

TO: Councillor: Robin Guest (Chairman)

Councillors: Bernie Attridge, David Barratt, Chris Bithell, Carolyn Cattermoul, Glenys Diskin JP, Quentin Dodd, Veronica Gay, Alison Halford, George Hardcastle, Patrick Heesom, Dennis Hutchinson, Eng. Klaus Armstrong-Braun, Peter Macfarlane, Peter Pemberton, Neville Phillips OBE, Tony Sharps, Aaron Shotton, Nigel Steele-Mortimer, Arnold Woolley

Your Ref /
Eich Cyf

Our Ref / Ein Cyf

Date / Dyddiad 10/12/2009

Ask for /
Gofynner am Mike Thomas

Direct Dial /
Rhif Union 01352 702324

Fax / Ffacs

Dear Sir / Madam,

A meeting of the **CONSTITUTION COMMITTEE** will be held in the **DELYN COMMITTEE ROOM, COUNTY HALL, MOLD** on **THURSDAY, 17 DECEMBER 2009** at **10:00** to consider the following items.

Yours faithfully



Assistant Director (Democratic Services)

AGENDA

1. **APOLOGIES**
2. **DECLARATIONS OF INTEREST (INCLUDING WHIPPING DECLARATIONS)**
3. **MINUTES**
To confirm as a correct record the minutes of the meeting held on 28/07/2009 (copy enclosed).
4. **OVERVIEW & SCRUTINY COMMITTEE STRUCTURE**
Report of Head of Legal and Democratic Services enclosed

County Hall, Mold. CH7 6NA
Tel. 01352 702400 DX 708591 Mold 4
www.flintshire.gov.uk
Neuadd y Sir, Yr Wyddgrug. CH7 6NR
Ffôn 01352 702400 DX 708591 Mold 4
www.siryfflint.gov.uk

5. **REGULATION OF INVESTIGATORY POWERS ACT AUTHORIZING OFFICERS**
Report of Head of Legal and Democratic Services enclosed
6. **FORMAT OF MINUTES**
Report of Head of Legal and Democratic Services enclosed
7. **CHAMPIONS**
Report of Head of Legal and Democratic Services enclosed
8. **CORPORATE GOVERNANCE - SELF-ASSESSMENT**
Report of Head of Legal and Democratic Services enclosed
9. **CHANGES TO THE FUNCTIONS AND RESPONSIBILITIES OF THE COUNCIL AND THE EXECUTIVE**
Report of Monitoring Officer enclosed
10. **CHAIR / VICE-CHAIR OF PLANNING & DEVELOPMENT CONTROL COMMITTEE**
Report of Monitoring Officer enclosed
11. **PLANNING PROTOCOL WORKING GROUP MEETING 11 DECEMBER, 2009**
To consider any recommendations to the Constitution Committee arising from the above meeting.

CONSTITUTION COMMITTEE
28TH JULY 2009

Minutes of the meeting of the Constitution Committee of Flintshire County Council held in County Hall, Mold on Tuesday 28th July 2009.

PRESENT: Councillor R J T Guest (Chairman)

Councillors: Eng K Armstrong-Braun, J B Attridge, R C Bithell, G D Diskin, QRH Dodd, A M Halford, P Heesom, H D Hutchinson, P R Pemberton, N Phillips, and N R Steele-Mortimer

SUBSTITUTES: Councillors: C Jones for D Barratt, E G Cooke for G Hardcastle, S Jones for R P Macfarlane, A Minshull for A P Shotton and C Thomas for M Higham

APOLOGIES: Councillor: A Woolley

IN ATTENDANCE:

Head of Legal and Democratic Services, Assistant Director (Democratic Services),
Head of Overview and Scrutiny and Democratic Services Manager.

23. DECLARATIONS OF INTEREST

None were received.

24. MINUTES

(a) Accuracy

RESOLVED

That the minutes of the meeting held on 12th March 2009 be confirmed as a correct record.

(b) Matters Arising

Councillor P Pemberton referred to minute number 18 (b) and the issues of the submission of late reports. He accepted that there were very few reports which were not now despatched with the agenda. However, he felt that agendas and reports, particularly when they were substantial, should be despatched to Members earlier to give them an opportunity to read them in good time for the meeting. Councillor Eng K Armstrong-Braun expressed a view that he did not think there was a problem and that staff had considerable work at present to prepare the reports and it would cause an unnecessary burden to have them earlier. The Chairman indicated that the comments of Councillor Pemberton had been noted but that at present there was a system being examined where Members had been given the choice to opt for alternative methods for the receipt of agenda and reports. The Assistant Director (Democratic Services) confirmed that this was being progressed. The Chairman indicated there may well be teething problems with the new system and that if Members had any concerns they should contact the Democratic Services Manager.

25. OVERVIEW AND SCRUTINY MEMBER AND OFFICE OPINION SURVEYS

The report of the Head of Legal and Democratic Services Officer was submitted, the purpose of which was to consider the outcomes of the Member and Officer surveys on Overview and Scrutiny. The report detailed the background to its preparation. It was reported that at a meeting of the Overview and Scrutiny Co-ordinating Committee on 3rd December 2008 consideration had been given to a report of the Welsh Scrutiny Champions Network meeting of the 3rd October 2008. During consideration of the item, at that meeting, the Chairman of this Committee explained he felt it was important that there was full Member consultation on any future arrangements for Overview and Scrutiny and suggested joint working between this Committee and the Co-ordinating Committee. The Co-ordinating Committee agreed that a meeting be arranged between the two Chairmen and Officers to prepare a questionnaire for completion by Members with the results reported to a later meeting of the two Committees.

Following the Co-ordinating Committee meeting, the Chief Executive advised that the contents of the proposed questionnaire should be considered by this Committee prior to its distribution to Members given the commitment to review the structure of the Overview and Scrutiny function. It was noted that a report had been presented to the meeting on 12th March 2009 when the proposed Member consultation of the Overview and Scrutiny function was approved. The said questionnaire was prepared and also sent to Senior Managers to obtain their observations on the Overview and Scrutiny arrangements. The return date for the questionnaire was extended until the end of May 2009.

The Assistant Director (Democratic Services) reported that responses to the questionnaire had been received from 42 Members and 11 Officers and these had been tabulated and were attached as Appendices 1 and 2 respectively. The report detailed how the questionnaire had been constructed and how the scores were interpreted. The responses to the Member and Officers surveys had been reported to the meeting of the Co-ordinating Committee on 16th July 2009. At that meeting each part of the survey was considered in turn and its views summarised within the report. The report explained there were six sections within the survey and to what they related. Prior to the Assistant Director presenting the report, Councillor P Pemberton expressed his disappointment that there had only been 42 responses from Members on the questionnaire, the Chairman expressed similar disappointment.

The Assistant Director then reported upon Section 1 (planning overview and scrutiny work) and the response to this section was generally positive and this was accepted by Members of the Committee. Councillor P G Heesom expressed caution if there was a move to reduce the number of Members on Overview and Scrutiny Committees and explained his reasons for this. Councillor R C Bithell responded by indicating that Overview and Scrutiny Committees were often poorly attended and Councillor J B Attridge commented that many Members left well before the meeting had been concluded. The Chairman indicated that at this stage the Committee would not be formulating a response in isolation but would consider this at the end of the discussion. The Head of Overview and Scrutiny advised that certain Scrutiny Chairs and Vice Chairs had indicated they were taking on board some of the comments made within this section.

The Assistant Director (Democratic Services) then presented Section 2 (Working Practices) and commented upon the key areas within this section. He referred in particular to question 14 in this section where there was a negative score and this was in relation to the involvement of Overview and Scrutiny in policy making. Councillor R C Bithell felt that Overview and Scrutiny had a role to play in the policy making process and could act as a very good sounding board. He also referred to a comment in relation to "views expressed at Overview and Scrutiny should not be as a result of a group whip". Speaking on behalf of his own group he indicated there was no such instruction and in fact referred to his experience when he was an Executive Member when his Group Members were very vociferous in making their comments at Overview and Scrutiny Committees. Councillor H D Hutchinson expressed similar sentiments in relation to his own group and his current role as an Executive Member. Councillor Eng K Armstrong-Braun referred to a comment in relation to "plain English" and felt this would be assisted if there were a summary of lengthy reports which would make reading easier. There was a suggestion that there was merit in the development of task and finish groups.

