

CONSTITUTION COMMITTEE:

REPORT OF THE MONITORING OFFICER

AGENDA ITEM: 5

Review of Decision Making Arrangements – Scoping Report

Reason for this Report

1. To allow Members to consider the priorities for, and extent of, a review of the Council's decision making arrangements.

Background

2. The Council is required to keep its Constitution under review and has delegated this function to the Constitution Committee as follows:

'To review the Council's Constitution, and to recommend to Council and/or the Cabinet 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).'

3. The Constitution Committee has delegated authority to the Monitoring Officer to make amendments to the Constitution in respect of:

- (a) amending typographical and minor drafting errors;
- (b) updating to reflect legislative changes and matters of record; and
- (c) drafting improvements to enhance clarity and remove minor anomalies

(Constitution Committee 08/09/08 Minute 6, point 3).

4. The Constitution Committee at its meeting on 20th September 2012 agreed a timetable to review the Constitution and to prioritise areas for review. Following completion of the review of the Council Procedure Rules, the next area scheduled for review is delegations.
5. At its meeting on 12th March 2013, the Committee received a presentation from the Monitoring Officer on delegations, and agreed that a scoping report should be submitted to its next meeting, setting out potential aspects of the Council's decision making arrangements for review.

Issues

6. The current Scheme of Delegations was approved in July 2006 (taking effect in October 2006), and whilst it has been amended from time to time, it still largely reflects the approach to decision making of the administration at that time. Since the adoption of the Scheme, the Council's administration, senior management arrangements and ways of working have changed. The Committee now has the opportunity to consider what changes to the Council's decision making arrangements may be required in order to suitably reflect these changes in the Council and ensure that decision making is effective, transparent and accountable.
7. Decision making arrangements need to balance proper democratic process with operational expediency, so that significant decisions are taken by those who are accountable to the electorate, whilst still ensuring the Authority makes timely and effective decisions, with appropriate professional advice, and the checks and balances that scrutiny brings to ensure propriety and transparency in the decisions made.

Current Scheme of Delegations and Legal Framework

8. Responsibility for discharging the various functions of the Council is allocated between full Council, the Cabinet, Committees and officers, and the current arrangements are set out in Part 3 of the Constitution, 'Responsibility for Functions' ('the Scheme of Delegations' or 'the Scheme'). The allocation of functions reflects their statutory classification as either 'Council Functions' or 'Executive Functions'. (There is a third category of 'Local Choice Functions', which the Authority must allocate to either the Council or the Executive – the list of such functions and their current allocation is set out in Section 3 of the Scheme.)
9. 'Council Functions' may be discharged by full Council or delegated to a Committee or an officer (or a Joint Committee or another authority). Council Functions may not be discharged by the Cabinet. Council Functions include the adoption of the budget and policy framework and certain other matters which must by law be reserved to full Council; and various other ('Non-Executive') functions such as planning and licensing, most of which the

Council has delegated to Committees – as listed and shown in Annex 1 to the Scheme of Delegations. The responsible Committee may decide to further delegate certain functions to an appropriate senior officer, e.g. non-contentious planning applications.

10. 'Executive Functions' may be reserved for discharge by the Cabinet collectively, or allocated to an individual member of the Cabinet, or delegated to a committee of the Cabinet or an officer (or a Joint Committee or the executive of another authority). Any decision in respect of an Executive Function (regardless of the decision maker) is referred to as an 'Executive Decision' – please see paragraph 32 below. Section 2 of the Scheme of Delegations lists those functions which are currently reserved to the Cabinet (but permit the Cabinet to delegate a decision on a specific matter to a senior officer). The current Scheme makes no provision for decision making by individual Cabinet Members nor by any committees of the Cabinet. All Executive Functions which have not been reserved to the Cabinet (or delegated to a joint committee) are delegated to officers in accordance with the provisions of the Officer Delegations set out in Section 4 of the Scheme.
11. The arrangement of the current Scheme of Delegations is explained in **Appendix A**, and the full Scheme can be found in Part 3 of the Constitution.

