 August 2015

AMENDMENTS TO THE COUNCIL CONSTITUTION

Purpose:	To make amendments in order to simplify, improve and / or add to the Council Constitution.
Policy Framework:	None.
Reason for Decision:	A decision of Council is required to change the Council Constitution.
Consultation:	Access to Services, Finance, Legal
Recommendation(s):	It is recommended that: 1) The changes to the Council Constitution as outlined in Paragraph 4 together with any further consequential changes be adopted.
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1. Introduction

1.1 In compliance with the Local Government Act 2000, the City and 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 area of the Council Constitution:

a) Part 3 - Scheme of Delegation.

4 Scheme of Delegation

- 4.1 As a result of general governance issues and recommendations arising from the Peer Review the Head of Legal, Democratic Services & Procurement was instructed to carry out a review of governance arrangements within the Council. This is referred to in the Peer Review Action Plan which has been approved by Cabinet and provided to Council for information.
- 4.2 The most pressing piece of work which needed to be resolved at the earliest opportunity was that of deciding how the authority is going to operate in terms of decision making in the future. One of the issues identified is the speed of decision making and in order to resolve that we need to amend the Scheme of Delegation to delegate authority to the most appropriate level.
- 4.3 This is key in terms of what the authority is seeking to achieve in terms of roles of members and officers, perceived or actual risk aversion, delays in making and implementing decisions and general red tape around the decision making process.
- 4.4 The Council provides an annual governance statement but this is something that needs to have more assurance. In order to prepare a meaningful annual governance statement the Council will need to carry out a full review of its governance arrangements, audit them annually and provide evidence. Ideally, the Annual Governance Statement (AGS) should be succinct and set out in a concise document which contains hyperlinks to the relevant evidential documents. It is also important that we define roles and responsibilities as part of this review. The Welsh Local Government Association (WLGA) is providing assistance with this work.
- 4.5 The baseline for the governance assessment is set out in the Chartered Institute of Public Finance and Accountancy (CIPFA) publication - *Good Governance Standard for Public Services* and this has formed the basis of the work being carried out. The principles set out in this guidance are as follows:
 1. **Good governance means focusing on the organisation's purpose and on outcomes for citizens and service users**
 - 1.1 *Being clear about the organisation's purpose and its intended outcomes for citizens and service users*
 - 1.2 *Making sure that users receive a high quality service*
 - 1.3 *Making sure that taxpayers receive value for money*
 2. **Good governance means performing effectively in clearly defined functions and roles**
 - 2.1 *Being clear about the functions of the governing body*
 - 2.2 *Being clear about the responsibilities of non-executives and the executive, and making sure that those responsibilities are carried out*

2.3 *Being clear about relationships between governors and the public*

3. Good governance means promoting values for the whole organisation and demonstrating the values of good governance through behaviour

3.1 *Putting organisational values into practice*

3.2 *Individual governors behaving in ways that uphold and exemplify effective governance*

4. Good governance means taking informed, transparent decisions and managing risk

4.1 *Being rigorous and transparent about how decisions are taken*

4.2 *Having and using good quality information, advice and support*

4.3 *Making sure that an effective risk management system is in operation*

5. Good governance means developing the capacity and capability of the governing body to be effective

5.1 *Making sure that appointed and elected governors have the skills, knowledge and experience they need to perform well*

5.2 *Developing the capability of people with governance responsibilities and evaluating their performance, as individuals and as a group*

5.3 *Striking a balance, in the membership of the governing body, between continuity and renewal*

6. Good governance means engaging stakeholders and making accountability real

6.1 *Understanding formal and informal accountability relationships*

6.2 *Taking an active and planned approach to dialogue with and accountability to the public*

