

Report To: County Council

Date of Meeting: 15th May 2012

Lead Member / Officer:

Report Author: Gary Williams – Head of Legal and Democratic Services

Title: Local Government (Wales) Measure 2011

1. What is the report about?

The report is about the changes required to be made to the Council's Constitution as a result of the provisions of the Local Government (Wales) Measure 2011.

2. What is the reason for making this report?

2.1 The Council is required by the Local Government (Wales) Measure 2011 to have an Audit Committee, a Democratic Services Committee and to adopt a new method by which Chairs of Scrutiny Committees are allocated. These provisions were commenced on 30th April 2012 with an expectation that they would be implemented at Annual General Meeting of Councils. These requirements will need to be reflected in the Council's Constitution.

3. What are the Recommendations?

3.1 That Council establishes an Audit Committee, determines the name, size and composition of the Committee and adopts the Terms of Reference attached as Appendix 2 for that Committee.

3.2 That Council resolves that the members of the Audit Committee will be appointed by the Council on a politically balanced basis.

3.3 That Council establishes a Democratic Services Committee, determines its size and composition and adopts the Terms of Reference attached as Appendix 3.

3.4 That Council adopts the principles to be applied to the appointment of Chairs of Scrutiny as set out in paragraphs 4.26 to 4.30 of this report.

3.5 That the Head of Legal and Democratic Services be authorised to make the necessary changes to the Council's Constitution to reflect the amendments required by the Local Government (Wales) Measure 2011 as set out in paragraphs 3.1 to 3.4 above.

4. Report details

Audit Committee

- 4.1 Section 81 of the Measure requires the local authority to appoint a committee “an Audit Committee” to:
- a) Review and scrutinise the authority’s financial affairs
 - b) Make reports and recommendations in relation to the authority’s financial affairs.
 - c) Review and assess the risk management, internal control and corporate governance arrangements of the authority.
 - d) Make reports and recommendations to the authority on the adequacy and effectiveness of those arrangements.
 - e) Oversee the authority’s internal and external audit arrangements.
 - f) Review the financial statements prepared by the authority.
- 4.2 In addition, the authority may confer on the Audit Committee such other functions as the authority considers suitable to be exercised by the Committee.
- 4.3 Section 82 provides that Council is to appoint the members of the Audit Committee.
- 4.4 The Measure does not prescribe the number of members who must be on an Audit Committee but does make the following provisions:
- a) The Committee must have at least two thirds of its membership who are members of the authority.
 - b) At least one member of the Committee must be a lay member i.e. an independent person who is not a member of the authority.
 - c) Only one member of the Committee can be a member of the Cabinet and that member cannot be the Leader.
- 4.5 It is not compulsory to have a Cabinet member on the Audit Committee. This is discretionary.
- 4.6 The draft statutory guidance suggests that political balance is not required but that membership of the Committee should be no less generous to non executive groups than would be the case were political balance rules to apply. The Measure itself does not say this. The general rule in local government law is that a formal committee of the Council should be politically balanced. It is therefore recommended that the Committee be politically balanced.
- 4.7 The Committee itself elects a Chair. The Chair can be either a member of the authority or a lay member but must not be a member of a group represented on Cabinet. If all groups are represented on Cabinet i.e. there are no opposition

groups, then the Chair may be a member of a group represented on Cabinet but must not actually be a member of the Cabinet.

- 4.8 All members of the Audit Committee including the lay member may vote on any question that falls to be decided by the Committee.
- 4.9 The Committee can require Members and Officers of the authority to attend before it to answer questions and can invite other persons to attend meetings. A Member or Officer of the authority must comply with any requirement to attend but does not have to answer any question which they would be entitled to refuse to answer in a court.
- 4.10 The Committee must meet at least once in every calendar year and must also meet if Council resolves that the Committee should meet or at least one third of the members of the Committee requisition a meeting. The Audit Committee can itself decide to meet over and above these requirements.
- 4.11 The Measure provides that any action of the Audit Committee is invalid if its membership is not constituted in accordance with the Measure. This means therefore that the Audit Committee cannot take any action until an independent lay member has been appointed. Council will therefore have to agree an appointment process. The statutory guidance regarding the recruitment of lay members states that the member should be independent from the Council and have no business connection with it, although knowledge of how local government functions would be a definite advantage. Local authorities should also try to avoid appointments of persons whose political allegiances are well known.
- 4.12 The guidance recommends that councils follow a public recruitment exercise similar to that used to appoint members of Standards Committees to recruit lay members. Any lay member with voting rights will of course be subject to the provisions of the Code of Conduct for Members. It is recommended that as the Council is required to appoint members of the Committee it delegates to those members the tasks of interviewing candidates for the position of independent lay member and requests that they make a recommendation to council to appoint their preferred candidate.
- 4.13 An independent lay member will be entitled to an allowance for attending meetings of the Audit Committee. The Independent Remuneration Panel for Wales provides the following mandatory fees:

Ordinary member of Audit Committee	£198 daily fee (£99 for ½ day)
Co-opted Chair of Audit Committee	£256 daily fee (£128 for ½ day)

These payments are capped with a maximum of the equivalent of ten full days a year for each Committee. Payments are for meeting time only but also include time spent on preparation and travelling. A half day meeting is defined as up to four hours and a full day meeting is defined as over four hours.