Potential areas of decision making for review

(i) Decision making by Members

12. Members may be involved in collective decision making as members of Council, the Cabinet or any Committee, on any matter within the responsibility of that body.
13. In addition to Members' collective decision making powers, as noted in the paragraph above, the law also allows the Authority to grant decision making powers to individual Cabinet members (under executive arrangements adopted by the Council pursuant to Part II of the Local Government Act 2000). Whilst the Constitution, Article 7 'The Cabinet', and the Cabinet Procedure Rules reflect this as a possible option, the current Scheme of Delegations makes no provision for individual Cabinet Member decisions, as the previous Administration favoured collective Cabinet decision making.
14. The current Administration has indicated that it favours a different approach. The Leader, in her letter to the Chair of this Committee last September, suggested issues for consideration by the Committee, including the administration's proposal to place Cabinet members at the heart of decision making. The Leader asked that consideration be given by this Committee to the Authority's scheme of delegations placing responsibility with individual Cabinet members who in turn would then be able to delegate decision making to officials within defined limits. The Leader further suggested that there should be financial limits in place which define when officials can make decisions without reference to elected members, when Cabinet members can

decide without reference to the Cabinet, and when decisions are reserved for collective Cabinet decisions.

15. The exercise of delegated authority by an individual Cabinet member would be subject to the same requirements as is applicable to any other Executive decision, such as appropriate consultation, advice and record keeping, and is also subject to call-in and scrutiny by a Scrutiny Committee/s.
16. Members may wish to note that in 2002/3, the Authority had an Executive Functions Scheme of Delegations under which individual Cabinet members had delegated authority, within their areas of responsibility, to make various decisions including:
 - Agreeing responses to petitions in respect of services within their portfolio;
 - Agreeing submission of bids for additional resources;
 - Determining responses to reports from Scrutiny Committees;
 - Approving acceptance of tenders valued from £1,000,000 to £5,000,000;
 - Approving the write-off of individual debts up to £50,000; and
 - Approving the sale or purchase of land valued £1,000,000 to £5,000,000 (Cabinet member with responsibility for Resources only).
17. The Committee is invited to consider whether it wishes to consider the issue of decision making by individual Cabinet Members; by individual non-executive Members; and/or any other aspects of Member decision making.

(ii) Decision making by Officers

18. Whilst decisions concerning or impacting upon policy, budget, strategy, and quasi-judicial matters (such as planning and licensing) are properly reserved to elected members who are accountable for their decisions to the electorate, there are operational and administrative decisions required to be taken on a daily basis, which may properly be delegated to officers to ensure the efficient and effective conduct of the Council's business.
19. Section 4 of the Scheme of Delegations sets out the current delegations to officers. In addition to the functions delegated to officers under the Scheme, the Council, Cabinet or any Committee may also delegate certain functions or decisions to a specific senior officer.
20. Members will note that the current Scheme does not reflect the revised senior management structure which was approved by Cabinet on 11th October 2012, and is due to take effect once the relevant appointments have been made. A separate report is being submitted to this Committee meeting, 'Officer Delegations – Changes in Management Arrangements', recommending amendments to the Scheme to allow the new post-holders to discharge the responsibilities of their posts as soon as their appointments commence. It is recommended that a general review of officer delegations should be undertaken once the revised structure is fully implemented.

21. Members may also wish to note that under the current arrangements, officers are given delegated authority to take most operational decisions, up to high financial thresholds, provided they are in accordance with the Authority's approved budget and policy framework and relevant procedure rules. For illustration purposes the majority of the matters listed in paragraph 16 above (powers delegated to individual Cabinet Members under the 2002/03 arrangements), are currently delegated to the Council's senior officers, in the Corporate Management Team.

(iii) Procurement decisions

22. The rules for procurements are set out in the Council's Contract Standing Orders and the Scheme of Delegations. Under current arrangements, procurement decisions may be taken, dependent on the value of the procurement, as follows:

- Cabinet – over £5 million
- Chief Executive, Chief Operating Officer and Corporate Chief Officers – up to £5 million
- Chief Officers – up to £1 million
- Operational Managers – up to £250,000,

Any procurement outside the budgetary framework requires the approval of full Council (for example, Project Gwyrdd.)

23. On behalf of the Community and Adult Services Scrutiny Committee, the Chair, Councillor Patel, in a letter to the Chief Executive dated August 2012, expressed his concern regarding the current Scheme's provisions for the Authority's senior officers to make decisions on procurements valued up to £5,000,000 without the requirement of any input from elected Members. (Members should note that, whilst there is no requirement for Member approval, the officer delegation is subject to various stipulated conditions, including compliance with the approved budget and policy framework and procedure rules, and does require officers to brief relevant Members and ensure they are properly kept informed.) In his letter, Councillor Patel has expressed the view that there should be Member input into procurement decisions.

24. Members may wish to give consideration to procurement decision making having regard to:

- (i) The nature of the procurement, in that certain types of procurement may be sensitive, for example, social services procurements such as the provision of domiciliary care to individuals with learning disabilities;
- (ii) The value of the procurement, with reference to paragraphs 22 and 23 above; and
- (iii) The impact on achieving wider Council policies, such as social and economic benefits.

