

CONSTITUTION COMMITTEE:

15 JANUARY 2015

REPORT OF THE COUNTY CLERK & MONITORING OFFICER

AGENDA ITEM: 5

INDIVIDUAL CABINET MEMBER DECISION MAKING

Reason for this Report

1. To report back on the consultation with the executive in relation to introducing decision making by individual Cabinet members.

Background

2. At its last meeting in September 2014, the Committee noted the recent Corporate Assessment by the Wales Audit Office (WAO) and its findings that “some processes intended to ensure good governance have not been implemented and decision making processes are inefficient and lack transparency.” The WAO had commented on the length of cabinet agendas and identified the need for more efficient arrangements to support timely decision making with better co-ordination of activity, swifter consideration of Scrutiny recommendations and improved management of meetings including agenda content.
3. In response to these findings, the Committee considered a Report proposing the introduction of individual executive decision making and subject to any change being implemented on a trial 12 month basis resolved that:
 - The information and suggested approach for analysis of the categories of Cabinet business set out in this report be noted and the criteria for scoring of each decision be further developed;
 - The County Clerk and Monitoring Officer consult with the Leader and Cabinet on individual Cabinet Member decision making and bring a further report to the Committee with options for consideration.
4. Under the ‘Leader and Cabinet’ model executive arrangements adopted by Cardiff (pursuant to the Local Government Act 2000), the Council may allocate responsibility for discharging its Executive Functions (which are prescribed by law) to the full Cabinet; any individual Cabinet Member; a Cabinet Committee or any officers. Any Executive Functions which are not

allocated by the Council may, by law, be discharged (or delegated) by the Leader of the Cabinet. This legal position is reflected in the Constitution, Article 7.7 (The Cabinet, Responsibility for Functions).

5. The Council has discretion over the extent to which it sets out the detailed allocation of Executive Functions in the Scheme of Delegations itself, or leaves scope for the Cabinet (or its Leader, individual Members or Committees) to either discharge or delegate functions as permitted by law. However, the Welsh Government's Statutory Guidance advises that 'Councils should ensure that the scheme of delegations determined by the Council is sufficiently flexible to ensure the executive can discharge functions efficiently and effectively.' (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, SI 2006/56, paragraph 4.16).
6. The Council's current allocation of responsibility for Executive Functions is set out in the Scheme of Delegations (in Part 3 of the Constitution), specifically in Section 2 which lists various functions which are reserved to the (full) Cabinet, and Section 4, which delegates all other Executive Functions to the Council's senior officers. No provision is currently made in Cardiff's Constitution for the Leader or any individual Cabinet Members to discharge any Executive Functions, i.e. to exercise decision making powers (rather than the current consultation requirements).

Legal Requirements for Individual Cabinet Member Decisions

7. Members should note that any decisions taken by an individual Cabinet Member (where allowed under the Council's Constitution) are subject to the same legal requirements as a full Cabinet decision, in respect of consultation, proper advice, record keeping, call-in and scrutiny.
8. The Welsh Government's Statutory Guidance (referred to in paragraph 5 above, specifically, paragraphs 6.23 to 6.27 inclusive) also emphasises the need for appropriate checks and balances, such as:
 - i. Ensuring that individual Cabinet Members are clear what exactly they can and cannot do (having particular regard to the broad well-being powers available to authorities under section 2 of the Local Government Act 2000);
 - ii. Ensuring that individual Cabinet Members are not permitted to actually sign contracts (they may approve the award of a contract, but the contract should be signed by the officer/s identified in the Council's Standing Orders, which in Cardiff's case is the City and County Solicitor or officer/s authorised by him);
 - iii. The need for protocols to ensure an individual Cabinet Member obtains any necessary advice from relevant officers before taking a decision, in the same way as decisions of the full Cabinet; and
 - iv. Ensuring that individual Cabinet Members are aware that any decisions they take will commit the authority to legal liability in the same way as collective Cabinet decisions, and that they are

personally accountable for their decisions to any relevant Scrutiny Committee.

Benefits and Criteria for Individual Decision making

9. The Leader and Cabinet have been consulted as requested by the Committee on the benefits of introducing this arrangement and potential criteria for individual Cabinet member decisions. Subject to proper, public and efficient process the executive members are very supportive of the proposal. The modern.gov committee management system introduced last year and due to go live on the internet in April will provide a robust and transparent process if the proposal is implemented.
10. Currently all cabinet business is analysed in the Cabinet Forward Plan with a traffic light (RAG) rating. This might provide a useful categorisation allowing individual decision making for green or amber rated matters. The current ratings are as follows:
 - Green- Decision of a non-contentious, day to day nature, unlikely to be the subject of call-in
 - Amber –decisions of a more sensitive nature which could be potentially contentious or not on a routine nature. These would generally flow through to the Cabinet for decision without prior scrutiny, although a judgment will be made in each case regarding scrutiny considerations before decision and the possibility of call-in
 - Red – Decision relating to high level functions primarily relating to policy formulation within the Policy and Budgetary Framework where the cabinet would usually make a proposal.
11. The other approach suggested would be based on English local government and the concept of a 'key decision'. Under the legislative arrangements which apply in England, a key decision is defined as an executive decision which is likely to result in significant expenditure or savings, having regard to the budget for that particular service or function; or is likely to be significant in terms of its effect on communities living or working in 2 or more wards of the authority (Regulation 8 of SI 2012/2089);
12. Non key or Green/Amber decision would be suitable for individual Cabinet member decision.
13. Members are invited to consider the information and suggested approach for analysis of Cabinet business set out in this report and to make any appropriate comments. If the Committee wishes to take this matter forward, it is recommended that the Monitoring Officer be instructed bring a further report back to this Committee setting out proposed amendments to the Constitution for further consideration.

Legal Implications

14. The relevant legal provisions are set out in the body of the report.

15. Members should note that any decision to allocate decision making powers to Individual Cabinet Members will require amendment of the Scheme of Delegations and the approval of full Council.

Financial Implications

16. There are no financial implications arising from this Report

Recommendations

The Committee is recommended to note the information and suggested approach and If the Committee wishes to take forward the matter of individual Cabinet Member decision making, to instruct the Monitoring Officer to bring a further report back to this Committee setting out proposed amendments to the Constitution for further consideration

Marie Rosenthal
County Clerk and Monitoring Officer
09 January 2015

Background papers

Constitution Committee Reports on the Delegations Review, May 2013, September 2013 & January 2014, and minutes thereof
Cabinet Agendas and Decision Registers for the period January 2014 to July 2014