6.3 *Taking an active and planned approach to responsibility to staff*

6.4 *Engaging effectively with institutional stakeholders*

4.6 In terms of the peer review action plan the action for governance was as follows:

Undertake a “whole system” review of how we make decisions to include:

i) *Member decision making, including Cabinet Member Delegation, briefings, role of Cabinet Advisory Committee’s (CAC’s) and impact of scrutiny*

ii) *Officer decision making, including the requirement to consult*

iii) *Legal, Equality Impact Assessment (EIA), Audit, Human Resources (HR) etc considerations¹*

- 4.7 As stated above there are concerns about the speed of decision making generally. There are a number of reasons for this. Among the most quoted are, risk aversion, perceived blame culture, lack of clarity as to who can decide what / what Cabinet needs to be aware of opposed to what it needs to decide.
- 4.8 The only governance issues to come out of the Corporate Assessment is that we - like most other Welsh Councils - don't record officer delegated decisions adequately. Therefore, this is something that we have to address and officers are seeking clarification from the Wales Audit Office as to their specific requirements in this regard. This will then form part of the root and branch review of the decision making process which has been carried out and is being implemented by the Head of Democratic Services.
- 4.9 Finally, a significant amount of work has already been done to producing a new Constitution based on the Welsh Modular Constitution. The modular constitution is a far more user friendly and accessible document than we have had present. This is being developed in the background in consultation with the Leader and, in turn, the Constitution Working Group.

4.10 **The Amended Scheme of Delegation**

In order to comply with the recommendations from the Peer Review and to speed up the decision making process, a new Scheme of Delegation for Executive Functions has been drafted and agreed by the Leader and this is before Council for approval today.

¹ **Recommendation 1:** Develop more formalised briefing of Cabinet members, which would include regular meetings with senior managers who have responsibility within their portfolio, with notes of the meeting and action points to ensure members' priorities and decisions are followed through. The emphasis should be on proactively engaging members in decisions, rather than briefing them too late into the process.

Recommendation 2: If the Cabinet Advisory Committees are to be effective, their responsibilities and relationship to existing arrangements needs to be clarified and set out clearly in the Constitution so that all members and officers understand their respective roles.

Recommendation 3: The Council should consider how scrutiny could be closely oriented towards the Council's top priorities by, for example, establishing inquiries shaped around them. This would help develop scrutiny's improvement role as well as ensuring activity and resources have maximum impact.

Recommendation 4: The Council could consider reducing the time that Cabinet has to respond to scrutiny recommendations (currently 3 months).

4.11 The Head of Legal, Democratic Services and Procurement has re-drafted the current scheme of delegation based on the Modular Constitution. The main changes are:

- i) Delegation of authority to individual Cabinet members
- ii) Formal recognition of the roles of Executive Support Members
- ii) Clearer guidance in relation to limitations on delegation
- iii) Schedule of Local Choice functions with associated delegations
- iv) Portfolio and responsibility matrix in respect of Cabinet member, Executive Support member and Cabinet Advisory Committees

4.12 An extract of the current Scheme of Delegation which is affected by the proposed change is outlined as **Appendix A**. **Appendix B** outlines the proposed change.

4.13 **Recording & Publishing Individual Cabinet Member Decisions**

4.14 In order for this system to be open and transparent it is essential that the decisions made by the individual Cabinet Member are recorded and publicised. As such, a decision tracker will be created. The decision tracker will be presented to each Cabinet as a standard item in order to give full view of each decision made. It is also proposed that the decision tracker will be published online in due course.

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**

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

6. **Legal Implications**

6.1 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/constitution

Background Papers: None.

Appendices:

Appendix A Extract of the current Scheme of Delegation which is affected by the proposed change

Appendix B Proposed Changes to the Scheme of Delegation.

