

CONSTITUTION COMMITTEE:

15 January 2010

REPORT OF THE MONITORING OFFICER

AGENDA ITEM: 2

Amendments to Scheme of Delegations – new Functions and Responsibilities Regulations; and Corporate Director Delegations

Reason for this Report

1. To enable the Committee to consider recommended amendments to the Scheme of Delegations to :
 - (i) reflect the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009 (SI 2009/260); and
 - (ii) widen the exercise of Corporate Director delegations under the Council's current corporate management arrangements.

Background

2. The Committee's approved Terms of Reference are:

To review the Council's Constitution, and to recommend to Council and/or Executive any changes, except that the Committee will have authority (subject to the Monitoring Officer's advice) to make the following changes on behalf of the Council:-

- (a) Drafting improvements to enhance clarity and remove minor anomalies.
- (b) Updating to reflect legislative changes and matters of record.
- (c) Amendments to the Financial, Contracts and Land Procedure Rules (subject to the advice of the S.151 Officer being sought).

Issues

(I). The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009 (SI 2009/260) – 'the New Regulations'

3. The responsibility for the exercise of functions of the Authority is governed by legislation (including regulations) and the Constitution and Scheme of Delegations is drafted in accordance with the same. The New Regulations

came into force on 2nd December 2009 and amend the previous regulations (the Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007). The main changes requiring attention are as follows:

Highways and Public Rights of Way Functions

4. Certain functions under the Highways Act 1980 and the Wildlife and Countryside Act 1981, which had featured in the earlier (2001) regulations, were omitted from the consolidated 2007 Regulations (such as the power to create, stop up and divert footpaths and bridleways). This had the unintended effect of transferring such responsibilities from the council to the executive. (Prior to the 2007 Regulations, responsibility for various functions relating to public rights of way had been delegated by this Council to the Planning Committee.) Following representations from a number of local authorities, the New Regulations provide that these functions are now ones for local choice. This enables authorities to decide for themselves whether to maintain these functions as the responsibility of the executive or return them to a committee of the full council.
5. In addition, the New Regulations include a number of other related functions under the Highways Act 1980 as ones for local choice. These include powers concerning the stopping up and diversion of certain highways, footpaths, bridleways and restricted byways crossing railways, the making of public path extinguishment and diversion orders and agreements concerning stiles/gates for persons with mobility problems.
6. A full list of the highways functions which are now matters for local choice is set out in **Appendix A**. Responsibility for the functions listed in Schedule A must be determined by the Council (except for paragraph (a) of Schedule A, which relates to the execution of highways works agreements. This function remains a local choice function, ie. the New Regulations make no changes in this respect. Council has previously determined the function of executing highways works agreements to be a Council function and delegated the same to the Monitoring Officer and Chief Officer. As the New Regulations make no changes in this respect, this report recommends no changes to the responsibility for the function of executing highways works agreements.)
7. It is recommended that the service areas concerned should be consulted on their views as to the proper allocation of the local choice functions set out in **Appendix A** (except for paragraph (a) thereof), and a further report submitted to this Committee to enable the Committee to take an informed decision in this regard. Pending such further report, the Committee is recommended to recommend to Council that these functions should remain the responsibility of the Executive.

Policy framework plans and strategies

8. The duty on local authorities to prepare and publish **Rights of Way Improvement Plans** (pursuant to section 60 of the Countryside and Rights of Way Act 2000, which came into force in late 2007) is included in the new

Regulations as a function which is not to be the sole responsibility of an authority's executive, that is, this Plan requires Council approval, and so is to be added to the Council's Policy Framework.

9. The Single Education Plan is replaced by the **Children and Young People's Plan** (pursuant to the Children and Young People's Plan (Wales) Regulations 2007 SI No 2316 (W.187)). Under the new Regulations, this function will continue to be one which is not to be the sole responsibility of an authority's executive, that is, this Plan requires Council approval, and so will remain part of the Council's Policy Framework under the title of the Children and Young People's Plan.
10. The Committee is asked to note that the Monitoring Officer has delegated authority to make amendments to the constitution (and Scheme of Delegations) to reflect legislative changes. The changes referred to in paragraphs 8 and 9 of this report will be made under this delegated authority of the Monitoring Officer.

