

Report of the Director of Corporate Services

Democratic Services Committee – 3 December 2014

LOCAL GOVERNMENT (WALES) MEASURE 2011 - SCRUTINY MANAGEMENT

Purpose:	To discuss the role and functions of the Head of Democratic Services; Democratic Services Committee and Scrutiny.
Policy Framework:	None.
Reason for Decision:	For Information Only
Consultation:	Finance, Legal.
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1. Introduction

- 1.1 The Local Government (Wales) Measure 2011 (The Measure) sets out the role and functions of the Head of Democratic Services; Democratic Services Committee and Scrutiny.
- 1.2 The specific areas of the Measure are as follows:
 - i) Part 1 “Strengthening Local Democracy”, Chapter 2 “Local Authority Democratic Services”
 - a) Part 8 “Head of Democratic Services”;
 - b) Part 9 “Democratic Services Functions”.
 - ii) Part 6 “Overview and Scrutiny”, Chapter 1 “Overview and Scrutiny Committees”.
- 1.3 The Welsh Government stated that the main intention of the Measure was to strengthen the role of Councillors, particularly those serving outside of the Council’s leadership, in carrying out their important duties and functions.
- 1.4 The Measure also introduced Democratic Services Committees whose role is to ensure that the non-executive role of Councillors is fully supported, including when they are acting in the crucial role of scrutineers.

1.5 The Welsh Government stated that all Councillors have crucial roles to undertake. However, it is vital that those who are not part of the leadership recognise the important and essential mandate they have to scrutinise and hold the leadership to account and, through that scrutiny, ensure that our public services are effective and efficient. Strong local democracy is essential to the delivery of good public services in order to identify any weaknesses in service delivery and to propose improvements. In that sense, the non-executive Councillor is the eyes, ears and voice of the electors they represent and it is vital that they play a full and vigorous role in scrutiny.

2. Democratic Services Committee of 11 September 2014 and Beyond

2.1 At the Democratic Services Committee held on 11 September 2014 concerns were raised namely:

- a) That the City and County of Swansea were not complying with the Local Government (Wales) Measure 2011 in that the Head of Democratic Services did not line manage the Scrutiny function within the Authority;
- b) There was lack of clarity as to who was accountable for scrutiny arrangements.

2.2 In order to clarify the position Frank Cuthbert of the Welsh Government was to be invited to the next meeting in order to discuss the present arrangements.

2.3 There followed a meeting between the Welsh Government and the Head of Legal, Democratic Services and Procurement together with his Deputy on 12 September 2014 to discuss the resolution of the Committee. At that stage Welsh Government was minded to decline the meeting.

2.4 With a view to assisting the Committee, on 22 October, the Deputy Monitoring Officer and Head of Democratic Services met with Frank Cuthbert to discuss the present scrutiny arrangements and any suggestions for improvement.

2.5 The Welsh Government stated that the policy intention behind Sections 8 and 9 of the 2011 Measure was that management of scrutiny should be the responsibility of the Head of Democratic Services. However, it was accepted by Welsh Government that the Measure did not specify that all scrutiny functions should fall to the Head of Democratic Services and that the Welsh Government Guidance does stress the need to avoid diluting the effectiveness of existing arrangements.

2.6 There followed a formal written invitation to Welsh Government to attend the meeting on 3 December. This invitation has been declined. Welsh Government have advised that they consider it more appropriate to allow internal discussions. Welsh Government have seen the proposals as set out in paragraph 5 of this Report

3. Functions of the Head of Democratic Services

- 3.1 Part 1 “Strengthening Local Democracy”, Chapter 2 “Local Authority Democratic Services”, Part 9 “Democratic Services Functions” sets out the functions of the Head of Democratic Services.
- 3.2 Relevant extracts from Part 1 “Strengthening Local Democracy”, Chapter 2 “Local Authority Democratic Services” of the Local Government (Wales) Measure 2011 to may be viewed in **Appendix A**.
- 3.3 Relevant extracts from the Statutory Guidance issued under Section 16 of the Local Government (Wales) Measure 2011 in relation to the Democratic Services Committee may be viewed in **Appendix B**.
- 3.4 The specific function of the Head of Democratic Services in relation to Scrutiny is set out below:

“ ...