The Assistant Director (Democratic Services) continued to Section 3 (Relationship with Executive). A discussion ensued in relation to the issue of Call-ins. Certain Members had commented that there had been a recent increase in the number of Call-ins. Councillor K Armstrong-Braun expressed a view that this should be examined because in certain cases he felt they were not undertaken for the proper reasons. The Head of Overview and Scrutiny advised of the procedure whereby the reasons for Call-ins had to be given. Councillor P Pemberton commented that they were often the last resort because it was the only opportunity for Members to comment on a particular issue. He felt there was merit in all issues being processed through the scrutiny function. Various Members suggested that there was no difference between the number of Call-ins instituted by respective administrations. In this respect the Head of Overview and Scrutiny Committee advised that the relevant figures showed a slight decrease. He also expressed a view that it would not be advantageous for all items to be considered by Overview and Scrutiny in the first instance, although it was a practice in some Authorities, because it would not allow the Overview and Scrutiny Committees to undertake their proper function and would slow down the process.

Councillor J B Attridge referred to a Call-in when the Chief Executive of the Authority commented upon the appropriateness of it being undertaken. Councillor P G Heesom also felt that they were a necessary part of the process. Councillor H D Hutchinson in his role of the Executive Member had welcomed the Call-in on a particular topic which he felt had been properly addressed and the situation improved because of it. The Assistant Director (Democratic Services) explained that the Call-in procedure was part of the mechanism for the Executive to be held to account.

The Assistant Director (Democratic Services) then went on to refer to Section 4 (Officer Support). Councillor R C Bithell commented that many of the reports that went to Overview and Scrutiny were of a high standard and reflected well on Officer support. Councillor Eng K Armstrong-Braun felt there was merit in recruiting more research staff to assist the Overview and Scrutiny function. Following on from this point, Councillor P G Heesom referred to the fact that the current arrangements did not allow support for political groups. The Head of Legal and Democratic Services

advised that the Council had decided not to pursue the issue of the retention of political assistants and in fact there had been no calls for it. The Head of Overview and Scrutiny reported that in the current economic climate with the Council looking to make savings it would not be appropriate for research assistants to be employed. In fact he commented on how fortunate he was because Flintshire had a high number of staff dedicated to the Overview and Scrutiny function compared with other North Wales Authorities. He indicated that in 2006 he had offered up a post of facilitator for redundancy to identify a saving to be in-line with other departments of the Council who at that time had lost staff. Councillor R C Bithell on the general principal of research indicated that Members had a role to play in this respect and referred to the support Members currently receive in the Authority which had been considerably enhanced over the years. He felt it was for Members in their own right to undertake the research.

Councillor C Thomas commented upon the excellent work undertaken by the Task and Finish groups and the Overview and Scrutiny Committees and how she had enjoyed her involvement with them. However, she was concerned that if there was a considerable increase in the number of Task and Finish groups it could have implications on staffing workloads.

The Committee then considered Section 5 (Overview and Scrutiny Committee structure) where a considerable discussion ensued. The Assistant Director (Democratic Services) explained that the Officers survey had resulted in a low score for the current Committee structure and expanded upon some of the points made. The Assistant Director (Democratic Services) explained that Appendix 3 to the report contained a suggested restructure of the Overview and Scrutiny Committees to reflect the results of the surveys. Councillor J B Attridge referred to discussions at the Overview and Scrutiny Co-ordinating Committee when there was reference to the possible consideration of other models. However, the Assistant Director (Democratic Services) was satisfied that Paragraph 3.08 of the report was an accurate reflection of the views of that Committee. Councillor J B Attridge indicated that other options should be considered because he felt that the merger of the terms reference of Social and Health with Community and Housing would create too much workload for a single Committee. This was supported by Councillor S Jones but not by Councillor Eng K Armstrong-Braun. Councillor P G Heesom expressed the view that Community and Housing could be combined with Environment and Regeneration Committee. Members also commented that whilst there was merit in aligning the Committees to the new Directorates there were some considerable detailed topic areas in certain Directorates and there would not be time to address all of these. The Chairman felt that there was merit in other options being considered and felt that this was the correct forum for such matters to be discussed. Councillor Eng K Armstrong-Braun felt it was important for what some people felt were minor issues not to be ignored. He was also of the opinion that Officers views should be taken into account. He suggested that the points made could be taken on board and report back to the Committee with these options considered, where if necessary, a special meeting could be held. The Head of Legal and Democratic Services indicated that further work could be undertaken on the suggestions received but it would not be necessary to call a special meeting of the Committee because there was an acceptance that the current arrangements were working reasonably well. The Head of Legal and Democratic Services also indicated that draft guidance from the Welsh Assembly

Government may have been received and then that could be incorporated into the review of the Committees.

With regard to the Crime and Disorder aspect it would be necessary for the Committee to make a decision on that because the issues would be under discussion with effect from 1st October 2009 and it would be necessary to confirm which Committee would be undertaking that work.

Councillor J B Attridge indicated that if the Scrutiny function was being examined it would be appropriate for this Committee to also look at the role of the Executive. However, the Chairman felt that was not within the remit and control of this Committee and that it was tasked with dealing with the Overview and Scrutiny function and this was accepted by the Committee. There was a general feeling that a deferment on this issue would be beneficial for further information to be collated.

The Chairman indicated that if Members wished to make any suggestions they should submit them to the Assistant Director (Democratic Services) who would incorporate them in any future reports. To assist this process it was agreed that this should be done by the end of August 2009. It was confirmed that a letter would be despatched to all Members to bring this to their attention.

RESOLVED:

- (a) That a decision on the amendments to the committee structure for Overview and Scrutiny be deferred pending a further report to consider any alternative models suggested by Members by the end of August.
- (b) That with effect from 1st October 2009 the Corporate Overview and Scrutiny Committee be responsible for dealing with the issues relating to the new Crime and Disorder powers and the Head of Legal and Democratic Services have delegated power to make any necessary Constitutional changes.

26. PROCEDURE TO REDUCE THE RISK OF AWARDS OF COSTS AGAINST THE COUNCIL IN PLANNING APPEALS

The report of the Head of Legal and Democratic Services was considered, the purpose of which was to consider a recommendation from the Planning Protocol Working Group to introduce a procedure for reducing the risk of costs being awarded against the Council when Members exercised their right to refuse applications which Officers had recommended for permission. The report detailed the background to its preparation and the Committee was informed that the report of the Head of Planning to the Planning and Development Control Committee gave reasons for when the Officer recommendations warranted a refusal and gave recommended conditions when the Officer recommendation was to grant permission. On occasions Member could decide that an application recommended for permission should be refused. In these circumstances the applicant had the right of appeal to the Planning Inspectorate once a Certificate had been issued. The Assistant Director (Democratic Services) explained that an award of costs could be made against either party to an appeal if that party had acted unreasonably and the report detailed the relevant criteria. It was noted that where costs were against the Authority they could amount to a significant sum to reflect the expenses to which the appellant had been put as a result of the

Authority acting unreasonably. Subsequently at a meeting of the Planning Protocol Working Group on 10th June 2009 it considered a report suggesting a way in which the risk of an award of costs being made against the Council could be reduced where Members decided to refuse an application recommended for permission. It was therefore decided that another report be submitted to a subsequent meeting of the working group. An amended report was submitted to the Working Group held on 17th July 2009 and the amended procedure in that report was agreed as a recommendation to this Committee.

The report detailed the considerations that should be taken into account in dealing with this issue. Councillor J B Attridge referred to other issues relating to this whereby an Officer of the Council, who had written reports to the Planning Committee with a specific recommendation, the same Officer had appeared at the appeal to defend the case which was in fact made against his recommendation. It was noted that this was an issue currently being addressed by the Planning Protocol Working Group. The Head of Legal and Democratic Services reported upon his role as the Monitoring Officer in the recommended process and the powers he currently had to deal with applications which caused him concern.