Gambling Act functions

11. Under the previous Regulations (2007), various Gambling Act 2005 functions were made matters for local choice; and this Council determined that responsibility for the same should be allocated to the Licensing Committee.
12. The New Regulations add the following additional Gambling Act functions (which did not come into force until after the 2007 Regulations were made), also as local choice matters:-
 - The duty to comply with a requirement to provide information to the Gambling Commission;
 - Functions relating to the exchange of information;
 - The power to exchange information; and
 - The function relating to the registration and regulation of small society lotteries.
13. Responsibility for the local choice functions listed in paragraph 12 must be determined by this Council. It is considered that these functions are entirely complementary to the existing Gambling Act functions exercised by the Licensing Committee, and accordingly, it is recommended that responsibility for the same should be allocated to the Licensing Committee.

(II) Corporate Director Delegations

14. Following recent staffing changes at senior management level, the Council currently has 1 Corporate Director in post, and an appointment process is being undertaken to fill 1 Corporate Director vacancy. Under the Council's Scheme of Delegations, various decisions are reserved for exercise by (the Chief Executive and) Corporate Directors – these are set out in **Appendix B**.
15. The Council's Corporate Management Team includes the City and County Treasurer, City and County Solicitor and Chief People and Organisational Development Officer, along with the Chief Executive and Corporate Director.

16. In order to facilitate timely and efficient decision making under the Council's current corporate management arrangements, the following change is proposed:-
- (i) the City and County Treasurer, City and County Solicitor and Chief People and Organisational Development Officer be permitted to exercise the delegated authority given to Corporate Directors under the Scheme of Delegations.
17. The proposal in 16(i) above will ensure that the Council has a reasonable number of senior officers capable of exercising Corporate Director level decisions, so that decisions can be taken in a timely and efficient manner. For the avoidance of doubt, the Corporate Director delegations would: (i) be exercisable by the City and County Treasurer, City and County Solicitor and Chief People and Organisational Development Officer in addition to any other delegated powers currently available to them as Chief Officers under the Scheme of Delegations; and (ii) provided that where such officers exercised a Corporate Director delegation they must comply with all requirements relating to Corporate Director decision (form, publication, call-in etc).

Legal Implications

The Local Government Act 200 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution up to date.

Financial Implications

There are no financial implications arising from this report

Recommendations

The Committee is recommended to:

1. instruct the City and County Solicitor to consult with the service areas concerned as to the proper allocation of the highways and public rights of way functions listed in **Appendix A** (save for paragraph (a) thereof), and report back to this Committee with recommendations in this regard;
2. recommend to Council that pending service area consultation and further consideration by Constitution Committee (as referred to in recommendation 1), the highways and public rights of way functions listed in **Appendix A** (save for paragraph (a) thereof) should remain the responsibility of the Executive;
3. note the updates to the Council's Policy Framework set out in paragraphs 8 and 9 of this report, which are to be made under the Monitoring Officer's delegated authority;

4. recommend to Council that the Gambling Act functions listed in paragraph 12 of this report be determined as Council functions and delegated to the Licensing Committee; and
5. recommend to Council the amendment of the Corporate Director delegations in the Scheme of Delegations as referred to in paragraph 16 of this report.

Kate Berry

City and County Solicitor
12 January 2010

Appendices

- A Highways functions for Local Choice determination (pursuant to SI2009/2983)
- B Corporate Director delegations (Part 3, Section 4B of the Constitution)

**HIGHWAYS FUNCTIONS
For LOCAL CHOICE**

- (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(1) – 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(1) – 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(2) 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).

DELEGATIONS TO CHIEF EXECUTIVE AND CORPORATE DIRECTORS

NOTE: the following delegations must be read in conjunction with the foregoing Sub-Section A which set out the overall basis, limitations, and further provisions which apply to this scheme of delegations.

All Delegated decisions taken in this sub-section, apart from CD1 and CD2 (Council Functions), will be published in the Executive Decision Register, irrespective of whether they are further delegated.