- (d) *To promote the role of the Authority's Overview and Scrutiny Committee or Committees;*
- (e) *To provide support and advice to:*
- (i) *The Authority's Overview and Scrutiny Committee or Committees and the members of that Committee or those Committees, and*
- (ii) *The Authority's Democratic Services Committee and the members of that Committee;*
- (f) *To provide support and advice in relation to the functions of the Authority's Overview and Scrutiny Committee or Committees to each of the following:*
- (i) *Members of the Authority;*
- (ii) *Members of the Executive of the Authority;*
- (iii) *Officers of the Authority; ...”*

4. Accountability for Scrutiny

- 4.1 There is no direct reference in the Measure to the line management of staff. In particular there is no reference to the Head of Democratic Services having to line manage scrutiny officers.
- 4.1 The Scrutiny Manager is responsible for all aspects of Scrutiny including direct line management of the scrutiny team.

- 4.2 The Head of Democratic Services is responsible and accountable for all aspects relating to Scrutiny as defined by the Local Government (Wales) Measure 2011. This includes the promotion, support and advice.
- 4.3 It is also worth noting that the former Welsh Government Local Government Minister singled out Swansea as a beacon of best practice with regard to the delivery of its Scrutiny function.

5. Strengthening Current Arrangements

- 5.1 The Head of Democratic Services and Scrutiny Manager currently enjoy an effective and professional working relationship with regard to the provision of support, advice and the promotion of Scrutiny. These discussions are part and parcel of their day to day responsibilities and the normal expectations upon Officers to deliver the Council's objectives through close collaboration.
- 5.2 In light of the discussions at the Democratic Services Committee of 11 September 2014, the opportunity has been taken to strengthen further the current arrangements by implementing the following additional measures:
- i) **Democratic Services Committee Annual Report.** This will include a section on Democratic Services and Scrutiny, Team Structures, Meetings, Training and associated issues. This will be presented to the Committee and to Council annually.
 - ii) **Quarterly Meetings** between Chair of Democratic Services, Chair of Scrutiny Programme Committee, Councillor Support and Development Member Champion, Head of Democratic Services and the Scrutiny Manager.
 - iii) **Annual Presentation to the Scrutiny Programme Committee** by the Chair of Democratic Services and Head of Democratic Services.
 - iv) **Annual Presentation to the Democratic Services Committee** by the Chair of Scrutiny Programme Committee and Scrutiny Manager.

6. Equality and Engagement Implications

- 6.1 An Equality Impact Assessment (EIA) screening process took place prior to the consultation period. The outcome indicated that it was low priority and a full report was not required.

7. Financial Implications

- 7.1 There are no financial implications associated with this report.

8. Legal Implications

- 8.1 There are no legal implications other than those set out in the body of the report.

Background Papers: None.

Appendices: None.

Relevant Extract from the Local Government (Wales) Measure 2011

Part 1 – Strengthening Local Democracy

Chapter 2 – Local Authority Democratic Services

8 Head of Democratic Services

- (1) A local authority must—
 - (a) Designate one of its officers to discharge the functions in section 9 (“democratic services functions”);
 - (b) Provide that officer with such staff, accommodation and other resources as are, in its opinion, sufficient to allow his or her functions to be discharged.
- (2) A head of democratic services may arrange for the discharge of democratic services functions by staff provided under this section.
- (3) An officer designated by a local authority under this section is to be known as the head of democratic services.
- (4) A local authority may not designate any of the following under this section—
 - (a) The Head of the Authority's paid service designated under section 4 of the Local Government and Housing Act 1989;
 - (b) The authority's monitoring officer designated under section 5 of that Act;
 - (c) The authority's chief finance officer, within the meaning of that section.

9 Democratic Services Functions

- (1) The functions of the head of democratic services are—
 - (a) To provide support and advice to the authority in relation to its meetings, subject to subsection (2);
 - (b) To provide support and advice to committees of the authority (other than the committees mentioned in paragraph (e)) and the members of those committees, subject to subsection (2);
 - (c) To provide support and advice to any joint committee which a local authority is responsible for organising and the members of that committee, subject to subsection (2);

