

CONSTITUTION COMMITTEE:

12 MARCH 2010

REPORT OF THE MONITORING OFFICER

WELSH ASSEMBLY GOVERNMENT CONSULTATION ON
SCRUTINY AND POLITICAL STRUCTURES IN WALES

AGENDA ITEM: 2

Reason for this Report

1. To consider the views of Members on the consultation paper published by the Welsh Assembly Government on scrutiny and political structures in Wales.

Background

2. The Local Democracy, Economic Development and Construction Act 2009 received Royal Assent in November 2009 and provides the National Assembly for Wales with legislative competence in respect of scrutiny and governance matters, including political structures, within local government. As a result, the Welsh Assembly Government is currently seeking views on a number of policy proposals that would be included in a future Assembly Measure to be introduced by the Welsh Assembly Government later this year. A copy of the consultation paper is attached as **Appendix A** to this report.

Issues

3. The consultation paper contains a number of policy proposals, which are grouped according to the following headings:
 - Future development of scrutiny
 - Joint scrutiny committees
 - Co-option of persons other than councilors
 - Scrutiny beyond the functions of a local authority
 - Health scrutiny
 - Imposition of group discipline in scrutiny committees
 - Allocation of scrutiny chairs
 - Forward planning
 - Officer support for scrutiny
 - Reference back of executive decisions

- Review of political structures and council organisation
 - Options for political structures
 - Functions and responsibilities
 - Delegation of functions
 - Forward planning
 - Audit committees
 - Welsh Ministers' powers
 - Strengthening the links with the Community
 - Duty to consult
 - Councillor/community calls for action
 - Promotion of democracy and petitions
4. The Committee is invited to note the policy proposals outlined in the consultation paper and consider whether the Council should submit a formal consultation response to the Welsh Assembly Government.
 5. The consultation period commenced on 16 December 2009 and is due to close on 17 March 2010. However, should the Committee agree to submit a consultation response, the Council intends to submit a draft response to the Welsh Assembly Government by 17 March 2010, which will then be confirmed or amended accordingly following consideration by Council on 25 March 2010.

Finance Implications

6. There are none arising directly out of this report.

Legal Implications

7. There are none arising from the report.

Recommendations

8. The Committee is asked to:
 - i) note the consultation paper published by the Welsh Assembly Government;
 - ii) consider whether the Council should submit a formal consultation response to the Welsh Assembly Government.

KATE BERRY
Monitoring Officer
8 March 2010

Appendix A: Welsh Assembly Government Consultation Paper on Scrutiny and Political Structures in Wales



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

CONSULTATION ON SCRUTINY AND POLITICAL STRUCTURES

16/12/09 – 17/03/10

Background

The Local Government Act 2000 (“the 2000 Act”) introduced executive models, overview and scrutiny committees, provision for the discharge of functions and also enabled principal authorities to opt out of executive models if they wished and adopt alternative arrangements, known in Wales as the Fourth Option (after the two mayoral options and the leader/cabinet model).

Although the Assembly was given limited powers to make secondary legislation in relation to certain issues, in general there was little room to vary the basic structures introduced through the 2000 Act. The main areas in which secondary legislative powers (now vested in the Welsh Ministers) are already available, are:

- To create an additional executive model
- To enable executives to arrange for the discharge of their functions to area committees, joint committees or to another authority
- To enable authorities to change their political structures
- To allow local authorities to opt for “alternative” (non-executive) arrangements, and
- How to deal with petitions for an elected mayor.

We have now entered an era in Wales, however, where our path for the development of public service diverges somewhat from that operating in England; the introduction of the Making the Connections agenda, the Beecham review, Local Service Boards and regional cooperation amongst local authorities. On top of this, the Government of Wales Act 2006 gives the National Assembly for Wales (“the Assembly”) the power to pass legislation known as Assembly Measures in relation to those “matters” (listed in “fields” in Part 1 of Schedule 5) which are within the Assembly’s legislative competence.

The Local Democracy, Economic Development and Construction Act 2009 (“the 2009 Act”) includes provisions which confer on the National Assembly legislative competence with respect to scrutiny and governance matters in local government.. The policy proposals set out in this consultation document flow from that competence

and would be included in an Assembly Measure which the Assembly Government intends to introduce to the Assembly in 2010.