Councillor N R Steele-Mortimer enquired whether there was a necessity for this decision to be made as he was not convinced that there was an issue to be addressed. He enquired on the number of cases where this had been an issue over recent years and the Head of Legal and Democratic Services gave an approximate figure. It was explained that the Head of Planning was preparing information on this. Councillor Mrs S Jones supported the views of Councillor N R Steele-Mortimer.

Councillor P G Heesom expressed a personal view that a number of recommendations on planning issues were as a result of recommendations of a report undertaken by the Council's external Auditors PricewaterhouseCoopers and felt that in many cases such recommendations were not necessary. Councillor R C Bithell had no objection to the principle but was concerned with the reference in the recommendation when it referred to the Monitoring Officer consulting the "Members concerned" and how this could be identified. The Head of Legal and Democratic Services explained this and clarified and that it was often dependent upon the case in consideration. The recommendation had been duly proposed and seconded. However, Councillor N R Steele-Mortimer proposed an amendment whereby a decision on this recommendation be suspended until information was made available from the Head of Planning in relation to the costs of appeals in recent years. This was duly seconded and on being put to the vote was lost. By way of reassurance, Councillor A Halford explained that a number of these issues involving planning protocol were in fact work in progress which the Head of Planning was actively pursuing.

RESOLVED:

That subject to the above clarification of "the Members concerned" in Paragraph 3.03 of the report the recommendation be agreed.

27. THIRD PARTY REPRESENTATIONS AT PLANNING COMMITTEE AND SITE VISITS

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was for Members to consider the recommendations of the Planning Protocol Working Group held on 10th June 2009 introducing third party representations, that was public speaking at Planning and Development Control Committees, and to agree a protocol for effective implementation.

It was also for the Committee to consider an amended protocol for Planning and Development Control Committee site visits to take into account the proposed amended committee procedures concerning third party representations. The report detailed the background to its preparation and identified the recommendation agreed at a meeting of the Planning Protocol Working Group held on 10th June 2009 and that the recommendation was to be referred to this Committee for consideration.

Also attached to the report was the protocol for public speaking which was included within the Planning Protocol Working Group report.

The Committee was informed that at its meeting held on 17th July 2009 the Planning Protocol Working Group considered a report of the Head of Planning on the Protocol for Planning and Development Control Committee site visits and a copy of that report was attached as Appendix B to the report together with a copy of the Resolution from that Committee. It was explained that if the recommendation was accepted by the Committee it was hoped to have third party representation procedure in place as early as possible and this would therefore also require the implementation of the site visits protocol. Members generally welcomed this development however Councillor Eng K Armstrong-Braun felt that time allocated for third party representatives to speak was too restrictive and referred to practices of other Authorities whereby they were given up to 10 minutes to speak. He proposed this as an amendment but was not seconded.

Members felt that a leaflet be prepared on the protocol in relation to third party representations. It was agreed that delegation be granted to the Head of Legal and Democratic Services to amend the Code of Best Practice for Planning Procedure to avoid it being returned to this Committee to reflect the new protocols.

RESOLVED:

- (a) That the recommendations of the Planning Protocol Working Group be approved and that the protocol on public speaking at Planning and Development Control Committee and the Protocol for Planning and Development Control Committee site visits, as detailed in the report be approved.
- (b) That the Head of Legal and Democratic Services be given delegated authority to amend the Code of Best Practice for Planning procedures appropriately.

Councillor Eng K Armstrong-Braun wished it to be recorded that he voted against this.

28. DELEGATION SCHEME

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was to consider the recommendations of the Planning Protocol Working Group on amendments of the existing Delegation Scheme concerning planning matters. The report detailed the background to its presentation and it was noted that at a meeting held on 17th July 2009 the Planning Protocol Working Group had considered a joint report which was attached as Appendix A. During the course of the discussion it was agreed that the matter set out in Paragraph 3.01 be deferred pending further specialist advice. However, it was subsequently agreed that the amendments set out in Paragraph 3.03 of that report (page 48) be recommended to County Council.

RESOLVED:

That the amendments set out in Paragraph 3.03 of the report be recommended to the County Council for acceptance.

29. BOARDS – HOUSING STRATEGY, HOUSING OPTIONS, LEISURE STRATEGY, STREET SCENE AND SCHOOL MODERNISATION

The Committee considered the report of the Head of Legal and Democratic Services, the purpose of which was to recommend the establishment of politically balanced Boards to assist the work of the Executive. The report detailed the background to its presentation. Councillor P G Heesom had proposed the acceptance of the recommendation. However, having heard the submission from Councillors J B Attridge and R C Bithell whereby they requested deferment on this issue to allow a detailed report, with suggested terms of reference for each of the Boards, he withdraw his proposal.

Councillor J B Attridge in speaking to the deferment felt that this was a key issue and had very wide reaching implications particularly as the Boards were to be politically balanced. He also made the point that the Leader in his own right could appoint Boards for whatever purpose so a deferment would not necessarily delay the process. The Head of Legal and Democratic Services explained that the reason for a report coming to the Committee was in the interest of transparency and openness. However, he indicated that he could prepare a report with some draft terms of reference for consideration by the Committee. Councillor Eng K Armstrong-Braun wished it to be noted that he felt that if the Boards were to be politically balanced that he and others who were not affiliated to political groups should be considered for a place on those Boards.

RESOLVED:

That a decision be deferred pending a further report.

30. REQUEST FOR AN ITEM TO BE CONSIDERED: SUBMITTED BY COUNCILLOR ENG K ARMSTRONG-BRAUN

The Head of Legal and Democratic Services indicated that Councillor Eng K Armstrong-Braun requested the Committee to discuss the following topic:-

“That all Executive Members can never be a Chair or Vice Chair of a Committee of which its remit is one of which the Executive Member is Executive for the Directorate etc. and policy making/decision making”.

The Chairman invited Councillor Eng K Armstrong-Braun to expand upon the reasons for his request. In making his presentation, Councillor Eng K Armstrong-Braun had referred significantly to the role of an Executive Member who sat on the Executive but was also a Chair or Vice Chair of a Committee such as the Planning and Development Control Committee and felt it was not appropriate for a Member to be involved in those areas as separate roles. Councillor J B Attridge felt there were no merits in the motion as it had no legal requirement and suggested it was a personal issue. Councillor R C Bithell supported by others had some sympathy with the proposal and referred to previous administrations whereby it was a policy that the Executive Member did not sit on a Regulatory Committee in the circumstances quoted by Councillor Armstrong-Braun.

Councillor N R Steele-Mortimer queried the status of panels and forums in such cases and the Head of Legal and Democratic Services acknowledged that in some cases they did have decision making powers. A discussion ensued and Members stressed this should not be related just to Planning Committee but the other Regulatory Committees as well.

The Head of Legal and Democratic Services reported upon the provisions in the Constitution in relation to the Chairs and Vice Chairs of the Audit and Licensing Committees. The Committee concluded that there was some merit in the recommendation and felt that a paper should be submitted with some guidance on this.

RESOLVED:

That the Head of Legal and Democratic Services submit a paper to a future meeting with a suggested protocol to address the issues raised in the request by Councillor Eng K Armstrong-Braun.

31. DURATION OF MEETING

The meeting commenced at 2.00 p.m. and ended at 4.47 p.m.

.....
Chairman

**SUMMARY OF DECLARATIONS MADE BY MEMBERS
IN ACCORDANCE WITH FLINTSHIRE COUNTY COUNCIL'S
CODE OF CONDUCT**

| | |
|-------------------------------|--|
| CONSTITUTION COMMITTEE | DATE: 28th JULY 2009 |
|-------------------------------|--|

| MEMBER | ITEM | MIN. NO. REFERS |
|---------------------------|-------------|----------------------------|
| NO DECLARATIONS WERE MADE | | |

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 4

REPORT TO: **CONSTITUTION COMMITTEE**
DATE : **17 DECEMBER 2009**
REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**
SUBJECT : **OVERVIEW & SCRUTINY COMMITTEE STRUCTURE**

1.00 PURPOSE OF REPORT

- 1.01 To recommend to County Council an amended Committee structure for Overview & Scrutiny.

