

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

Council – 20 April 2017

AMENDMENTS TO THE COUNCIL CONSTITUTION

Purpose:	To make amendments in order to simplify, improve and / or add to the Council Constitution. The proposed amendment relates to decisions on school organisation being made should there be an objection to a proposal during the Statutory Notice period. This amendment will streamline the decision making process and bring the Authority into line with the majority of Councils in Wales.
Policy Framework:	The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013.
Consultation:	Access to Services, Finance, Legal
Recommendation(s):	It is recommended that: 1) The changes to the Council Constitution as outlined in Paragraphs 3.2.1 and 5 of the report 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 suggested amendment to the Council Constitution. The amendments are within the following area of the Council Constitution:

- a) Part 2 – Articles of the Constitution – Article 12 “Officers”;
- b) Part 3 - Responsibility for Functions - Scheme of Delegation.

3.2 Part 2 – Articles of the Constitution – Article 12 “Officers”

3.2.1 The Proper Officer of the Authority is the Chief Executive (Head of Paid Service). It is proposed that for the purpose of Article 12.5.2 and 12.5.3 the Proper Officer be also assigned to the Head of Democratic Services. This would allow the Chief Executive or the Head of Democratic Services to act as Proper Officer relating to:

- i) Witness and receipt of declarations of Office (Section 83 of the Local Government Act 1972);
- ii) Receipt of declaration of resignation of office (Section 84 of the Local Government Act 1972);
- iii) Convening of meeting of Council to fill casual vacancy in the Office of Chairman (Section 88 of the Local Government Act 1972);
- iv) Receipt of notice of casual vacancy from 2 local government electors (Section 89 of the Local Government Act 1972).

3.3 Part 3 - Responsibility for Functions - Scheme of Delegation.

3.3.1 The Constitution Working Group considered this amendment at its meeting on 6 February 2017. The Group noted that the proposed amendment suggested that in the event of the Authority considering school re-organisation and where objections are received, the delegation should be made directly to Cabinet as opposed to Council. Cabinet already exercises decision making where no objections are received. The proposed amendment brings it in line with Welsh Government Guidance and other local authorities. It also allows the decision to be subject to scrutiny and Call In procedure.

3.3.2 However, the Group were concerned that the amendment potentially removed all 62 Non Executive Councillors from the decision making process and therefore requested that safeguards were put in place. The suggested safeguard being that the Call In Procedure be reviewed so as to make the process of Call In easier and more transparent.

3.3.4 The Head of Legal and Democratic Services (Monitoring Officer) and Head of Democratic Services are currently conducting a review of the Call In Procedure and will be submitting a report to Council in May / June for consideration.

4. School Organisation

4.1 The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013 requires local determination of certain school organisation proposals should objections be received during the Statutory Notice period.

- 4.2 Prior to the introduction of these new regulations Welsh Ministers would determine proposals following objection.
- 4.3 The Welsh Government introduced a School Organisation Code on 1 October 2013. The Code makes it clear that those proposing school organisational changes “should place the interests of learners above all others” and “should give paramount importance to the likely impact of the proposals on the quality of:
- Outcomes (standards and wellbeing);
 - Provision (learning experiences, teaching, care support and guidance, and learning environment); and
 - Leadership and management (leadership, improving quality, partnership working and resource management).”
- 4.4 The Code outlines the procedure that must be followed when a local authority proposes a school reorganisation. This includes a consultation period on the proposal followed by a period of Statutory Notice. Previously, if a Council published a Statutory Notice in respect of a proposed change to school organisation and an objection was received, the proposal would automatically be referred to the Welsh Government for determination. The new Code allowed for local determination of school organisation proposals to which objections were received, and The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013 amends The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2007 to give discretion to whether the approval or determination of school organisation proposals under Sections 51 or 53 of the School Standards and Organisation (Wales) Act 2013 are the responsibility of the executive.
- 4.5 Proposals will still require approval by the Welsh Ministers if:
- They affect sixth form education;
 - They have been made by a proposer other than the relevant local authority and an objection has been made by that local authority.
- 4.6 All other school organisation proposals fall to the local authority to determine, noting that the local authority will only be required to determine proposals made by persons other than itself if an objection to those proposals has been made and not withdrawn in writing within the prescribed period.
- 4.7 Section 5.5 of the School Organisation Code states “Executives or Cabinets are already responsible for overseeing school organisation planning, including decisions to consult on and to publish school organisation proposals and will have a well-developed understanding of school organisation issues. This understanding, combined with their more general experience of decision making and the fact that they are democratically accountable to the local electorate, makes executives well placed to decide whether or not contested school organisation proposals should be approved”. Local authorities are, however, able to establish alternative decision making processes if they wish through a local decision making committee. The statutory School Organisation Code notes if local authorities choose to do this “they will need to

consider carefully how they will ensure that such bodies deliver fair and robust decision making”.

4.8 A report was taken to Council on 8 May 2014 seeking confirmation of where decisions should be made following an objection. It was noted in that report that the City and County of Swansea has had extensive experience of school organisation proposals over past years and its Cabinet would be well placed to accept the new statutory responsibility to determine specified proposals. However, Council determined at that time that full Council should make these decisions. Council also noted that the establishment of a separate local decision making committee would introduce new governance arrangements without this experience and would give rise to additional administrative demands, costs and risks.

4.9 Since the decision was made on 8 May 2014 for Council to determine proposals it has been identified that the vast majority of Councils in Wales have their Cabinet determining school organisation proposals as this reduces the lengthy timeline involved with these proposals and scrutiny committees can also be consulted at an appropriate stage in the development and consultation of school organisation proposals, as will all individual elected members for the school(s) or areas(s) served by the school(s) concerned. The Welsh Government have also indicated that they would have foreseen this function to be the role of Cabinet rather than full Council for the reasons above.

5. Part 3 – Responsibility for Functions - Scheme of Delegation - Local Choice Functions

5.1 Local Choice Function J25 currently states:

No.	Function	Delegation of Function
J25	Functions in respect of approval by a local authority under section 51 or a determination by a local authority under section 53 of the School Standards and Organisation (Wales) Act 2013.]	Council where objections are made. Cabinet where there are no objections.

5.2 It is proposed that J25 be amended so that Cabinet instead of Council determines future school organisation proposals should a decision be required following objection during the Statutory Notice period. It is therefore proposed to amend J25 as follows:

No.	Function	Delegation of Function
J25	Functions in respect of approval by a local authority under section 51 or a determination by a local authority under section 53 of the School Standards and Organisation (Wales) Act 2013.]	Cabinet

6. Equality and Engagement Implications

- 6.1 The Equality Impact Assessment (EIA) process will be followed for every school organisation proposal prior to seeking Cabinet approval to go out for public consultation. The process is not relevant to this report, which seeks to change the executive function.

7. Financial Implications

- 7.1 There are no financial implications associated with this report, unless the outcome is to establish a local determination panel. If that were to happen, a separate report would be required to identify the source of funding.

8. Legal Implications

- 8.1 Part 3 of the School Standards and Organisation (Wales) Act 2013 (the Act) significantly changed responsibilities for the determination of school organisation proposals. Previously all school organisation proposals which drew objections during the statutory consultation process had to be referred to the Welsh Ministers for determination. The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2013 add the responsibility to determine school organisation proposals under the Act to the schedule of functions set out in the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 which may be (but need not be) the responsibility of an authority's Executive. The Council are therefore required to determine who makes this determination.
- 8.2 The amended version of the Council Constitution will be available at www.swansea.gov.uk/constitution

Background Papers:

Welsh Government School Organisation Code (Circular 006/2013).

Appendices: None.