Future development of scrutiny

1. Joint scrutiny committees

The creation of Local Service Boards and regional partnership boards of local authorities, as well as budget constraints and the need for efficiencies have changed the strategic situation facing local government. This period is likely to be characterized by an increase in services being delivered through partnerships of two or more local authorities or by local authorities collaborating with other organisations within the public sector.

Current legislation requires each principal council to operate overview and scrutiny committees, with powers to scrutinise and develop policies in relation to their own authority's functions, including those of the executive, as well as in relation to social, environmental and economic issues affecting their area. However, there are no legislative provisions which enable the creation of joint scrutiny committees with other local authorities, even though there have been occasional instances of these being established on a short-term, informal, basis. Such joint committees offer the advantage of reviewing services which span county boundaries but lack any teeth in relation to them.

The Assembly Government proposes that local authorities should be able to create joint scrutiny committees with one or more local authorities. Such joint committees would have similar powers to single-authority scrutiny committees in relation to each authority involved in its membership.

The nominations for membership of joint committees from each constituent authority should reflect political balance within that authority and the same number of members should be nominated by each authority. The process for deciding on the appointment of the chairs and vice-chair posts should be agreed between constituent authorities.

We propose that Welsh local authorities should be able to form joint scrutiny committees with neighbouring English authorities. However, the National Assembly cannot legislate for English local government, so their participation in such a body would be dependent on any legal constraints placed upon them.

2. Co-option of persons other than councillors

Scrutiny can be strengthened by co-opting expert advisers, citizens' representatives or people from other outside bodies such as other public service deliverers or third sector organisations. This could enhance the authority of local authority scrutiny in the eyes of other bodies, their users and citizens more generally. At present, other than in limited specific circumstances, no co-optee can vote. The exception is the position of parent governors and church representatives who sit as voting members of education scrutiny committees (see also paragraph below on crime and disorder scrutiny committees). The Assembly Government wishes to advance the position of co-optees

whilst still recognising the unique authority of the locally elected members to represent their constituents.

The Assembly Government proposes that local authorities be enabled to co-opt people to scrutiny committees other than elected councillors and allow them voting powers. Local authorities would be able to decide on the appropriateness of such a move but the Welsh Ministers should have a fallback power to direct authorities to co-opt if felt necessary to do so (for instance, if this seemed necessary to ensure the cooperation of outside public bodies).

The total number of co-optees on a scrutiny committee should not outnumber the elected members on that committee, although such a provision could be disapplied for scrutiny sub-committees, so that a number of co-options could be made without requiring a regard for balance in the elected members.

Any voting co-optees are to be treated as being members of the authority and subject to the members' code of conduct. They should have the same power as elected members to propose agenda items, including those which "call-in" executive decisions. Best practice in relation to co-option will be included in guidance.

3. Scrutiny beyond the functions of a local authority

Currently, scrutiny committees have power under Section 21 of the 2000 Act 'to make reports or recommendations to the authority or the executive on matters which affect the authority's area or the inhabitants of that area'. They are not, therefore, confined to examining local authority functions but they have no statutory powers to require cooperation from bodies outside the authority.

If local authority scrutiny committees are to operate successfully in the era of local service boards, shared services etc, they will need to relate to organisations other than their own authority. At present, scrutiny committees can require executive members and officers of their own authority to attend their proceedings but only invite others from outside their authorities.

The Assembly Government intends to strengthen provisions so that there be a requirement on local authorities that they take responsibility for scrutinising the delivery of public services in their area (but see below with respect to Health). Scrutiny committees would be able to require representatives of deliverers of devolved public services to provide information and/or to attend when invited to do so. Any such organisations would have to provide an explanation to the scrutiny chair in the event of a refusal to attend. The bodies which would be subject to scrutiny would be listed in regulations to be made by Welsh Ministers prior to the measure coming into force.

It should be noted that from October 2009, local authorities need to establish crime and disorder scrutiny committees, under the provisions of sections 19 and 20 of the

Police and Justice Act 2006. These have the responsibility for scrutinising the work of the local community safety partnership (CSP) and its constituent bodies (with respect to their crime and disorder roles). Under Home Office regulations, these committees will be able to co-opt representatives from the CSP organisations and give them voting rights. The committees will also be able to require representatives of CSP organisations to attend and/or provide information.

