

CONSTITUTIONAL CHANGES

1. **Introduction**

- 1.1. The reports which follow all relate to the provisions of the Council's Constitution. The amendments which are submitted for consideration by Council partly arise out of decisions already made but which require amendment of the Constitution. Other reports, for example those dealing with contract procedure rules and the new improvement regime, are in substance fresh decisions for Council to make. Each report will specify the reason for the amendment recommended.

2. **CONTRACT PROCEDURE RULES**

Purpose of the Report

- 2.1. To amend the Authority's Contract Procedure Rules.

Background

- 2.2. Annex E of Part 3 of the Authority's Constitution requires the Authority's Audit Committee to review the Authority's Contract Procedure Rules and to recommend to Council any proposed revisions of the rules.
- 2.3. At its meeting of the 22nd March 2010, the Audit Committee received a joint report from the Head of Legal and Democratic Services and the Head of Financial Services recommending that Contract Procedure Rule 7 (regarding the acceptance of tenders) should be revised in order to ensure that the Contract Procedure Rules were both aligned and appropriate for their purpose.
- 2.4. After consideration of the report the Audit Committee resolved that the revised Contract Procedure Rule 7 be approved in accordance with the revisions set out in the officers' report.

The revised Contract Procedure Rule 7 approved by the Audit Committee and recommended to Council for approval is set out in Appendix 1 of this report.

Recommendations

- 2.5. That Council approve the recommendation of the Audit Committee and Contract Procedure Rule 7 shall be amended in accordance with that recommendation.

- 2.6. That the Head of Legal and Democratic Services be authorised to amend the Authority's Constitution (*version dated 08.01.09*) by substituting the revised wording in Appendix 1 for the wording currently set out in the Contract Procedure Rules in the Constitution.

3. **DEPUTY MONITORING OFFICER**

Purpose of Report

- 3.1. To appoint Mr. Brian Thorne as the Council's Deputy Monitoring Officer.

Background

- 3.2. Mr. Brian Thorne – Principal Litigation Solicitor has been previously designated by the Authority as its Acting Deputy Monitoring Officer on a temporary basis and he has duly performed this role for some time.

Recommendations

- 3.3. That Council designate Mr. Brian Thorne – Principal Litigation Solicitor as its Deputy Monitoring Officer.
- 3.4. That the Head of Legal and Democratic Services be authorised to amend the Authority's Constitution (*version dated 08.01.09*) to reflect the appointment of Mr. Thorne to that role.

4. **LOCAL GOVERNMENT WALES MEASURE 2009 IMPROVEMENT REGIME**

Purpose of Report

- 4.1. In order to ensure that the changes introduced by the Local Government (Wales) Measure 2009, as they relate to the duty of the Authority to secure continuous improvement of the Council's functions, are accurately incorporated into the Council's Constitution.

Recommendation

- 4.2. That amendments are made to the wording of the Authority's Constitution (*version dated 08.01.09*) in accordance with the proposed amendments set out in Appendix 2 to this report.

5. **CHANGES TO THE LOCAL AUTHORITIES (EXECUTIVE ARRANGEMENTS) FUNCTIONS AND RESPONSIBILITIES REGULATIONS MADE BY THE WELSH ASSEMBLY GOVERNMENT**

Purpose of Report

- 5.1. To obtain a decision by Council on whether or not functions designated as “Local Choice” functions by the Welsh Assembly Government should be designated as Council functions or Executive functions within the Authority.

Background

- 5.2. At the meeting of Council held on the 16th December 2009, the Head of Legal and Democratic Services advised Council of the recent amendments made by the Welsh Assembly Government to the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007.
- 5.3. Amongst other things these changes included the designation of certain functions as “Local Choice Functions” for Local Authorities: i.e. it was for each Local Authority to designate which of these functions would be Council functions and which would be Executive functions.
- 5.4. In his report to Council the Head of Legal and Democratic Services advised Council of the specific functions contained in the Highways Act 1980 and the specific functions contained in the Gambling Act 2005 which were now designated by the Welsh Assembly Government as being “Local Choice Functions”. The relevant functions are set out in Appendix 4 hereto.
- 5.5. At that meeting Council resolved that the listed highways functions set out in the report should “remain executive functions”, subject to review by the Council meeting which will follow the next Annual Meeting”.
- 5.6. Similarly Council resolved that the listed Gambling Act Functions “be delegated to the appropriate Licensing and Gambling Act Committee subject to review” as above.