2.00 BACKGROUND

- 2.01 At the meeting of the Committee on the 28 July it considered a report on the results of the Overview & Scrutiny member and officer opinion surveys. The questionnaire used for the surveys included a section seeking views on the Overview & Scrutiny Committee structure. Both the member and officer survey results support a revised Committee structure which has a close alignment to the Council's organisational structure, avoids duplication and has capacity to engage in external Overview & Scrutiny.
- 2.02 The responses to the member and officer surveys were reported to the meeting of the Overview & Scrutiny Coordinating Committee on the 16 July 2009. At that meeting the Committee supported the revised Committee structure shown in **Appendix 1** to this report with the proviso that there should be greater emphasis on outward looking Scrutiny, including regional working and the relationship with the Welsh Assembly Government. The Chair of the Coordinating Committee suggested that this could possibly be added to the terms of reference of the Coordinating Committee.
- 2.03 The survey results and the views of the Coordinating Committee were considered at a meeting of this Committee on the 28 July 2009. In considering the future Committee structure a number of different views were expressed, which included views both in favour and against combining the existing Community & Housing with the existing Social & Health Committee, combining the existing Community & Housing Committee with the existing Environment & Regeneration Committee and a view that the Coordinating Committee should be combined with the Constitution Committee. The Committee decided that all members should be given the opportunity to make suggestions as to an amended Committee structure by the end of August and that consideration should be deferred pending a further report to consider any such alternative models. By letter dated the 30 July 2009 all members were informed of this and a copy of that letter is attached as **Appendix 2**.

Date: 10/12/2009

- 2.04 This further consultation led to responses being received from Councillors Armstrong-Braun, Barratt, Carver and Newhouse. A common feature of these responses was a dislike of the idea of having joint Chairs and Vice Chairs of the two Committees that were being proposed to replace four existing Committees. Councillors Armstrong-Braun and Newhouse indicated that they were happy with the suggestion of having four functional Overview & Scrutiny Committees of 15 members each. They also both indicated there should not be a Coordinating Committee. Councillor Barratt, however, indicated that he was against combining four existing functional Committees into two new functional Committees.
- 2.05 At the Group Leaders' meeting on the 16 September 2009 the issue of Overview & Scrutiny Committees was considered and it was decided that Group Leaders should have four weeks to make any suggestions they may wish to make. Following which a meeting should be arranged for Overview & Scrutiny Chairs and Vice Chairs to consider the various options.
- 2.06 The only Group Leader who made suggestions was Councillor Robin Baker on behalf of the Liberal Democrat Group. He indicated that only three members of the Group wished to make further comments to those made in the member survey. Councillor Matthews' and Councillor Baker's personal views were in favour of the Overview & Scrutiny Committees reflecting the Directorate structure. Councillor McGuill indicated the Committees should be aligned to the Executive.
- 2.07 A progress report on this matter was given to the Coordinating Committee meeting on the 22 October 2009. The main issue arising from consideration of the report was whether the Community & Housing Committee should be combined with the Social & Health Committee in view of their existing workloads. It was decided a small Working Group of members should be set up to explore this further.
- 2.08 Immediately after the Coordinating Committee meeting the meeting of Chairs and Vice Chairs was held pursuant to the Group Leaders' meeting and the suggestions made by the Liberal Democrat Group considered. At both the Coordinating Committee meeting and the meeting of Chairs and Vice Chairs a number of members were of the view that reducing the number of formal Committees would enable greater use of Task & Finish Groups. There was also a recognition that as any new Committee structure was unlikely before the annual meeting there was now less reason for joint Chairs and Vice Chairs. There was also a recognition that the Coordinating Committee was needed to deal with issues common to all of the Overview & Scrutiny Committees.
- 2.09 On the 2 November 2009 the Member Working Group met to consider the issue of combining the Community & Housing and Social & Health Committees. Following a wide-ranging discussion Councillor McGuill, who Chaired the meeting, summarised the factors in favour of the two

Committees combining and those against. The factors in favour were that the Committee structure would match the Directorate structure and there would be more scope for Task & Finish Groups and Workshops resulting in a better use of officer resources. The factors against were that currently the housing stock transfer option and the new health structures were both issues requiring a lot of time. Also that the way that two existing Committees operated were very different.

- 2.10 Councillor McGuill identified three options, namely, to continue the status quo, to combine the two Committees now or after the work on the housing stock transfer option. None of the members were in favour of the status quo. Councillors McGuill, Falshaw and Gay favoured combining the two Committees now. Councillors Hampson, Isherwood and David Mackie favoured the Committees combining after the housing stock option process.

3.00 CONSIDERATIONS

- 3.01 The Local Government Act 2000 gives Councils freedom to have one or more Overview & Scrutiny Committee as each Council may determine. Provided the political balance requirements are met Councils also have freedom to determine the size of each Overview & Scrutiny Committee. Flintshire currently has more Overview & Scrutiny Committees than any other North Wales Council and the number of members on each Committee is higher than average. The current Committee structure is based on the Council's previous Directorate structure, together with a Coordinating Committee.
- 3.02 Committee meetings are resource intensive, both in terms of officer support and member time. Officers believe that by reducing the number of formal Overview & Scrutiny Committees, more resources can be devoted to Task & Finish Group working resulting in more efficient and effective Overview & Scrutiny.
- 3.03 Whilst a few members have questioned the need for a Coordinating Committee more recognise that it serves a valuable role in dealing with issues common to all the Overview & Scrutiny Committees and thereby avoiding duplication. In addition to its role in dealing with requests for Scrutiny topics, its Chair has also suggested its role could be expanded to include scrutiny of regional working and the relationship with the Welsh Assembly Government. At present the Coordinating Committee has more members than the other Overview & Scrutiny Committees and there is no good reason for this. Consideration should be given to reducing the size of this Committee.
- 3.04 The existing Corporate Management and People & Performance Committees were created at a time when there were two Central Directorates. Now there is a Central Corporate Services Directorate it seems appropriate to combine the two existing Committees into one Corporate Committee. In addition to

scrutinising all the services provided by the Corporate Directorate it would also include the new Crime and Disorder Powers and scrutinise the Police and Fire Authorities. The results of the member and officer surveys support the combining of the two existing Committees in this way and during the subsequent consideration of a revised Committee structure this has been supported by the Coordinating Committee.

- 3.05 The current Lifelong Learning Overview & Scrutiny Committee scrutinises all services provided by the Lifelong Learning Directorate and external bodies relating to Education and the Arts. In the member and officer survey and subsequent consideration of a revised Committee structure no suggestions have been made to change the existing terms of reference of this Committee.
- 3.06 The existing Environment Overview & Scrutiny Committee scrutinises all services provided by the Environment Directorate, including waste management. It also scrutinises external bodies relating to the work of the Environment Directorate, such as the Tourist Board, Regional Flood Defence Committee, Dee Estuary Forum, Tourism Partnership and CBI Wales. Such a Committee reflects the feedback from the member and officer surveys and the Coordinating Committee favours no change to it.
- 3.07 During consideration of the Committee structure at the last Constitution Committee meeting a member suggested the Environmental Committee be combined with the existing Community and Housing Committee. The reason given was that this would better reflect existing Executive portfolios. Executive portfolios are in the gift of the Council Leader and do change on a regular basis. Officers believe that the Environment Committee already has a broad remit and does not have capacity to take on the work of the current Community & Housing Committee.
- 3.08 The member and officer surveys favour a Committee structure that reflects the existing Directorate structure and this would mean combining the existing Social & Health and Community and Housing Committees. This is the aspect of the proposals that has attracted the most member interest. Initially this was supported by the Coordinating Committee but a number of members have subsequently questioned whether one Committee could deal with the workload. At the Coordinating Committee meeting on the 22 October it was decided that this should be considered by a Member Working Group. At its meeting on the 2 November the Working Group was split as indicated in paragraph 2.09 above.
- 3.09 In determining a revised Overview & Scrutiny Committee structure it is important it has widespread member support. The wide ranging consultation following the member and officer surveys does however, indicate it will be difficult to arrive at a structure which has unanimous member support.