4. Health scrutiny

The National Health Service in Wales has been subject to significant reform in the recent period, which is still underway. Consideration is being given to the future role of Community Health Councils (CHCs) and their relationship with the new Local Health Boards (LHBs). At the time of writing, their configuration is undecided. Whereas in England, local authorities have had a responsibility to scrutinise the NHS in their area since 2003, that has not been the case in Wales, partly because of the continued existence of CHCs (abolished in England). However, local authorities work closely with LHBs in the preparation of Health, Social Care and Well-being Strategies and Children and Young People's Plans and they have a close interest in the NHS and its inter-relationship with social services provision. They are also vital partners within Local Service Boards.

A number of initiatives have already been taken to improve scrutiny processes in this field. A pilot exercise, supported by the Assembly Government's Scrutiny Development Fund, is under way in Carmarthenshire whereby the county council and CHC are developing joint scrutiny of health and social services and Cardiff City Council have established a pilot scrutiny panel for their LSB which involves representatives from health and other bodies, in a voting capacity, to examine to work of the LSB.

The Assembly Government wishes to encourage local authorities, CHCs and LHBs to take account of these experiments and any others which may develop. Legislative steps in relation to scrutiny in this area will be revisited following a review of these projects, allowing time for the health restructuring to bed in and for relationship between CHCs and local authority scrutiny to be tested.

5. Imposition of group discipline in scrutiny committees

Turning to the rules under which scrutiny committees currently operate, it has been suggested that "whipping" can undermine effective scrutiny. Current guidance already emphasises that the party whip should not be used in the business of overview and scrutiny committees.

Scrutiny is viewed as an arena in which policy examination and review should be as independent as possible. Whipping does not sit easily with this. Scrutiny is not a decision-making process and whipping could stifle fully independent scrutiny. Abolishing whipping would still allow members of scrutiny committees to discuss their voting intentions and to decide, if they wished, to vote along party/group lines.

The Assembly Government proposes that political groups should be prevented from imposing voting instructions on members of a scrutiny committee and from imposing discipline on a member of a scrutiny committee as a result of their voting in a particular fashion.

6. Allocation of scrutiny chairs

A further issue in the operation of independent scrutiny is that some councils have appointed chairs of scrutiny committees who are all members of the same political group(s) as the members of the executive.

This practice can give an impression that scrutiny is not fully independent or that special responsibility allowances paid to chairs of scrutiny committees represented patronage by the ruling leadership.

Scrutiny works most effectively where chairs and members feel free from constraint and able to act effectively as a check and balance to the leadership. Constructive criticism should lead to better policy development.

The Assembly Government proposes that chairs of scrutiny committees should be allocated at least in proportion to the political balance of an authority. This will not prevent an authority from allocating a greater proportion of chairs to members of political groups outside the executive if they see fit. Nor would it prevent an authority from avoiding this requirement, provided there was unanimity in support of this. Committee vice-chairs should be decided upon by the membership of the committee.

In the event of a political group refusing to take up its allocation of chairs, the post should be offered to another political group not represented in the executive or, in the absence of such, be decided upon by the committee itself.

7. Forward planning

Many authorities already operate scrutiny in a way which is well planned and has a healthy balance between the scrutiny and policy development role. However, the 2007 research report by CRG Research on “The Role and Functions of Elected Members” found that examples also existed of scrutiny committees being “swamped” with paperwork and ploughing through reams of executive decisions. It is preferable if scrutiny committees organise their work in a planned way.

It is not a requirement that scrutiny committees consider every decision made by cabinet. It can be far more productive for them to take longer considering policy areas in greater detail. The public should also have the opportunity of knowing when particular policy areas are being reviewed and follow the deliberations of the scrutiny committee if they wish.

We propose that scrutiny committees should be required to produce forward work plans and publish them on their council web pages. In drawing up their forward plans, committees would be obliged to have regard to the cabinet

forward plan, their authority’s joint risk assessment, local delivery agreement and (when existent) outcome agreements.

8. Officer support for scrutiny

If scrutiny is to operate effectively, it must be provided with adequate officer support. This support should be discreet and should be overseen by an officer with sufficient seniority to ensure that scrutiny is able to punch its weight within the officer structure. Failure to provide reasonable levels of officer support leads to inadequate research and administration. It is noticeable that inadequate scrutiny is usually highlighted in reports by regulators/inspectors where service delivery failure threatens.

