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—
SUBORDINATE LEGISLATION
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Local Government, Wales

**GUIDANCE FOR COUNTY AND COUNTY BOROUGH
COUNCILS IN WALES ON EXECUTIVE AND ALTERNATIVE
ARRANGEMENTS 2006**

Made: 30th July 2006

Coming into force: 31st July 2006

EXPLANATORY NOTE

(This note is not part of the Guidance)

The National Assembly for Wales, in exercise of powers under section 38 of the Local Government Act 2000 is updating guidance to county and county borough councils in Wales on the content and operation of a constitution including executive and alternative arrangements.

This guidance underpins the provisions of Part II of the Local Government Act 2000 which concerns the operations of new political management structures for county and county borough councils. It is statutory guidance to which local authorities must have regard.

The first edition of this guidance was produced in July 2001 and first updated in September 2002.

Signed: Sue Essex

**The Minister for Finance, Local
Government and Public Services**
Date: 30th July 2006

THE LOCAL GOVERNMENT ACT 2000

PART II

GUIDANCE FOR COUNTY AND COUNTY BOROUGH COUNCILS IN WALES ON EXECUTIVE AND ALTERNATIVE ARRANGEMENTS 2006

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1. INTRODUCTION

1.1 This document provides guidance to county and county borough councils in Wales on the content and operation of a constitution including executive and alternative arrangements.

1.2 This guidance underpins the provisions of Part II of the Local Government Act 2000 (the Act) and is issued under section 38 of the Act.

NOTE: The first edition of this guidance was produced in July 2001 and updated in September 2002.

BACKGROUND AND KEY PRINCIPLES

1.3 The White Paper *Local Voices: Modernising Local Government in Wales*, issued by the Welsh Office in 1998, put in place a programme for the reform and modernisation of local government in Wales.

1.4 Councils, in partnership with the Assembly, business, the voluntary sector and others, have a vital role to play in improving the quality of people's lives. Councils everywhere need to provide vision and leadership for their local communities, and to deliver high quality services to local people.

1.5 The Act provides powers for councils to promote the economic, social and environmental well being of their area and a duty to develop Community Strategies. It also established a new ethical framework for local government. This guidance addresses Part II of the Act, which concerns the operation of new political management structures for county and county borough councils.

1.6 The Assembly has worked in partnership with local government and other organisations in developing guidance which is relevant to Welsh local authorities. Although the Act applies to both England and Wales, this guidance indicates where the Assembly has used its powers under the Act by means of subordinate legislation to make provisions applying to authorities in Wales.

1.7 Part II of the Act gives local people a real say in how they are governed and introduced executive and alternative arrangements which:

- deliver visible, accountable leadership for a council and the community it serves; and
- provide transparent and efficient decision-making.

1.8 Executive arrangements replaced large elements of the old committee system of local government with a system in which a small, clearly identified executive

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is responsible for providing leadership and taking decisions within a framework agreed by the full council; and where new overview and scrutiny committees review the performance of the executive and seek continuous improvement and development.

- 1.9 Authorities had the choice of adopting alternative arrangements (the operation of which is contained in The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001) as outlined in Chapter 7 'Alternative Arrangements – 'The Fourth Option''. The majority of this Guidance is therefore devoted to the operation of executive arrangements. Where practical, however, it should also be applied to councils operating alternative arrangements. With the obvious exception of specific references to legislation and provisions clearly applying only to executive models, this applies in particular to paragraphs 2.7 - 2.11, 2.18 – 2.48, 4.114 – 4.127, 4.134 – 4.140, Chapters 5, 6, 8, 9 and 10.

MAIN STATUTORY PROVISIONS

- 1.10 In Wales, Part II of the Act applies only to county and county borough councils.

- 1.11 Section 37 requires each authority to prepare, keep up to date and publicise, a document known as the council's 'constitution'.

- 1.12 Section 25 of the Act placed a duty on local authorities to consult on and prepare proposals for executive arrangements, which included one of three broad new forms of executive described in section 11 of the Act. These were:

- a directly elected mayor with a cabinet of councillors appointed by the elected mayor (mayor and cabinet);
- a council leader appointed by the council with a cabinet appointed either by the council or the leader (leader and cabinet);
- a directly elected mayor with an officer appointed by the council (known as the council manager) who is responsible for the executive's functions (mayor and council manager);

and alternative arrangements as outlined in Chapter 7 (the fourth option).

Such consultations took place in 2001 and 2002 and proposals for each local authority were approved by the Assembly in 2002.

- 1.13 Section 11(5) enables the Assembly, by regulation, to make provision for other forms of executive including forms of executive where other members of the executive are directly elected. Section 12 provides that in exercising powers under section 11(5) the Assembly must have regard to, amongst other things, any proposals put forward by councils. Such proposals must also meet criteria of efficiency, transparency and accountability.

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- 1.14 Section 13 requires that all functions of a local authority should be the responsibility of the executive unless otherwise specified in regulations. Sections 14 to 20 define ways in which functions can be delegated both within and outside the executive and outside the authority.
- 1.15 Section 21 requires an authority's executive arrangements to include arrangements for overview and scrutiny committees to hold the executive to account and to assist in developing the council's policy.
- 1.16 Section 22 of the Act deals with access to information. It ensures that decisions made by the executive must be recorded and made public.
- 1.17 Sections 26 and 27 require that, where an authority's proposals include a directly elected mayor, the authority may only implement the proposals if they are approved by a referendum of local electors. Section 28 requires the authority, where the proposals require a referendum, to draw up outline fallback proposals to be implemented in the event that the referendum rejects the proposals.
- 1.18 A referendum can be instigated by the authority or it may be triggered by a petition signed by local electors (section 34) or by a direction or order from the Assembly (sections 35 and 36). The Local Authorities (Referendums) (Petitions and Directions) (Wales) Regulations 2001 (amended by The Local Authorities (Referendums) (Petitions and Directions) (Amendment) (Wales) Regulations 2003) fixes the percentage threshold required to trigger a referendum to 10% of local electors. (section 34).
- 1.19 Section 31 allows the Assembly to specify any local authorities which may draw up proposals to operate alternative arrangements and the Assembly agreed that all Principal Councils in Wales could do so. Section 32 enables the Assembly to introduce regulations for how alternative arrangements might operate. The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001 specifies how alternative arrangements operate and those are covered in Chapter 7 'Alternative Arrangements – The Fourth Option'.
- 1.20 Local authorities are able to change their arrangements under the provisions of The Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004.

2. ROLES AND RESPONSIBILITIES

2.1 All councillors have important roles under the new constitutions and all are subject to the same ethical framework and code of conduct. It is crucial that all councillors have a clear understanding of their role and those of other councillors in order to understand how different functions within the council will operate as a cohesive whole. This chapter describes the basic roles and responsibilities of councillors in the four main elements of a council operating executive arrangements: namely, the full council; councillors as representatives of their communities or areas; the executive; and overview and scrutiny committees. It then goes on to describe the role of officers in supporting them.

THE FULL COUNCIL

2.2 The role of the full council is to agree the form of the executive arrangements, along with the standing orders, schemes of delegation and codes of conduct which together make up the council's constitution; to agree the policy and financial framework; and to agree key appointments. All councillors, acting together as the full council, have the following responsibilities:

- adopting the new constitution and changes to it;
- agreeing the council's policies and budget;
- approval of specified statutory plans;
- approval of the council's financial rules and regulations;
- taking decisions in respect of executive functions which are not in accordance with the policies and budget agreed by the full council;
- exercising quasi-judicial functions such as the passing of local bye-laws and any other decisions which by law are still required to be taken by the full council;
- making appointments to committees and to the executive where the new constitution so provides;
- appointing the council leader where the council has chosen a model under section 11(3) of the Act.
- appointing the council manager (if appropriate); and
- making or confirming the appointment of the chief executive (see paragraph 2.29 below).

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- 2.3. The council meeting is the forum at which all executive and non-executive members discuss the council's key policies, setting the strategic framework and budget for implementation and delivery on the basis of proposals put forward by the executive. The plans, strategies and financial proposals, which need to be agreed by the full council are, discussed in Chapter 3 'Responsibility for Functions'.
- 2.4 After considering the executive's proposals, the full council will have the power to:
- adopt or approve the draft policy or budget;
 - ask the executive to reconsider it; or
 - amend the policy or budget itself.
- 2.5 The full council is required to approve or adopt the draft of any policies which must be sent to the Assembly or Minister of the Crown for approval. The executive has responsibility for amending any such policy as required by the Assembly or Minister from whom approval is required.
- 2.6 The council, rather than the executive, remains responsible for planning, licensing and registration functions and the local regulation of health and safety. This is explained in more detail in Chapter 3 'Responsibility for Functions'. These matters will normally be delegated to committees of the council or to officers.

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REPRESENTATIONAL AND CONSTITUENCY ROLES OF COUNCILLORS

- 2.7 All councillors already represented their electoral division constituencies but this has become an even more important role for all councillors under a new constitution. Councillors who are not members of the executive need to ensure that they fully represent the interests of their constituents and act as the bridge between their localities and the executive.
- 2.8 They can play an important role in consulting their communities on the development of council policy, in particular in best value reviews, the community planning process, and other local initiatives, for example on community safety. It is their responsibility to represent these views to the executive, overview and scrutiny committees (of which they might be a member), officers and the full council. Councillors also have the right as individuals to scrutinise executive policies and input their views to the appropriate body.
- 2.9 Where a council or executive decides to adopt a structure, which includes area committees or forums, all councillors in that area will be able to be members of those bodies and, where they have delegated functions or budgets, take decisions in respect of their area.

2.10 All councillors will also be able to represent the council on partnerships and outside bodies if appointed to such posts by either the executive or the council as appropriate.

2.11 Local authorities are encouraged to ensure that all non-executive councillors shall have the opportunity to sit on at least one council committee.

THE ROLE OF THE EXECUTIVE

2.12 The executive has the role of providing strategic leadership and direction to the council.

5. It is responsible for developing and proposing those plans and strategies, which make up the policy framework of the council to the full council for approval.

- It is responsible for proposing the budget to the full council for approval, including the allocations to different services and projects, proposed taxation levels and contingency funds.

(e) The executive may also be fully responsible for a number of other plans of a more operational nature, depending on how the full council decides to use any discretion it has to delegate such plans to be the responsibility of the executive (Chapter 3 'Responsibility for Functions' refers).

2.13 The executive will then be responsible for implementing the policies the full council has adopted and spending the budget in accordance with the policy framework and the council's financial rules and regulations. The executive will be clearly accountable to the rest of the council and to the public for the decisions it takes in doing so.

2.14 Local authorities should underpin their executive and council arrangements with procedures that maximise openness and transparency in order to ensure that all elected members, executive and non-executive, and the public, are able to inform themselves about all aspects of the executive's work and decisions being taken on their behalf, and can influence these at an early stage. This can be best achieved through sound local forward work programming, agenda management and recording, reporting, information management and communication procedures and practices.

2.15 Councillors in the executive will:

- lead the community planning process and the search for best value, with input and advice from overview and scrutiny committees, area committees and any other persons as appropriate;

- take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver the budget and policies decided by the full council;

- deal with emerging issues;

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- deal with unexpected events (e.g. floods, severe weather, accidents, serious outbreaks of contagious illness etc.)
- be the focus for forming partnerships with other public, private, voluntary and community sector organisations to address local needs; and
- be responsible for delivering services in line with the adopted policies and budget. Operational and administrative matters will continue to be dealt with most effectively at officer level, however, with the executive exercising a leadership and strategic role.

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2.16 In developing the budget and formulating policy, the executive will be responsible for any consultation, which is required or necessary. The executive should, at an early stage in the development of the budget and policies, consult the relevant overview and scrutiny committees (perhaps by commissioning a policy review) and other relevant committees of the council which in the case of the Unitary Development Plan should include any committee of the council which takes development control decisions.

2.17 The executive, particularly in the case of a directly elected mayor, will inevitably have its own policy agenda. Nevertheless it will also need to respond to any recommendations of overview and scrutiny committees and individual councillors who will also be seeking to represent to the executive the needs of the local community. Where these differ from the executive's policy, the executive will need to justify the differences and its actions, where necessary seeking approval from the full council, or change its policy.

OVERVIEW AND SCRUTINY

2.18 Overview and scrutiny committees are an essential and integral part of executive arrangements. Under Section 21 of the Act, they are given wide-ranging powers of review and scrutiny and the ability to make reports and recommendations on any matters relevant to the area and its inhabitants. The role of councillors exercising overview and scrutiny is:

- to hold the executive to account for the efficient exercise of executive functions – especially the performance of the executive as measured against the standards, objectives and targets set out in the policies and plans which it is implementing;
- to assist in the improvement and development of the council's policies by evaluating whether they are achieving their stated objectives, whether those policies and the way they are being implemented reflect the needs and priorities of local communities and by reporting and making recommendations to the executive or the full council;
- to review and make reports on issues which affect the authority's area or its residents; and

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- to examine whether the systems the executive has in place to deliver its functions are robust and are being properly observed.

