

CYNGOR SIR POWYS COUNTY COUNCIL.

Democratic Services Committee
4th October, 2012

REPORT AUTHOR: Strategic Director – Law and Governance

SUBJECT: Designation of the Head of Democratic Services

REPORT FOR: Decision

- 1.1 The Local Government (Wales) Measure 2011 requires that a local authority must designate one of its officers as a Head of Democratic Services. A copy of an extract of the Statutory Guidance together with the report considered at the County Council on 20th October, 2010 are attached at **Appendix 1 and 2**.
- 1.2 Following the last meeting of the Committee, the Chief Executive and Management Team has been asked to make a nomination to the Committee and an extract of the Minutes of the Management team meeting held on 10th September, 2012 is attached at **Appendix 3**.
- 1.3 The Management Team has suggested that the role of Head of Democratic Services is already included within the role and responsibilities of the Head of Legal, Scrutiny and Democratic Services, and accordingly it is recommended that the Head of Legal, Scrutiny and Democratic Services be designated as the Council's Head of Democratic Services.

Recommendation:	Reason for Recommendation:
That the Head of Legal, Scrutiny and Democratic Services be designated as the Council's Head of Democratic Services.	To comply with the requirements of the Local Government (Wales) Measure 2011 that the Council designates one of its officers as Head of Democratic Services.

Relevant Policy (ies):	
Within Policy:	Y / N
Within Budget:	Y / N

Relevant Local Member(s):	
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Person(s) To Implement Decision:	Clarence Meredith
Date By When Decision To Be Implemented:	October, 2012

Contact Officer Name:	Tel:	Fax:	Email:
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Background Papers used to prepare Report:

Chapter 3 Democratic Services Committee

Statutory Guidance for Democratic Services Committee made under Section 16 of the Local Government (Wales) Measure 2011

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.

CYNGOR SIR POWYS COUNTY COUNCIL.

COUNTY COUNCIL
20th October, 2011

REPORT AUTHOR: Strategic Director – Law and Governance

SUBJECT: Establishment of Democratic Services Committee.

REPORT FOR: Decision

1. INTRODUCTION

- 1.1 The Local Government (Wales) Measure 2011 (“the Measure”) entered onto the statute book in March of this year but much of this legislation remains to come into force through ministerial commencement orders.
- 1.2 One such provision in the Measure awaiting a commencement order is the requirement for local authorities in Wales to appoint a “Democratic Services Committee”.
- 1.3 Another such provision awaiting implementation deals with the requirement for the DSC (on behalf of the Council) to designate one of the Council’s officers, to be known as “the Head of Democratic Services”, to discharge the “Democratic Services Functions” as set out in the Measure.
- 1.4 Appendix 1 outlines the provisions in the Measure relating to the new Democratic Services Committee (DSC), the new Head of Democratic Services post (HDS) and the scope of “Democratic Services Functions”.
- 1.5 As will be seen from Appendix 1 this new committee must be politically balanced and apart from its role in designating the HDS it will also have responsibilities in relation to overseeing staff and resources concerning the democratic services functions.

2. PROGRESSING ARRANGEMENTS RELATING TO THIS NEW STATUTORY COMMITTEE

- 2.1 It will be a number of months until the provisions in the Measure relating to these matters discussed above come into force and relevant ministerial guidance is finalised.

- 2.2 The latest information is that the commencement order bringing these provisions into effect will be made next April along with the relevant ministerial guidance being introduced at the same time.
- 2.3 One option is, of course, to wait until the legislation and guidance comes into effect before implementing any changes required by the Measure.
- 2.4 That course of action however could result in the introduction of a new statutory committee and a new statutory officer post in the busy period running up to the ordinary Council elections in May and/or possibly beyond.
- 2.5 Given its pivotal role there would appear to be merit in considering establishing this new committee sooner rather than later and ahead of the legislation actually coming into force.
- 2.6 The appointment of a DSC at this early juncture would, of course, have to be undertaken under the Council's existing statutory powers. However by endeavouring to follow the model laid down in the Measure subsequent adjustments would, hopefully, be minimal (if required at all) when the Measure comes into force.
- 2.7 By establishing a committee now there would be an opportunity for the new DSC to start work at the earliest opportunity (before the turn of the year) and begin the task of laying sound foundations in readiness for the new Council in May next year.
- 2.8 As far as the size of the DSC is concerned there are no statutory limitations. The majority of the Council's current committees are composed of 15 members and it is suggested that this should be the size of this politically balanced committee. It would, of course be open to the Council at any point in the future to alter the size of the committee.
- 2.9 It will, of course, be necessary to amend the Council's Constitution to reflect the emergence of this new committee. This will be the subject of a further report in due course.
- 2.10 In relation to the appointment of the Chair of this committee as will be seen from Paragraph 1.7 of Appendix 1 to this report this is a function for full County Council. It will also be noted that the County Council will not be able to appoint a Councillor from the "Executive Group". The Act defines "Executive Group" to mean a Political Group some or all of whose Members comprise, or are included in, the Executive of the Authority. In Powys terms this currently means a Councillor who belongs to either the Powys Independent Alliance or the Welsh Liberal Democrats.