The Assembly Government proposes to place a requirement on local authorities to provide adequate, independent officer support for scrutiny and to have regard to any guidance produced by the Assembly Government in relation to this matter. Such support could be shared between different authorities. We do not propose to follow the route of the statutory scrutiny officer, as introduced for England, but would welcome views on this matter.

9. Reference back of executive decisions

The National Assembly’s Health, Wellbeing and Local Government Committee in its report “Inquiry into Local Government Scrutiny and Overview Arrangements” recommended that “the Assembly Government should strengthen and clarify the guidance on call-ins with a strong predisposition towards allowing call-ins in all circumstances except where there are clear exceptional reasons for doing otherwise”. The term “call-in” refers to the power of scrutiny committees to consider an executive decision which has been made but not implemented and to ask the executive to reconsider.

The Assembly Government supports the general point of the Health, Wellbeing and Local Government Committee and intends to address it within statutory guidance. This will include reference to safeguards to deal with vexatious or repetitive attempts at call-ins.

Review of political structures and council organisation

10. Options for political structures

We have now had more than 7 years of formal experience of the political structures introduced through the Local Government Act 2000. There has been little support for mayoral models in Wales and none expressed for the option of elected mayor plus council manager, recently removed as an option in England by the Local Government and Public Involvement in Health Act 2007.

The Fourth Option (“alternative arrangements”) has operated in three councils since the introduction of the option in 2002. Although, as yet, no formal approach has been made to the Assembly Government by any of the three councils to change, the structure has not always been comfortable. Difficulties have arisen at various times in

relation to the creation of coherent leaderships, the relationship between the board and full council and the relationship between boards and area committees. The Assembly Government is not convinced that the Fourth Option has clearly demonstrated an improvement in transparency and effectiveness and it seeks to provide for the possibility of executive models being made sufficiently flexible to suit all principal councils. For instance, the current restrictions on the maximum size of area committees under executive arrangements, (that they must not represent more than 40 percent of either the area or the populations of an area) could be revisited.

The Assembly Government proposes to remove the “mayor and council manager” option. We will make it easier for local authorities to change their political models (subject to this not happening more than once every four years. All political models will need to include a leader or elected mayor plus a cabinet/executive, though this may include the possibility of a politically balanced cabinet. (Note: In this case, the executive would reflect the balance immediately following the four-yearly full council elections and be in place for the full term of the council)

It is proposed to introduce greater flexibility in the rules governing the establishment of area committees compared to existing executive models.

11. Functions and responsibilities

At present, complex regulations¹ specify the statutory functions of local authorities which must not, or may not, be the responsibility of executives or boards. The general principle is that core council functions should be the responsibility of the executive or board and responsibility for functions should also be transparent.

The Assembly Government intends to simplify the current system, so that “fields” of activity would be stipulated which would not be appropriate for executive responsibility, allowing authorities themselves to decide on fine detail and allowing more functions to be subject to local choice. Welsh Ministers would have a fall-back power of direction in relation to this matter.

12. Delegation of functions

The introduction of Local Service Boards opens the way by which decisions might be reached by those boards. There are already arrangements available which allow local authorities to form joint committees with other local authorities and delegate decision-making functions to those committees. The same does not apply, however, to committees formed with other public bodies which are not county or county borough councils.

It is proposed that local authorities will be able to delegate decision-making powers to executive members representing them on Local Service Boards or other partnerships. Any such decisions will need to be recorded and published in the same way as other executive decisions.

¹ The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007
The Local Authorities (Alternative Arrangements) (Wales) Regulations 2007

13. Forward planning

The research report on the Role and Functions of Elected Members recommended that executives should be obliged to publish forward plans of their work programme for the period ahead. This would enable the more efficient organisation of scrutiny as well as enabling greater public transparency.

The Assembly Government proposes to make it a requirement that executives should publish forward plans on their websites. These should be rolling documents covering a period of six months ahead and subject to quarterly update. Guidance would make reference to the extent of detail required.

14. Audit committees

The Assembly Government has endorsed CIPFA's 2005 guidance to local authorities on the establishment of audit committees, as distinct bodies from the executive or scrutiny function. This recognises the complexity of local authorities as multi-million pound service delivery organisations. Audit committees are seen as an essential check on financial propriety and may also identify opportunities for efficiencies.