25. The Council's Contract Standing Orders are currently being reviewed by a team of officers. Revised rules are being drafted to reflect model rules issued by the Welsh Local Government Association, developments in procurement law, collaboration with partner authorities and category management work undertaken by the Council's Procurement Office. Any proposed changes to the Scheme of Delegations will also be reflected in the new draft Contract Rules.
26. It is proposed, with the Constitution Committee's agreement, to submit a report on the draft new Rules to this Committee for consideration and approval in the Summer / Autumn of this year, with a view to the revised rules being introduced, following a lead-in period for implementation and training, in April 2014.

(iv) Property decisions

27. The rules for property disposals and acquisitions are set out in the Council's Procedure Rules for the Acquisition and Disposal of Land and the Scheme of Delegations. Under current arrangements, property decisions may be taken, dependent on the value of the transaction, as follows:
- Cabinet – over £5 million
 - Chief Executive, Chief Operating Officer and Corporate Chief Officers (may not be delegated) – up to £5 million
 - Corporate Chief Officer, Corporate Services (may authorise or delegate) – up to £1 million
 - Strategic Estates Officer – smaller transactions,

Any price outside the budgetary framework requires the approval of full Council.

28. The Council holds "investment" land which it acquired for development purposes, eg. the Sports Village. Disposal of such land for a proper purpose is not normally a policy issue, provided the Council is obtaining the best price or rent reasonably obtainable. The Council also holds "operational" land and buildings, such as playing fields, school land, depots, officers etc. Declaring such assets as surplus to requirements does normally involve a policy decision, as another service area may have a use for the asset, or a community use may be preferable to a market disposal. A proper consultation process is needed in this respect. However, the Council is responsible for a large number of small land transactions, such as lettings on shopping parades and industrial estates, and it is not feasible to have a consultation process on every one of those. As with planning, the system would grind to a halt in the absence of fully delegated decision making for everyday disposals.
29. In January 2011, the Constitution Committee approved a revised procedural policy for the Disposal of Council Property, which intended to increase the limit on the power delegated to the Chief Corporate Services & Section 151 Officer (which may be delegated to, and exercised by, the Strategic Estates Officer) to deal with land and property transactions to a maximum value of £1 million, subject to certain limitations. The policy also introduced a new

process for dealing with surplus land and property. Certain amendments need to be made to ensure clarity and consistency within the Constitution. This will be the subject of a report to a future meeting of this Committee.

(v) Transparency and Scrutiny of Decision Making

30. Good governance under executive arrangements requires that Executive Decisions are open and transparent, so that it is clear who took the decision and the reasons for it, and so that the decision can be subject to proper scrutiny and challenge. This is understood to be particularly relevant to Executive Decisions as such decisions are the responsibility of a relatively small number of elected members.

There are statutory provisions which govern the recording of Executive Decisions taken by the Cabinet (collectively) or individual Cabinet members (the Local Authorities (Executive Arrangements)(Decisions, Documents and Meetings)(Wales) Regulations 2001, as amended). All decisions taken by Cabinet Members (collectively and individually) must be published and are subject to call-in

31. There is no such legal requirement for authorities in Wales to publish Executive Decisions taken by officers. WAG Guidance (Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, paragraph 5.25) advises that executive officer decisions should be recorded and that such record should be available on request to scrutiny committee members, individual councillors and to the public (subject to any lawful constraints for exempt or confidential information). The Guidance further suggests that the degree of detail required should be proportionate to the nature of the decision and sufficient to provide a clear audit trail. Arrangements in respect of Executive Decisions taken by officers are left to individual authorities to determine as a matter of good practice.
32. Members should note that scrutiny committees are statutorily empowered to scrutinise any decision which is the responsibility of the Executive (pursuant to section 21(2)(a) of the Local Government Act 2000), which includes any Executive Decision delegated to an officer (or allocated to an individual Cabinet Member.)
33. Under the current Scheme of Delegations, all Executive Decisions of the Cabinet, Chief Executive and Chief Operating Officer; and most Corporate Chief Officer decisions must be published and are subject to call-in (in accordance with the Scrutiny Procedure Rules). However, these requirements do not currently apply to Chief Officer / Heads of Service decisions (set out in Section 4C of the Scheme), nor to those decisions of the Corporate Chief Officers made under the specific delegations to Statutory Officers (Section 4E of the Scheme) or Other Officers (Section 4F of the Scheme).
34. Those officer decisions which are not currently required to be published or subject to scrutiny call-in include some significant decisions, such as the

tender and award of contracts up to £1 million (CO3). Changes in the senior management structure, specifically, the reduced number of Corporate Directors / Officers, may mean that more significant decisions are being delegated down to Chief Officer level, for example, by the Cabinet. The Committee may wish to consider whether some of these significant decisions should be subject to publication and call-in requirements.