Recommendations

- 5.7. That Council resolve that the Highway Act functions now identified as “Local Choice Functions” shall be designated as Executive functions within the Authority.

- 5.8. That Council resolve that the Gambling Act functions now identified as “Local Choice Functions” shall be designated as Non-executive functions of the appropriate Licensing and Gambling Act Committee of the Authority.
- 5.9. That the Head of Legal and Democratic Services be authorised to amend the Council’s Constitution to reflect the Council’s resolutions in respect to the above matters.

6. **UPDATING OF CONSTITUTION**

Purpose of Report

- 6.1. To update the Council’s Constitution.

Background

- 6.2. From time to time there is a necessity to make amendments to the Council’s Constitution as a result of various legislative changes made by Central Government and/or decisions made by the Authority, Council Committees, Cabinet or Cabinet Boards. Appendix 3 to this report contains proposed amendments to the Constitution for the purposes of updating the Constitution; in order that it accurately reflects recent changes in legislation and changes to the Authority’s delegation arrangements. Set out in each proposed amendment is a brief summary of the reason for the amendment.

Recommendation

- 6.3. That the Head of Legal and Democratic Services be authorised to amend the Council Constitution (*version dated 08.01.09*) in accordance with the proposals set out in Appendix 3.

Proposed Contracts Procedure Rule 7 (CPR7): Recommended Wording

7. Acceptance

- 7.1(a) Where the amount of the lowest or most economically advantageous Tender/Quotation is within an amount already approved by the Council as part of its estimates the Authorised Officer may accept the Tender/Quotation on behalf of the Council, though if in excess of £250,000 in value or amount, in consultation with the relevant Cabinet Member.
- 7.1(b) The Authorised Officer shall report to the next possible meeting of the Council details of Tenders/Quotations over £50,000 in value accepted under this Procedure Rule stating (where applicable) the approved estimate or estimates concerned.
- 7.2 A Tender/Quotation which is the lowest or most economically advantageous, but is not within an approved estimate, shall be reported to the Council for authority to accept.
- 7.3 Where Tenders/Quotations are invited on the basis of the lowest price and two or more are identical in price Tenders/Quotations are to be re-invited on a most economically advantageous basis.
- 7.4 The Council is not obliged to accept any Tender/Quotation.
- 7.5 All Contract acceptances shall be in writing and no verbal communication is to be made to the proposed Contractor as to the intention, or otherwise, to enter into a formal Contract.
- 7.6 In the case of tenders subject to EU procurement rules any award will be subject to a minimum standstill period of 10 calendar days between communicating the award decision by e-mail to all tenderers and contract award. Where the award decision is communicated by non-electronic means the minimum standstill period shall be 15 calendar days. If the standstill period ends on a non-working day it must be extended to midnight at the end of the next working day.

Local Government (Wales) Measure 2009: Proposed amendments to Constitution's wording

Page 2.12 **Appendix (a) (i)**

Delete “improvement/best value performance plan” and replace with:-

“Corporate Plan and Annual Report”

Page 3.29 **Annex G**

Delete Para 16 – “draft the Improvement Plan: consult the Policy and Resources Overview and Scrutiny Committee; and recommend to Council” and replace with:-

“ draft the Corporate Plan, including the identification of the Council’s priorities for improvement during the plan period; consult the Policy and Resources Overview and Scrutiny Committee and recommend to Council”.

Page 3.29 **Annex G**

Add new point to Paragraph 16.