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- 2.19 In addition, they will be able to review the discharge of non-executive functions and to report on matters of more general local concern. This could link with the authority's power under Part 1 of the Act to promote economic, social and environmental well being, by identifying areas which the executive could address using this power.
- 2.20 Local authorities should take measures to ensure that the overview and scrutiny function is afforded a central role in both the structure and the ethos of the authority. In order to achieve this nonexecutive members need to understand their role and have a full appreciation of its potential and importance. This may be promoted by arrangements being in place for the executive to keep scrutiny committees fully aware of their forward plans and timetabling. They may also consider discussing the forward work plans of scrutiny committees also with the chairs of these committees to try and ensure that the most effective use is made of the function and capacity of scrutiny. On-going member training and development is also an essential contribution to the effectiveness of scrutiny.
- 2.21 Overview and scrutiny committees have an important role in listening to and representing the views of local people and representative organisations. They will need to establish dialogue with all sectors of the community so that they are aware of the diverse needs and views of different groups. The Assembly encourages overview and scrutiny committees to seek views from as many quarters as necessary to get a balanced picture of the effects of council policy and executive decisions. For example, an overview and scrutiny committee could conduct a review of how certain decisions have affected a particular community of interest or a particular area, taking advice from community groups and representatives or area committees or forums.
- 2.22 The Welsh Local Government Association has undertaken to develop a model of good practice for policy development by overview and scrutiny committees, building on evidence of success in local authorities. This will be developed in consultation with the WLGA's "Scrutiny Champions Network".
- 2.23 Overview and scrutiny committees cannot under the Act discharge any council function other than overview and scrutiny and, where the council has so decided, conducting best value reviews. This is to ensure there is a clear separation between the discharge of functions and the review and oversight of functions.

BEST VALUE

- 2.24 Councils will need to consider what precise role overview and scrutiny committees should play in respect of Best Value but it is inevitable that these committees will have an interest in it. Although the executive will remain accountable for Best Value, the Best Value Performance Plan (which this guidance refers to as an improvement plan and the action plans resulting from

Best Value reviews provide a prime basis for overview and scrutiny committees to monitor the executive's performance and evaluate its approach – for example in terms of the shape of the review programme, the review methods used and progress against the performance plan improvement plan and action plans.

2.25 Overview and scrutiny committees can, under Section 21(5) of the Act, be given the responsibility to conduct a Best Value review or reviews. The responsibility for drafting the Improvement Plan rests with the executive and this should set out who is responsible for carrying out reviews. One option is that the executive could have discretion to invite an overview and scrutiny committee, with its agreement, to take the lead in conducting a review. Alternatively the executive could involve a member or members of an overview and scrutiny committee to form part of the review team as well as inviting the full committee to comment on the final report and recommendations.

OFFICERS

2.26 Officers are required to support both the executive and other councillors in their several roles. The Assembly is committed to working with local government to ensure that adequate officer support is provided for the scrutiny function within councils. This section describes some of the key aspects of the roles of officers and the relationships between officers and members under a new constitution.

The Chief Executive

2.27 The core roles of the chief executive (normally the head of paid service) ("head of the authority's paid service" means the officer designated under section 4(1) of the Local Government Act 1989) are:

- overall corporate management and operational responsibility (including overall management responsibility for all staff);
- the provision of professional and impartial advice to all parties in the decision making process (the executive, overview and scrutiny committees, the full council and other committees);
- responsibility for a system of record keeping for all the authority's decisions (executive or otherwise);
- representing the authority on partnership and external bodies (as required by statute or the council); and
- service to the whole council, on a politically neutral basis.

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The Monitoring Officer and Chief Finance Officer

- 2.28 Current legislation under section 5 of the Local Government and Housing Act 1989, places responsibility on the monitoring officer for overseeing *vires* issues, in particular providing advice to the authority on the legality of their policies and proposals through the preparation of reports of unlawfulness or maladministration. The monitoring officer therefore performs a key function in ensuring lawfulness and fairness in the operation of the council's decision-making process, including investigation and reporting on issues that embrace all aspects of the council's functions.
- 2.29 With the introduction of the new ethical framework for local government in Part III of the Act, there have been some significant changes to the role of the monitoring officer. The monitoring officer has a key role in promoting and maintaining high standards of conduct within a council, in particular through their provision of support to the authority's standards committee.
- 2.30 As far as the executive arrangements are concerned, the monitoring officer's key role is that of providing advice on *vires* issues to all members of the council, both executive and non-executive members. This has been extended to include providing advice on whether decisions taken by the executive are within the policy framework agreed by the full council outlined in Chapter 6 'Checks and Balances'. Similarly the chief finance officer (appointed under section 151 of the Local Government Act 1972) will be responsible for providing advice on whether a decision is likely to be considered contrary to or not wholly in accordance with the budget.
- 2.31 In most authorities the monitoring officer will also be the proper officer for the purposes of ensuring that executive decisions, together with the reasons for those decisions and relevant officer reports and background papers, are made publicly available as soon as possible.
- 2.32 The monitoring officer cannot be the head of paid service/chief executive or the council manager. It is considered inappropriate for the chief executive officer to perform the monitoring officer role as there would be potential for conflicts of interest.

Appointment and Dismissal

- 2.33 Employment Contracts for all officers will continue to be with the authority rather than with, say the executive. This does not mean that the executive, or board, should not discuss personnel matters. It would, indeed, be considered normal practice for the executive, or board, to discuss council recruitment practices, equal opportunities, terms and conditions of staff etc., but not be involved in the appointment (or dismissal) of individual staff or their terms and conditions. All officers, including the council manager where appointed (see Chapter 4 'Structures and Systems'), are subject to the same ethical framework and code of conduct.
- 2.34 The council and the executive will both need to be content with the appointment (or dismissal) of the head of paid service. The executive will also need to be content with the appointment (or dismissal) of other chief officers although responsibility for their appointment will lie with the council, a

committee of the council or, in the case of a leader and council manager executive, with the council manager.

- 2.35 The statutory protections against disciplinary action, previously only afforded to the head of paid service (chief executive) by the Local Government (Standing Orders) Regulations 1993 (SI 1993/202), have been the subject of new regulations, The Local Authorities (Standing Orders) (Wales) Regulations 2006 (SI 2006/1275 (W 121)). These extend the same protection to the monitoring officer and the chief finance officer in recognition of their enhanced roles in new constitutions and, in the case of the monitoring officer, in the new ethical framework.
- 2.36 Under current legislation, the head of paid service, may not have disciplinary action taken against them (except suspension for the purposes of investigating alleged misconduct) unless it is in accordance with a recommendation in a report made by an independent person whose appointment has been agreed between the officer in question and the authority, or by the Assembly in the absence of agreement between the officer and the authority.
- 2.37 In addition, in the view of the Assembly, councillors (including members of the executive) should not be involved in the appointment or dismissal of officers below deputy chief officers. Appointment of officers below deputy chief officer should be made by officers of the authority and not members. Appointment of deputy chief officers (as defined in section 2(8) of the Local Government Act 1989) is a non-executive function which may be delegated to officers under section 101 of the Local Government Act 1972. This issue is further clarified in the Local Authorities (Standing Orders) (Wales) Regulations 2006
- 2.38 This does not preclude the final right of appeal by an officer being to a panel of elected members, where this is a part of the disciplinary and related procedures of the council.

Arrangement of Officer Support

- 2.39 It is a matter for local choice how councils choose to organise officer support for the different roles within the council. Councils should adopt protocols setting out the roles, responsibilities and rights of officers and members and establishing the key principles governing officer/member relationships and these should be included in the constitution.
- 2.40 Some key principles are:
- all officers will remain employed by, and accountable to, the authority as a whole;
 - all officers must be politically neutral in carrying out their duties and offer independent, professional and impartial advice to members;
 - relationships between officers and members should be professional and based on mutual respect;

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- all the council's functions will need support from officers (the executive, overview and scrutiny, the full council, committees, individual councillors consulting with and representing their communities);
- overview and scrutiny in particular will need effective and properly resourced support; and
- all officers will need training and development to help them support the various member roles effectively and to understand the new structures (see Chapter 10 'Training and Development').

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2.41 As the majority of functions will be executive functions, it is likely that, dependent on the size of authority, in practice many officers will be working to the executive for most of their time. The executive must respect the political neutrality of the officers.

Officers and Overview and Scrutiny

2.42 It is for local authorities to decide whether to separate officer support (e.g. committee secretariat) between the executive and overview and scrutiny functions. It is recommended that authorities should have dedicated officer support for scrutiny, whenever possible. Strong, well-resourced support for scrutiny can serve to reinforce the separation of functions between those of the executive and the overview and scrutiny committees. However, the Act does not require this and it remains a matter for local choice. Nevertheless, authorities should ensure that their scrutiny support is reasonably senior in status and is given sufficient intellectual and investigative freedom to operate across the council. Where a council does decide to separate officer support it will be essential to ensure that all staff have rewarding career development opportunities and are treated fairly at all times.

2.43 In practice, councils will wish to ensure that there is no duplication of advice provision within the authority as far as professional, technical and operational expertise is concerned. Officers will need to understand the distinct role of overview and scrutiny committees and respect their independence from the executive.

2.44 Overview and scrutiny committees are able to require officers to attend to answer questions about and discuss the discharge of executive or non-executive functions. The executive and overview and scrutiny committees should always bear in mind that it is for the elected executive to answer questions about its policies and decisions. When officers appear to answer questions their contribution should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions. Officers may be asked to explain how administrative factors may have affected both the choice of policy measures and the manner of their implementation. They may, and in many cases should, be asked to explain advice they have given to members of the executive prior to decisions being taken and they can also be asked to explain and give reasons for decisions they themselves have taken under delegations from the executive.

- 2.45 Overview and scrutiny committees should also consider the seniority of the officers it would be appropriate to call to appear before a committee. Councils may wish to set in place arrangements to restrict the power to officers above a certain grade, for example deputy chief officer and above, to ensure that more junior officers are not put under undue pressure.
- 2.46 As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious, although where an overview and scrutiny committee is conducting a policy review they can offer impartial and professional advice on the implications of different options.

Officers and the Full Council

- 2.47 In the same way it will be a matter for local choice how councils choose to organise support for the full council in its roles and, in some cases, it might be appropriate for there to be dedicated support for the council and committees which discharge non-executive functions.
- 2.48 Councillors will need enhanced support from officers (whether direct, or in terms of serving ICT support) to help them listen to and represent and address individual issues raised by constituents. Councils will need to consider how to resource such support to ensure all councillors can effectively represent their communities.

3. RESPONSIBILITY FOR FUNCTIONS

3.1 Section 13 of the Act requires that all functions of a local authority (including those conferred by the Act and by future legislation) unless otherwise specified in the establishing legislation are the responsibility of the executive. This is subject to any subordinate legislation made by the Assembly, i.e. they will be executive functions unless regulations state they are not or may not be.

3.2 Functions conferred by legislation (rather than by delegation from the council) on statutory committees of a local authority (such as the standards committee, overview and scrutiny committees and, where appropriate, the sea fisheries advisory committee) or on named officers of a local authority (such as the monitoring officer, the electoral registration officer or the proper officer) are not affected by section 13 of the Act – they cannot be executive functions and therefore continue to be subject to the same legislative framework as they were prior to the provisions of the Act coming into force. The Licensing Act 2003 has imposed new duties on local authorities. A licensing committee must be appointed by the full council, to carry out functions specified in the Act. It is for each authority to decide whether other licensing functions are appropriate to the full council or the executive.

3.3 Section 13 enables the Assembly to make regulations as to whether functions, or specified actions in connection with the discharge of functions, are the responsibility of the executive or not. All other functions not specified in the regulations must, by default, be the responsibility of the executive (referred to throughout this guidance as executive functions).

3.4 The Assembly has adopted the following approach to the division of functions between the executive and the council:

- determination of the council's policy framework and budget and other constitutional and quasi-legislative functions are the responsibility of the full council;
- functions which involve either determining applications from individual persons for a licence, approval, consent, permission or registration or direct regulation of individual persons together with any related enforcement actions are not the responsibility of the executive; and
- all other functions are the responsibility of the executive.

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FUNCTIONS WHICH ARE NOT THE RESPONSIBILITY OF THE EXECUTIVE

3.5 The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001 (as amended by the Local Authorities Executive Arrangements (Functions and Responsibilities) (Amendment) (Wales) Regulations 2002, 2003 and 2004) made under section 13 requires that certain functions will not be the responsibility of the executive. These functions will continue to be subject to the same legislative

framework as they were prior to the provisions of the Act coming into force: for example the council may delegate them to committees, sub-committees and officers in accordance with section 101 of the Local Government Act 1972. Delegations will vary from council to council depending on local circumstances. However, where such decisions are currently delegated to committees or to officers then these delegations should continue. *Note: where local authorities establish such committees, all councillors, including members of the executive, will be eligible to serve as members of the committees. (But see below in the case of audit committees).*

FULL COUNCIL FUNCTIONS

3.6 The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001, (as amended) outline the functions to be exercised by the full council. These will include:

- the adoption or approval of specified plans, strategies and arrangements (policies) of the council – referred to throughout this guidance as the policy framework;
- the adoption or approval of the budget and virement limits, including the agreement of council tax rates;
- determining the scheme of councillors’ allowances;
- authorising any applications to the Assembly for transfer of housing stock; and
- dealing with any matter referred to the full council by the executive.

