

Report



Democratic Services Committee

Part 1

Date: September 2022

Subject **Amendment to the Constitution - Cabinet Job-sharing and Executive Assistants**

Purpose To consider proposed amendments to Part 2 Article 7 of the Constitution to reflect legislative changes in relation to Cabinet Job-sharing and Executive Assistants

Author Head of Law & Standards

Ward City wide

Summary Section 58 of the Local Government & Elections (Wales) Act 2021 (“the 2021 Act”) amends the Local Government Act 2000 to require councils in Wales operating executive arrangements to make provision enabling two or more Councillors to share office on the Cabinet, including the office of Leader. Section 57 of the 2021 Act provides for the appointment of Assistants to the Executive.

Therefore, the Council’s Constitution requires amendment to specifically make provision for the job-sharing of Cabinet posts and the appointment of Executive Assistants, in accordance with the requirements of the legislation. The proposed amendments to Part 2 Article 7 of the Constitution, relating to Cabinet arrangements, are set out in the Appendix and Committee are asked to agree to the proposed changes and recommend their adoption by full Council

Proposal **To recommend to Council proposed amendments to Part 2 Article 7 of the Constitution, as set out in the appendix to the report, to reflect legislative changes in relation to Cabinet Job-sharing and Executive Assistants**

Action by Head of Law & Standards

Timetable In line with legislative requirements

This report was prepared after consultation with:

- Chief Executive
- Strategic Directors
- Head of Finance
- Heads of People, Policy & Transformation

Background

1. Section 58 of the Local Government & Elections (Wales) Act 2021 (“the 2021 Act”) amends the Local Government Act 2000 to require councils in Wales operating executive arrangements to make provision enabling two or more Councillors to share office on the Cabinet, including the office of Leader.
2. Section 57 of the 2021 Act provides for the appointment of Assistants to the Executive.
3. These legislative changes are intended to provide councils with an opportunity to increase the diversity in their Cabinet through the use of job sharing arrangements and/or the appointment of assistants to the executive. This is also consistent with the Council’s equalities and socio-economic duties and the need to ensure that decision-making reflects and supports the diversity of local communities and is informed by a wide range of perspectives and experiences.
4. Therefore, the Council’s Constitution requires amendment to specifically make provision for the job-sharing of Cabinet posts and the appointment of Executive Assistants, in accordance with the requirements of the legislation. The proposed amendments to Part 2 Article 7 of the Constitution, relating to Cabinet arrangements, are set out in the Appendix and Committee are asked to agree to the proposed changes and recommend their adoption by full Council.
5. Job-sharing

The legislation requires the Council to provide for the role of Leader and individual Cabinet Member posts to be job-shared by two (or more) Councillors. The Leader is appointed by full Council and, therefore, the election of the Leader on a job-share basis is a matter for full Council. The Council cannot require the post to be job-shared and two or more members would have to put themselves forward for election as Leader on the basis of an agreed job-sharing arrangement.
6. Cabinet Members are appointed by the Leader and, therefore, it is for the Leader to determine any job-sharing arrangements, in accordance with the legislation and the provisions in the Constitution. The Leader has already appointed the Cabinet Member for Social Services on a job-sharing basis. The total number of Cabinet Member posts (including that of Leader) that can be filled on a job-sharing basis is limited to 3 by the 2021 Act. The maximum number of members on the Cabinet can be increased from 10 to 13 to accommodate job-sharing as this is still treated as a single post on the Cabinet.
7. The draft statutory Guidance issued by the Welsh Government provides that, when making Cabinet Member appointments on a job-sharing basis the Leader should consider a number of factors, including:-
 - (a) how this could increase the diversity in the Cabinet to best reflect the diversity in the council’s area;
 - (b) how job-sharing cabinet Members will be supported to ensure they can maintain a reasonable work life balance;
 - (c) how job-share arrangements may offer opportunities for succession planning in the Cabinet

Therefore, these considerations are set out in the amendments to Part 2 Article 7 in relation to the job-sharing provisions.

8. The draft guidance also provides that terms of the job-sharing arrangements should be clear and agreed in advance. Job-sharing arrangements should not be used solely as a means of increasing the number of Cabinet Members or to create roles for job-sharing members which equate to workloads greater than if the cabinet position was held by an individual member.
9. In the case of both job-sharing Leaders and job-sharing Cabinet Members, the two or more members in the job-sharing arrangement are to be treated as one member when attending a Cabinet meetings for voting purposes and for the purposes of determining whether a meeting is quorate. If both job-sharers attend a meeting in their capacity as Cabinet Members they are both be recorded as having attended the meeting and they may both speak at the meeting. However, they are only entitled to a single, shared vote. If they both attend a meeting, then they must decide between them in advance who will cast their shared vote and inform the chair of the meeting. If only one job-sharer attends a meeting, then the attending member must cast their vote in the manner agreed with their job-sharing partner. If the job-sharing partners cannot agree on how their shared vote should be cast at any meeting, then that vote shall be treated as invalid and disregarded for the purposes of decision-making.
10. The draft Guidance provides that councils and job-sharing members should recognise that the successful operation of job-sharing arrangements will require the establishment of effective working arrangements from the outset and high levels of trust between the job-sharing members. The working arrangements should include how disputes between job-sharers will be resolved. Therefore, provision has been made in Part 2 Article 7.9.7 that, if job-sharing Cabinet Members are unable to agree on any individual decision delegated to them jointly under the members scheme of delegation within their portfolio, then that decision shall be referred to and determined by the Leader.
11. The treatment of job-sharing partners as if they were one member for the purposes of voting and the quorum requirements for Cabinet meetings does not extend to other meetings that they attend in their roles as Councillors. Therefore, they will continue to have separate votes at meetings of full Council and other non-executive meetings.
12. Assistants to the Executive

The draft guidance explains that the appointment of Executive Assistants is to support diversity by enabling members who might not be in a position to take up a full time executive role because of personal or other circumstances to have the opportunity to learn and develop. Although they are not full members of the Cabinet, Executive Assistants can attend and speak at Cabinet meetings or at committees of the executive and can bring valuable diversity and insight into discussions. Executive Assistants are, again, appointed by the Leader and can be removed or replaced at any time. The guidance provides that there should be a clear purpose to the appointment of assistants to the executive, and these appointments should not be used solely as a means of increasing the number of members able to make a contribution to the Cabinet functions.