“ draft the Annual Report, accounting for the extent to which the Council has delivered the improvement identified in the Corporate Plan”

Page 3.29 **Annex G**

Para 17 – delete reference to “District Audit Action Plans” and replaced with:-

“action plans that respond to recommendations made by the Council’s external regulators”

Page 3.31 **Point (e)**

Delete “monitor quarterly budgets and Improvement Plan Performance Indicators in respect of all the functions listed above” and replace with:-

“Monitor quarterly budgets and performance in securing continuous improvement of all the functions listed above”

Page 3.33 **Point (c)** – As point (e) above

Page 3.34 **Point (d)** – As point (e) above

Page 3.36 **Point (d)** – As point (e) above

Page 3.38 **Point (d)** – As point (e) above

Page 3.40 **Point c** – Replace bullet points with:-

- “Monitor the performance of services, paying particular attention to the priorities for improvement set out in the Corporate Plan;
- Compare the performance of the Council’s services over time and with other authorities who provide similar services;
- From time to time consider whether to exercise the power to collaborate”

Page 3.40 **Point d** – Replace with:-

“Implement and monitor improvement actions following improvement or efficiency reviews”

Page 3.47 **Paragraph 1 - Performance Scrutiny of the Executive**

Delete paragraph and replace with:-

“Performance scrutiny of the Executive – the extent to which the Council has appropriate arrangements in place to secure the continuous improvement of its functions”

Page 3.47 **Policy and Resources Overview and Scrutiny Committee**

Delete section and replace with:-

- “Scrutiny of the processes the Council has gone through to discharge its duty to improve;
- Scrutiny of the functions of the Council to discharge its duty to improve;

- Scrutiny of the processes the Council has gone through to determine its improvement priorities;
- Monitor progress on the delivery of the Council’s improvement priorities”

Page 3.47 **All Overview and Scrutiny Committees** – delete section and replace with:-

“Will have a remit to specifically examine the performance of all services within its portfolio and the extent to which services are continuously improving, including ensuring performance measures reflect what matters to citizens”

Page 3.48 **Paragraph 2**

Replace “review the Improvement Review programme as a whole and the review methods in conjunction with the Cabinet” with:-

“ consider the draft Corporate Plan prepared by the Cabinet and comment upon it and the methods that have been used to produce it”

Page 3.48 **Paragraph 2**

Replace “ monitor overall progress on the District Audit Improvement Action Plan” with:-

“monitor overall progress made in response to the annual Improvement Report”

Page 3.48 **Paragraph 2**

Delete “comment on the overall and specific contents of the council’s draft Improvement Plan prior to publication each year” and replace with:-

“Comment on the draft Annual Report prior to publication each year”

Page 3.48 **Paragraph 2 - All Overview and Scrutiny Committees**

Replace the bullet points with:-

- “receive service-specific contents of the Corporate Plan (the service issues being those under the purview of the “equivalent” Cabinet committee;

- Commission and participate in improvement reviews through appropriate mechanisms and recommend onwards to the Executive (the Executive being accountable for improvement, for drafting the Corporate Plan, for determining improvement priorities and for ensuring executive performance management). Note: while a committee will conduct reviews in relation to the areas covered by the Committee, the Committee may agree that a particular review normally in its remit shall be undertaken by another Committee if for example o Committee had too many reviews in a particular year but in such cases the Chair of the relevant Committee may be present throughout the review process;
- Monitor implementation by the Executive of the appropriate improvement actions and responses to the Council’s external regulators;
- Promote innovation by challenging the status quo and encourage different ways of thinking and options for delivery;
- Monitor implementation by the Executive of business plans”

Page 4.84 **Paragraph 4.8**

“Performance Plans”

Delete 4.8....”the Authority is required to publish annually the best value improvement plan...” and replace with:-

“Improvement Plans

The Authority is required to publish annually a forward looking document which is termed the Corporate plan and the Authority is also required to publish a backward looking document which is termed the Annual Report...”

Page 4.84 4.8.1.e) delete and replace with:-

4.8.1.e) “To determine improvement priorities which are meaningful, relevant, realistic and challenging”

Page 4.85 4.8.2 – delete second bullet point and replace with:-

4.8.2 “ to contribute to the development of corporate improvement priorities and performance information”

Page 4.85 4.8.3 delete second bullet and replace as above

1. **Full Council Policies**

Page 2.12 **Article 4 – Full Council**

The reference in paragraph (a) (i) of the Appendix to Article 4 to a “Local Transport Plan” is to be deleted and replaced with the “Regional Transport Plan”.

Reason:-

To reflect legislative requirements of the Welsh Assembly Government.