3.7 The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001 (as amended) require the statutory plans and strategies listed below to be adopted by the full council:

- Behaviour Support Plans
- Best Value Performance Plan (or Improvement Plan)
- Children and Young People’s Framework
- Young People’s Partnership Strategic Plan
- Community Strategy
- Crime and Disorder Reduction Strategy
- Health and Well-being Strategy
- Local Transport Plan
- Single Education Plan
- Unitary Development Plan/Local Development Plan
- Welsh Language Scheme
- Youth Justice Plan

Note: The Assembly Government is committed to an extensive programme of reducing local authorities’ planning requirements. Any reduction in plans flowing from

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this would be reflected in amendments to the relevant regulations. However, if a requirement to prepare a plan is removed, any requirement in those regulations setting out how that plan is to be approved, would automatically cease to have effect.

3.8 Together with the admission arrangements for maintained schools for which the authority is the admission authority, any plan or strategy for the control of the authority's borrowing or capital expenditure and certain non-statutory plans (see below), these make up the key elements of the council's policy framework.

3.9 The regulations also allow the council to decide that certain other plans or strategies (statutory or non-statutory) in addition to those listed above are to be adopted or approved by the full council. This would enable the council to expand the policy framework to include other key plans or strategies of the authority and to set out in its executive arrangements, which plans and strategies are to be adopted or approved, by the full council. This will normally mean that the executive will draft the budget, plans and strategies and place them before the full council for approval.

3.10 A number of non-statutory plans and strategies also set out key aspects of the council's policy for delivering key council services and therefore could be adopted by the full council as part of the policy framework including:

- Children First Plan
- Corporate Plan
- Local Housing Strategy
- Housing Operational Plan
- Housing Stock Business Plan
- Lifelong Learning Development Plan
- Policy agreements

3.11 The Assembly may consider and propose changes to these non-statutory requirements in order to streamline them. Councils own requirements with regard to the approval of Plans would need to be updated correspondingly.

3.12 Certain other functions such as those in respect of the conduct of elections and quasi-legislative functions such as making byelaws and decisions relating to rights of way will not be the responsibility of the executive and should be the responsibility of the full council. In addition, functions which, by virtue of any enactment, are required to be discharged by the full council must continue to be discharged by the full council.

PARTNERSHIP PLANS

3.13 Increasingly, local authorities do not have sole responsibility for the preparation of many plans and strategies, even though they may have the lead role in co-ordinating them. A number of plans (such as the Community Strategy, Crime and Disorder Reduction Strategy, Early Years Development Plan and Community Care Plan) are now prepared by local strategic

partnerships. They include action and targets to which a range of other bodies will be contributing.

- 3.14 Such plans must be negotiated and agreed by all the relevant partners, and it would be counter-productive if the full council were to object to elements of a policy that had already been agreed by the executive and other local partners. It will, therefore, be especially important to establish clear lines of communication between the executive and the council during the development of these joint partnership plans.

DEVELOPMENT CONTROL

- 3.15 The Unitary Development Plan will form part of the council's policy framework. The executive will be responsible for formulating the Local or Unitary Development Plan. In doing so the executive should consult any committee which takes development control decisions as well as any relevant overview and scrutiny committees.
- 3.16 The Assembly believes that full exchange of information between the executive and the Planning Committee is essential. The executive should, therefore, consult any committee which takes development control decisions on successive drafts of the Unitary Development Plan while policy is being formulated. Local authorities may decide that they wish the appropriate executive member to be a member of the Planning Committee.
- 3.17 Development control decisions will not be the responsibility of the executive. Therefore implementation of the Unitary Development Plan through development control will continue to be exercised under delegations from the council in accordance with section 101 of the 1972 Act. That said, 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.

LICENSING AND REGISTRATION FUNCTIONS AND HEALTH AND SAFETY AT WORK

- 3.18 Local authority licensing and registration functions may not be the responsibility of the executive, together with the functions of imposing conditions, limitation or terms on the licence etc., making charges (where permitted) for the licence etc. and any enforcement action taken in respect of those functions. For example, if the applicant for a licence does not comply with the conditions of issue of the licence it will be for the body within the council that made the decision to enforce it. The Licensing Act 2003 has strengthened this position, making it a requirement of each county and county borough council that they establish a licensing committee, charged with providing the functions outlined in the Act.
- 3.19 In addition, all health and safety at work functions, where the council is regulating other businesses, must also not be the responsibility of the executive. This includes some licensing functions such as:

- the power to licence storage of petroleum; and
- the power to licence and close premises for the keeping and selling of explosives.

3.20 Responsibility for health and safety for the council as an employer is the responsibility of the executive.

AUDIT COMMITTEES

3.21 As a matter of good practice and as part of their corporate governance arrangements, local authorities are encouraged to establish audit committees. An audit committee shall be a committee of the authority and shall have powers delegated to it as agreed by the authority. It is recommended that no executive members belong to the audit committee but councils may wish to appoint non-councillors, who would not have a vote. It is also recommended that, where political groups operate, the authority appoint as chair of the committee a councillor who is not a member of the controlling political group.

LOCAL CHOICE FUNCTIONS

3.22 There will be certain functions where councils will be able to decide, in drawing up their new constitution, whether or not they are to be the responsibility of the executive. This is addressed in The Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001 (as amended) made under section 13 of the Act (see para 3.5). These functions broadly fall into the following categories:

- locally derived functions: i.e. conferred by local Acts (other than those specified elsewhere in the regulations);
- functions which, depending on the circumstances, may be appropriate for either the executive or a committee/panel (or officer): e.g. the determination of appeals against decisions made by or on behalf of the authority and certain environmental protection functions; and
- functions which, depending on the circumstances, may be appropriate for either the executive or the full council: e.g. the making of certain arrangements for appeals against the decisions of the authority, making appointments to outside bodies and making arrangements for questions to be answered on police matters at council meetings.

3.23 In addition, to enable overview and scrutiny committees to conduct certain best value reviews the function of conducting best value reviews under section 5 of the Local Government Act 1999 is also included in this category of functions.

3.24 If a council's executive arrangements provide that local choice functions are the responsibility of the executive then they are subject to the same legislation

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as all other executive functions. On the other hand if a council's constitution provides that these functions are not the responsibility of the executive then they will be subject to the same legislative framework as they were before the coming into force of the provisions of the Act.

- 3.25 In addition, the council can provide in its executive arrangements that these functions are shared between the executive and the council (or its committees) i.e. that some specified actions in connection with the discharge of these functions are to be the responsibility of the executive and others are not. For example, limitations could be set on the extent to which the executive is to be responsible for certain actions by setting delegation limits.

Local Act Functions

- 3.26 Some local Acts confer functions on specific authorities or groups of authorities and, in some cases, specify ways in which those functions are to be discharged. These functions are by definition specific to that authority or group of authorities. Therefore, the Assembly believes it is appropriate that the decision on whether these locally derived functions are executive functions should be taken locally.
- 3.27 If the local Act in question specifies that the function must be discharged by the full council then that function must continue to be discharged by the full council. For local Act functions which are not to be the responsibility of the executive, any consequent enforcement function etc. must also not be the responsibility of the executive.

Functions which may be Appropriate for Either the Executive or a Committee/Panel

- 3.28 Certain functions in respect of control of pollution (air, water and land), statutory nuisances and other environmental protection functions may be the responsibility of the executive if the council's executive arrangements so provide.
- 3.29 These functions often involve a combination of delivery and implementation of council policy, direct regulation of individual persons and policy and strategy development. In most cases, therefore, it will be appropriate for executive arrangements to provide that these functions are shared between the executive and the council (or its committees), for example, with the council responsible for regulatory, consent or enforcement decisions and the executive responsible for the remainder of the decisions.
- 3.30 Councils should have regard to the principles set out above when deciding the extent and circumstances in which these functions are to be exercised by the executive, the council or its committees. Where these functions are currently delegated to officers this should continue, whether or not they are the responsibility of the executive.
- 3.31 In circumstances where these functions are not to be the responsibility of the executive there should be full exchange of information between the executive and the committee which is responsible for these functions. The Assembly

recommends that an appropriate member of the executive should be a member of that committee.

3.32 A council should decide for itself how appeals are determined and in particular whether they are determined by the executive or not. This is because the Assembly believes that there are a number of possible arrangements for determining appeals against decisions of the authority.

3.33 However, in determining such arrangements, local authorities must ensure that they are consistent with article 6 of the European Convention on Human Rights, which asserts the right to a fair trial. In particular, article 6 says:

“...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.”

3.34 From 2nd October 2000, all councils became subject to the Human Rights Act 1998, which incorporates the Convention into UK law. Local authorities are public authorities for the purposes of section 6 of that Act and are therefore subject to the 1998 Act.

3.35 To ensure consistency with article 6 the Assembly recommends that councils make arrangements for the determination of appeals which ensure that no member or officer who was involved in making the decision in question is involved in the determination of the appeal. Appeals against decisions of the executive, where there will be a measure of collective responsibility, should not be heard by a panel, which includes any member of the executive.

3.36 This might mean that the executive, or a directly elected mayor, is the appellate authority for decisions not taken by the executive providing that any executive member on the committee which took the decision does not hear the appeal. Conversely it could be a committee, which does not include any members of the executive, which would hear an appeal in respect of a decision of the executive.

3.37 Alternatively, in many councils it might be more appropriate for a council to set up an appeals committee or panel ensuring that members of the appeals panel have not been involved in the original decision. This might, for example, be a large panel of councillors from whom a small appeals panel for any particular case is drawn.

3.38 Where an appeal is determined by the executive, the executive will need to consider carefully whether, to be consistent with article 6, it should hold any hearing in public. Where the right to appeal is established by law, councils will need to ensure that the appeal is heard by an independent and impartial tribunal in public.

Functions which may be Appropriate for Either the Executive or the Full Council

3.39 A council can determine in its executive arrangements whether the executive or the council is responsible for making appointments to any body *outside* the

council. This does not apply to appointments to bodies inside the council (e.g. committees which must be appointed by the council) or to appointments of staff.

- 3.40 Whoever makes such an appointment, the member appointed could be either a member of the executive or another councillor. In making appointments to outside bodies the executive (and indeed the council and its committees) must ensure that such appointments do not prejudice equality of opportunity.

EXECUTIVE FUNCTIONS

- 3.41 All other local authority functions not specified as being functions which the full council must determine must be the responsibility of the executive (but see the material in Chapter 4 'Structures and Systems' below on delegations, in particular delegations to area committees).
- 3.42 This means that the vast majority of local authority functions must be discharged by the executive including many of the major service areas such as: social services, education, housing and transport.
- 3.43 The executive is able to delegate functions to officers. Many of the functions, which are to be executive functions, have, prior to the Act, often been discharged by officers, either because they are operational or management decisions or because professionally trained officers are necessary to discharge the functions.
- 3.44 The creation of a separate executive may well, in many authorities, lead to greater delegation to officers. In particular, the executive should continue to delegate operational and management decisions to officers as well as decisions in respect of functions which require professional officer skills, to ensure that the decision is reasonable, fair and therefore lawful. In Social Services, for example, there is also a need to exercise professional judgement in dealing with personal and confidential matters which should be delegated to officers in keeping with the overall policies of the council.

SOCIAL SERVICES

- 3.45 Social services functions will be the responsibility of the executive, which must ensure that social services has the leadership and clarity of direction it needs. Member responsibilities for social services remain crucial under new constitutions. Clear accountability arrangements for social services should be made to members. It will be important for a council's constitution and the scheme of delegation within the executive to make clear who is responsible for social services functions and how, through overview and scrutiny committees, they will be held to account.
- 3.46 Section 102 of the Local Government Act 2000 removes the requirement in sections 2 to 5 of the Local Authority Social Services Act 1970 to have a social services committee, but the requirement for the statutory post of Director of

Social Services remains. The social services functions remain those set out in Schedule 2 of the Local Authority Social Services Act 1970.

- 3.47 Directors should have a sufficient level of seniority, with direct access to the head of paid service and to councillors. Proper accountability arrangements need to be in place for staff who are directly accountable to the Director, as well as those who are not in a direct line management relationship. The Director has a pivotal role in securing accountability, although they might not directly manage services for example those commissioned from external services or in partnership with other agencies or other departments of the council. Effective arrangements need to be in place where activities and functions are shared to enable the Director to manage information about the performance of all social services functions.

