

BRIDGEND COUNTY BOROUGH COUNCIL

REPORT TO COUNCIL

15 SEPTEMBER 2021

REPORT OF THE CHIEF OFFICER – LEGAL, HR & REGULATORY SERVICES

AMENDMENTS TO THE CONSTITUTION AND SCHEME OF DELEGATION OF FUNCTIONS

1. Purpose of report

1.1 The purpose of the report is to seek Council's approval of:

- 1.1.1 a number of minor refinements to the Constitution in relation to the sealing of Council legal documents to enable a more efficient management of the legal process;
- 1.1.2 amending the Constitution to incorporate the revised Contract Procedure Rules; and
- 1.1.3 amending the Council's Scheme of Delegation of Functions in relation to Council functions in accordance with section 4.7 of this Report.

2. Connection to corporate well-being objectives / other corporate priorities

2.1 This report assists in the achievement of the following corporate well-being objectives under the **Well-being of Future Generations (Wales) Act 2015**:-

- 1. **Supporting a successful sustainable economy** – taking steps to make the county borough a great place to do business, for people to live, work, study and visit, and to ensure that our schools are focussed on raising the skills, qualifications and ambitions for all people in the county borough.
- 2. **Helping people and communities to be more health and resilient** - taking steps to reduce or prevent people from becoming vulnerable or dependent on the Council and its services. Supporting individuals and communities to build resilience, and enable them to develop solutions to have active, healthy and independent lives.
- 3. **Smarter use of resources** – ensure that all resources (financial, physical, ecological, human and technological) are used as effectively and efficiently as possible and support the creation of resources throughout the community that can help to deliver the Council's well-being objectives.

3. Background

3.1 Certain agreements, namely land transfers and contracts over an agreed monetary value, are required to be executed as deeds. This enables enforcement action to be commenced after the usual time limitation period of 6 years. In such instances the agreements are completed by the signature of an Authorising Officer and by affixing the Council's Common Seal.

- 3.2 The Council is required to review the Contract Procedure Rules, which form part of the Council's Constitution, on a regular basis.
- 3.3 The Contract Procedure Rules contain the rules and guidelines for procuring goods, services and works. They are designed to ensure compliance with UK and European law, ensure best practice is followed and best value is achieved in the use of public funds.

4. Current situation/proposal

Sealing of Deeds

- 4.1 Article 14.05 of the Constitution requires that "the affixing of the Common Seal shall be attested by either the Mayor, the Deputy Mayor, the Leader or the Deputy Leader and by the Solicitor of the Council or a person authorised by him/her". The inclusion of these Members is an historical requirement and it is unclear what purpose this additional requirement serves given the complex nature of these documents and the governance processes that are undertaken before such documents are sealed. The logistics around the current process arguably involve unnecessary delay and expense and it is therefore suggested that the requirement for the Mayor or Deputy Mayor, Leader or Deputy Leader to attest the sealing of documents is removed. This is now the common practice of a number of local authorities.

- 4.2 It is recommended that Article 14.05 of the Constitution be amended to read:

"The Common Seal of the Council will be kept in a safe place in the custody of the Solicitor to the Council. A decision record of the Council, Cabinet and any Officer authorised in accordance with the Scheme of Delegation of Functions, will be sufficient authority for sealing any document necessary to give effect to the decision. The Common Seal will be affixed to those documents which in the opinion of the Solicitor to the Council should be sealed. The affixing of the Common Seal will be attested by the Solicitor to the Council or some other person authorised by them".

- 4.3 Rule 20.2 of the Contract Procedure Rules (CPRs) provides: "Every Contract, including frameworks which exceed £500,000 shall be executed under Seal". The monetary value of a contract is not the sole factor in determining whether an agreement requires execution under Seal. Statutory and common law requirements and practical considerations such as the complexity of the arrangement also need to be considered. It is therefore proposed that the CPRs within the Constitution be amended to read:

"Every Contract, including frameworks which exceed £500,000 in amount or value shall be referred to the Solicitor for the Council for approval".

Typographical and other corrections

- 4.4 It is further recommended that the following be inserted at Article 15.03 to allow the Monitoring Officer to make typographical and other corrections to the Constitution:

“The Monitoring Officer in consultation with the Head of Paid Service shall have power to make typographical and other corrections and clarification amendments to the Constitution (provided they do not make substantive change to the meaning of the Constitution) and to make updating amendments to the Constitution where required due to changes in legislation”.

