
**REPORT OF THE DIRECTOR OF GOVERNANCE AND LEGAL
SERVICES AND MONITORING OFFICER**

RESPONSIBILITY FOR AIR QUALITY MANAGEMENT FUNCTIONS

Reason for this Report

1. To enable the Committee to consider the recommended transfer of responsibility within the Council for air quality management functions from the Public Protection Committee to the Cabinet, in order to support better integrated policy development; and recommend amendment of the Council's Scheme of Delegations accordingly.

Background

2. The Committee's approved terms of reference are to review the Council's constitution and recommend to the Council any changes.
3. The Scheme of Delegations (in Part 3 of the Constitution), sets out the responsibility for discharging the various functions of the Council. The allocation of functions reflects their statutory classification as 'Executive', 'Non-Executive' or 'Local Choice' functions. Local choice functions are functions which, in law, may be, but need not be, the responsibility of the Cabinet, and it is for full Council to decide by whom they shall be exercised. Cardiff Council's allocation of Local Choice Functions is set out in Section 3 of the Scheme of Delegations.
4. 'The discharge of any function relating to the control of pollution or the management of air quality' is a Local Choice Function, which is allocated under Cardiff's current Scheme of Delegations to the Public Protection Committee.

Issues

5. Local Air Quality Management (LAQM), a regime established by Part IV of the Environment Act 1995, requires Local Authorities to monitor air quality having regard to the standards and objectives set by the Welsh Government; to identify areas non-compliant with the national air quality objectives; designate those non-compliant areas as Air Quality Management Areas (AQMA's); and develop and implement local air quality action plans for AQMA's designed to ensure compliance with the national objectives (sections 82-84 Environment Act 1995).

6. The Public Protection Committee has received technical monitoring reports, but it is understood that action plans have often not been aligned with other corporate initiatives which highlight the immediate and long-term health benefits to be gained by reducing pollution exposure across the entire population as well as taking action on localised pollution hotspots.
7. In June 2017, the Welsh Government issued new policy guidance to local authorities in Wales in relation to local air quality management. Local authorities must have regard to this guidance when carrying out their local air quality management duties under the 1995 Environment Act.
8. At the heart of the new guidance is a requirement for local authorities to follow the 5 ways of working, set out in the Well-being of Future Generations (Wales) Act 2015, when carrying out local air quality management. This means planning for the long term, integrating policies which can impact on air quality, involving people, collaborating with others and preventing problems from getting worse or from arising in the first place. This means that local air quality management (LAQM) must encompass more than just the Local Authority's statutory functions under Part IV of the 1995 Act. The exercise of those functions must be properly joined up with the management of land use and transport planning, as well as with the carrying out of any other activities, which have a bearing on local air quality.
9. The Cabinet is currently developing a Clean Air Strategy aiming to keep levels of air pollution as low as reasonably practicable across the City, an area wider than individual Air Quality Management Areas AQMAs. Such a strategy cannot operate in isolation from other policy areas, but must be integrated with land use and transport planning, public health, active travel, green infrastructure, road safety and climate change. Responsibility for these other functions rest with the Cabinet.
10. For all these reasons, it is suggested that it makes sense to consider all issues pertaining to Air Quality together. Continuing to report them separately may result in missed opportunities, at worst in the implementation of conflicting policies. Consideration of these matters at one forum, Cabinet, should enable a greater focus on prevention and help bring about better outcomes for people and communities in both the short and the long term.
11. Cabinet Members have been informally consulted and are supportive of the proposed transfer of responsibility to the Cabinet.
12. The Public Protection Committee noted the proposed transfer of responsibility for this function at its meeting on 7th November 2017. Members were concerned that the transfer of the monitoring function from the Public Protection Committee to Cabinet could generate a conflict of interest if air quality metrics worsened and considered that it should remain an independent function. Members suggested that the Public Protection Committee should receive progress reports before submission to Cabinet and also receive feedback after Cabinet.

13. In considering the appropriate allocation of responsibility for air quality management functions, it is important to carefully consider the exact nature of the functions involved. As set out in paragraph 5 above, the Council is required to monitor air quality having regard to the standards and objectives set by Welsh Government and must designate any area which does not comply with those standards and objectives as an Air Quality Management Area (AQMA). In discharging these 'monitoring functions', the Council does not have any significant discretion. However, the development of action plans designed to improve air quality in AQMAs is a strategic function, responsibility for which may properly be allocated to the Cabinet. As the action plans will need to be informed by the assessments made (in discharging the monitoring functions), it is suggested that it is appropriate to allocate responsibility for all air quality management functions to the Cabinet.
14. The Welsh Government's Statutory Guidance on Executive Arrangements (SI 2006/56) confirms that it is appropriate for Councils to allocate responsibility for air quality management functions to the Executive, except for any regulatory (direct regulation of individual persons), consent or enforcement decisions. Currently, there are no such regulatory, consent or enforcement functions in respect of air quality management applicable in Cardiff.

Financial Implications

15. There are no financial implications arising from this report.

Legal Implications

16. The recommended transfer of responsibility for air quality management functions from the Public Protection Committee to the Cabinet requires an amendment to the Scheme of Delegations, Section 3. The amendment will require the approval of full Council.
17. Other relevant legal implications are set out in the body of the report.

RECOMMENDATION

The Committee is recommended to recommend to Council that the Air Quality Management functions of the Council be allocated as Cabinet functions and that the Scheme of Delegations, Section 3, be amended accordingly.

Davina Fiore

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20th February 2018

Background papers

Local Air Quality Management in Wales: Policy guidance, June 2017

Public Protection Committee 'Air Quality in Cardiff – Progress Report', November 2017; and minutes thereof

Welsh Government Statutory Guidance on Executive Arrangements, SI 2006/56