The role of the statutory Director of Social Services must be placed firmly in the context of the need for authorities to have clear managerial arrangements and strong professional leadership for social services. While the line management responsibilities of the Director may vary according to the arrangements an authority considers best to meet its need, there is a core of responsibilities across all the authority's social services functions which fall to the Director of Social Services. These are:

- Providing clear professional leadership across social services.
- Having direct access to and advising the Chief Executive and councillors on social services matters and on the direction the authority should take in fulfilling its social services responsibilities.
- Ensuring that strong performance management arrangements are in place across social services, and reporting at a corporate level and to members on the authority's performance in respect of these.
- Ensuring that the authority has proper safeguards to protect vulnerable children and young people, adults and older people, and reporting at a corporate level and to members on their effectiveness.
- Fulfilling overall responsibility for social services workforce planning, training and professional development.
- Ensuring that there are adequate arrangements in place for social services to work effectively with others, both within and outside the authority, in fulfilling its social services functions and in contributing to the achievement of wider policy objectives.

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Services for Children and Young People

- 3.48 The Children Act 2004 requires local authorities to identify a Lead Director for Children and Young People's Services and a Lead Member. They are responsible for promoting co-operation to improve the well being of children and young people and for the production of Children and Young People's Plans across all local authority services. There are similar requirements for NHS Trusts and Local Health Boards, again with the intention of promoting co-operation that will underpin strategic improvement. The role of the Lead Director in Wales does not change arrangements for executive authority or accountability for services. Lead Directors in Wales will be responsible for

promoting partnership working across departments of the local authority and, in recognition of the leadership role of the authority, with its partners. This responsibility is independent of and additional to any operational responsibility a lead director may have for a particular service or group of services. The statutory requirement will continue for authorities to have a Director of Social Services and a Chief Education Officer.

3.49 Arrangements will need to be put in place to ensure that there is proper scrutiny of the Lead Director's role in respect of partnership planning, without confusing accountability for service delivery. Local authorities should also have regard to guidance on corporate parenting produced jointly by the Assembly Government and the WLGA.

Social Services Regulatory Functions

3.50 Under the provisions of the Care Standards Act 2000, the National Assembly for Wales has assumed the former local authority responsibilities for regulation and inspection from local authorities and the former health authorities and has extended the coverage of its regulatory and inspection role. Overall, the National Assembly for Wales is now responsible for the regulation and inspection of:

- All residential care homes including those which provide nursing care;
- Children's homes;
- Independent boarding schools (welfare inspections only);
- Childminding and other day care for under-8s; and
- Nurses' agencies;
- Domiciliary care;
- Fostering agencies;
- Maintained boarding schools (welfare inspections only);
- Private and voluntary healthcare; and
- Adult placement schemes

3.51 In the past, local authorities regularly sent copies of social services committee papers to the Social Services Inspectorate for Wales. Since the onset of new political structures, this practice has become patchy with some cabinet papers and some scrutiny papers being received. Local authorities are encouraged to ensure that arrangements are made for the Inspectorate to receive relevant papers, from whichever source.

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4. STRUCTURES AND SYSTEMS

4.1 In operating their constitutions, authorities need to address how the constituent parts of the council will be structured and work together to deliver both strategic and operational objectives. This chapter addresses some of the factors that need to be taken into account including the form of the executive, the number and size of committees, the frequency of meetings, work programmes and systems of delegation.

THE FULL COUNCIL

4.2 Whatever type of executive arrangements a council adopts, the full council will retain some major decision making powers, as outlined in the previous chapters.

Council Meetings

4.3 Councils will need to think how the role of the council meeting in policy determination can be enhanced, for example:

- it might be appropriate for councils to meet more frequently at certain times of year (for example around the end/beginning of the financial year) and less often at others;
- the structure and style of the meetings may need to change to allow for more debate on key policies; and
- arrangements will be necessary to enable open and informed debate on reports from overview and scrutiny committees as well as proposals from the executive.

4.4 Councils will also need to determine how the executive should present proposals for the key policies and the budget to the full council in order to facilitate debate.

THE EXECUTIVE STRUCTURE

4.5 There are three forms of executive described in the Act:

- mayor and cabinet;
- leader and cabinet; and
- mayor and council manager.

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4.6 In addition, sections 11(6) and (7) of the Act enable the Assembly, by regulation, to make new forms of executive available to local authorities.

Section 11 provides that such forms may include forms of executive, which contain directly elected cabinets.

4.7 As councils implement the new executive arrangements and develop their constitutions to meet the needs of their local communities, the experience they gain of working under the new arrangements might suggest that new forms of executive should be added to those already available. The main purpose of this section of the Act is to enable this experience to be used in the development of new forms of executive if the existing forms prove to be not sufficient.

4.8 The Assembly would be unlikely to make available a form of executive which was very similar to an existing form or one which was only applicable to a single authority. There is already very considerable scope within the three broad frameworks for authorities to tailor the executive arrangements to suit the needs of their communities. It is intended that if any new forms should be made available they would need to be significantly different from existing forms of executive and should also be applicable, at least in principle, to all or a significant number of other authorities.

THE EXECUTIVE: LEADER AND CABINET MODELS

4.9 Section 11(3) of the Act makes provision for this form of executive. The leader is appointed by the full council and can only be removed by the full council. The function of appointing the leader must be carried out by full council and cannot be delegated to a committee.

4.10 Councils should have provisions in their constitution which specify the procedure for electing the leader, the term of office and circumstances when a leader may be removed. Such arrangements should not in any way compromise efficiency, transparency and accountability in decision making: in particular, too frequent changes could be counterproductive.

4.11 It is for each council to set out in its constitution how the arrangements for the appointment of the cabinet should work. There are two alternatives:

- a cabinet appointed by the leader; and
- a cabinet appointed by the council as a whole.

4.12 However, in either case the cabinet must consist of not fewer than three (including the leader) and not more than ten councillors. While the Assembly has the power under section 11(9) of the Act to provide for a different maximum number of members of a Cabinet, that number cannot exceed 10.

Cabinet Appointed by the Leader

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4.13 Under this form of executive, although the leader has not been directly elected, that person would be given a free hand to decide on size (not exceeding 10) and membership of the cabinet, having regard to the relevant outcomes of the consultation undertaken on the proposals for the executive arrangements. The leader can either choose a single party cabinet, a cabinet which reflects the overall political balance of the council, or any other combination as the leader sees fit, in line with section 24 of the Act.

Cabinet Appointed by the Council

4.14 Under these arrangements, the full council decides the size (not exceeding 10) and composition of the executive and could set out the scheme of delegations in accordance with section 15(2).

Allocation and Delegation of Functions

4.15 Section 15(2) of the Act allows functions which are the responsibility of a leader and cabinet executive to be allocated to the whole executive; to any members of the executive; to any committee of the executive; or to an officer of the authority. It is therefore possible for individual cabinet members to have specific functions (or “portfolios”) allocated to them and to take decisions personally: see Chapter 6 ‘Checks and Balances’ for guidance on individual decisions.

4.16 This provision also allows authorities to limit the power of the leader to decide delegations or to carry out functions personally, by setting out the allocation of functions in the executive arrangements themselves. This could either be a broad scheme, along the lines of allowing a function, say, to be discharged either by a single member or an officer, or it could specifically spell out most delegations within the executive and to officers although this might in practice be unwieldy. For example, if the delegation scheme said a particular function had to be carried out by a committee of the executive in all circumstances, a decision to delegate such a function to an officer would need to be referred back to full council. Therefore, under these arrangements councils should ensure that the scheme of delegations determined by the council is sufficiently flexible to ensure the executive can discharge functions efficiently and effectively.

4.17 Alternatively, under section 15(3), the leader may retain the functions and be given powers to decide delegations within and from the executive. In these circumstances executive arrangements can allow the leader to decide:

- to delegate certain functions to be the responsibility of individual members of the executive;
- whether to set up any committees of the executive and delegate functions to them;
- whether to delegate any functions to area committees, to a joint committee with another authority or to another authority;

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- whether to contract out any functions; and
- which executive functions will be delegated to officers.

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4.18 The leader may place limits on the delegation. For example, the leader might decide to delegate matters to an individual executive member but specify that decisions which involve expenditure above a certain level, or in relation to one aspect of the portfolio, must be decided by the full executive; or the leader may decide to impose the condition on the delegation that it may not be delegated onwards to an area committee or an officer (again perhaps linked to a certain expenditure level).

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4.19 Where the executive arrangements leave functions in the hands of the leader to delegate, the leader may at any time override the scheme of delegation and exercise functions in person.

4.20 Arrangements for appointing a cabinet and deciding delegations can be determined separately. For example, the council might decide on the size and composition of the cabinet but allow the leader to decide how to delegate work within the executive. Whatever the arrangements, the delegations must be made publicly available and contained within the authority's constitution and it should, in particular, be clear, at all times, if there are individual portfolio holders. Should any changes be made to the delegations during the course of the year or the term of the council, they will also need to be publicised.

Delegation Outside the Executive

4.21 The executive, its committees or individual members of the executive can delegate widely to officers. Such delegation may be a way of ensuring more efficient decision-making. The executive may also contract out functions or delegate decisions to area committees, joint committees or to other authorities. Such delegations must be clearly set out within the context of a systematic scheme of delegations and clear limits to those delegations in terms of functions and budgets (see paragraphs 4.65 to 4.72 below).

4.22 Where an executive chooses to delegate functions to officers or other structures outside the executive, it will nevertheless remain responsible to the council, through overview and scrutiny committees, for those functions. That is to say, both its decision to delegate a function and the way that the function is being carried out will remain the responsibility of the executive and they will be expected to account for those functions to overview and scrutiny committees.

4.23 Whilst officers can be required to give evidence to overview and scrutiny committees, members or officers from another authority working in partnership cannot. Executives should therefore ensure that, where they have delegated a function, they have a mechanism in place for reviewing the outcome of that delegation.

Frequency and Timing of Meetings

- 4.24 It is for individual local authorities to decide how frequently their cabinet should meet. However, they must have regard to the principles behind the Act and the efficient deployment of resources. A cabinet which met once a week might, depending on its working methods and agendas, be spending too much time on operational issues. A cabinet which met once a month might – again, depending on its working methods – not have enough time to give corporate policies and governance the attention they may need, even if decisions are delegated to individual members of the executive and are not being delayed by the lack of meetings.

Terms of Office

- 4.25 Whilst there is no maximum or minimum term of office specified in the legislation councils should give careful consideration to how often the leader or cabinet should be re-appointed. The terms of office for the leader and cabinet could range from 1 or 2 years or be longer bearing in mind local circumstances and the need for public accountability and a degree of stability. The term of office for the leader and cabinet must be set out in the council's constitution. Clearly, the term of office cannot be exceeded or extended after the date of the next election.
- 4.26 The full council might choose to retain the power to dismiss the executive *en masse*, for example following a change of political control of the council. In addition, they need to consider arrangements for appointing new members to cabinet where casual vacancies occur.
- 4.27 The council must include the arrangements for appointing and dismissing the leader and other executive members in its constitution.

Deputy Leader

- 4.28 There is no requirement to appoint a deputy leader but it is a matter for local choice if councils wish to do so. Councils will need to ensure that appropriate arrangements are in place to cover for the absence of the leader.

Substitution/Co-option and Attendance at Cabinet Meetings

- 4.29 Local authorities will be free to determine whether to have deputy cabinet members but should they so decide, those deputies will be unable to substitute for a cabinet member at a cabinet meeting nor vote on behalf of the cabinet member for whom they deputise. Cabinet members cannot delegate decision-making power to individual elected members outside the cabinet. An executive, therefore, is not able to have formal substitute or deputy members. A separate executive is designed to increase transparency and accountability. Allowing formal substitution could cloud accountability. Since deputies cannot play a formal role in the decision-making process, their role, if appointed, would be a support and advisory one which could have a representational element.

- 4.30 For the same reason, there is no formal co-option allowed onto the executive. However, the executive will be entitled to consult with whoever it thinks appropriate. Indeed, executives are encouraged to take soundings from other councillors, including overview and scrutiny committees, and the wider local community as part of its policy deliberations
- 4.31 In addition, there is nothing to stop an executive inviting anybody it considers appropriate to attend its meetings. However, that person would not be able to take formal decisions. An executive must formally remain a small group of individuals accountable for decision making or its delegation with regard to executive functions.

THE EXECUTIVE: MODELS WITH A DIRECTLY ELECTED MAYOR

- 4.32 Section 11(2) of the Act makes provision for an executive of a directly elected mayor and a cabinet appointed by the mayor. Section 11(4) makes provision for an executive of a directly elected mayor and a council manager. In order to adopt arrangements of this type, a council must first hold a referendum and obtain the approval of local government electors (see Chapter 9 'Consultation'). Before explaining the detail of these executive arrangements, it is necessary to say more about the status of a directly elected mayor.

Directly Elected Mayors

- 4.33 A directly elected mayor is to be treated in the same way as a councillor and a member of the authority for the purposes of legislation relating to local government. In particular, a directly elected mayor:

- is subject to the same qualification and disqualification rules as other councillors (including failure to attend meetings etc.);
- is subject to the same ethical framework and code of conduct as all other councillors;
- is entitled to attend, speak at and vote at meetings of the council and its committees;
- is taken into account in calculations of seat allocations on politically balanced committees of the council;
- comes under the local authority allowances scheme; and
- is subject to the same provisions for filling casual vacancies as other councillors.

