

FLINTSHIRE COUNTY COUNCIL

REPORT TO: CONSTITUTION COMMITTEE

DATE: WEDNESDAY, 30 JANUARY 2013

REPORT BY: DEMOCRACY & GOVERNANCE MANAGER

SUBJECT: LOCAL GOVERNMENT (WALES) MEASURE 2011

1.00 PURPOSE OF REPORT

- 1.01 For the committee to consider the implementation of parts of the Local Government (Wales) Measure 2011.

2.00 BACKGROUND

- 2.01 Whilst there have been different commencement dates for different parts of the Local Government (Wales) Measure 2011, large parts of the Measure came into effect at the end of April 2012. Statutory guidance on those parts of the Measure was issued some 8 weeks later on the 25 June 2012. Some aspects of the Measure had to be implemented prior to the statutory guidance being issued. These included the appointment of Overview & Scrutiny Chairs at the Council's annual meeting and the recruitment of a lay person to serve on the Council's Audit Committee.
- 2.02 Copies of the statutory guidance were placed in the Members' library and group rooms. During July there were separate reports to the Audit, Constitution and Democratic Services Committees on the parts of the guidance relating to such committees.
- 2.03 In the report to the Constitution Committee of the 24 July, it was explained that the intention was to bring a further report to the committee in relation to the constitutional aspects of implementing the Measure and statutory guidance following consultation with Group Leaders and relevant officers. There was consultation with the Group Leaders at its meeting on the 19 October 2012.

3.00 CONSIDERATIONS

- 3.01 Many aspects of the Measure require operational and administrative work that can be implemented by the relevant officers. There are however, two aspects directly affecting Members which are the subject of this report. These are contained in sections 56 and 63 of the Measure.

- 3.02 Section 56 of the Measure enables arrangements to be made for individual Members to exercise functions in relation to that Member's electoral division. Where the function is a Cabinet function, the arrangements are to be made by the Council Leader. Where the function is a Council function the arrangements are to be made by the Council. Such arrangements can also be made in relation to that Member's role as the Council's representative on an outside body.
- 3.03 The statutory guidance indicates that judicious use of these powers may assist Members to become "Cabinet members for their ward" as described in the report by Local Government Leadership referenced in the Simpson report. The Simpson report advocates a re-think of Member's "committee-based" work in favour of a more localised, empowered means of addressing community issues. The intent behind the provision is a desire to give Councils a wider range of opportunities to make effective use of elected Members' representational role (paragraphs 4.4, 4.5 and 4.11 of the statutory guidance).
- 3.04 Paragraph 4.17 of the statutory guidance states that when considering whether or not to delegate functions to non Executive members, Councils may wish to give thought to various issues including:-
- Would Members need additional support such as legal advice in the discharge of delegated functions?
 - How will Members be supported if their decisions are challenged, for example, by judicial review?
 - How will Members publically record decisions made using their new powers?
- 3.05 In addition to the considerations identified in the statutory guidance, other issues if this is to be pursued are the budget implications, the inconsistency of practice in different wards, the effect on Council policies and on staffing workload and resources.
- 3.06 In Flintshire it has been the custom and practice under differing leaderships for Cabinet members to reach decisions on a joint basis rather than individually. It has also been the custom and practice for all Member decisions to be based upon a written report from officers detailing various implications such as legal and financial. Putting in place similar arrangements so that each of the 70 members could make individual decisions would require significant additional officer resources. Without such a framework the risks identified in the statutory guidance would be the greater, leading again to significant officer resources being needed to deal with complaints and legal challenges. At the Group Leaders meeting there was an unanimous agreement not to utilise the power given by section 56.

- 3.07 The other aspect of the Measure of direct interest to Members is section 63 which introduces provision for “Councillor calls for action” (CCfA) enabling Councillors to refer issues of local importance to an Overview & Scrutiny Committee. Section 63 changes the existing provisions in the Local Government Act 2000 to ensure that Executive arrangements by a local authority enable any member of the Council to refer to an Overview & Scrutiny Committee a “local government matter” which falls within the committee’s remit. A referral in this way will ensure that the matter is included in the agenda and discussed at the committee. In making such a referral the Member must have regard to the statutory guidance issued in June 2012.
- 3.08 The statutory guidance (paragraph 6.27) makes clear that before a CCfA goes to an Overview & Scrutiny Committee, Councillors should consider the 13 other options listed in that paragraph of the guidance. Paragraph 6.5 of the statutory guidance makes clear that CCfA should be understood as a means of “last resort” with issues being made to a Overview & Scrutiny Committee after other avenues have been explored.
- 3.09 Flintshire currently has an agreed protocol relating to individual Members putting items on the agenda of an Overview & Scrutiny committee. It is considered that this needs updating and amending to reflect the CCfA process. At the Group Leaders meeting it was considered that the current protocol should be updated to reflect the CCfA process. A draft of this updated protocol is attached as appendix 1.

4.00 RECOMMENDATIONS

- 4.01 To not pursue the power given by section 56.
- 4.02 To approve the updated protocol shown in appendix 1 to replace the existing protocol relating to Members putting items on the agenda of Overview & Scrutiny Committees.

5.00 FINANCIAL IMPLICATIONS

- 5.01 There would be significant resource implications of implementing the powers given by section 56 but none as a result of implementing section 63.

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 There would be significant resource implications of implementing the power given by section 56 but none as a result of implementing section 63.

10.00 CONSULTATION REQUIRED

10.01 None.

11.00 CONSULTATION UNDERTAKEN

11.01 With Group Leaders.

12.00 APPENDICES

12.01 Appendix 1 - Draft Protocol

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

Statutory guidance on the Local Government (Wales) Measure 2011

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