4.00 RECOMMENDATIONS

4.01 To recommend to County Council a revised Overview & Scrutiny Committee structure as shown in Appendix 1 subject to:-

- (a) The Coordinating Committee being reduced to 15 members.
- (b) The Coordinating Committee having responsibility to scrutinise regional working and the relationship with the Welsh Assembly Government.
- (c) The deletion of references to Joint Chairs and Vice Chairs.

5.00 FINANCIAL IMPLICATIONS

5.01 This report recommends a reduction in the number of Overview & Scrutiny Committees from seven to five, should this recommendation be approved by Council there would be savings made on the special responsibility allowances payable on the deleted Chair and Vice Chair positions.

6.00 ANTI POVERTY IMPACT

6.01 None as result of this report.

7.00 ENVIRONMENTAL IMPACT

7.01 None as result of this report.

8.00 EQUALITIES IMPACT

8.01 None as result of this report.

9.00 PERSONNEL IMPLICATIONS

9.01 None as result of this report.

10.00 CONSULTATION REQUIRED

10.01 With all members and senior officers.

11.00 CONSULTATION UNDERTAKEN

11.01 With all members and senior officers.

12.00 APPENDICES

12.01 Appendix 1 - Overview & Scrutiny revised Committee structure.
Appendix 2 - Letter dated 30 July 2009 sent to all Members.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 **BACKGROUND DOCUMENTS**

Member and officer Overview & Scrutiny survey results.
Report to and minutes of Coordinating Committee meeting 16 July 2009
Report to Constitution Committee meeting 28 July 2009
Report to Coordinating Committee meeting 22 October 2009

Contact Officer: Peter J Evans
Telephone: 01352 702304
E-Mail: peter_j_evans@flintshire.gov.uk

POSSIBLE REVISED COMMITTEE STRUCTURE

Corporate Overview & Scrutiny Committee

- Combining existing terms of reference of Corporate Management and People and Performance Committees.
- Joint Chairs and Vice Chairs.
- 15 Members.
- Scrutinises all services within the Corporate Directorate.
- Crime and Disorder powers from the 1 October 2009.
- Scrutinises external bodies, including Police and Fire.

Community Overview & Scrutiny Committee

- Combining existing terms of reference of Social Health and Community and Housing Committees.
- Joint Chairs and Vice Chairs.
- 15 Members.
- Scrutinises all services within Community Directorate.
- Scrutinises external bodies, including Local Health Board, Community Health Council and Housing Associations.

Lifelong Learning Overview & Scrutiny Committee

- 15 Members and 4 co-optees'.
- No change to existing terms of reference.
- Scrutinises all services within Lifelong Learning Directorate.
- Scrutinises external bodies, including schools, colleges, Clwyd Theatr Cymru, Arts Council and WAG Department of Children's Education Lifelong Learning & Skills (DCELLS).

Environment Overview & Scrutiny Committee

- 15 Members.
- Minimal change to existing terms of reference (to include Waste Management).
- Scrutinises all services within Environment Directorate.
- Scrutinises external bodies, including Tourist Board, Regional Flood Defence Committee, Dee Estuary Forum, Tourism Partnership and CBI Wales.

Coordinating Overview & Scrutiny Committee

- 21 Members.
- Existing terms of reference.

APPENDIX 2

All Members of the Council

PJE/LS/C196005

30 July 2009

Mr Peter Evans

01352 702304

01352 702494

Dear Councillor,

OVERVIEW & SCRUTINY COMMITTEE STRUCTURE

My purpose in writing to you is to inform you of the decision taken by the Constitution Committee at its meeting on the 28 July when it considered a report on the outcome of the Member and officer surveys on Overview & Scrutiny.

You may recollect that a questionnaire relating to Overview & Scrutiny was compiled in consultation with the Chairs of the Coordinating and Constitution Committees and sent to Members and Senior Managers on the 26 March 2009. The individual responses received were then tabulated and reported to the Coordinating Committee meeting on the 16 July and to the Constitution Committee on the 28 July. Whilst both Committees considered a number of issues arising from the questionnaire responses, this letter relates to the Constitution Committee's consideration of a revised Committee structure for Overview & Scrutiny.

The responses to the questions relating to the Committee structure in both the Member and officer surveys supported a revised Committee structure which has a closer alignment to the Council's organisational structure, avoids duplication and has capacity to engage in external Overview & Scrutiny. The attached possible structure was therefore reported to both Committees for consideration. It would combine the existing People and Performance and Corporate Management Committees and similarly combine the existing Community & Housing and Social & Health Committees so as to reflect the Directorate structure. In considering this possible structure the Coordinating Committee recommended it to the Constitution Committee with one amendment that there should be greater emphasis on outward looking Scrutiny, including regional working and the relationship with the Welsh Assembly Government. The Chair of the Coordinating Committee suggested that this could possibly be added to the terms of reference of the Coordinating Committee.

.../...

In considering this the Constitution Committee decided to defer making a recommendation to County Council to enable Members to have the opportunity to suggest alternative options so that officers could consider and bring back a further report including them prior to a new structure being recommended to County Council. Amongst the views expressed at the Constitution Committee were views both for and against combining the existing Community and Social & Health Committees, for the existing Community and Housing Committee to be combined with the Environment & Regeneration Committee and to combine the Coordinating and Constitution Committees. The Committee decided that any suggestions Members wished to make should be submitted by the end of August. If you have any suggestions as to a possible revised Committee structure for Overview & Scrutiny please could you therefore submit them to either myself or the Head of Overview & Scrutiny by the end of August.

Yours sincerely,

Peter J Evans
Assistant Director (Democratic Services)

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 5

REPORT TO: **CONSTITUTION COMMITTEE**
DATE : **17 DECEMBER 2009**
REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**
SUBJECT : **REGULATION OF INVESTIGATORY POWERS ACT**
 AUTHORISING OFFICERS

1.00 PURPOSE OF REPORT

- 1.01 To amend the existing Regulation of Investigatory Powers Act (RIPA) authorising officers so as to reflect a recommendation from the Office of Surveillance Commissioners.

2.00 BACKGROUND

- 2.01 The Regulation of Investigatory Powers Act 2000 enables and regulates the use by public authorities such as Flintshire of covert surveillance and covert human intelligence sources. Compliance with the Act is enforced by the Office of Surveillance Commissioners who periodically visit authorities to check on their arrangements.
- 2.02 On the 10 June 2009 an Assistant Surveillance Commissioner visited the Council and subsequently issued an inspection report containing five recommendations. These recommendations have been or are in the course of being implemented.
- 2.03 One recommendation was to reduce the number of those permitted to authorise for the purposes of RIPA and compliance with this recommendation requires an amendment to the officer delegation scheme in the Constitution.

3.00 CONSIDERATIONS

- 3.01 At present paragraph 3.11 of the delegation scheme provides that the Chief Executive, Corporate Directors and Heads of Service can authorise officers within their service to act as authorised officers for the purposes of RIPA.
- 3.02 The Office of Surveillance Commissioners is recommending that this be reduced to about five officers in addition to the Chief Executive and Directors. The officers delegated will then undertake authorisations more frequently and become more familiar with and expert in the requirements. All such officers should have received training on RIPA.
- 3.03 Another recommendation in the report was that the Council appoint a RIPA Monitoring Officer with responsibility for RIPA record keeping, training,

Date: 10/12/2009

oversight and heightening awareness of RIPA throughout the Council. As part of the Democratic Services review it was decided this should be the Governance and Democracy Manager.

- 3.04 The parts of the Council that make most use of RIPA are Trading Standards, Environmental Health, Audit, Benefits and Housing. The RIPA Monitoring Officer is consulting with the Heads of Service for these areas to determine five officers who can be authorised following which the authority of any other authorised officers will be cancelled.

4.00 RECOMMENDATIONS

- 4.01 That the delegation scheme is amended to provide that the Chief Executive, Corporate Directors and up to five other officers determined by the RIPA Monitoring Officer be authorised for the purposes of RIPA.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None as a result of this report.

6.00 ANTI POVERTY IMPACT

- 6.01 None as a result of this report.

7.00 ENVIRONMENTAL IMPACT

- 7.01 None as a result of this report.

8.00 EQUALITIES IMPACT

- 8.01 None as a result of this report.