- 4.34 The main differences are in terms of election of the mayor. Assembly Regulations, should they be required, will set out arrangements for the term of office of the mayor and the timing and phasing of mayoral elections within the normal electoral cycle of unitary authorities. In Wales this will mean a normal term of office of 4 years.

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4.35 However, the mayor is, in particular, different because that person will have a direct mandate from the local electorate which could be different from that of any of the groups in the council. As a member of the executive the directly elected mayor can also be required, when asked, to attend and answer questions at meetings of the council's overview and scrutiny committees to account for their actions, the actions of the executive and those acting on its behalf.

4.36 In councils where there is an elected mayor, the titles of 'Mayor' and 'Deputy Mayor' can only be used by the elected mayor and the mayor's chosen deputy.

4.37 Where an authority has been granted a Lord Mayoralty by Royal Charter, paragraph 4.36 does not apply. It will depend on the terms of the Letters Patent as to which councillor shall carry the title of Lord Mayor. Should an authority have both a Lord Mayor and an elected mayor, protocol would suggest that the Lord Mayor would take priority in ceremonial functions.

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4.38 A directly elected mayor cannot be the chairman of the council. It is a matter for local choice whether the directly elected mayor or the chairman of the council discharges the ceremonial duties previously performed by the chairman of the council. In addition, a member of an executive cannot be chairman of a council. The chairman of a council and executive have clearly defined roles and responsibilities under executive arrangements. It is important to ensure that there is clear separation of duties between the office of council chairman and the executive. To demonstrate a proper separation of duties a member of an executive cannot also hold the office of chairman.

Absence of the Mayor

4.39 The mayor is required to appoint a deputy mayor. In the mayor and cabinet form of constitution the deputy must be a councillor who is a member of the executive. In the mayor and council manager form of constitution the deputy must be a councillor who is not a member of an overview and scrutiny committee and is not the chairman or deputy chairman of the authority.

4.40 The deputy mayor acts on the directly elected mayor's behalf when that person is unable to discharge their duties for any reason, for example if the mayor:

- vacates their office for any reason (e.g. death, resignation, disqualification etc.);
- is suspended from office for a time;
- is absent abroad for a period of time; or
- is incapacitated through illness; etc.

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4.41 If the mayor is unable to discharge their duties then the deputy mayor is treated as the mayor for that period of time and is entitled to discharge all the

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mayor's functions as a member of the executive. If the deputy mayor and mayor are unable to discharge their duties, then the mayor's functions must be discharged (and not delegated) by the cabinet or council manager as the case may be. The exception to this relates to any ceremonial roles the elected mayor may have where the council may choose who would be most appropriate to discharge those duties in that circumstance.

- 4.42 In the mayor and cabinet form of executive arrangements, if the offices of mayor, deputy mayor and all the cabinet members are all vacant then the council may discharge functions for which the executive is responsible or delegate them onwards under section 101 of the Local Government Act 1972.
- 4.43 In the mayor and council manager form of executive arrangements, if the offices of mayor, deputy mayor and council manager are all vacant then the council may discharge functions for which the executive is responsible or delegate them onwards under section 101 of the Local Government Act 1972.
- 4.44 If for any reason the office of directly elected mayor is vacated a casual vacancy in that office arises and a by-election results. This would normally follow around six weeks after the vacancy arises, unless the next normal date for election of the mayor is within six months of the date the vacancy occurs in which case a new mayor is elected on the next normal date for the mayoral election.

Recall of the Mayor

- 4.45 Under the leader and cabinet form of executive arrangements the leader is appointed by full council and can be dismissed by full council. Under the other two forms of executive arrangements, however, the directly elected mayor has a mandate separate from that of the council. That person will be directly accountable to the electorate rather than to the council. The Act therefore does not allow the mayor to be dismissed by a vote of the council, nor to be dismissed by the electorate other than through the ballot box.
- 4.46 Notwithstanding this, the mayor is subject to the same rules of conduct which govern councillors and would therefore be subject to the same sanctions as other councillors.

Mayor and Cabinet Executive

- 4.47 Under this form of executive arrangements, the mayor will choose the size of the cabinet, which must consist of a minimum of two other councillors and a maximum of nine other councillors. In deciding the size of the executive, the mayor should have regard to the relevant outcomes (if any) of the consultation undertaken on the proposals which were the subject of the referendum.
- 4.48 In choosing the cabinet, the mayor will have a free hand. The Mayor can either choose a single party cabinet, a cabinet which reflects the overall political balance of the council, or any other combination as that person thinks

fit, in line with section 24 of the Act. All members of the executive must be elected councillors of that authority.

Delegation of Functions

4.49 Section 14 of the Act gives the mayor the same degree of freedom in deciding delegations as a council leader can have under section 15 (see paragraph 4.17 above).

Relationship Between Mayor and Cabinet

4.50 The mayor will have been elected on manifesto commitments and so will have a direct authority-wide mandate. The cabinet will be charged with delivery of those manifesto commitments. It follows that the Mayor will:

- have control over the membership of the cabinet;
- be able to appoint or dismiss cabinet members; and
- be able at any time to discharge a function by overriding the scheme of delegation.

Mayor and Council Manager Executive

4.51 The purpose of this form of executive arrangements is to achieve a clear separation between policy development (by the mayor and council) and implementation of policy (by the council manager).

4.52 The key feature of these arrangements is that the council as a whole appoints the council manager (it may set up a committee to interview short-listed candidates and make a recommendation to the full council) and that person should be responsible for appointing all staff. In addition, the council manager will be responsible for delivering the policy framework and budget agreed by the council, having regard to any political steer from the directly elected mayor.

4.53 In this model, the mayor is the only other member of the executive. The mayor's role is to give broad political guidance to the council manager, in line with the Mayor's manifesto commitments and the policy framework agreed by council. However, all of the day-to-day decisions delivering and implementing that framework will be the responsibility of the council manager.

4.54 This form of constitution allows the elected mayor to appoint formal advisory committees of councillors (see Schedule 1 to the Act) to advise the council manager on the exercise of their functions.

4.55 The council manager must not be the monitoring officer or the chief finance officer of the authority. The council manager should also not normally be the electoral registration officer or proper officer for the purposes of verifying petitions or publishing records of decisions (see Chapter 6 'Checks and Balances').

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- 4.56 The mayor must appoint another councillor as deputy mayor (who may also be removed from office by the mayor). The deputy mayor would not formally be a member of the executive. However, given that as deputy mayor, that person may have to take control at short notice (for example in the event of death or disqualification) arrangements should ensure that the deputy is kept fully informed and given access to papers of the executive. The deputy mayor cannot be the chairman or deputy chairman of the authority and cannot be a member of an overview and scrutiny committee.

Delegation of Functions by the Council Manager

- 4.57 Section 16 provides that the council manager can either discharge the functions personally, delegate executive functions to another officer or to area committees or joint committees or to another authority or contract a function out. Section 16 also requires that the council manager must have regard to any advice from the elected mayor when deciding whether and how to exercise or delegate functions which are the responsibility of the executive.
- 4.58 In addition, the council manager may choose for functions to be discharged by the executive; i.e. the mayor and the council manager collectively. This would be expected to happen only in relation to the drawing up of the key plans, strategies and arrangements (the policy framework) for submission to the full council (see Chapter 3 'Responsibility for Functions') where the mayor will need to make a political input in line with their personal mandate.
- 4.59 If, when drawing up proposed policies and budget for the council to consider, the elected mayor and the council manager cannot agree then they should each put their views separately to the full council. Only the full council can ultimately decide the policy framework and budget.
- 4.60 The council manager is appointed by, and is therefore responsible to, the full council. The council's conflict resolution procedures for determination of the policy framework and budget (see Chapter 6 'Checks and Balances') should take account of this. The council manager cannot require the council to reconsider decisions taken in respect of the policy framework or budget. However, the elected mayor must have such powers.

Overview and Scrutiny and the Council Manager

- 4.61 The council manager has a right to attend and speak but not vote at all meetings of an authority, its committees and sub-committees except overview and scrutiny committees. The council manager will be able to attend overview and scrutiny committee meetings, insofar as they are held in public, but will not be allowed to speak unless invited to do so by the committee. In addition, of course, an overview and scrutiny committee can require the council manager to attend a meeting to answer questions, both as an officer of the authority and a member of the executive.
- 4.62 In normal circumstances the council manager should also be the head of paid service and chief executive. The Assembly recognises that there is the potential for this to create conflict because the council manager will be a

member of the executive and as chief executive, that person will ultimately be responsible for resourcing the overview and scrutiny function.

- 4.63 Council managers should therefore ensure that overview and scrutiny committees are properly supported and that they are not personally involved in the day to day management and operation of the overview and scrutiny function. In practice this will often mean that a different chief officer will be handed day to day management responsibility for overview and scrutiny with a number of other officers reporting to this officer rather than directly to the council manager (as head of paid service).
- 4.64 However, in practice, the council manager is responsible to the full council which in turn is responsible for appointment and dismissal of the council manager. The council manager can, therefore, be dismissed by the full council if there are significant policy disagreements between the council manager and the council.
- 4.65 Section 9 of the Local Government and Housing Act 1989 allows up to three political assistants to be appointed to advise the three major groups on a council. Schedule 1 of the Act allows, where there is a directly elected mayor, a fourth assistant to be appointed by the mayor. Political assistants may attend executive meetings only if invited.

DELEGATION TO MORE FLEXIBLE STRUCTURES

4.66 Before the Act came into force, under the committee system local authorities were able to make use of wider, often more flexible forms of decision making and advisory structures than simply delegation from the full council to committees and officers. These more flexible structures include:

- area committees;
- statutory decentralisation schemes under the Local Government (Wales) Act 1994;
- joint committees with one or more other local authorities;
- delegation of functions to other local authorities; and
- contracting out of functions to non-local authority bodies and organisations.

4.67 Under a new constitution with a separate executive there is even more flexibility in the way councils conduct their business. For functions which are not the responsibility of the executive the same legislative framework continues to apply and all these more flexible arrangements continue to be available for those functions.

4.68 The Act also allows the executive to make use of the same types of structures for executive functions. The Local Authorities (Executive Arrangements)

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(Discharge of Functions) (Wales) Regulations 2002, made under sections 18 to 20 of the Act allow the executive to:

- delegate to area committees;
- delegate to another council;
- delegate functions to joint committees with other authorities; and
- contract-out functions which the executive would be able to delegate to an officer, subject to a contracting out order made under section 70 of the Deregulation and Contracting Out Act 1994.

4.69 Who decides whether the executive delegates or contracts out functions in any of these ways will depend on the form of constitution in place.

4.70 As with delegations from the executive to officers, responsibility for the discharge of functions for which the executive is responsible remains with the executive even if the executive chooses to delegate or contract out the functions in these ways. The executive will have to account to overview and scrutiny committees both for the decision to delegate or contract out a particular function and for the outcome of so delegating, i.e. the actual discharge of the function.

4.71 In addition, functions which are the responsibility of the executive which are to be discharged by an area committee, joint arrangements or another authority must be exercised in accordance with the policy framework set by the full council.

4.72 Area Committees for the purpose of this guidance are those established under the Act and not those established by approved decentralisation schemes under the Local Government (Wales) Act 1994.

4.73 Further guidance on each of these structures is provided below.

AREA COMMITTEES

4.74 The Assembly recognises that area committees can have an important role to play in bringing decision making closer to local people and in helping give local people a say in the way in which a council works.

4.75 Area committees or forums can take many forms and undertake a variety of roles. For example, they can be made up of councillors, representatives from other public, private and voluntary sector bodies in the area and local people or they can be made up of councillors only. Area committees can be purely advisory and consultative bodies or they can have delegated functions and budgets. Throughout this chapter 'area committee' means a committee of councillors only and 'area forum' means a committee of councillors and non-councillors. Area committees can, of course, co-opt additional non-voting members.

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4.76 Under the legislative framework prior to the passing of the Act, local authorities either operated area committees under the Local Government Act 1972 or operated a decentralisation scheme approved by the Secretary of State under the Local Government (Wales) Act 1994. In the case of the former:

- area committees which include non-councillor voting members cannot formally take decisions in respect of council functions (except in respect of the functions described in regulations 4 and 5 of the Local Government (Committees and Political Groups) Regulations 1990 (SI 1990/1553));
- area committees need not be politically balanced;
- they must not cover an area larger than two fifths of the authority in terms of area or population; and
- they cannot include members from electoral divisions outside the area.

4.77 This previous legislative regime for area committees, i.e. in accordance with the Local Government Act 1972, will continue for functions which are not the responsibility of the executive such as development control or licensing.

4.78 The executive will also be able to delegate functions and budgets to area committees (as defined in section 18 (3) of the Act) where the only voting members of those committees are councillors (and, in respect of the functions described in regulations 4 and 5 of the Local Government (Committees and Political Groups) Regulations 1990 where there are co-opted voting members permitted by section 13 of the Local Government and Housing Act 1989).