13. The legislation provides that neither Presiding Member, Deputy Presiding Member, Mayor nor Deputy Mayor can be appointed as assistants to the executive, because of the need for political neutrality.
14. Although assistants to the executive are not full members of the Cabinet, they are treated as if they are members of the executive for the purposes of the allocation of seats on scrutiny committees where neither members of the executive nor assistants to the executive can be members. Similarly, where legislation and the Constitution allow a set number of Cabinet Members to sit on other Committees, such as Chief Officer Appointment panels, they can only have a member of the executive or an assistant to the executive as part of their allocation of seats.
15. The opportunity has also been taken to make a number of other drafting amendments to Part 2 Article 7 to update and clarify the existing provisions, but there are no other substantive changes apart from the job-sharing and executive assistant provisions.

Financial Summary

16. There are no financial implications. Where the roles of Leader or Cabinet Members are job shared, then the senior salary attached to the post in accordance with the members scheme of allowances, is apportioned between them in accordance with the job-sharing arrangements. Executive Assistants do not receive any senior salary or responsibility allowance.

Risks

Risk	Impact of Risk if it occurs* (H/M/L)	Probability of risk occurring (H/M/L)		What is the Council doing or what has it done to avoid the risk or reduce its effect	Who is responsible for dealing with the risk?
Not agreeing and updating the Constitution to make provision for Cabinet job-sharing and executive assistants	H	M		Failure to update the Constitution to make provision for Cabinet job-sharing and executive assistants would be contrary to the requirements of the 2021 Act and principles of equality. It could leave the Council open to legal challenge.	Head of Law & Standards Democratic and Electoral Services Manager
Agreeing and updating the Constitution	L	L		The Council will have complied with its statutory duty to make provision for	Head of Law & Standards Democratic and Electoral

to make provision for Cabinet job-sharing and executive assistants				Cabinet job-sharing and executive assistants and its equality and diversity duties	Services Manager
--	--	--	--	--	------------------

*Taking account of proposed mitigation measures.

Links to Council Policies and Priorities

The proposed amendments to the constitution are consistent with the strategic objectives set out in the Corporate Plan, the Equalities Plan and also the well-being objectives under the Well-Being of Future Generations (Wales) Act. These legislative changes are intended to provide councils with an opportunity to increase the diversity in their Cabinet through the use of job sharing arrangements and/or the appointment of assistants to the executive. This is also consistent with the Council's equalities and socio-economic duties and the need to ensure that decision-making reflects and supports the diversity of local communities and is informed by a wide range of perspectives and experiences.

Proposed Action

To recommend to Council the proposed amendments to Part 2 Article 7 of the Constitution, as set out in the Appendix to the report, to reflect legislative changes in relation to Cabinet Job-sharing and Executive Assistants

Comments of Chief Financial Officer

There are no financial implications.

Comments of Monitoring Officer

Set out in the report.

Comments of Head of People Policy & Transformation

As outlined in the report the proposed amendments to the constitution are consistent with the strategic objectives set out in the Corporate Plan, the Equalities Plan and also the well-being objectives under the Well-Being of Future Generations (Wales) Act.

The opportunity to ensure that decision-making reflects and supports the diversity of local communities and is informed by a wide range of perspectives and experiences is supported.

Fairness and Equality Impact Assessment:

- **Wellbeing of Future Generation (Wales) Act**
- **Equality Act 2010**
- **Socio-economic Duty**
- **Welsh Language (Wales) Measure 2011**

An FEIA has not been completed as the amendment to the Constitution to make provision for Cabinet job-sharing and appointment of executive assistants is a legislative requirement. However Welsh Government have undertaken extensive consultation and a regulatory impact assessment before they introduced the legislation.

- Welsh Government have engaged with relevant stakeholders as part of the consultation on the legislation. Job-sharing and the appointment of assistants to the executive will provide an opportunity for greater diversity within the executive decision-making process, enhance opportunities for people with protected characteristics and those suffering from socio-economic disadvantage and will allow more opportunity for the use of the Welsh language.
- As such, there are no negative impacts associated with the legislation in terms of equalities or social disadvantage.
- In terms of the sustainable development principle and 5 ways of working

Long-term – Improved work-life balance will encourage longer-term improvements in the numbers and diversity of people standing in elections and serving as executive members and will also assist longer-term succession planning within the Cabinet.

Prevention – The flexible working arrangements for Cabinet Members will help to avoid any breach of the Council's equalities and socio-economic duties.

Integration – The provisions are consistent with the well-being goal of a More Equal Wales

Collaboration – Job-sharing and executive assistants will facilitate a more collaborative approach to executive decision-making,

Involvement – Improved diversity on the Cabinet will ensure that decision-making reflects and supports the diversity of local communities and is informed by a wide range of perspectives and experiences.

Background Papers

Dated: September 2022