9.00 PERSONNEL IMPLICATIONS

- 9.01 The Council's use of RIPA investigatory powers is infrequent and not burdensome.

10.00 CONSULTATION REQUIRED

- 10.01 Consultation is being taken with relevant Heads of Service.

11.00 CONSULTATION UNDERTAKEN

- 11.01 Consultation is being taken with relevant Heads of Service.

12.00 APPENDICES

- 12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS

Report from the Office of Surveillance Commissioners dated 8 July 2009.

Contact Officer: Peter J Evans
Telephone: 01352 702304
E-Mail: peter_j_evans@flintshire.gov.uk

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 6

REPORT TO: **CONSTITUTION COMMITTEE**
DATE : **17 DECEMBER 2009**
REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**
SUBJECT : **FORMAT OF MINUTES**

1.00 PURPOSE OF REPORT

- 1.01 To consider setting up a Task & Finish Group to review the format of minutes for Council and Committee meetings.

2.00 BACKGROUND

- 2.01 The present format of minutes emanated from a decision of the County Council held on the 8 November, 2005. That part of the resolution relating to the format of minutes resolved as follows:-

"(c) That the minutes of the Planning and Licensing Sub-Committees retain their existing format.

(d) That the minutes of other Committees include the purpose of the report as part of the preamble and set out succinctly the main issues discussed affecting the balance of any debate and refer to the recommendations setting out the decision. Minutes should no longer repeat large parts of the report to which they refer.

(e) That unless exceptional circumstances exist, statements should not be appended to Committee or Council minutes.

(f) That the practice of naming Members in minutes should continue but be curtailed to include names where it would be necessary to do so, particularly in order to reflect the balance of any debate that may have taken place.

(g) That the situation be reviewed in 6 to 12 months from the introduction of the new practices."

- 2.02 The remainder of the resolution dealt with a new process for the approval of minutes and arrangements whereby questions on minutes could be asked at meetings of the County Council following 10 clear working days notice in writing of the question.
- 2.03 It was always intended to review the arrangements relating to minutes but this has been delayed for a number of reasons including the development of the Committee Administration System.

3.00 CONSIDERATIONS

- 3.01 The process adopted for the previous review included the setting up of a Member Working Group to compare the processes in place in similar

Date: 10/12/2009

Authorities across Wales and forming a view as to the most appropriate format for the specific needs of Flintshire County Council. The Member Group consisted of Members from each of the four political groups on the Council.

- 3.02 If Members agree to the setting up of a Task & Finish Group, it could take into account any existing or subsequent comments that Members have in relation to issues concerning minutes of the County Council or other Committees of the Council.

4.00 RECOMMENDATIONS

- 4.01 To consider whether or not to set up a Task & Finish Group to review the format of minutes for Council and Committee meetings.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

- 10.01 All Members of the Council, either prior to, or at a formal meeting of the County Council.

11.00 CONSULTATION UNDERTAKEN

- 11.01 All Members of the Council, either prior to, or at a formal meeting of the County Council.

12.00 APPENDICES

- 12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS

As referred to in the report.

Contact Officer: Barry Davies
Telephone: 01352 702344
E-Mail: barry_davies@flintshire.gov.uk

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 7

REPORT TO: **CONSTITUTION COMMITTEE**
DATE : **17 DECEMBER 2009**
REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**
SUBJECT : **CHAMPIONS**

1.00 PURPOSE OF REPORT

- 1.01 To consider setting up a Task & Finish Group to review the roles and appointments of Champions.

2.00 BACKGROUND

- 2.01 At the meeting of the County Council held on the 24 August, 2009 the Leader of the Council withdrew a Notice of Motion which stated:

"That work as a Member Champion be added to the list of approved duties in the Members' Allowance Scheme with effect from 1 April, 2009."

- 2.02 Some research undertaken in connection with the Notice of Motion established that there was no single process for the appointment of Champions. In addition there was no clear picture as to the reporting or accounting lines between Champions and the responsible Executive Member, Committee Chair or Directorate.

- 2.03 Requests have been made for the Constitution Committee to consider reviewing the position with a view to:

- Establishing what processes have been used to appoint Champions in the past.
- Considering the rationalisation of an appointments process.
- Considering role descriptions for Champions.
- Identifying how Champions should report back on their activities to the County Council.
- Considering the extent to which the activities of Champions should be made eligible for travelling and subsistence allowance within the Members' Allowance Scheme.

3.00 CONSIDERATIONS

- 3.01 The role of Champions was considered briefly at the last meeting of the Corporate Management Overview & Scrutiny Committee and it was agreed

Date: 10/12/2009

at the suggestion of the Chairman of the Constitution Committee that the matter be left with the Constitution Committee to avoid duplication of effort.

- 3.02 Members are invited to consider setting up a Task & Finish Group. The Group could at its first meeting consider those arrangements which have already been put in place and the remit of existing Champions where this has been set out. It is suggested that the Task & Finish Group comprise Members of each of the four political groups on the Council and report back in due course in relation to those matters set out in paragraph 2.03.

4.00 RECOMMENDATIONS

- 4.01 That Members consider setting up a Task & Finish Group to review the role and appointment of Champions and make appropriate recommendations to rationalise the present situation.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

- 10.01 All Members of the Council through the democratic process.

11.00 CONSULTATION UNDERTAKEN

- 11.01 Limited consultation so far.

12.00 APPENDICES

- 12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS

As referred to in the report.

Contact Officer: Barry Davies
Telephone: 01352 702344
E-Mail: barry_davies@flintshire.gov.uk

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 8

REPORT TO: **CONSTITUTION COMMITTEE**
DATE : **17 DECEMBER 2009**
REPORT BY: **HEAD OF LEGAL AND DEMOCRATIC SERVICES**
SUBJECT : **CORPORATE GOVERNANCE - SELF-ASSESSMENT**

1.00 PURPOSE OF REPORT

1.01 To inform Members of the delayed timescale for the Annual Self-Assessment of Corporate Governance.

2.00 BACKGROUND

2.01 It was initially the intention to commence work on the self-assessment of the Council's Corporate Governance arrangements towards the end of the summer to enable a comprehensive consultation exercise before a draft report was made to the Constitution Committee at a meeting early in 2010.

2.02 Members may recall the Wales Audit Office indicating that they would be undertaking a piece of work nationally which would involve Members and Senior Officers of Flintshire County Council completing a questionnaire with certain follow-up interviews. It was intended that the results would be analysed and aspects of that analysis would be fed back so that it could be considered as part of the self-assessment.

2.03 Unfortunately for a number of reasons, the Wales Audit Office work was delayed and the outcome of the exercise is still awaited although it is hoped that it will be received before the end of the calendar year.

3.00 CONSIDERATIONS

3.01 In the circumstances and providing the outcome of the Wales Audit Office exercise is received by the end of the year, it is suggested that the following provisional timescale should now be followed:-

- Corporate Governance Working Group commence work in January 2010 meeting in mid January, late January and mid February.
- Draft self-assessment report to be completed by early March.
- Consultation amongst Senior Officers mid March.
- Consideration by CMT - early April.
- Consideration by Constitution Committee - late April/early May.
- Audit of self-assessment - June/July.

Date: 10/12/2009

- Review of Code of Corporate Governance will take place in parallel with the above.

4.00 RECOMMENDATIONS

- 4.01 That Members note the provisional timescale for the self-assessment and review the Code of Corporate Governance set out in paragraph 3.01.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

- 10.01 CMT and Heads of Service

11.00 CONSULTATION UNDERTAKEN

- 11.01 CMT and Heads of Service

12.00 APPENDICES

- 12.01 None

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 BACKGROUND DOCUMENTS

As referred to in the report.

Contact Officer: Barry Davies
Telephone: 01352 702344
E-Mail: barry_davies@flintshire.gov.uk

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 9

REPORT TO: CONSTITUTION COMMITTEE
DATE : 17 DECEMBER 2009
REPORT BY: MONITORING OFFICER
SUBJECT : CHANGES TO THE FUNCTIONS AND RESPONSIBILITIES OF THE COUNCIL AND THE EXECUTIVE

1.00 PURPOSE OF REPORT

- 1.01 To inform Members of a number of additional functions which have been designated as County Council rather than Executive functions and others which are local choice functions whereby the Council can decide whether it wishes those functions to be exercised by the Executive or by itself through delegated powers granted to Committees and Officers.