2. **RIPA Delegations**

Page 3.62 **Part 3 - Officer Delegation Arrangements**

Point 5 The Regulation of Investigatory Powers Act 2000

The reference to Mr. Ken Sawyers, Mr. Colin Preece and Mr. William Watson be deleted.

Reason:- The aforesaid officers have retired.

3. **Delegations Coed Darcy**

Page 3.68 **Part 3 – Coed Darcy Delegation Arrangements**

Point 2 Coed Darcy Limited

The reference to Mr. Ken Sawyers should be deleted and replaced with a reference to Mr. Steven Phillips. The name of Mr. John Flower be added.

Reason:- Mr. Sawyers has resigned and Mr. Phillips was appointed to the Board by Cabinet on 27th November 2009. It is also to reflect the appointment of Mr. Flower.

4. **Delegations Baglan Bay**

Page 3.68 **Part 3 – Baglan Bay Delegation Arrangements**

Insert a new point 4 as follows:-

4. Baglan Bay Company Limited

Mr. Steven Phillips is designated to act as a Director of the Baglan Bay Company Limited.

Reason:- Mr. Phillips was appointed to the Board by Cabinet on 27th November 2009.

5. **Recovery Proceedings**

Page 3.83 **Part 3 – Director of Finance and Corporate Services Delegation Arrangements**

Point 2 – Authorisation of Officers to represent the Council for Recovery Proceedings

The list of officers is to be amended to include “Mrs. L. Lewis”.

Reason:- Authorisation made by Policy and Resources Cabinet Board on 16th October 2008.

6. **Other Legal Proceedings**

Page 3.86 **Part 3 – Director of Finance and Corporate Services Delegation Arrangements**

Point 10 – Authority for named persons to conduct legal proceedings on behalf of the Authority

Marcus Craig Griffiths (Articled Clerk) and Miss. Helen Eynon (Articled Clerk) are added to the lists of officers who are authorised to represent the Council in the Magistrates’ Court pursuant to Section 223 (1) Local Government Act 1972 and in the County Court pursuant to Section 60 (2) County Court Act 1984.

Reason:- Authorisation was granted by Policy and Resources Cabinet Board on 16th October 2008.

7. **Treasury Management**

Page 3.89 **Part 3 – Director of Finance and Corporate Services Delegation Arrangements**

Point 19 – Treasury Management

The current paragraph in Point 19 be numbered as roman numeral (i).

The following paragraph be inserted and numbered roman numeral (ii).

“(ii) That the Director of Finance and Corporate Services be granted delegated authority to utilise any changes in relation to debt repayment in line with the Welsh Assembly Government Guidance.”

Reason:- Authorisation was granted by Policy and Resources Cabinet Board on 26th March 2009.

8. **Write Offs**

Page 3.90 **Part 3 – Director of Finance and Corporate Services Delegation Arrangements**

Insert New Point 23 as follows:-

“Write Offs – Insolvencies

That the Director of Finance and Corporate Services be granted delegated authority to write off Council Tax, Business Rates, Sundry Debtor and Housing Benefits overpayments debts over £1,000 which are caused by insolvency.”

Reason:- Authorisation granted by Policy and Resources Cabinet Board on 27th August 2009.

9. **Licensing**

Page 3.91 **Part 3 – Director of Finance and Corporate Services
Delegation Arrangements – Licensing**

After paragraph (ii) the following paragraph is to be inserted:-

“That the Director of Finance and Corporate Services, Head of Legal and Democratic Services and the Principal Licensing Officer be each given delegated authority to authorise individual competent and qualified officers to serve notice or take such actions in respect of serving Notices under the Statutory Provisions set out in Schedule 2.”

Reason:- Authorisation granted by Registration and Licensing Committee on the 9th December 2008.

10. **Searches**

Page 3.103 **Part 3 – Director of Finance and Corporate Services
Delegation Arrangements**

At the end of the Head of Legal Services Proper Officer Provisions the following shall be inserted:-

“Delegation Arrangements

1. **Local Authority Property Search Services**

That the Head of Legal and Democratic Services be granted delegated authority to vary the Scheme of Charges for Local Authority Property Search Services, as appropriate.”

Reason:- Authorisation granted by Policy and Resources Cabinet Board on 11th June 2009.