Appendix A

Extract of the current Scheme of Delegation which is affected by the proposed change

INTRODUCTION – SCHEME OF DELEGATION

- 1 The effect of S13 of the Local Government Act 2000 is to make the Executive responsible for all functions of the Authority with the exception of those functions which are specified in The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2007 (as amended from time to time) as not to be the responsibility of an Authority's Executive.
- 2 All functions which may be (but need not be) the responsibility of the Executive are to be Executive functions save for the determination of appeals which shall be carried out by the Appeals & Awards Committee, except for appeals relating to decisions in respect of approvals to drive school transport which will be heard by the General Licensing Committee, the calculation of the Council Tax base and licensing functions and matters of a licensing nature all of which shall be exercised by Council and delegated as set out in the Council Scheme of Delegation.
- 3 The exercise of all delegated authority for functions shall include doing anything which is necessarily incidental to the exercise of that function and all delegations and or authorisations shall be construed accordingly unless they are expressly limited otherwise.
- 4 References to any enactment regulation order or byelaw shall be construed as including any subsequent amendments or re-enactment or re-making whether or not with amendments.
- 5 This part sets out a scheme of delegation for Executive and Non-Executive functions.

1.2 Executive (Cabinet) Delegations

- 1.2.1 All Executive functions are vested in the Leader of the Council.
- 1.2.2 The Leader of the Council delegates all Executive functions to the Executive and/or Responsible Officers (i.e. those Officers identified within the Management structure at Part 7 of this Constitution and detailed within Article 12 of this Constitution).
- 1.2.3 The right to revoke the delegation of Executive functions to Responsible Officers, in whole, in part or on terms, is reserved to the Leader of the Council.

- 1.2.4 Responsible Officers are only to exercise their delegated authority for functions for which they have budgetary and management or operational or statutory responsibility (i.e. budgetary and management; budgetary and operational; statutory).
- 1.2.5 All Responsible Officers may authorise another Officer to exercise their delegated functions provided that the Responsible Officer has line management responsibility for that Officer. (Except where terms have been expressly imposed upon the delegation by the Leader of the Council in accordance with paragraph 4 which would preclude such authorisations).
- 1.2.6 The exercise of Executive functions by the Leader of the Council, the Executive or Responsible Officer (or other authorised Officers) shall be subject to any budgetary or policy framework approved by Council.
- 1.2.7 If there exists a policy or budgetary framework approved by Council then it will be the responsibility of the Leader of the Council, the Executive and Responsible Officers to implement that policy or budgetary framework and not to do anything in exercising Executive functions which contravenes that policy or budgetary framework. Further, if no policy framework has been approved by Council in circumstances where, in law, the Council is under a duty to have in place a policy framework then the Leader of the Council, the Executive and Responsible Officers (or other authorised Officers) cannot exercise the functions in the absence of Council approving a policy framework.
- 1.2.8 In the absence of a policy framework and in the absence of any duty, in law, to have a policy framework then the Leader of the Council, the Executive and Responsible Officer (or other authorised Officers) shall exercise all Executive functions as they think appropriate.
- 1.2.9 The exercise of all Executive functions shall be and shall deem to be exercised on behalf of and in the name of the Council of the City and County of Swansea.
- 1.2.10 The exercise of all Executive functions are to be exercised in accordance with any Procedure Rules within this Constitution or any guidance or Procedure rules issued subsequently.
- 1.2.11 The exercise of Executive functions by Responsible Officers in relation to the acquisition or disposal of property shall be limited as follows:
- a. Acquisition of freehold of leasehold property (where a premium only is payable) up to £250,000;

- b. Acquisition of freehold or leasehold property where a rent is payable – up to £50,000 per annum;
- c. Disposal of freehold property or leasehold property (where a premium only is payable) up to £500,000 or for anything other than best consideration;
- d. Disposal of leasehold property where a rent is payable – up to £50,000 per annum.

1.2.12 Provided that in such cases where the consideration is not straightforward or involves varying rents or is a combination of rental and premium the Chief Operations Officer shall assess the total capital value of the transaction to establish if such value exceeds the limits of this delegation.