- (d) To promote the role of the authority's overview and scrutiny committee or committees;
 - (e) To provide support and advice to—
 - (i) The authority's overview and scrutiny committee or committees and the members of that committee or those committees, and
 - (ii) The authority's democratic services committee and the members of that committee;
 - (f) To provide support and advice in relation to the functions of the authority's overview and scrutiny committee or committees to each of the following—
 - (i) Members of the authority;
 - (ii) Members of the executive of the authority;
 - (iii) Officers of the authority;
 - (g) To provide support and advice to each member of the authority in carrying out the role of member of the authority, subject to subsection (3);
 - (h) To make reports and recommendations in respect of any of the following—
 - (i) The number and grades of staff required to discharge democratic services functions;
 - (ii) The appointment of staff to discharge democratic services functions;
 - (iii) The organisation and proper management of staff discharging democratic services functions;
 - (i) Such other functions as may be prescribed.
- (2) The references to “advice” in paragraphs (a) to (c) do not include advice about whether or how the authority's functions should be, or should have been, exercised.
- (3) The following kinds of support and advice are not to be considered as support and advice for the purposes of subsection (1)(g)—
- (a) Support and advice to a member of the authority in discharging that member's functions as part of the executive of the authority (except as provided for under subsection (1)(f));

- (b) Advice about whether or how the authority's functions should be, or should have been, exercised in relation to any matter under consideration, or to be considered, at a meeting of the authority, a committee referred to in subsection (1)(b) or a joint committee which a local authority is responsible for organising.
- (4) Nothing in subsection (1)(h) affects the duty of the head of paid service in section 4(2) of the Local Government and Housing Act 1989.
- (5) In this section, references to a committee (or joint committee) include references to any sub-committee of that committee.

10 Duty to Adopt Standing Orders about Management of Staff

Section not relevant for this discussion.

11 Local Authorities to Appoint Democratic Services Committees

- (1) A local authority must appoint a committee (“a democratic services committee”) to—
 - (a) Exercise the function of the local authority under section 8(1)(a) (designation of head of democratic services),
 - (b) Review the adequacy of provision by the authority of staff, accommodation and other resources to discharge democratic services functions, and
 - (c) Make reports and recommendations to the authority in relation to such provision.
- (2) It is for a democratic services committee to determine how to exercise those functions.

12 Membership

Section not relevant for this discussion.

13 Sub Committees

Section not relevant for this discussion.

14 Proceedings etc.

- (1) A local authority is to appoint the person who is to chair the democratic services committee (who must not be a member of an executive group).
- (2) If there are no opposition groups, the person who is to chair the democratic services committee may be a member of an executive group but must not be a member of the local authority's executive.

- (3) A democratic services committee is to appoint the person who is to chair any sub-committee of such a committee.
- (4) All members of a democratic services committee, or of a sub-committee of such a committee, may vote on any question that falls to be decided by the committee.
- (5) A democratic services committee of a local authority, or a sub-committee of such a committee—
 - (a) May require members and officers of the authority to attend before it to answer questions, and
 - (b) May invite other persons to attend meetings of the committee.
- (6) It is the duty of any member or officer of a local authority to comply with any requirement imposed under subsection (5)(a).
- (7) A person is not obliged by subsection (6) to answer any question which the person would be entitled to refuse to answer in, or for the purposes of, proceedings in a court in England and Wales.
- (8) A democratic services committee, or a sub-committee of such a committee, is to be treated as a committee, or sub-committee, of a principal council for the purposes of Part 5A of the Local Government Act 1972 (access to meetings and documents of certain authorities, committees and sub-committees).
- (9) For the purposes of subsections (1) and (2), the expressions “executive group” and “opposition group” have the same meaning as in section 75.

15 Frequency of Meetings

- (1) A democratic services committee must meet once in every calendar year.
- (2) The democratic services committee of a local authority must also meet if—
 - (a) The local authority resolves that the committee should meet, or
 - (b) At least one-third of the members of the committee requisition a meeting by one or more notices in writing given to the person who chairs the committee.
- (3) It is the duty of the person who chairs a democratic services committee to secure that meetings of the committee are held as required by subsections (1) and (2).
- (4) This section does not prevent a democratic services committee from meeting otherwise than as required by this section.

16 Discharging Functions

- (1) A democratic services committee may not exercise any functions other than its functions under this Chapter.
- (2) In exercising, or deciding whether to exercise any of its functions, a democratic services committee, or a sub-committee of such a committee, must have regard to guidance given by the Welsh Ministers.

17 Termination of Membership on Ceasing to be Member of Authority

Section not relevant for this discussion.

18 Reports and Recommendations by Head of Democratic Services

- (1) The head of democratic services for a local authority must, as soon as practicable after preparing a report or making a recommendation under section 9(1)(h), send to each member of the authority's democratic services committee a copy of the report or recommendation.
- (2) A democratic services committee must consider any report or recommendation sent to the members of the committee under this section at a meeting held not more than three months after copies of the report are first sent to members of the committee.