11. **Head of Housing and Public Protection**

Pages 3.115 to 3.120 **Part 3 – Director of Social Services, Health and Housing Delegation Arrangements**

(c) Environmental Health and Trading Standards

All references to “the Head of Business Strategy” shall be deleted and be replaced with references to “the Head of Housing and Public Protection.”

Reason:- At its meeting of the 15th December 2008 the Personnel Committee made changes to the head of Service Portfolios in relation to the then Head of Housing. They resolved that the Head of Housing be re-designated “Head of Housing and Public Protection” and that he assumed management responsibility for the Environmental Health and Trading Standards Services (which had previously been managed by the Head of Business Strategy).

12. **Head of Housing and Public Protection**

Page 3.120 **Part 3 – Director of Social Services, Health and Housing Delegation Arrangements**

(c) Environmental Health and Trading Standards

After Paragraph (xii) insert a new paragraph as follows:-

“(xiii) **Discharge of Trading Standards Functions by other Councils**

1. The Head of Housing and Public Protection is authorised to make arrangements for the discharge by other Councils of the functions of investigating and instituting proceedings on trading standards matters in the Neath Port Talbot area under Section 19 of the Local Government Act 2000, regulations made thereunder and any other enabling power.

Reason: To enable the Council to draw on regional trading standards capabilities that will enhance public protection services. Cabinet has delegated this function to the Head of Housing and Public Protection.

13. **Land Drainage**

Page 3.143 **Part 3 – Director of Environment Delegation Arrangements**

Point 9. Land Drainage Issues

After the current paragraphs contained in Point 9 the following paragraphs shall be inserted:-

“That the Director of Environment be granted delegated authority to serve Notices under Section 25 of the Land Drainage Act 1991 to maintain the flow of water in a watercourse.

The Head of Streetcare be granted delegated authority to exercise the powers available under Section 64 of the Land Drainage Act 1991, if deemed necessary.”

Reasons:-

1. Authorisation was granted to serve Section 25 Notices by the Environment & Highways Cabinet Board on 4th December 2008.
2. Authorisation to exercise powers under Section 64 was granted by the Environment and Highways Cabinet Board on 21st February 2008.

14. **Burial/Exhumations**

Page 3.143 **Part 3 – Director of Environment Delegation Arrangements**

Point 12 Burial/Exhumations

The wording in Point 12 shall be deleted and replaced with the following wording:-

“12. Burial/Exhumations

That the powers to act in all matters associated with Burials/Exhumations be delegated to the following Officers:-

The Director of Environment, the Head of Streetcare, the Parks and Neighbourhood Services Manager, the Street Scene Manager, the Principal Development Support Officer and the Principal Country Parks and Grants Officer.”

Reason:- Authorisation granted by Environment and Highways Cabinet Board on 5th March 2009.

15. **Decriminalised Parking**

Page 3.143 **Part 3 – Director of Environment Delegated Powers**

Point 10. Decriminalised Parking

The reference to the “Head of Policy and Administration” is to be deleted and replaced with a reference to the “Head of Engineering and Transport.”

Reason:- On the 7th April 2010 the Personnel Committee resolved to amend the structure of the officers of the Environment Directorate. As a result of that review management responsibility for decriminalised parking was transferred to the Head of Engineering and Transport.

16. **Air Quality and Contaminated Land**

Page 3.161 **Part 3 – Director of Environment Delegated Powers**

Point 20. Air Quality and Contaminated Land

The reference to the “Head of Policy and Administration” is to be deleted and replaced with a reference to the “Head of Planning”.

The reference to the “Policy and Strategy Manager” is to be deleted and replaced with a reference to the “Climate Change Manager.”

Reasons:- On the 7th April 2010 the Personnel Committee resolved to amend the structure of the officers of the Environment Directorate. As a result management responsibility for air quality and contaminated land was transferred to the Head of Planning.

17. **Grants and Acquisitions**

Page 3.163 **Part 3 – Director of Environment Delegated Powers**

After Schedule 2 of Point 20 there shall be inserted the following Points 21 and 22:-

21. Rural Development Plan: Y Gronfa Wledig and Accommodation Provider’s Grant Scheme

That the Director of Environment be granted delegated authority to determine grant applications for the Rural Development Plan funded Y Gronfa Wledig, and the Accommodation Provider’s Grant Scheme.