1.2.13 AND PROVIDED FURTHER THAT for the avoidance of doubt the above shall apply to any transaction involving the Council's property even where the Council may be party to any form of Joint Venture or Partnership which may involve a disposal of a larger area of land or property.

1.3 Non Executive (Council) Delegations

1.3.1 The functions which are reserved to Council by virtue of Schedule 1 to The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2007(as amended from time to time) are listed in the table below, together with the body/Officer to whom they are delegated in the right hand column of the table. Council retains responsibility for the function even though it may be delegated. If Council is listed in the right hand column then the function is solely exercisable by Council.

1.3.2 In addition to the table below there are statutory plans/schemes/strategies which are detailed at schedule 3 to the Regulations cited in the preceding paragraph which are not to be sole responsibility of the Executive and which will consequently require the approval of Council (those plans are listed within Article 4.01(i) of this Constitution).

Appendix B

Proposed Changes to the Scheme of Delegation

Scheme of Delegation

Form and Composition of the Executive Arrangements

- 1 The Council operates a Leader and Cabinet Executive Model. In this Council the Executive is referred to as the Cabinet. The following is a summary of the Executive arrangements. The proceedings for Cabinet which include appointment of the Leader and Cabinet are set out Article 7 and the Cabinet Procedure Rules.
 - 1.1 The Cabinet consists of the Leader of the Council (the “Leader”) and nine other Councillors appointed to the Cabinet by the Leader.
 - 1.2 The Leader will appoint a Deputy Leader who will act as Leader in the Leader’s absence and may also if s/he thinks fit remove the Deputy Leader from office at any time. In these circumstances the Leader shall inform the Monitoring Officer immediately. The Deputy Leader may exercise all of the functions of the Leader where the position is vacant or where the Leader is absent or otherwise unable to act.
 - 1.3 **Executive Support Members**

Other Councillors may, from time to time, be designated by the Leader as Executive Support Members these members will also be Chair of the relevant Cabinet Advisory Committee (CAC) (subject to the CAC itself electing them as Chair). Subject to the limitations set out below, these members may also be referred to as Deputy Cabinet Members.
 - 1.4 Executive Support Members will not be a member of the Cabinet and will not participate in Executive Decision making, but may work closely with a Cabinet Member and to a portfolio set for them by the Leader or Cabinet Member.
 - 1.5 S/he will not be a Member of the Overview and Scrutiny Committee relating to the specific responsibilities of the Cabinet Member he/she is assisting or any other areas to which they are assigned.
 - 1.6 An Executive Support Member may support the Cabinet Member through the delegation of tasks as agreed for his/her area of responsibility, including:
 - i) attending/chairing meetings
 - ii) speaking/opening events
 - iii) reading and commenting on papers
 - iv) meeting Officers
 - v) agreeing press releases./comments and carrying out interviews

- vi) representing the Council on appropriate groups
 - vii) Introducing reports as subject matter experts in Cabinet meetings
 - viii) Attendance at Scrutiny meetings to provide subject matter expertise relating to their area of responsibility
- 1.7 An Executive Support Member will not have delegated powers and ultimate responsibility will remain with the Cabinet Member.
- 1.8 Executive Support Members will not be entitled to speak to a report or take part in a debate at Cabinet meetings but may be invited by the Leader to provide subject matter expertise in relation to a policy or the specific responsibilities of the Cabinet Member s/he is assisting or any other areas to which they are assigned.
- 1.9 Executive Support Members will not be entitled to vote at Cabinet meetings or Cabinet Committee meetings nor deputise for the Cabinet Member when the Cabinet Member is called to appear at Scrutiny Committee though there is nothing preventing the Executive Support Member attending Scrutiny in their own right to provide evidence relating to the work they are undertaking subject to the principle that the Cabinet Member will always retain ultimate responsibility.

2 Exercise of Council Functions

The Cabinet is appointed to carry out all of the Council's functions which are not the responsibility of any other part of the Council, whether by Law or under this Constitution.