- 4.14 The Council currently has a Corporate Governance Committee which exercises very similar functions to those required by the Measure of an Audit Committee.
- 4.15 The current Terms of Reference of the Corporate Governance Committee are attached as Appendix 1 to this report.
- 4.16 There is no requirement to call the Committee the 'Audit Committee'. It is for Members to decide whether they wish the Committee to be known as the Audit Committee or whether they wish to continue with the Corporate Governance Committee and designate it as the Audit Committee for the purposes of the Measure.
- 4.17 Draft amended Terms of Reference are attached to this report as Appendix 2.
- 4.18 Council will need to determine the membership of the Committee. The Corporate Governance Committee currently has six Members to include the Vice-Chair of Council. The Measure requires that there be at least one independent lay member of the Committee and there may be one Cabinet member. Council needs to determine the membership of the Committee.

Democratic Services Committee

- 4.19 Section 11 of the Local Government (Wales) Measure 2011 requires the Council to appoint a committee to:
- a) exercise the function of the local authority under Section 8(1)(a) to designate a Head of Democratic Services
 - b) review the adequacy of provision by the authority of staff, accommodation and other resources to discharge democratic services functions, and
 - c) make reports and recommendations to the authority in relation to such provision.
- 4.20 It is for the Democratic Services Committee to determine how to exercise those functions.
- 4.21 The members of the Democratic Services Committee must be appointed by Full Council. There are to be no co-opted members. There may be no more than one member of the Cabinet on the Committee who cannot be the Leader.
- 4.22 The Committee must be politically balanced. The Full Council must also appoint the Chair of the Committee who must not be a member of any of the political groups represented in the Cabinet, unless, there are no opposition groups in which case any member of the Committee may be appointed as Chair provided that that member is not a member of the Cabinet.
- 4.23 The Committee must meet at least once a year. In addition it may meet further if Full Council so decides or at least a third of the membership of the Committee demands a meeting. There is no maximum limit on the number of meetings of the Committee.

- 4.24 Any report presented to the Committee by the Head of Democratic Services must be considered by it within three months. Similarly any report made by the Committee must be considered by Full Council within three months.
- 4.25 Council will need to determine the number of Members required to serve on the Committee and whether or not the Committee should include a Cabinet member.

Appointment of Chairs of Scrutiny Committees

- 4.26 The Local Government (Wales) Measure 2011 provides that in circumstances where there are two or more political groups and multiple scrutiny committees, the following principles for the appointment of Chairs should apply.
- 4.27 The first principle is that the political groups represented in the Cabinet can only appoint as many Chairs as are proportionate to their share of the Council's overall membership, when taken together, rounding down if this does not equal a whole number of Chairs.
- 4.28 The second principle is that the remainder of the Scrutiny Chairs are the "property" of those groups not represented in Cabinet. If there is only one such group they are entitled to all the remaining Chairs. If there is more than one such group, then each gets a share of the Chairs in proportion to their membership of the non Cabinet groups.
- 4.29 If a political group declines to take its allotment of Chairs, none of those Chairs can be allocated to groups represented on Cabinet. The vacant positions are to be offered to the other groups.
- 4.30 If the political make up of Cabinet changes then the exercise of allocation of Chairs begins again.
- 4.31 The Council may adopt a different allocation system but only if it is more favourable to non executive groups. A majority of each group must support every proposal to adopt a different system and the proposal must be approved by resolution of the Full Council with a majority of members of every political group voting in favour.

5. How does the decision contribute to the Corporate Priorities?

- 5.1 The decision implements the requirements of the Local Government (Wales) Measure 2011 and contributes to the priority of a high performing Council.

6. What will it cost and how will it affect other services?

- 6.1 There will be an additional cost associated with fees payable to the independent lay member of the Audit Committee. These are a statutory requirement and are set out in the report.

7. What consultations have been carried out?

- 7.1 The Welsh Government consulted councils upon the Measure and the draft guidance.

8. Chief Finance Officer Statement

This is a statutory change resulting from the implementation of the Local Government Measure. There should not be significant additional costs as a result of the changes to the committee structure though there could be some with the establishment of additional committees. There will be a minor cost associated with the appointment of co-opted members to an audit committee. Any additional costs would have to be absorbed within existing council resources.

9. What risks are there and is there anything we can do to reduce them?

- 9.1 The requirements of the Measure are compulsory and failure to implement the provisions relating to Audit and Democratic Services Committees and the appointment of Chairs of Scrutiny would place the Council in a position where it may be subject to a Direction from Welsh Ministers.

10. Power to make the Decision

Section 81 Local Government (Wales) Measure 2011.
Section 11 Local Government (Wales) Measure 2011.
Section 70 Local Government (Wales) Measure 2011.