PROVIDED ALWAYS that the decision is:

- a) within budget;**
- b) in accordance with the Council's policy framework;**
- c) in accordance with Council's Financial and Land Procedure Rules and Contracts Procedure Rules;**
- d) in accordance with their Service Area Business Plan; and**
- e) not a matter specifically reserved for Full Council, a Committee of the Council, the Executive or a Statutory Officer,**

The Chief Executive and all Corporate Directors shall be authorised:-

- 1.1 To make any decisions relating to any matter within their area of responsibility ('General Delegation')**
- 1.2 To take appropriate action, which is necessary, to ensure the efficient, equitable and effective delivery of services.**

1.3 To exercise the following Specific Delegations:-

Ref.	Delegation	Form of Evidence
<p>Human Resources CD1</p>	<p>Authority to manage the human resources within their area of responsibility, including the appointment, establishment, salary/grade, training, terms and conditions of employment, health and safety, discipline, suspension and dismissal of staff, in accordance with the Council's HR and financial procedures and subject to appropriate consultation as outlined therein, except where any proposal:-</p> <p>(1) involves the probability of redundancies and/or cannot be implemented within existing budgets, and/or</p> <p>(2) has significant effects on the employment of existing staff in that or any other Council Service Area</p> <p>(Note: in relation to the above it remains the Council's policy to avoid compulsory redundancies where possible. Officer delegations can only be discharged within the Council's Human Resources policies and procedures).</p> <p>Qualification: This may not be further delegated.</p>	<p>Relevant HR Form</p>
<p>CD2</p>	<p>Authority to consider and approve, as appropriate, in consultation with the Chief People and Organisational Development Officer, City and County Treasurer and in accordance with the provisions of the Local Government Pension Scheme and the Council's approved policy and criteria, the early retirement of staff (aged 50 or over) in the following circumstances:</p> <p>(1) in the interests of the efficiency of the service</p> <p>(2) who request voluntary retirement</p> <p>Qualification: This may not be further delegated.</p>	<p>Relevant HR Form</p>
<p>Procurement CD3</p>	<p>To procure works, goods, services and/or supplies and manage all aspects of the contract (except in relation to variations - see CD4; framework arrangements - see FS20 and FS21; or where the Contracts Procedure Rules make contrary provision) where the estimated contract value does not exceed £5,000,000; and in all cases, subject to compliance with Financial Procedure Rules, Contracts Procedure Rules and the Policy</p>	<p>Contract Pre and Post Tender Forms</p>

Ref.	Delegation	Form of Evidence
	<p>and Budget Framework.</p> <p>Qualification: This may not be further delegated.</p>	
CD4	<p>To authorise, issue or approve variations in accordance with the values, as set out in the Contracts Procedure Rules.</p> <p>Qualification: This may not be further delegated.</p>	
CD5	<p>To appoint persons to undertake management consultancy up to a value of £500,000 where the sum is allocated in the budget and for that purpose, subject to compliance with the Contracts Procedure Rules and the Policy and Budget Framework.</p> <p>Qualification: This may not be further delegated.</p>	Contract Pre and Post Tender Forms
Other CD6	<p>Within Service Areas to vire sums not exceeding £250,000 provided under specific public revenue budget heads to other purposes (revenue only), subject to compliance with the Financial Procedure Rules.</p> <p>Qualification: This may not be further delegated.</p>	Virement Form
CD7	<p>Within service areas to vary the approved programme of capital expenditure by an addition or deletion or material modification of an existing project by a virement not exceeding £250,000 to or from another project but subject to the Policy and Budgetary Framework and in accordance with Financial Procedure Rules.</p> <p>Qualification: This may not be further delegated.</p>	Virement Form
CD8	<p>To authorise the disposal or acquisition of land and to be the Designated Body for the purposes of the Procedure Rules for the Acquisition or Disposal of Land in the following cases:</p> <p>For disposals or acquisitions not exceeding £5,000,000, where the amount offered is greater than</p>	Acquisition/ Disposal of

Ref.	Delegation	Form of Evidence
	<p>that estimated by the Lead Strategic Estates Manager or no more than ten percent below that estimate, the offer may be accepted</p> <p>For disposals or acquisitions not exceeding £1,000,000 in value where the proposal is to accept the best offer reasonably obtainable but that is determined other than on price alone</p> <p>For taking or granting of leases at rents not exceeding £1,000,000 pa and agreeing the renewal or restructuring of existing leases for rents not exceeding £1,000,000 pa</p> <p>And provided that the offer that represents the best price reasonably obtainable by the Authority</p> <p>Qualification: This may not be further delegated.</p>	Land Form
CD9	<p>In accordance with any policy or strategy approved by the Executive to consider and determine applications for financial assistance or assistance in kind and to approve or reject applications having a value not exceeding £1,000,000 per grant.</p>	Grant Application Form
CD10	<p>To exercise the rights and responsibilities of the Council as shareholder or member of a company or other body, where no other specific provision has been made.</p> <p>Qualification: This may be further delegated to officers of grade OM1 or above only.</p>	