22. Proposed Policy for Strategic Property Acquisitions

That the Director of Environment, in consultation with the relevant Cabinet Member and the Director of Finance and Corporate Services, be granted Delegated Authority to make strategic acquisitions within the County Borough.

Reasons:-

1. Delegation under 21 was granted by the Economic & Community Regeneration Cabinet Board on 13th November 2008.
2. Delegation under 22 was granted by the Economic & Community Regeneration Cabinet Board on 12th February 2009.

18. **Joint Arrangements**

Page 3.165 **Annex K - Joint Arrangements**

The reference in Table 1 to “The Emergency Planning Joint Committee” is to be replaced with a reference to the “Joint Resilience Committee.”

Reason:- To reflect the change in name of the Joint Committee.

Any of the following functions in respect of highways—

- (a) the making of agreements for the execution of highways works;
- (b) the functions contained in the following provisions of Part III of the Highways Act 1980 (creation of highways)—
 - (i) section 25 - creation of footpath, bridleway or restricted byway by agreement;
 - (ii) section 26 - compulsory powers for creation of footpaths, bridleways or restricted byways;
- (c) the functions contained in the following provisions of Part VIII of the Highways Act 1980 (stopping up and diversion of highways etc)—
 - (i) section 116 - power of magistrates' court to authorise stopping up or diversion of highway;
 - (ii) section 117 - application for order under section 116 on behalf of another person;
 - (iii) section 118 - stopping up of footpaths, bridleways and restricted byways;
 - (iv) section 118ZA - application for a public path extinguishment order;
 - (v) section 118A - stopping up of footpaths, bridleways and restricted byways crossing railways;
 - (vi) section 118B - stopping up of certain highways for purposes of crime prevention etc;
 - (vii) section 118C - application by proprietor of school for special extinguishment order;
 - (viii) section 119 - diversion of footpaths, bridleways and restricted byways;
 - (ix) section 119ZA - application for a public path diversion order;
 - (x) section 119A - diversion of footpaths, bridleways and restricted byways crossing railways;
 - (xi) section 119B - diversion of certain highways for purposes of crime prevention etc;
 - (xii) section 119C - application by proprietor of school for special diversion order;
 - (xiii) section 119D - diversion of certain highways for protection of sites of special scientific interest;

- (xiv) section 120 - exercise of powers of making public path extinguishment and diversion orders;
- (xv) section 121B - register of applications;
- (d) the functions contained in the following provisions of Part IX of the Highways Act 1980 (lawful and unlawful interference with highways and streets)—
 - (i) section 130 - protection of public rights;
 - (ii) sections 139 - control of builders' skips;
 - (iii) section 140 - removal of builders' skips;
 - (iv) section 140A - builders' skips: charges for occupation of the highway;
 - (v) section 142 - licence to plant trees, shrubs etc in a highway;
 - (vi) section 147 - power to authorise erection of stiles etc on footpath or bridleway;
 - (vii) section 147ZA - agreements relating to improvements for benefit of persons with mobility problems;
 - (viii) section 149 - removal of things so deposited on highways as to be a nuisance etc;
 - (ix) section 169 - control of scaffolding on highways;
 - (x) section 171 - control of deposit of building materials and making of excavations in streets;
 - (xi) section 171A and regulations made under that section - works under s169 or s171: charge for occupation of the highway;
 - (xii) section 172 - hoardings to be set up during building etc;
 - (xiii) section 173 - hoardings to be securely erected;
 - (xiv) section 178 - restriction on placing of rails, beams etc over highways;
 - (xv) section 179 - control of construction of cellars etc under street;
 - (xvi) section 180 - control of openings into cellars etc under streets, and pavement lights and ventilators;
- (e) exercising functions under section 34 of the Wildlife and Countryside Act 1981 (limestone pavement orders); and
- (f) exercising functions under section 53 of the Wildlife and Countryside Act 1981 (duty to keep definitive map and statement under continuous review).

Functions in respect of gambling under the following provisions of the Gambling Act 2005—

- (a) section 29 - licensing authority information;
- (b) section 30 - other exchange of information;
- (c) section 350 - exchange of information;
- (d) Part 5 of Schedule 11- registration with local authority.