35. However, the Chief Officer delegations (in Section 4C of the Scheme) and the Specific Officer delegations (in Sections 4E and 4F of the Scheme) also contain less significant decisions such as approving write-offs of up to £5,000 (CO12), and administrative decisions such as decisions of the Section 151 Officer to operate the Council's bank account (FS10). It may be disproportionate and untenable for some of these operational and or administrative decisions to be subject to publication and call-in requirements.
36. The Committee is invited to consider whether it wishes to review the Council's arrangements regarding publication and call-in of officer decisions, as adapted to reflect the new senior management structure, and consider whether these arrangements reflect best practice or whether revised arrangements should be introduced.
37. Members may also wish to consider scrutiny arrangements more widely, having regard to the provisions of the Scrutiny Procedure Rules, and in consultation with Scrutiny Committees. Specific issues which the Committee may wish to consider include:
 - (i) Pre-decision scrutiny – whether the current arrangements are providing sufficient early sight and effective involvement in matters of interest; and
 - (ii) Call-in criteria and/or procedures – whether these require review.
- (vi) Other issues
38. Members may wish to consider whether there are other aspects of the decision making arrangements which they wish to review, such as:
 - (i) Council Functions (Sections 1A and 1B of the Scheme – see paragraph 7 above) –Members may wish to review the allocation of such functions between full Council and its Committees, or may be content that the current delegations to Committees (as set out in Annex 1 to the Scheme) remain appropriate.
 - (ii) Local Choice Functions (Section 3 of the Scheme – see paragraph 7 above) –Members may wish to review the allocation of such functions between Council and the Cabinet, or may be content that the current allocations remain appropriate.
 - (iii) Any other aspects or issues pertaining to decision making.
39. Members are invited to consider and comment on the issues set out above, agree the aspects of decision making arrangements which the Committee

wishes to review and the associated timescale, and instruct the Monitoring Officer to prepare further reports to allow those matters to be progressed.

Legal Implications

40. The Local Government Act 2000 and the Local Authority Constitution (Wales) Direction 2002 requires the authority to keep its constitution under review and up to date. Article 14 of the Constitution provides for such review and amendment, and requires that any changes to the Council Scheme of Delegations must be approved by the Council.
41. There are no direct legal implications arising from the recommendations of this report.

Financial Implications

42. There are no financial implications arising from this report

Recommendations

The Committee is recommended to:

- (i) Note the information contained in the report and make any appropriate comments;
- (ii) Agree the aspects of the Council's decision making arrangements which the Committee wishes to review and the associated timescale; and
- (iii) Request the Monitoring Officer to bring back future reports to this Committee setting out options for consideration, in respect of those aspects of the Council's decision making arrangements which are to be reviewed by the Committee.

Melanie Clay

Chief Officer, Legal & Democratic Services and Monitoring Officer
9 May 2013

Appendices

Appendix A – Arrangement of Current Scheme of Delegations

Background papers

National Assembly for Wales, Guidance for County and County Borough Councils in Wales on Executive and Alternative Arrangements 2006, SI 2006 No. 56

APPENDIX A

Current Scheme of Delegations

The current Scheme of Delegations is arranged as follows:

- Section 1A 'Council Functions' lists those Council Functions which the Authority has agreed can only be discharged by full Council. This includes the adoption of the budget and policy framework and certain other matters which, by law, must be reserved to full Council.
- Section 1B 'Non-Executive Functions' refers to those functions which, by law, cannot be the responsibility of the executive (Cabinet), that is, they must be discharged (or delegated) by Council. The Council has delegated most, but not all, of these functions to Committees. These functions and the allocation of responsibility approved by Council are listed in Annex 1 to the Scheme (and Annex 2 sets out the Terms of Reference of the Council's Committees, reflecting those responsibilities).
- Section 2 'Cabinet Functions' lists the Executive Functions which have been reserved for decision by the Cabinet (but may be delegated by the Cabinet to an officer under the current Scheme).
- Section 3 'Local Choice Functions' lists the functions which the Council is required to allocate to either the Council or the Cabinet, and the allocation of responsibility for these functions which has been approved by this Authority.
- Section 4 'Officer Delegations' sets out the current delegations to officers, approved by the Executive and Council as part of the Scheme. Members should note that in addition to the delegations set out here, officers may also be given delegations by the Cabinet, the Council or Committees in respect of any matter within their respective responsibilities.
- Section 5 'Delegations to Joint Committees' sets out the approved delegations to Joint Committees.