4.79 In deciding to delegate functions to an area committee, the executive must be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions. The executive must remain, and be seen to remain, responsible and accountable for those functions as the clear, accountable leadership of the council. The executive must also be satisfied, if there has been delegation to area committees, that there are appropriate mechanisms in place to ensure that this happens.

4.80 In addition, the council and the executive should give careful consideration to the respective roles of community and town councils and area committees. Community and town councils should always be consulted before an authority establishes area committees.

4.81 The limitations on delegations could take many forms depending on how the executive chooses to set them out. Some examples are:

- a maximum budget in respect of executive functions delegated to area committees (either as a percentage of the executive's budget or in actual cash terms);

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- budget allocations to individual executive functions delegated to area committees (either as a percentage of the executive’s budget or in actual cash terms);
- the limits within which an area committee can vire funds between allocations in respect of executive functions (either as a percentage of the executive’s budget or in actual cash terms);
- restrictions on the “size” of individual decisions in terms of the maximum expenditure (either as a percentage of the executive’s budget or in actual cash terms); and
- protocols relating to the effect of the decisions of one area committee affecting another area. For example there might be a presumption of “no harm” with provision in standing orders to allow any ward member from outside the area covered by an area committee to “call-in” a decision of that committee.

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4.82 The Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002 (as amended by the Local Authorities (Executive Arrangements) (Discharge of Functions) (Amendment) (Wales) Regulations 2003) require the executive to prepare and keep up to date a document, which sets out any delegations from the executive to area committees. This document should be included in the council’s constitution and must be made available to the public. It should contain a clear chart of delegations to area committees and the limitations (financial or other) which the executive has put on those delegations.

4.83 The Assembly also has a reserve power to place limitations on delegation of executive functions (either in terms of budget or functions or both). The Assembly does not believe it will be necessary to use this power because evidence from councils which have been operating area committee arrangements for some time shows that such delegations are usually limited to matters of purely local interest and that schemes of delegations and limitations on them are generally clearly set out and strictly adhered to.

4.84 However, the Assembly will not hesitate to use this reserve power if, after a period of operation of new constitutions, it considers that some executives, having had due regard to this guidance, are delegating executive functions to area committees too extensively or without clear systematic limitations and conditions on those delegations with adverse effects on efficiency, transparency and accountability.

Area Committees and Non-Executive Functions

4.85 Area committees which discharge functions delegated to them by the executive can also discharge non-executive functions, such as licensing and planning. However, where such a committee combines these roles the executive and the council must ensure that accountability for the different types of function remains clear – it must be clear who is responsible for which functions and therefore who must be held to account. To help councillors

and, in particular, the public in this regard, councils should ensure that agendas for area committee meetings should clearly differentiate between executive and non-executive business.

4.86 Area committees will continue to be appointed by the council under section 102 of the Local Government Act 1972, whether or not they have functions delegated to them by the executive. Members of the executive may be members of area committees just as they can be members of any ordinary committee. Indeed one possible arrangement might be where the chairs of area committees are members of the executive together with other councillors.

4.87 Area committees can have a number of other important roles in many councils. For example:

- area committees or forums could have a role in advising the executive or overview and scrutiny committees on matters of interest in their area;
- area committees or forums could play an important role in assisting all councillors in listening to and representing their communities;
- area forums could play an important role in partnership building between the council, other local public, private and voluntary sector organisations and local people;
- area committees or forums could play an important role in developing area community strategies as part of the wider community planning process; and
- area consultative forums could help a council consult local people on the proposals for new executive arrangements under the Act (see Chapter 9 'Consultation').

4.88 Local authorities may wish to prepare a decentralisation strategy that defines the role of the 'sub-local' level in the business of the council and its input into the executive and scrutiny functions. This may refer to other de-centralised aspects of the council such as community councils and other fora.

4.89 Any, all or none of these may be appropriate to a new constitution in a particular local authority and/or local circumstances. In addition, a council could choose to combine any of these with area committees discharging executive and/or non-executive functions.

JOINT ARRANGEMENTS

4.90 Under the legislative framework in place prior to the passing of the Act two or more local authorities could, if they all agreed, enter into arrangements to discharge functions jointly. Those arrangements could include establishing a joint committee either to advise the authorities on matters of joint interest or to discharge functions. That framework continued to apply to joint arrangements for functions which are not the responsibility of the executive in all the

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authorities concerned and to joint arrangements established to advise the participating authorities.

- 4.91 Under The Local Authorities (Executive Arrangements) (Discharge of Functions) (Wales) Regulations 2002 (as amended), it is also possible for the executive to enter into such joint arrangements with another authority (or authorities) or with the executive of another authority (or authorities) in respect of functions for which they are responsible.
- 4.92 Where the functions, which are to be the subject of joint arrangements, are the responsibility of the executive it is for the executive to decide whether or not to enter into joint arrangements.
- 4.93 Where a joint committee is established to discharge those functions, the executive is responsible for appointing the members of such a joint committee and the political balance requirements do not apply. *(Note: Authorities will still be free to operate voluntary joint committees with other authorities and other bodies to deal with issues which the authority deems appropriate but will not have decision making powers).*
- 4.94 The regulations permit local authorities to appoint members of the executive, non-executive councillors or officers to joint committees carrying out executive functions. However, in all cases the local authority representatives are representing the executive and must report back accordingly.
- 4.95 The Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2001 requires the executive to prepare and keep up to date a document which sets out any delegations from the executive to joint committees which include councillors from outside the executive. This document must be included in the council's constitution and be made available to the public. It should contain a clear chart of delegations to joint committees and the limitations the executive has put on those delegations.
- 4.96 Where the executive has delegated functions to a joint committee and those functions are not the responsibility of the executive in any other participating authority (or if those functions are not functions of that authority), that other authority may appoint councillors from outside the executive to be members of the joint committee and the political balance requirements apply to such appointments.
- 4.97 Where the functions delegated to a joint committee are not the responsibility of the executive in any participating authority (or if those functions are not functions of that authority) and the joint committee only has functions in respect of part of the area of that authority (regardless of the size of the area), then that authority may only appoint councillors to the joint committee who are members of electoral divisions wholly or partly within the area in respect of which the joint committee has functions and the political balance requirements do not apply to such appointments.
- 4.98 If a joint committee is established under joint arrangements between executives, all the members of the joint committee are members of the

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executive and the enhanced arrangements for accountable executive decision making described in Chapter 5 'Openness and Access to Information' of this guidance apply. Part VA of the 1972 Act applies for all other joint committees established to discharge functions which are the responsibility of the executive in one or more of the participating authorities. For significant decisions such joint committees should also adopt the enhanced arrangements for accountable executive decision making described in Chapter 5 'Openness and Access to Information' of this guidance.

4.99 In addition, as was the case prior to the Act:

- the number of members of a joint committee from each of the participating authorities is a matter for local negotiation between those authorities; and
- joint committees may delegate to sub-committees of themselves or officers.

4.100 In deciding to enter into joint arrangements, the executive must be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions. The executive must remain, and be seen to remain, responsible and accountable for those functions as the clear, accountable leadership of the council.

4.101 In circumstances involving joint arrangements between two or more authorities, it will be the responsibility of each participating authority to ensure that scrutiny arrangements are in place to ensure that councillors in each authority have the opportunity to review relevant decisions and policies. There are no legislative provisions permitting the establishment of joint scrutiny committees. However, there may be room for co-ordination and flexibility between local authorities as to how to handle this process. This will become increasingly important as the Making the Connections agenda is embedded in Welsh local government. The Assembly Government recommends such action and will seek to bring about a statutory entitlement for authorities to formalise such arrangements

DELEGATION TO ANOTHER AUTHORITY

4.102 Councils are able to delegate functions, which are not the responsibility of the executive to another authority under the same legislative framework as that in place prior to the passing of the Act.

4.103 The executive will also, with the agreement of the other authority in question, be able to delegate its functions to another authority. In this case the legislative framework governing such delegations will vary depending on the status of the functions in the authorities in question. The following paragraphs describe the various possible scenarios for joint arrangements between two authorities.

4.104 If the function in question is an executive function in both authorities then the function must be the responsibility of the executive in the authority to whom it

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is delegated. The decision whether or not to accept the delegation is, however, to be for the full council and not the executive.

- 4.105 If the function in question is an executive function in the authority delegating it but not in the other (or if the function is not a function of that other authority), then whether or not it is the executive of the second authority which is responsible for the functions is to be decided in negotiation between the two authorities.
- 4.106 If the function is an executive function in the authority to whom it is delegated but not in the delegating authority (for whatever reason) then the function must be the responsibility of the executive in the authority to whom it is delegated. The decision whether or not to accept the delegation is, however, to be for the full council and not the executive.
- 4.107 In deciding to delegate a function to another authority, the executive must be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions. The executive must remain, and be seen to remain, responsible and accountable for those functions as the clear, accountable leadership of the council.

CONTRACTING OUT

- 4.108 The executive can contract out, to another body or organisation, functions which may be exercised by an officer and which are subject to orders under section 70 of the Deregulation and Contracting Out Act 1994
- 4.109 In deciding to contract out a function for which it is responsible, the executive should be satisfied that it will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that it will deliver best value. The executive must remain, and be seen to remain, responsible and accountable for those functions as the clear, accountable leadership of the council.

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OVERVIEW AND SCRUTINY

Coverage of Functions

- 4.110 The Assembly expects that most authorities will have more than one overview and scrutiny committee and that they will meet regularly. However, the precise arrangements for overview and scrutiny (including the number, membership and remits of the committees) is a matter for local choice, bearing in mind the need to be able to review and scrutinise all executive functions.
- 4.111 As a minimum, overview and scrutiny committees must cover all of the functions of the executive of the authority. Councils will need to decide collectively the terms of reference of each committee. The precise names of these committees are also a matter for local choice.

Political Balance

4.112 Where party groups have been declared, overview and scrutiny committees must reflect the political balance of the full council, in accordance with sections 15 and 17 of and Schedule 1 to the Local Government and Housing Act 1989. This is to ensure that the committees look at the council as a whole and take a corporate view of the workings of the council. The only exception is where the council or committee decides without any member voting against to suspend these requirements, in accordance with section 17 of the Local Government and Housing Act 1989.

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4.113 Local authorities are encouraged to allocate chairs of overview and scrutiny committees in such a way as to include groups who are not part of the council administration, at least to reflect party balance on the authority. This would serve to assure the public that the overview and scrutiny function is not in any way under the control of the council leadership.

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Size of Overview and Scrutiny Committees

4.114 Councils need to consider carefully how overview and scrutiny committees are organised. They must accord with the rules on political balance and the Assembly would encourage an inclusive attitude on behalf of authorities towards the composition of these committees (see Chapter 6 'Checks and Balances').

4.115 Where there is a majority group, councils might consider it appropriate to have all or some of these committees chaired by members outside the majority group. The issue of membership is a matter of local choice but in deciding membership, councils will need to bear in mind the particular skills and expertise required to ensure that thorough and informed reviews take place. Overview and scrutiny committees can co-opt non-councillors but co-opted members cannot have voting rights. (It will be a matter for local choice whether it is the full council or overview and scrutiny committees which have the power to co-opt members to these committees). Where an overview and scrutiny committee does decide to co-opt (without voting rights) non-councillor representatives, for example from local tenants organisations, they should ensure that those representatives have an opportunity to influence the committee's lines of enquiry and workplan.

4.116 Members of the executive cannot be members of overview and scrutiny committees. Councils should bear this in mind when deciding the size of their executive. There must be enough members of the majority group outside the executive to take up the seat allocations on overview and scrutiny committees.

4.117 In general, the number of councillors on overview and scrutiny Committees - and other council committees for that matter (excluding area committees) - should not be so great as to be unwieldy. The aim of the Act is to make processes more efficient and effective. The Assembly is of the view that this aim is best served through smaller committees looking at issues in more detail.

Work Programmes and Agendas

- 4.118 Councils also need to decide how the work programmes of each overview and scrutiny committee are determined, bearing in mind the resources available, time constraints and the concerns of the local community. Generally speaking the Chair of the committee should take the lead in planning the work programme, in line with the independence of overview and scrutiny from the executive. However they will need to take into account what plans the executive may have that will require input from overview and scrutiny. This could range from timetabling consideration of draft reports or plans from the executive, including consideration of draft budget priorities, to direct involvement in a policy review or best value review.
- 4.119 The Chair will also need to take into account the views of other members of the committee in determining the work programme and agendas. In particular, any member of an overview and scrutiny committee (or sub committee) has the right to ensure that any matter relevant to the committee's functions is put on the agenda and discussed (section 21(8) of the Act refers). Overview and scrutiny committees will need to consult each other in determining their work programmes.
- 4.120 Members will need help in researching the policy area or decisions they are examining and in deciding which avenues of enquiry to pursue and which witnesses to call. This help can come both from officers (at a suitably senior level) and from the provision of training, development and the exchange of experience between authorities for councillors. Experience from councils operating interim overview and scrutiny arrangements before the passing of the Act shows that focussed overview and scrutiny enquiries with a well-defined set of aims are generally more successful than wide ranging enquiries.
- 4.121 Overview and scrutiny committees can require members of the executive and officers to attend their meetings and answer questions. (Where officers are called before scrutiny committees, authorities should describe the procedures in their member/officer protocol). Indeed, councils may wish to consider as a standing requirement, within their standing orders, enabling the relevant executive member to engage in dialogue with the committee about executive decisions and forthcoming issues (but not, of course, to vote on any issue).