2.00 BACKGROUND

- 2.01 Regulations made in 2007 consolidated earlier regulations made following the introduction of Executive functions. Those Regulations specify three types of functions:-
- Functions which must not be the responsibility of an Authority's Executive. These include Town and Country Planning and Development Control, Licensing and Registration, Health & Safety at Work and functions relating to Elections and Bylaws, determination of the Authority's budget and their borrowing and capital expenditure;
 - Functions which can be, but need not be, the responsibility of an Authority's Executive (also known as local choice functions). These include the determination of appeals such as decisions made by, or on behalf of the Authority, conducting best value reviews, functions relating to pollution and statutory nuisances and the calculation of the Council Tax base; and
 - Functions which must not be the sole responsibility of an Authority's Executive. These relate to plans, schemes and strategies such as the Performance Plan, Health & Well-being Strategy and the Welsh Language Scheme.

3.00 CONSIDERATIONS

- 3.01 The new Regulations will continue to have the effect of making most Local Authority functions the responsibility of the Executive. However the new Regulations do make the following changes:

Date: 10/12/2009

- Certain functions under the Highways Act 1980 and the Wildlife and Countryside Act 1981, which had featured in the earlier regulations, were not included in the consolidated 2007 Regulations (such as the power to create, stop up and divert footpaths and bridleways). This had the unintended effect of transferring the rights of way responsibilities from the full Council to the Executive. Following representations from a number of local authorities these functions are now returned to the Regulations as ones for local choice. This will enable authorities to decide for themselves whether to maintain these functions as the responsibility of the Executive or return them to full Council;
- In addition a number of other related functions under the Highways Act 1980 have also been added to the Regulations 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;
- The duty on local authorities to prepare and publish Rights of Way Improvement Plans (Section 60 of the Countryside and Rights of Way Act 2000, which came into force in late 2007) is being included as a function which is not to be the sole responsibility of an Authority's Executive;
- The following functions under the Gambling Act 2005, the provisions for which did not come into force until after the 2007 Regulations were made, are being made ones for local choice:-
 - 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.
- An amendment is made to reflect the replacement of the requirement to produce a Single Education Plan with one to produce a Children and Young People's Plan (The Children and Young People's Plan (Wales) Regulations 2007 SI No 2316 (W.187) refers). The function will continue to be one which is not to be the sole responsibility of an Authority's Executive.

3.02 The Regulations came into force on the 2 December, 2009.

3.03 The explanatory memorandum published by the Welsh Assembly Government indicated that the new Regulations are designed to improve the efficiency, flexibility and timeliness of local government decision-making. A full copy of the Regulations are set out at Appendix 1. Since the 2007 Regulations the Highways and Wildlife & Countryside Act functions have been dealt with as Executive functions, and where appropriate delegated to Officers, whilst the Gambling Act functions have been regarded as County

Council functions and delegated to the Licensing Committee, its sub-committees and Officers as appropriate. The arrangements seem to have worked satisfactorily and Members may feel it appropriate to continue those arrangements.

- 3.04 The new Regulations also make the approval of the Single Education Plan and Rights of Way Improvement Plan functions of the Council and the Executive's remit will be to consider and recommend draft plans for approval by the Council.
- 3.05 The new Regulations make electoral functions under the National Assembly for Wales (Representation of the People) Order 2003 an Executive rather than a Council function.

4.00 RECOMMENDATIONS

- 4.01 That the Highways functions set out in Regulation 4 of Appendix 1 be local choice functions exercised by the Executive in accordance with the existing Delegation Scheme.
- 4.02 That the Wildlife and Countryside functions set out in Regulation 4 of Appendix 1 be local choice functions exercised by the Executive in accordance with the existing Delegation Scheme.
- 4.03 That the functions set out in Regulation 4 of Appendix 1 relating to Gambling Act functions be local choice functions exercised by the Council through the existing Delegation Scheme to the Licensing Committee, sub-committees and Officers.
- 4.04 That Members note that the following functions are Council functions:
- a. Approval of the Single Education Plan
 - b. The Rights of Way Improvement Plan
- 4.05 That the electoral functions set out in the National Assembly for Wales (Representation of the People) Order 2003 become an Executive function.
- 4.06 That the Monitoring Officer accordingly makes appropriate amendments to the Constitution reflecting the above decisions and the content of the Regulations.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

7.01 None

8.00 EQUALITIES IMPACT

8.01 None

9.00 PERSONNEL IMPLICATIONS

9.01 None

10.00 CONSULTATION REQUIRED

10.01 The Welsh Assembly Government consulted widely during their discussions on the proposed Regulations.

11.00 CONSULTATION UNDERTAKEN

11.01 The Welsh Assembly Government consulted widely during their discussions on the proposed Regulations.

12.00 APPENDICES

12.01 Appendix 1 - Welsh Statutory Instrument 2009 No. 2983 (W.260) - The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009.

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985
BACKGROUND DOCUMENTS

As referred to in the report.

Contact Officer: Barry Davies
Telephone: 01352 702344
E-Mail: barry_davies@flintshire.gov.uk

WELSH STATUTORY
INSTRUMENTS

2009 No. 2983 (W.260)

**LOCAL GOVERNMENT,
WALES**

The Local Authorities (Executive
Arrangements) (Functions and
Responsibilities) (Wales)
(Amendment) Regulations 2009

EXPLANATORY NOTE

(This note is not part of the Regulations)

Part II of the Local Government Act 2000 provides for the discharge of a local authority's functions by an executive of an authority (which must take one of the forms specified in section 11(2) to (5) of that Act) unless those functions are not to be the responsibility of the authority's executive. The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007 (SI 2007/399 (W.45)) ("the Principal Regulations") specify those functions that are not to be the responsibility of an authority's executive or are to be the responsibility of such an executive only to a limited extent or only in specified circumstances.

These Regulations amend the Principal Regulations.

Schedule 2 to the Principal Regulations lists those functions which may be (but need not be) the responsibility of an authority's executive. Regulation 4 of these Regulations amends this list by inserting specified functions under the Highways Act 1980, the Wildlife and Countryside Act 1981 and the Gambling Act 2005. The effect of these amendments is that a local authority has discretion as to whether the functions in question are exercised by the executive.

Regulation 5 amends the Principal Regulations by using generic wording to refer to the children and young people's plans to be prepared and published by local authorities in accordance with regulations made under section 26 of the Children Act 2004. It also provides that rights of way improvement plans must not be the sole responsibility of the executive.

WELSH STATUTORY
INSTRUMENTS

2009 No. 2983 (W.260)

**LOCAL GOVERNMENT,
WALES**

The Local Authorities (Executive
Arrangements) (Functions and
Responsibilities) (Wales)
(Amendment) Regulations 2009

Made 10 November 2009

Laid before the National Assembly for Wales

11 November 2009

Coming into force 2 December 2009

The Welsh Ministers make the following Regulations in exercise of the powers conferred on the National Assembly for Wales by sections 13, 105 and 106 of the Local Government Act 2000(1) and now vested in them(2).

Title and commencement

1. The title of these Regulations is The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) (Amendment) Regulations 2009 and they come into force on 2 December 2009.

Amendment

2. The Local Authorities (Executive Arrangements) (Functions and Responsibilities) (Wales) Regulations 2007(3) are amended as follows.

3. In Part D of Schedule 1 (functions not to be the responsibility of an authority's executive), omit paragraph 18.

-
- (1) 2000 c.22.
(2) The powers of the National Assembly for Wales are now vested in the Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).
(3) SI 2007/399 (W. 45).

4. In Schedule 2 (functions which may be, but need not be, the responsibility of an authority's executive)—

(a) for paragraph 18 substitute—

“18. Any of the following functions in respect of highways—

- (a) the making of agreements for the execution of highways works⁽¹⁾;
- (b) the functions contained in the following provisions of Part III of the Highways Act 1980 ⁽²⁾ (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)⁽³⁾—
 - (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;

(1) Section 278 of the Highways Act 1980 (c.66) was substituted by section 23 of the New Roads and Street Works Act 1991 (c.22).