- 2.11 Whether the Chair of this committee (once the legislative provisions are in force) will be entitled to receive an SRA will be a matter for the Independent Remuneration Panel to decide and this will not be known until their next report in respect of 2012/13 is published later in the year.
- 2.12 Clearly if this committee comes into existence before the legislative provisions are in force there are no powers to pay an SRA to the Chair as the present Panel report covering 2011/12 was prepared prior to the measure coming into force and makes no reference to the Democratic Services Committee Chair.
- 2.13 In these circumstances Council may wish to consider making an application to the Panel for an additional SRA in respect of this Committee Chair to deal with this interim situation and so be able to pay an SRA to the Chair of this committee immediately following appointment.
- 2.14 If this approach is agreed by Council it will need to be determined as to the level at which this SRA should be set for the purposes of making such an application i.e. which tier of Chair SRA should be selected.
- 2.15 As Members know the current annual SRA for Scrutiny Chairs and the Chair of the Planning Committee is £6,516 with the Chairs of other committees entitled to SRA's receiving £3,258 per annum. It may be that Council would consider this latter SRA as being more appropriate.

3. RECOMMENDATIONS

- 3.1 That Council under its existing statutory powers appoints a 15 member politically balanced committee to be called the "Democratic Services Committee" with effect from the date of this Council meeting.
- 3.2 That such Committee be composed of non-executive councillors from the political groups allocated on the single committee political balance basis set out in the Ready Reckoner used at the last Annual Meeting in May this year, namely:-

Powys Independent Alliance	6
Welsh Liberal Democrats	3
Shires Independent Group	3
Welsh Conservatives	2
Welsh Labour	1
Total	15

- 3.3 That each political group notifies Council at the meeting of their nominations to serve as members of this committee.

- 3.4 That Council appoints the chair of the committee from amongst the members appointed to serve on the committee.
- 3.5 That Council considers whether to make an application to the Independent Remuneration Panel in relation to an additional SRA for the Chair of this committee as discussed in Paragraphs 2.11 to 2.15 above.

Recommendation:		Reason for Recommendation:	
As set out in section 3 of the report.		To facilitate the introduction of a new statutory committee.	
Relevant Policy (ies):		Council's Constitution	
Within Policy:	Y	Within Budget:	Y
Date By When Decision To Be Implemented:		With immediate effect	
Contact Officer Name:	Tel:	Fax:	Email:
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Outline of the Measure's provisions relating to the new Democratic Services Committee (DSC), the new Head of Democratic Services post (HDS) and the scope of "Democratic Services Functions"

1. Requirements for the appointment and operation of a DSC

- 1.1 The full County Council must appoint a DSC and has no discretion in the matter and cannot delegate this duty.
- 1.2 All members appointed to a DSC must be Councillors i.e. it is not permissible to appoint co-optees from outside the authority.
- 1.3 No more than one member of the Executive can sit on a DSC.
- 1.4 The Executive Leader cannot sit on a DSC.
- 1.5 The political balance requirements apply to a DSC.
- 1.6 One or more sub-committees may be appointed by a DSC.
- 1.7 The Chair of a DSC must be appointed by the full County Council and cannot be a member of the executive group (unless there are no opposition groups – in which case the executive group member appointed as Chair must not be a member of the executive).
- 1.8 The Chair of a sub-committee of a DSC must be appointed by the DSC.
- 1.9 Members and Officers of the Authority may be required to attend before a DSC (or one of its sub-committees) to answer questions and a DSC (or one of its sub-committees) may invite other persons to attend meetings of the committee/sub-committee.
- 1.10 It is the duty of any Member or Officer of the Council to comply with a request to attend a meeting of the DSC or one of its committees and answer questions (unless entitled to refuse to answer such a question if it had been asked in a Court of law).
- 1.11 The normal requirements of the Local Government Act 1972 in relation to the press and public having rights of access to meetings and documents etc apply to a DSC and any sub-committee.
- 1.12 A DSC may meet as frequently or infrequently as it chooses but must meet :-

- (a) at least once in every calendar year;
- (b) when full County Council resolves that it should meet;
- (c) when at least one third of the members of a DSC submit a written requisition to the Chair.