Amendments to the Contract Procedure Rules

- 4.5 Following a review of the Contract Procedure Rules, a number of changes have been made to the existing Contract Procedure Rules to ensure the Council modernises the way it procures goods, services and works. A copy of the revised Contract Procedure Rules is attached to this report at **Appendix 1**. A report was presented to Cabinet on 14th September 2021 to approve the revised Contract Procedure Rules to take effect from 1st October 2021.
- 4.6 The revised Contract Procedure Rules now need to be incorporated into the Constitution.

Amendments to the Scheme of Delegation of Functions in relation to Council Functions

- 4.7 The following amendments will be required to the Council’s Scheme of Delegation of Functions in relation to Council Functions as set out below in tracked changes:

General Powers of Chief Officers

Paragraph 1.7 to be removed in its entirety: “accept the lowest tender received where payment is to be made by the Council and the highest tender received where payment is to be received by the Council in consultation with the Procurement Manager.”

Renumbering of current paragraphs 1.8 to 1.13 of General Powers of Chief Officers to paragraphs 1.17 to 1.12 of General Powers of Chief Officers.

Scheme B2 functions allocated to each Chief Officer

Amendment to paragraph 1.3 as shown via tracked changes:

1.3	In accordance with the values set out in the Council’s Contract Procedure Rules: respect of any contract having an estimated value not exceeding £1,000,000.00: a) To authorise the invitation of tenders; (b) To accept the most Most economically Economically advantageous Advantageous tender Tender received and enter into a Contract (form of tender), or the highest tender received where payment is to be received by the Council and enter into a Contract. (form of tender), or the highest tender received where payment is to be received by the Council and enter into a Contract. and any further deeds and documents which are supplemental to the Contract.
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	<p>(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.</p> <p>(d) To authorise invitation of tenders, to accept a tender or enter into a Contract <i>and/or</i> any further deeds and documents which are supplemental to the Contract in accordance with any permitted waiver under the Council's Contract Procedure Rules.</p>
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Insert an additional function at Scheme B2 as a function allocated to each Chief Officer:

1.4	To approve a modification to an existing Contract or Framework Agreement in accordance with the Council's Contract Procedure Rules and the values set out in the Council's Contract Procedure Rules to enter into any deed or documents which is required to give effect to such modification.
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Renumbering of current paragraphs 1.4 to 1.6 of Scheme B2 to paragraphs 1.5 to 1.7 of Scheme B2.

Insert an additional function at Scheme B2 as a function allocated to the Monitoring Officer:

3.42	To approve and enter into any further deeds and documents which are ancillary to any existing agreement approved by or on behalf of the Council in consultation with the Section 151 Officer and relevant Corporate Director.
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Renumbering of current paragraphs 3.42 to 3.56 of Scheme B2 to paragraphs 3.43 to 3.57 of Scheme B2.

4.8 A report was presented to Cabinet on 14th September 2021 proposing similar changes to the Scheme of Delegation of Functions for Executive decisions.

5. Effect upon policy framework and procedure rules

5.1 The Constitution governs the operation of the Authority and thereby has an effect upon the operation of the Policy Framework.

5.2 The revised Contract Procedure Rules are mandatory for all commissioning/procurement staff to comply with. The Contract Procedure Rules are a fundamental part of the Council's Constitution.

5.3 The Scheme of Delegation of Functions will require amendment as detailed in Section 4.7 of this report.

6. Equality Act 2010 implications

6.1 Although there are no direct impacts, the Constitution as the key governance framework document for the Authority is critical in demonstrating commitment to the Authority's duties under the Equality Act 2010.

7. Well-being of Future Generations (Wales) Act 2015 implications

7.1 The well-being goals identified in the Act were considered in the preparation of this report. It is considered that there is no significant or unacceptable impact upon the achievement of well-being goals/objectives as a result of this report.

8. Financial implications

8.1 There are no financial implications. Whilst the monetary thresholds in relation to affixing the Seal have been amended, the Monitoring Officer retains the right to require contracts to be sealed where appropriate.

9. Recommendations

It is recommended that Council:

- 9.1 approve the amendments to the Constitution as set out within this report;
- 9.2 note the revised Contract Procedure Rules to take effect from 1st October 2021; and
- 9.3 approve the amendments to the Scheme of Delegation of Functions in relation to Council functions as set out in section 4.7 of the Report.

Kelly Watson

MONITORING OFFICER

September 2021

Contact Officer: Kelly Watson
Monitoring Officer

Telephone: (01656) 643248

Email: kelly.watson@bridgend.gov.uk

Postal address:
Legal and Regulatory Services
Civic Offices
Angel Street
Bridgend
CF31 4WB

Background documents: None.