(2) 1980 c.66.

(3) Sections 118ZA, 118B, 118C, 119ZA, 119B, 119C, 119D and 121B were inserted by section 57 of, and Part 1 of Schedule 6 to, the Countryside and Rights of Way Act 2000 (c.37). Sections 118A and 119A were inserted by section 47 of, and Schedule 2 to, the Transport and Works Act 1992 (c.42).

- (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;

(1) Section 140A was inserted by the New Roads and Street Works Act 1991 (c.22) (section 168 and Part 1 of Schedule 8).

- (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(3) (limestone pavement orders); and
 - (f) exercising functions under section 53 of the Wildlife and Countryside Act 1981(4) (duty to keep definitive map and statement under continuous review).”;
- (b) for paragraph 24 substitute—

-
- (1) Section 147ZA was inserted by section 69(3) of the Countryside and Rights of Way Act 2000 (c.37).
 - (2) Section 171A was inserted by the New Roads and Street Works Act 1991 (c.22) (section 168 and Part 1 of Schedule 8).
 - (3) 1981 c.69. Section 34 was amended by paragraph 83 of Schedule 11 to the Natural Environment and Rural Communities Act 2006 (c.16). By section 27AA of the 1981 Act section 34 has effect as if references to Natural England were references to the Countryside Council for Wales.
 - (4) Section 53 was amended by the Countryside and Rights of Way Act 2000 (c.37) (section 51 and Part 1 of Schedule 5) and the Natural Environment and Rural Communities Act 2006 (c.16) (section 70).

“24. Functions in respect of gambling under the following provisions of the Gambling Act 2005(1)—

- (a) section 29 – licensing authority information;
- (b) section 30 – other exchange of information;
- (c) section 166 – resolution not to issue casino licences;
- (d) section 212 and regulations made under that section – fees;
- (e) section 284 – removal of exemption;
- (f) section 304 – authorised persons;
- (g) section 346 – prosecutions by licensing authority;
- (h) section 349 – three-year licensing policy;
- (i) section 350 – exchange of information;
- (j) Part 5 of Schedule 11 – registration with local authority.”.

5. In Schedule 3 (functions not to be the sole responsibility of an authority’s executive)—

- (a) in column (1) for “Single Education Plan” substitute “Children and Young People’s Plan”;
- (b) in column (2) for “The Single Education Plan (Wales) Regulations 2006 (SI 2006/877 (W. 82))” substitute “Regulations made under section 26 of the Children Act 2004(2)”;
- (c) at the end—
 - (i) in column (1), insert “Rights of Way Improvement Plan”;
 - (ii) in column (2) in relation to that entry in column (1), insert “Section 60 of the Countryside and Rights of Way Act 2000(3).”.

Brian Gibbons

Minister of Social Justice and Local Government, one of the Welsh Ministers.

10 November 2009

(1) 2005 c.19.
(2) 2004 c.31.
(3) 2000 c.37.

FLINTSHIRE COUNTY COUNCIL

AGENDA ITEM NUMBER: 10

REPORT TO: **CONSTITUTION COMMITTEE**
DATE : **17 DECEMBER 2009**
REPORT BY: **MONITORING OFFICER**
SUBJECT : **CHAIR / VICE-CHAIR OF PLANNING & DEVELOPMENT**
 CONTROL COMMITTEE

1.00 PURPOSE OF REPORT

- 1.01 To enable Members to consider the appropriateness of an Executive Member being either the Chair or Vice-Chair of the Planning & Development Control Committee.

2.00 BACKGROUND

- 2.01 At the last meeting of the Constitution Committee on the 28 July Members asked for a report to enable them to consider Councillor Engineer Klaus Armstrong-Braun's request that the Committee make a recommendation to the County Council that an Executive Member should not hold the position of Chair or Vice-Chair of the Planning & Development Control Committee.

3.00 CONSIDERATIONS

- 3.01 As mentioned at the last meeting of the Committee, research was undertaken in the lead-up to the formation of the Executive in May 2008 as to whether it was possible for an Executive Member to be a Vice-Chair of the Planning & Development Control Committee. As mentioned the guidance issued by the Welsh Assembly Government in July 2006 is silent on the matter but there has been guidance in England suggesting that it was not appropriate for the Chair of Planning to be a member of the Executive.
- 3.02 An extract of the Guidance published in England is attached as Appendix 1 and it will be noted in paragraph 5.18 that the guidance states; "local authorities should consider including a member of the executive, if possible with responsibility for the Development Plan, on one or more committees which take development control decisions although she or he should not normally be the chair".
- 3.03 The Guidance acknowledges that there may be certain circumstances where the Executive Member in question could be Chair of the Committee but does not go on to identify those circumstances. It may be that the Guidance anticipates that there will be circumstances where the Committee is considering applications submitted on the basis of decisions made by the Executive. In those circumstances it seems to me that it would be prudent for an Executive Member to acknowledge a potential conflict in any event

Date: 10/12/2009

and decline to take part in discussions whether he or she is Chair, Vice-Chair or an ordinary member of the Committee.

- 3.04 In summary, there does not appear to be any impediment to an Executive Member being Vice-Chair of the Planning & Development Control Committee but the English Guidance relating to the role of Chair of a Planning Committee is at the very least persuasive.

4.00 RECOMMENDATIONS

- 4.01 That Members give further consideration to Councillor Engineer K Armstrong-Braun's request.

5.00 FINANCIAL IMPLICATIONS

- 5.01 None

6.00 ANTI POVERTY IMPACT

- 6.01 None

7.00 ENVIRONMENTAL IMPACT

- 7.01 None

8.00 EQUALITIES IMPACT

- 8.01 None

9.00 PERSONNEL IMPLICATIONS

- 9.01 None

10.00 CONSULTATION REQUIRED

- 10.01 None required

11.00 CONSULTATION UNDERTAKEN

- 11.01 None undertaken

12.00 APPENDICES

- 12.01 Appendix 1 - extract of the Guidance published in England

LOCAL GOVERNMENT (ACCESS TO INFORMATION) ACT 1985 BACKGROUND DOCUMENTS

As referred to in the report.

Contact Officer: Barry Davies
Telephone: 01352 702344
E-Mail: barry_davies@flintshire.gov.uk



Development control

5.16 The Development Plan will form part of the local authority's policy framework described in chapter 2 of this guidance. The executive will be responsible for formulating the Development Plan in accordance with the Town and Country Planning (Development Plan) Regulations 1999. The different types and forms of Development Plan are set out in Planning Policy Guidance Note 12 Development Plans, together with guidance on their preparation. Chapter 2 provides further guidance on the process of preparing and adopting the Development Plan.

5.17 By virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, development control decisions will not be the responsibility of the executive. Therefore implementation of the Development Plan through development control will continue to be exercised under delegations from the local authority in accordance with section 101 of the 1972 Act although some residual planning functions such as preparation of supplementary planning guidance, designation of conservation areas, areas of archaeological interest and nature reserves, removal of permitted development rights through Article 4 Directions and making compulsory purchase orders will be the responsibility of the executive.

5.18 The Secretary of State considers that full exchange of information between the executive and any committee which takes development control decisions is essential. The executive will need to ensure that there is effective two-way communication between them and any such committee and should consult any such committee on successive drafts of the Development Plan while policy is being formulated. In addition, local authorities should consider including a member of the executive, if possible with responsibility for the Development Plan, on one or more committees which take development control decisions although she or he should not normally be the chair.

5.19 In addition, the powers to require information as to interests in land in section 330 of the Town and Country Planning Act 1990 and section 16 of the Local Government (Miscellaneous Provisions) Act 1976 are specified in Schedule 2 to the Regulations as a local choice function.

5.20 Using the powers in section 13(4) and 13(5) of the Act a local authority's executive arrangements should provide that these functions to require information as to interests in land are not to be the responsibility of the executive except to the extent that it is necessary to exercise these powers in respect of actions which are preliminary to the exercise of powers to make compulsory purchase orders.