Frequency of Meetings

- 4.122 The frequency with which overview and scrutiny committees meet is largely dependent on their workload and the number of such committees. Again, it will be for individual councils to decide how often committees should meet. Factors such as the timing and location of meetings should also be considered, for example to make it easier for members of the public and organisations with a particular interest in a subject to attend. Overview and scrutiny committees will be able to invite contributions from a wide range of individuals, groups and organisations outside the council and this could be of

particular benefit in reaching a well balanced view of the impact of the council's policies or a proposed strategy or decision.

Budgets

4.123 Councils will need to consider whether overview and scrutiny committees should have their own budgets for circumstances where they cannot reasonably expect external witnesses or co-opted members to meet their own expenses, or possibly to allow them to commission independent analysis to support a review. Councils will need to develop guidelines for committees on any such expenditure.

Policy Panels

4.124 Where councils have involved members in policy review and development through policy panels, they should consider whether this experience and expertise can be perpetuated through overview and scrutiny committees.

Declaration of Interests

4.125 Where members of an overview and scrutiny committee have a personal interest in a decision or policy under review, they must disclose it in accordance with the code of conduct adopted by the authority. In addition it is a fundamental principle of accountability that councillors cannot scrutinise their own decisions. Even if a councillor or co-opted member does not have a personal interest (as defined by the code of conduct) in a decision which is being scrutinised by the committee, if they were involved in taking that decision (e.g. as a member of an area committee with delegated functions) they must disclose that fact and withdraw from discussion except to provide such information as the committee may require. They must not take part in the approval of any report from the committee on that issue.

The Party Whip

4.126 Use of the party whip is discouraged in the business of overview and scrutiny committees. If used, it should be declared. This does not mean that voting on party lines is in any way illegitimate when confronting issues related to, for instance, political ideology, national/local party policy and manifesto commitments.

4.127 Overview and scrutiny committees are to hold decision-makers to account. The question of the compatibility of whipping with this process is a matter for political parties to consider both locally and nationally. In some councils, which have experimented with transitional arrangements, overview and scrutiny committees have not been whipped when scrutinising executive decisions. The Parliamentary Joint Committee which examined the draft Local Government (Organisation and Standards) Bill in 1999 recommended that councils consider, when drawing up a new constitution, incorporating a rule that whipping should be declared. The Assembly encourages councils to take that recommendation on board.

Overview and Scrutiny and Area Committees

- 4.128 As this guidance makes clear, overview and scrutiny committees must reflect the political balance of the council. Therefore, area committees cannot, under normal circumstances, formally discharge the overview and scrutiny function.
- 4.129 However, that does not mean that area committees have no role in overview and scrutiny. Where councils have area committees, overview and scrutiny committees may, in reviewing and scrutinising decisions of the executive, seek views from area committees to assess the impact of the executive's decisions on different areas in the authority. This could form part of an enquiry into the executive's decisions or as part of a wider review of policy.
- 4.130 In particular, area committees can have valuable input to make into the development of the council's policy framework, as a mechanism for enhancing the representational role for councillors and ensuring that the council's policies reflect the views of local people and do not discriminate unfairly between different areas of the authority.
- 4.131 It is almost inevitable that, where the executive has delegated some functions to area committees, some members of those area committees will also be members of overview and scrutiny committees. Where an overview and scrutiny committee is reviewing the discharge of executive functions delegated to area committees such cross membership may create conflicts of interest.
- 4.132 Where an overview and scrutiny committee is reviewing policy, perhaps at the request of the executive which is developing one of the plans in the policy framework, or more generally, the Assembly does not consider that there is a problematic conflict of interest. Therefore the Assembly recommends that in such circumstances it is sufficient for a councillor who is a member of an area committee which has functions delegated to it by the executive within the policy area in question, to declare their interest orally before the relevant agenda item is reached, but then be allowed to speak.
- 4.133 However, where an overview and scrutiny committee is scrutinising specific decisions in relation to functions delegated to an area committee by the executive a genuine conflict of interest would arise and the circumstances described in paragraph 4.122 above would apply.

Church and Parent Governor Representatives

(Note: Local authorities should have regard to separate Assembly guidance on the Parent Governor Representatives and Church Representatives (Wales) Regulations 2001)

- 4.134 Prior to the Act, church and parent governor representatives had the right to sit and vote on a committee of an authority dealing with educational matters in

accordance with section 499 of the Education Act 1996 (as amended by section 9 of the School Standards and Framework Act 1998). Representatives of the Church in Wales and the Roman Catholic Church need to be appointed where one or both of these churches appoint foundation governors for voluntary schools in the authority's area. All authorities need to appoint parent governor representatives. Where councils have been operating interim executive arrangements, in advance of the Act, the Assembly has stated in Circulars 1/99 (paragraph 11) and 2/00 (paragraphs 121-145) that such representatives should sit on relevant overview and scrutiny committees and policy development groups where education matters are being discussed.

- 4.135 Under the Act, co-opted members are not allowed formally to vote on an overview and scrutiny committee with the exception of church and parent governor representatives.
- 4.136 Such representatives have a right to membership of overview and scrutiny committees in recognition of the important contribution such representatives make to education at a local level. Local authorities will need to be mindful of this when deciding on the size of overview and scrutiny committees. This is because the church and parent governor representatives are excluded from political balance considerations.
- 4.137 Where the remit of a committee goes beyond education such representatives are entitled to vote only on matters which relate to any education functions which are the responsibility of the authority's executive or board, and which falls to be considered at a meeting of the committee. Church and Parent Governor representatives may participate in any discussion in a committee to which they have been appointed, whether or not they have voting rights on the topic under discussion.
- 4.138 The minimum number of such representatives which a council must have on a committee dealing with education is four – one Church in Wales and one Roman Catholic Church representative (if both churches appoint foundation governors for voluntary schools in the authority's area) and the minimum requirement of two parent governor representatives. However, the maximum number of parent governor representatives a council may appoint to any committee dealing with education is five. In addition, a council may also have been directed to include, with voting rights, a representative of another faith or denomination. Where there is more than one committee covering educational matters, the same representatives may be appointed to each committee.
- 4.139 These representatives have the right to ensure their concerns are put onto the agenda of such committees. Councils may also allow such representatives to chair such committees. If a council as a whole is deciding the workplan of such a committee, it should bear in mind the concerns of these representatives.

Changing the arrangements

4.140 With the approval by the Assembly, in December 2004, of the Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004, local authorities may now make changes to their constitutional structures, including that of their basic constitutional model, subject to certain provisions. Separate guidance has been issued by the Assembly Government on this matter, which is attached as an Annex to this guidance.

5. OPENNESS AND ACCESS TO INFORMATION

- 5.1 One objective of the Act is to achieve greater transparency in the decision-making processes of local government. It should be clear what policies; strategies and decisions are being considered, when and by whom. When decisions are taken, they should be communicated promptly and it should be clear who took them and what their reasons were. The information and analysis relating to them should be readily available to anyone; subject only to defined categories of information where confidentiality needs to be respected. This chapter sets out the principles and requirements which need to be observed regarding openness and access to information under executive arrangements. The relevant regulations are the Local Authority Executive Arrangements (Decisions, Documents and Meetings) (Wales) Regulations 2001.
- 5.2 These principles and requirements are based on the existing regime on access to information, as set out in Part VA of the Local Government Act 1972 (inserted by the Local Government (Access to Information) Act 1985 which, at the time of writing, is subject to review. The full council will continue to be subject to this regime, as will the executive and any of its sub committees; overview and scrutiny committees (section 21(11)(a) of the Act refers), other committees of the full council – such as those dealing with planning and licensing issues – and area committees.
- 5.3 Standards Committees established under Part III of the Act will also need to act in accordance with Part VA of the Local Government Act 1972. There is separate guidance on the operation of these committees.
- 5.4 Under executive arrangements, it is possible for individual executive members to take decisions. It is therefore necessary to set out the arrangements on access to information which apply in these new circumstances. The approach to openness and access to information should however be considered in the context of the whole of the authority's dealings with the public.

GENERAL APPROACH

- 5.5 Openness is not just a matter of having a set of rules to follow. Authorities need to reinforce public trust and confidence that people can gain access to information easily. If people can see that the authority continues to make positive efforts to communicate information and engage with people at an early stage in the development of its plans, they may accept more readily that if any information is withheld it is because there is a good reason for keeping it confidential.
- 5.6 In interpreting and applying all the provisions on access to information there should be a presumption of openness. Some categories of information, such as information covered by legal professional privilege and information supplied in confidence by another person, who has not given consent to disclosure, must remain confidential. However if information falls into one of

the other exempt categories, the authority should consider whether the harm which might result, either from discussing that item in public or from responding positively to a request to release the information, is significant enough to outweigh the public interest in disclosing it. In cases of doubt, the advice of the monitoring officer should always be obtained.

- 5.7 Following the incorporation of the European Convention on Human Rights into UK law by the Human Rights Act 1998, the relevant convention rights need to be taken into account, particularly those regarding respect for private and family life and freedom of expression. Other legal requirements such as those in the Data Protection Act 1998 must also be observed.

CONSULTATION AND DIALOGUE

- 5.8 Where the executive is considering any policy, strategy or decision which will affect individuals, groups or whole communities or which will significantly affect the use of resources available to the authority, it must take steps to inform those affected or who may be affected at the earliest possible stage so that their views can be taken into account before final proposals are considered. In doing so it should work closely with overview and scrutiny committees, area committees or forums and ward councillors where they have taken the initiative in seeking the views of the public and interested groups. The context for this is the authority's community leadership role, in which it will be encouraging partnership working and dialogue with local communities and all bodies active locally, ranging from town and community councils and local voluntary organisations to businesses and national public bodies.

- 5.9 The executive should build into its own timetable for decisions time to consult the relevant overview and scrutiny committee(s) and individual ward councillor(s), where appropriate. Authorities should include in their standing orders protocols which ensure that except in cases of genuine urgency or confidentiality councillors are informed and consulted in advance about executive proposals affecting their constituents. The protocols should also set out any other standard arrangements regarding consultation. Officers should include standard statements in reports to the executive indicating what consultation (including public consultation) has taken place and including a summary of the views expressed. The Regulations referred to in 5.1 above require authorities to ensure that records of decisions by the executive, any executive committee or individual executive members include details of any consultation undertaken in accordance with the authority's standing orders and constitution and where such consultation has not taken place, the reason why not.

- 5.10 The Assembly will also expect all authorities to:

3. make publicly available a forward work programme of business to be considered by the executive, by overview and scrutiny committees and by the full council. This forward work programme should include the annual timetable for consideration of the budget and any plans forming the policy framework and requiring council approval; the timetable for other plans

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which are a matter for the executive; and any individual matters on which the executive intends to consult in advance of taking a decision – for example, Best Value service reviews. It should be updated at least quarterly. If the authority's executive has an annual operational plan, that could provide the basis for the published forward work programme and for regular progress reports for the public, although material will need to be presented in a user-friendly way. Since overview and scrutiny committees will be developing their own work programmes, they may wish to supplement the information provided by the executive with information about the issues which they will be examining;

4. use means additional to the provision of papers at their offices to inform the public of matters being considered by the authority: in particular through publication of forward work programmes and agendas on the internet; through the local media; and through the provision of information to local voluntary and community groups and the business community for dissemination through their networks, if desired.

5.11 The Assembly has wide-ranging powers under section 22(9) of the Act to make regulations governing the provision of information to the public and will review the need to use these powers if it finds that good practice is not being observed.

PUBLICATION OF POLICIES ON ACCESS TO INFORMATION

5.12 The Freedom of Information Act 2000 sets out certain categories of exempt information, which are additional to those in the 1972 Act and not mentioned here. The Fol Act does not put any further limits on the rights of access to local authority information set out in the 1972 Act.

5.13 The Freedom of Information Act requires authorities to publish a scheme setting out how they will make information available. The scheme is subject to approval by the independent Information Commissioner, who has powers to enforce compliance with the Freedom of Information legislation. Authorities may find it useful to set out their whole approach to access to information in a single document covering all parts of the council. This should include:

- how the council will make information available to all, especially when consulting on matters which will affect people or the services they receive;
- the standards the authority will apply when responding to requests for information, including time-scales and any charges it may apply;
- the additional access to information which members will have;
- the position on access to general information held by the council as well as access to meetings, including standard deadlines for responses to requests for information;

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- a commitment to make information available in different formats, by different means or in languages additional to Welsh and English, in response to the needs and wishes of different communities. This should include policies on access to information for people with physical impairments and people with learning disabilities; policies on consulting children and young people; and policies on access to information for, and dialogue with, people from ethnic minorities; and

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- a commitment to plain language.