19 Reports and Recommendations by Democratic Services Committees

- (1) A democratic services committee for a local authority must, as soon as practicable after it has prepared a report or made a recommendation under section 11(1)(c), arrange for a copy of it to be sent to each member of the authority who is not a member of the committee.
- (2) A local authority must consider any report or recommendations at a meeting held not more than three months after copies of the report or recommendation are first sent to members of the authority.

20 Local Authority Functions not to be Delegated

The functions of a local authority under sections 8(1), 11, 12(1) and (2), 14(1), 15(2)(a) and 19(2) are not to be delegated under section 101 of the Local Government Act 1972.

**Relevant Extract from the Statutory Guidance issued under Section 16 of the
Local Government (Wales) Measure 2011**

Chapter 3 Democratic Services Committee

Introduction

- 3.1 The Measure contains provisions related to the strengthening of local democracy. Chapter 2 of this Part deals with “local authority democratic services”. Most principal councils will have a part of their organisation which bears the title “democratic services” or something similar but this is the first time that such provision is being made in legislation.
- 3.2 The provisions in Part 1 flow from proposals developed in the report of the Councillor Commission Expert Panel Wales, “*Are we being served?*” published in 2009. It expressed the view that, since the introduction of executive structures through the Local Government Act 2000, insufficient attention had been given to ensuring that the needs of those councillors outside the executive, the overwhelming majority, were being well provided for.
- 3.3 The Panel therefore proposed that “*consideration should be given to a legal separation of the executive and non-executive functions of the council, with separate funding streams, that would protect the central provision of members’ services.*”
- 3.4 Although the Welsh Government did not support that proposal in full, mainly because it implied considerable organisational upheaval and likely expense, it nevertheless agreed with the gist of the argument, that those councillors outside the leadership needed safeguards to ensure they were able to fulfil their duties and play a full role in the operation of the local authority.
- 3.5 This guidance is provided to assist local authorities and, where directed at democratic services committees, constitutes guidance under section 16 of the Measure.

What the Measure requires

- 3.6 Each county and county borough council is required to designate one of their officers to the new statutory post of “Head of Democratic Services” (HDS) and provide that officer with sufficient support to do their job (section 8(1)).
- 3.7 The person designated as HDS must not be the council’s Head of Paid Service, Monitoring Officer or Chief Finance Officer (section 8(4)). The post of HDS is a politically restricted post within the meaning of the Local Government and Housing Act 1989 (section 21); and the designation must be made by the democratic services committee (section 11(1)(a)).

- 3.8 The HDS would be able to delegate any of his/her functions to any of his/her staff (section 8(2)).

The functions of the HDS are –

- (a) To provide support and advice (but see note 1 below)
- To the authority in relation to its meetings;
- To committees of the authority and the members of those committees;
- To any joint committee which a local authority is responsible for organising and the members of that committee;
- In relation to the functions of the authority's overview and scrutiny committee(s), to members of the authority, members of the executive and officers;
- To each member of the authority in carrying out the role of member of the authority (but see note 2 below);
- (b) To promote the role of the authority's overview and scrutiny committee(s);
- (c) To make reports and recommendations in respect of the number and grades of staff required to discharge democratic services functions and the appointment, organisation and proper management of those staff;
- (d) Any other functions prescribed by the Welsh Ministers.

[Notes

1. The function of providing advice about whether or how the authority's functions should be, or should have been, exercised, only applies to advice concerning the functions of the overview and scrutiny and democratic services committees;
2. In this case, advice to a member does not include advice in connection with their role as an executive member, and does not include advice about a matter being or to be considered at a meeting (other than a meeting of an overview and scrutiny or democratic services committee).]

- 3.9 The Measure enables Welsh Ministers to make regulations requiring local authorities to include within their standing orders provisions concerning the management of the staff provided to the HDS. For these purposes, "management of staff" does not include appointment, dismissal or disciplinary action (section 10).

3.10 Each council must also establish a democratic services committee (DSC) to perform the following roles (section 11):

- Carry out the local authority's function of designating the HDS;
- Keep under review the provision of staff, accommodation and other resources made available to the HDS, in order to ensure that it is adequate for the responsibilities of the post;
- Make reports to the full council in relation to these matters.

Each DSC can decide how it carries out these functions.

3.11 The full council must appoint the members of the DSC, which must consist solely of councillors and cannot include more than one member of the executive, who must not be the council leader. The rules concerning allocation of seats to political groups apply to the DSC.