1.13 The Chair of a DSC has a duty to ensure that meetings are held as required above.

1.14 The DSC (or a sub-committee) is required to exercise the following functions (and it is for the DSC to determine how to exercise them) :-

- (a) designate the officer who is to be the Head of Democratic Services (HDS) (see below)
- (b) consider any report or recommendation from the HDS (see further below) within 3 months
- (c) review the adequacy of provision by the authority of staff, accommodation and other resources to discharge the democratic services functions (see below)
- (d) make reports and recommendations to the Council in relation to such provision (the Measure requires the DSC to furnish all non committee members with a copy)
- (e) The DSC cannot exercise any functions other than those specified above
- (f) The Measure stipulates that the DSC must have regard to ministerial guidance.

1.15 Currently such ministerial guidance is only in draft form. Whilst this draft guidance stresses that it is for each DSC to decide how it carries out its functions this could include referring matters to relevant scrutiny committees for them to consider and report back.

1.16 This draft guidance further makes reference to the fact that most authorities will already have part of their organisation bearing the title “democratic services” or something similar.

1.17 However, as the draft guidance confirms, this is the first occasion it is being formally legislated for.

2. Requirements for designation and functions of HDS

2.1 Section 9 of the Measure requires every Welsh local Authority to designate one of its officers as HDS

- 2.2 That HDS is required to discharge what the Measure calls “democratic services functions” which are described below.
- 2.3 As indicated above the designation of the HDS is undertaken by the DSC (or a Sub-committee of the DSC).
- 2.4 Certain officers cannot be appointed to this role by the DSC (or a sub-committee), namely;-
 - (a) Head of paid Service (Chief Executive)
 - (b) Monitoring Officer
 - (c) Chief Finance Officer
- 2.5 The post of HDS is a politically restricted post
- 2.6 The Council is required to provide the HDS with such staff, accommodation and other resources as are, in its opinion, sufficient to allow his or her functions to be discharged
- 2.7 The Measure also enables Welsh Ministers to make regulations requiring local authorities to include within their standing orders provisions concerning the HDS’s management of staff allocated to them (excluding appointment, dismissal or disciplinary action which are covered in other legislation).
- 2.8 The draft Guidance indicates that initially, it is most likely that an existing officer of the Council will be appointed hence the reference to “designation”.
- 2.9 The draft Guidance confirms that the DSC cannot insist that the HDS post must be a new recruit.
- 2.10 There is an expectation that the Head of Paid Service will make proposals to the DSC in this connection but the DSC will be free to require an internal advertising of the post.
- 2.11 It is made clear that the person designated as HDS is not prevented from undertaking other roles.
- 2.12 As the DSC has the power to designate the HDS, it follows that it also has power to remove the designation if it so desires. That does not mean that it can dismiss the individual as an employee of the authority.
- 2.13 The draft guidance acknowledges that that in some councils the scrutiny function has not been part of what has previously been known as “democratic services” and those arrangements may have worked well. The guidance refers to the importance of taking care not to dilute the effectiveness of existing arrangements.

3. Scope of democratic services functions

3.1 The lengthy provisions in section 9 of the Measure detailing the scope of the democratic services functions to be the responsibility of the HDS are summarised in the draft guidance as follows:-

- (a) to organise meetings of the council and its committees, including any joint committees it is involved in – but not to provide policy advice to those meetings.
- (b) to promote the role of overview and scrutiny committees within the authority and to explain their role and function to councillors in general, the council executive and other officers.
- (c) to organise and to provide policy advice to the council's Democratic Services Committee and its scrutiny committees.
- (d) to provide support and advice to help individual councillors carry out their role as members of the authority.
- (e) to produce reports on the number of staff required to support democratic services, any new appointments required and how the staff should be organised.
- (f) to carry out any other functions contained within regulations made by Welsh Ministers.

**Minutes of Management Team Meeting
held on Monday, 10 September 2012**

		<i>Action</i>
10.	<p>Head of Democratic Services</p> <p>CM noted a request from the Democratic Services Committee seeking confirmation of the Council's Head of Democratic Services as outlined in the Local Government Measure. MT confirmed that this was currently covered by Janet Kealey in her role as Head of Legal, Scrutiny and Democratic Services. CM to report back to Wyn Richards.</p>	<i>CM</i>