- 2.1 The exercise of all Executive functions shall be and shall be deemed to be exercised on behalf of and in the name of the Council of the City and County of Swansea.
- 2.2 There are certain functions which may only be carried out by Council and which are stipulated in the Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2007 (as amended). These, together with a record of who has delegated authority to deal with them are set out in the tables below.
- 2.3 There are also functions informally called Local Choice Functions which Cabinet may opt to discharge itself or may ask another part of the Council to carry out. The Local Choice Functions and any associated delegations are set out below.
- 2.4 There are also certain plans and strategies which are not to be the sole responsibility of Cabinet and these are contained in Article 4 of this Constitution.

3 **Responsibility for and Delegation of Cabinet Functions**

The Leader may exercise Executive Functions himself/herself or may otherwise make arrangements to delegate responsibility for their discharge. The Leader may delegate Executive Functions to:

- i) The Cabinet as a whole;
- ii) A Committee of the Cabinet (comprising executive Members only);
- iii) An individual Cabinet Member;
- iv) A joint committee;
- v) Another local authority or the executive of another local authority;
- vi) Delegated Officers identified in Article 12 and Part 7 of this Constitution

- 3.1 The exercise of all delegated authority for functions shall include doing anything which is necessarily incidental to the exercise of that function unless they are expressly limited.
- 3.2 The Leader will determine the portfolios of individual Members of the Cabinet. Individual Cabinet Members are authorised to exercise functions in relation to their portfolio subject to limitations. The current portfolios are set out in the Terms of Reference below.
- 3.3 The Leader has powers under s.15(4) of the Local Government Act 2000 to discharge personally or to arrange for discharge under others' delegated powers any Executive functions not covered by the Scheme of Delegations for the time being.
- 3.4 The Leader has authority to appoint representatives of the Council onto outside bodies where those outside bodies relate to Executive Functions of the Council. This is subject to the provisions of the Local Government and Housing Act 1989 (Duty to allocate seats to political groups).
- 3.5 The right to revoke the delegation of Executive functions in whole, in part or on terms is reserved to the Leader.

4. **Sub-Delegation of Executive Functions**

Where the Cabinet, a Committee of the Cabinet or an individual Member of the Cabinet is responsible for an Executive Function, they may delegate further to joint arrangements or an Officer.

- 4.1 Unless the Leader directs otherwise, a Committee of the Cabinet to whom functions have been delegated by the Leader or Cabinet may delegate further to an Officer.

4.2 Where Executive Functions have been delegated, that fact does not prevent the discharge of delegated functions by the person or body who delegated.

5. **Limit on Exercise of Executive Functions**

5.1 **Individual Cabinet Members**

Where any delegated power is allocated to an individual Cabinet Member and that Member is absent or otherwise unable to act the power is allocated to the Leader and in the Leader's absence to the Deputy Leader.

5.1.1 Any delegated power includes the authority to undertake any action incidental to the application of the delegated power.

5.1.2 Subject to the following prescriptive provisions, individual Cabinet Member may exercise their delegated powers to make decisions on any matters falling within the Cabinet Member's portfolio (other than decisions which are contrary to the Policy Framework or contrary to or not wholly in accordance with the approved Budget) which, if delayed, would seriously prejudice the Council's or the public's interests.

5.1.3 In respect of any contract having an estimated value exceeding £1,000,000 but not exceeding £5,000,000:

- a) To authorise the invitation of tenders; and
- b) To accept a tender other than the lowest tender received where payment is to be made by the Council, or other than the highest tender received where payment is to be received by the Council where there are special reasons approved by the Section 151 Officer for not accepting the lowest tender or the highest tender as the case may be.
- c) To authorise invitation of tenders, to accept a tender or enter into a contract in accordance with any exemption under the Council's Contract Procedure Rules.