3.12 The council must also appoint the chair of the DSC, who must not be a member of any of the political groups represented in the executive. The exception to this is when a council has no opposition groups. In this case, any member of the DSC can be appointed as chair **provided** the member is not a member of the executive (section 14((1), (2) and (9)).

3.13 The DSC can appoint its own sub-committees and delegate functions to them (section 13). The DSC appoints the chair of any sub-committee (section 14(3)).

3.14 A DSC has the power to require the attendance of any members or officers of the council to answer questions and can invite anyone else it likes to do so also. If a member or officer is required to attend they must answer any questions unless the question is one which they would be entitled to refuse in a court (section 14(5) to (7)).

3.15 DSC meetings and sub-committees are to be open to the public as is normal in council meetings and subject to the same regime of accessibility in general (section 14(8)). The DSC must meet at least once a year (section 15(1)) and, additionally if the full council so decides or at least a third of the members of the DSC demands a meeting (section 15(2)). There is no limit on the maximum number of meetings a DSC may hold. The onus lies on the chair to ensure that meetings are held when required (section 15(3)).

3.16 The DSC must have regard to guidance from Welsh Ministers when exercising its functions (section 16(2)).

3.17 Any report presented to the DSC by the HDS must be considered by the DSC within three months. Similarly, any report made by the DSC must be considered by the full council within three months (sections 18 and 19).

Functions of the DSC

Designating the Head of Democratic Services

- 3.18 Only the DSC or a sub-committee of the DSC can designate the HDS. How this operates in practice will vary and a DSC can decide itself how it wishes to do this. In many cases, there will be an obvious person who already fulfils much of the HDS function. One would expect the Head of Paid Service to make a recommendation to the DSC as to who would be a suitable candidate.
- 3.19 It should be made clear that the person designated as HDS is not prevented from performing other roles within the authority. Just as the Monitoring Officer will often have other duties to perform outside his/her statutory role, so too could the HDS. Local authorities should take care to ensure that any other duties do not conflict with their HDS role.
- 3.20 However, the DSC will need to be satisfied that the person designated has sufficient time to conduct his/her functions despite any other roles they may have.
- 3.21 When a new HDS is required, again the DSC could designate an existing officer or, if it felt there was no-one suitable, could agree with the Chief Executive or relevant members(s) that the post should be advertised externally, in which case the procedures for appointing staff described in the council's standing orders must be followed. It would be a sensible arrangement for the DSC to be consulted on the advertising, interview and selection process, even though it would be the authority, not the DSC, which would appoint as the employing body. The appointment could, however, be made subject to the DSC subsequently designating the selected person as HDS. The Welsh Government will consider amending the Local Authority (Standing Orders) (Wales) Regulations 2006 to encompass the role of the HDS.

Staff and resources for democratic services

- 3.22 It is the function of the DSC to consider, and make recommendations as to, the adequacy of the provision of staff, accommodation and other resources for the exercise of the functions which fall to the HDS. The functions known in many local authorities as members' services, committee services and overview and scrutiny support would fall within the HDS responsibilities.
- 3.23 In some councils, the scrutiny function has not been part of what has previously been known as "Democratic Services" and these arrangements may well have worked well. It is important to note that the HDS designation created by the Measure will probably not be identical to any previous post with the same or similar name. However, in taking responsibility for promoting the scrutiny function and providing support and advice as indicated in section 9, it will be important to take care not to dilute the effectiveness of existing arrangements.

In particular any arrangement already in place to provide advice in relation to the scrutiny function and research and analysis should not be weakened as a result of establishing these new arrangements. The HDS would need to present a report to the DSC describing what s/he feels to be a reasonable level of support for democratic services functions.

The DSC, however, could not make the final decision on these matters. It would need to submit its own report to the full council, arguing the case for necessary resource. It may well be that full council will modify or reject the DSC's report, in which case it could be advisable for the DSC to consider alternative proposals, which may involve a period of negotiation involving the HDS, Chief Finance Officer and the appropriate executive councillor.

- 3.24 The final decision on resources will rest with full council. However, the Measure places the responsibility on the authority itself to ensure that the HDS is provided with sufficient staff, accommodation and other resources as are, in the council's opinion, sufficient to allow the HDSs functions to be discharged (section 8(1)(b)) and it will therefore need to explain any decision not in keeping with the recommendations of the DSC.