We propose to make the establishment of audit committees a requirement and that the arrangements for appointment of members should be a function of the full council. It is proposed that the Chair of the audit committee be a lay person, as in the case of standards committees, and that a maximum of one third of the membership also be lay appointees.

15. Welsh Ministers' powers

The Welsh Ministers' powers of intervention in the operation of a local authority are largely confined to instances where there is a threat to the delivery of essential public services. There are very limited powers in the event of political impasse or breakdown.

There may be circumstances in which political impasse prevents the authority from making decisions or otherwise making effective governance possible.

It is proposed that Welsh Ministers be empowered to intervene in the operation of a local authority when there is an actual or perceived threat to the effective discharge of functions, as identified within a report of an inspector/regulator.

Strengthening the links with the Community

16. Duty to consult

Following the recommendation of "Beyond Boundaries: Citizen-Centred Local Services for Wales" to develop citizen-centred scrutiny, a number of options for involving the citizen in the scrutiny process have been discussed and piloted in

various councils. Local authorities are already under obligations to consult as part of the development of their strategic plans.

It is proposed that scrutiny committees should be placed under an obligation to provide the public an opportunity to contribute to policy reviews by scrutiny committees.

17. Councillor/community calls for action

The Local Government and Public Involvement in Health Act 2007 introduced the provisions necessary for the operation of community, or councillor, calls for action (CCfAs) in England.

A further form of CCfA was introduced for the scrutiny of crime and disorder matters, under the provisions of sections 19 and 20 of the Police and Justice Act 2006 in April 2009 for England and in October 2009 for Wales. In essence, CCfAs under the Police and Justice Act 2006 empower local communities and local councillors. Should a local community feel they have a crime and disorder problem which falls within the responsibility of their local authority, they may raise it with their local member. The local member could be empowered, through a delegation of budgets and responsibility, to remedy the problem themselves if practical to do so. If that is not practical, he could ensure that the matter was discussed at the relevant scrutiny committee, who, in turn, could require the executive/board to investigate and produce a report on the matter. This would be fed back to the community through the local member.

The Assembly Government proposes to introduce the provisions enabling CCfAs in policy areas beyond that of crime and disorder. Such provisions would be supported by guidance as to how to deal with frivolous or repetitive bids. Local authorities would be empowered to provide for functions and budgets to be delegated to councillors for use within their local community area.

18. Promotion of democracy and petitions

The 2009 Act includes provisions in relation to Petitions and the Promotion of Democracy. It imposes duties on local authorities to promote understanding of the opportunities for members of the public to influence the work of local authorities and other local public bodies. The provisions apply to England and Wales but Welsh Ministers have discretion as to when they are commenced in Wales.

In brief, the provisions place a duty on local authorities to promote understanding of their functions, their democratic arrangements and how members of the public can take part and what taking part is likely to involve.

In addition, there is a duty on principal local authorities to promote understanding of public bodies (referred to as 'connected authorities') which cover the authority's area, explaining what they do and their democratic arrangements, and how members of the public can take part and what this is likely to involve. Allied to this is a duty to promote understanding among local people of courts boards, independent monitoring boards for prisons and immigration removal centres, Youth Offending Teams and lay justices and how local people might play a role in these.

The 2009 Act places duties on councils in relation to electronic petitions signed by those who live, work or study in the local area. They must make, publicise and comply with a scheme for handling both paper and electronic petitions, so that local decision-making about petitions is more transparent, by requiring them to publicly respond to petitions which meet certain criteria.

The provisions give an automatic right for the matter raised in a petition to be debated by the full council if more than a specified number of people have signed it. Welsh Ministers have the power to issue guidance as to the threshold figure which is appropriate and to specify by order a threshold figure applicable to all principal authorities, or to direct a principal authority to amend its petitions scheme, including the threshold specified in it.

Under the 2009 Act, certain senior council officers could, as a result of a petition, be called to account at a scrutiny meeting, though councils could determine which of their officers are liable to be called to account.

The Welsh Ministers have power to issue guidance in relation to the petition function. This includes a power to create a model petitions scheme which authorities will be able to adopt and a power to direct an individual authority to amend its petition scheme.

The Assembly Government proposes to commence these provisions so as to come into force at the same time as provisions in the Assembly Measure. We will consult on guidance on the promotion of democracy and on petitions. We will also consult on whether other local authorities (community councils, national parks, fire and rescue authorities) should be subject to petition schemes.

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>	