5.1.4 In connection with services falling within the Cabinet Member's portfolio to authorise the submission of tenders for the supply of goods, works or services to another local authority or a public body in accordance with the powers conferred upon the Council by the Local Authorities (Goods and Services) Act 1970 where the estimated value of the proposed tender exceeds £1,000,000 but does not exceed £5,000,000.

5.1.5 To authorise the disposal of surplus goods acquired in connection with services falling within the Cabinet Member's portfolio having an estimated total value exceeding £100,000 but not exceeding £200,000.

5.1.6 To declare land or buildings utilised in connection with services falling within the Cabinet Member's portfolio surplus to requirements.

5.1.7 To approve, subject to the budget process:

- i) Fees and charges for new services in accordance with any relevant charging policy approved by the Cabinet; and
- ii) Increases in existing fees and charges which are in accordance with any relevant charging policy approved by the Cabinet and which are necessary to reflect either inflation or other increases in costs.

5.1.8 To authorise the appointment of consultants providing a professional service whose fees are estimated to exceed £100,000.

Officer Delegation

5.2 Responsible Officers can only to exercise delegated authority for functions for which they have budgetary and management or operational or statutory responsibility. Decisions taken under delegated authority will be recorded in the register maintained by the Head of Democratic Services.

5.2.1 The exercise of functions by Responsible Officers in relation to the acquisition or disposal of property shall be limited as follows:

- a) Acquisition of freehold or leasehold property (where a premium only is payable) up to £250,000;
- b) Acquisition of freehold or leasehold property where a rent is payable – up to £50,000 per annum;
- c) Disposal of freehold property or leasehold property (where a premium only is payable) up to £500,000 or for anything other than best consideration;
- d) Disposal of leasehold property where a rent is payable – up to £50,000 per annum.

5.2.2 In cases where the consideration is not straightforward such as involving varying rents or a combination of rental and premium the Chief Operations Officer shall assess the total capital value of the transaction to establish if such value exceeds the limits of this delegation.

5.3 Subject to any limitations imposed by the Leader, all Responsible Officers may authorise another Officer to exercise their delegated functions provided that the Responsible Officer has line management responsibility for that Officer. In those circumstances it is expected that a written "chain of authority" will be maintained.

5.4 General

The exercise of Executive functions by the Leader, Cabinet, individual Cabinet Members or responsible Officers and anyone authorised under this Scheme of Delegation shall be subject to any budgetary or policy framework which has been approved by Council.

5.5 If a policy or budgetary framework has been approved by Council then it will be the responsibility of the Leader, the Cabinet, individual Cabinet Members and Responsible Officers to implement that policy or budgetary framework and not to do anything in exercising Executive functions which contravenes that policy or budgetary framework.

5.6 If no policy framework has been approved by Council in circumstances where the Council has a legal duty to have in place a policy framework then those functions cannot be exercised until the Council approves the policy framework.

5.7 The exercise of all Executive functions are to be exercised in accordance with any Procedure Rules within this Constitution.

5.8 Amendments to the Scheme of Delegation

The Leader may amend the scheme of delegation relating to Executive Functions at any time. In doing so the Leader will give written notice to the Monitoring Officer and to the person, body or committee concerned. The notice must set out the extent of the amendment to the scheme of delegation, and whether it entails the withdrawal of delegation from any person, body or committee.

5.9 The Monitoring Officer will present a report to the next ordinary meeting of the Council setting out the changes made by the Leader.

5.10 Where the Leader seeks to withdraw delegation from a committee of the Cabinet notice will be deemed to be served on that committee when he has served it on its chair.

6 Council Delegations

The functions reserved to Council by Schedule 1 to The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2007(as amended) are listed in the table below, together with the body/Officer to whom they are delegated in the right hand column of the table. In the event that only Council is listed in that column then only Council can exercise that function.

6.1 Council retains responsibility for the function even though it may be delegated.

6.2 In addition to the table below there are statutory plans/schemes/strategies listed in Article 4 which will consequently require the approval of Council.