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5.14 In due course, this could be adapted to become the authority's "scheme" under the Freedom of Information legislation. The Regulations referred to in 5.1 (above) also require authorities to make available a written summary of the rights to attend meetings of the executive and to inspect, copy and obtain documents. They must also maintain a register giving the name and address of every executive member and the ward they represent; their membership of executive sub committees; and the portfolios they hold.

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5.15 The Welsh Assembly Government is preparing an order to amend Schedule 12A of the Local Government Act 1972, in order to ensure that the provisions with regard to "exempt information" in local government are compatible with the Freedom of Information Act 2000, which became fully operational on 1 January 2005, and in keeping with the requirements of the Data Protection Act 1998. Regulations will also be prepared to amend Regulation 10 of the Local Authorities (Executive Arrangements) (Decisions, Documents and Meetings) (Wales) Regulations 2001, which also contains references to schedule 12A.

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EXECUTIVE MEETINGS

- 5.16 Section 22 of the Act provides that meetings of a local authority executive, or committee of an executive, are to be open to the public or held in private, subject to regulations made by the Assembly.
- 5.17 The Regulations referred to in 5.1 above provide that Part VA of the Local Government Act 1972 (access to meetings and documents) shall apply to local authority executives and sub-committees of executives in the same way as it applies to other committees of the council. That is, executive committees must meet in public subject only to the exemptions in Part V of the 1972 Act.
- 5.18 Executive committees, sub committees or any group of executive members are not prevented by these regulations from deliberating in private, but they cannot conduct any formal business or take executive decisions during such informal sessions. It may be useful for executive members for example to have informal meetings and discussion workshops during the preparation of a draft strategy or plan, or to consider a draft report from officers and give their initial reactions. They may need to have a meeting with representatives of other bodies to discuss the approach to a particular subject. Such meetings will be an adjunct to public consultation and deliberation and in no way a substitute for them. Matters put to an executive committee or sub-committee must be presented and debated, as well as decided, in public. If exempt information is concerned and the executive wishes to exclude the public from

a meeting for that reason, the executive is still required to give notice of the meeting and to identify the category of exempt information being considered.

ACCESS TO INFORMATION BY OVERVIEW AND SCRUTINY COMMITTEES

- 5.19 Members of overview and scrutiny committees may obtain any information concerning decisions of the executive, with the exception of exempt information unless it is relevant to a matter the committee intends to review or scrutinise. This includes access to all background analysis and reports prepared by officers, as well as other information, which the executive considered in exercising its functions. It will be for the Monitoring Officer to decide whether information should be disclosed to an overview and scrutiny committee in accordance with the Regulations.
- 5.20 If exempt information is released to an overview and scrutiny committee, the committee (or sub committee) will be bound to conduct any discussion of that information in private and not to make the information public, in order to respect the confidence in which it was given.

ACCESS TO INFORMATION BY INDIVIDUAL MEMBERS

- 5.21 Nothing in this guidance is intended to restrict the current common law concept that information should be disclosed to a councillor who has a legitimate interest in that information (the “need to know” concept).
- 5.22 Individual members should have access to documents of the executive under the same terms as the existing provisions on rights of access in Part VA of the 1972 Act.

RECORDING OF EXECUTIVE DECISIONS

5.23 Section 22 of the Act requires that a written record must be kept of “prescribed” decisions made at meetings of local authority executives, or committees of executives, which are held in private. In the same way, a written record must be kept of prescribed decisions made by individual members of local authority executives. These records must include reasons for the decisions to which they relate. Section 22 also allows the National Assembly to make regulations concerning records of decisions made in public. The Regulations require the approach set out below:

- the record of all executive decisions, whether taken at meetings of an executive or a committee of the executive (whether in public or in private) or by an individual, must include the reasons for the decision; a record of any personal interest declared and any dispensation to speak granted by the authority’s standards committee; and details of consultation (see paragraph 5. 9 above)
- the record is to be made, communicated and kept by an officer of the authority;

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- this record is to be made publicly available as soon as is reasonably practicable after the decision was reached;
- decisions by individual members shall not be implemented before an officer has recorded them unless exceptional circumstances make it essential for the decision to be implemented before that can happen. In such cases, the member will need to obtain the agreement of the chair of the relevant overview and scrutiny committee or the chair or vice-chair of the authority before implementing the decision;
- the record must be accompanied by the relevant reports and background papers. Where it is not practical for the background papers to accompany the record of the decision, they must be produced as soon as reasonably practicable after anyone asks to see them;
- if the decision concerns exempt information, it will need to be treated as such – i.e. made available to overview and scrutiny in confidence and not made available to the public, in so far as it involves the disclosure of exempt information. The same would apply to reports and background papers;
- records and reports will need to be available for six years and background papers for four years following the decision.

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5.24 No statutory timescale is prescribed for producing the record of a decision but within two working days would be timely. If any part of the information which the record has to contain is already contained in the report considered by the executive in reaching its decision, it may be acceptable for the record to cross-refer to where that information is already presented as long as enough information is given in the actual record for it to make sense and give an accurate summary when read alone. Although the requirement to produce a record applies to all executive decisions by elected executive members, common sense dictates that this applies to matters formally put to them for decision rather than to trivial or incidental “decisions”. Officers will need to consider case by case however whether the circumstances are such that members of the authority or members of the public would regard an apparently trivial or incidental decision as one which did need to be treated in accordance with the Regulations.

DECISIONS TAKEN BY OFFICERS

5.25 Where executive functions, as defined in the council's constitution, have been delegated to officers, decisions still need to be recorded. This record will need to be available on request to overview and scrutiny committees, to individual councillors and to the public subject to any limitations on exempt information as above. The degree of detail required should be proportionate to the nature of the decision and sufficient to provide a clear “audit trail”. Authorities may find it useful to adopt a protocol and proforma setting out what information should be routinely recorded in respect of decisions on executive

functions delegated to officers under the new constitution as well as ensuring that its internal control systems monitor that delegations and agreed procedures are being observed.

6. CHECKS AND BALANCES

- 6.1 The Act aims to promote more timely decision making by allowing decisions to be taken by a small executive or by individual members of that executive. This greater flexibility has to be balanced by systems to ensure not only that there is transparency and openness (addressed in Chapter 5 ‘Openness and Access to Information’) but also that the executive’s decisions accord with the policy and financial framework agreed by the full council; do not contravene any other statutory requirements; and take into account the views of others with a legitimate interest. This chapter sets out the measures which the Act requires to safeguard proper, accountable decision making by the executive.

OVERVIEW AND SCRUTINY COMMITTEES

- 6.2 Section 21 of the Act requires that local authorities’ overview and scrutiny committees must have power (among other things) to review or scrutinise decisions made, or other action taken, in connection with the discharge of any functions which are the responsibility of the executive. The power to review or scrutinise a decision made but not implemented includes power to recommend that the decision be reconsidered by the person who made it (whether an individual member of the executive, an officer of the council or the whole executive); or to ask the full council to review the decision. Procedures must be put in place in the standing orders to ensure that overview and scrutiny committees are informed of all executive decisions taken by members. Authorities will need to decide whether to specify, by reference to the scheme of delegations, any categories of decisions delegated to officers which should also be routinely notified to the relevant overview and scrutiny committee.

- 6.3 Authorities’ standing orders will need to set out the general circumstances in which overview and scrutiny committees may decide either to refer a decision made but not implemented back to the executive or to ask the council to review it. The reasons for doing so might include:

2. a belief, following advice from the monitoring officer, that the decision or action was contrary to the policy framework or budget, or fell outside the functions of the executive;

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3. a belief that the executive had not followed agreed procedures on consultation (as set out in standing orders or protocols adopted by the council) before reaching its decision; or

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4. a belief that the executive had not followed, or had failed to take account of, any legal obligations, including regulations or statutory guidance governing the council’s actions, or other guidance adopted by the council.

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- 6.4 This might also include a request from an overview and scrutiny committee that the executive consider an action or decision which it has not taken, but

which the committee believes it should have done according to the policy, financial and legal framework and guidance under which it operates. Again, the advice of the monitoring officer should be obtained before the committee decides on such a request.

- 6.5 It should be clear that referral remains very much of a “back stop” and should be considered only where there are genuine and serious grounds for doing so. If the executive arrangements are working effectively, there should be plenty of opportunity for the views of overview and scrutiny committees and individual councillors to be taken into account in advance of decisions being made which concern their functions or their constituents. Equally, executive members should not be taking decisions without the professional advice of officers (see paragraph 6.24 below).
- 6.6 The standing orders will need to set out the procedure which an overview and scrutiny committee should follow to refer a matter either back to the executive or to the full council. In order not to frustrate the intention that executive arrangements should lead to more timely decision making, authorities should specify a time limit within which any referral must be made. For example the time limit might be that any referral should be made in writing not more than 5 working days from when the committee receives the record of the decision (which also means that it is in the executive’s interest to ensure that records of decisions are issued quickly).
- 6.7 The standing orders will also need to set out the procedures which the overview and scrutiny committee members should follow in order to make a referral.
- 6.8 Committee chairs should not be able to veto the use of call-in procedures, where there is significant support for such action. Local authorities are encouraged to review their call-in procedures and ensure that those procedures, and the requisite number of members required to exercise a call-in, are reasonable and support the principles of accountability and democracy. The precise procedures should be outlined in standing orders.
- 6.9 Standing orders will need to make provision both to allow urgent decisions to proceed despite a request for referral and to allow a referral to take place despite the fact that less than the agreed proportion of committee members have expressed a view in the time available. Where there is genuine urgency either way, the Chair of the overview and scrutiny committee concerned or the person nominated by them to act in their absence (for example the vice Chair or the Chair of the Council) should decide. The same would apply to a sub-committee if the decision in question fell within the remit of a sub committee to which the overview and scrutiny committee had delegated functions, although in urgent cases the Chair of the full committee could decide in the absence of the sub-committee Chair.
- 6.10 For some decisions there may be more than one relevant chair of an overview and scrutiny committee. The standing orders should only require the agreement of one relevant overview and scrutiny committee chair. Executive arrangements should set out protocols for determining which chair should be consulted for each category or description of executive function.

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- 6.11 A decision which is within the definition of executive functions and which is in accordance with the policy and financial framework agreed by the council remains one for the executive to take. If an overview and scrutiny committee decides to refer such a decision (for example because necessary consultation was not undertaken) then it should refer it back to the executive, which will remain responsible for taking the decision.

DECISIONS CONTRARY TO THE POLICY OR FINANCIAL FRAMEWORK

- 6.12 If the executive proposes to take a decision contrary to the policy framework (unless the executive has delegated power to vary the policy in question) or contrary to or not wholly in accordance with the budget and financial regulations, or any plan or strategy for the control of the authority's borrowing or capital expenditure adopted by the full council, that decision must be taken by the full council unless the decision is urgent. In such cases, either the overview and scrutiny committee or the executive itself should refer the matter to the full council.
- 6.13 The policy framework adopted by the council on the basis of the executive's proposals in effect sets out, for the policies the executive is responsible for implementing, the framework within which the executive must work. Whether or not a proposed decision is within the council's policy framework and budget is a matter of *vires*. Therefore it will be for the council's monitoring officer, chief finance officer (the section 151 officer) or chief executive as well as other chief officers to advise councillors within and outside the executive on whether or not in legal terms or otherwise a decision is likely to be considered contrary to the policy framework or contrary to or not wholly in accordance with the budget or other matters which are determined only by the full council. If, following a full council debate, the monitoring officer advises that the decision is likely to be considered contrary to the policy framework or contrary to or not wholly in accordance with the budget, then the decision must be taken by the full council and not the executive.
- 6.14 In cases where the executive takes a decision contrary to the policy or financial framework and implements it on the grounds of urgency, the person responsible for it must, as soon as reasonably practicable afterwards, provide to the full council a report explaining the decision, the reasons for it and the reasons why the decision was urgent.

CONFLICT RESOLUTION IN SETTING THE BUDGET AND POLICY FRAMEWORK

- 6.15 Where the executive is elected on a separate mandate from the full council – for example, where there is a directly elected mayor – councils will be required to have mechanisms for resolving disputes between the executive and the full council in setting the budget and policy framework.
- 6.16 In such cases, standing orders would need to set out a conflict resolution mechanism giving the executive at least 5 working days to object to a full council decision before that decision takes effect. If the executive registers such an objection the council will have to reconsider the issue in light of the

objection. The full council would be able to insist on its decision by either a simple majority or a greater majority depending on the council's constitution.

- 6.17 Such a mechanism could only be employed for functions, such as adoption of the budget or the policy framework, which are the responsibility of the full council – it could not be employed in respect of executive functions where the legislation requires that only the executive can take the decision (or delegate it) so long as it is in accordance with the policy framework and budget. In this case, overview and scrutiny committees have specific powers to challenge the executive and to refer decisions made but not implemented: see paragraphs 6.2 to 6.10 above.
- 6.18 With the leader and cabinet model, the executive will have the responsibility for proposing policies and the budget to the full council, so standing orders will need to provide that the council will not adopt a policy framework or a budget without taking the proposals from the executive as the basis for these. However the full council's power to set the policy framework and budget will not be qualified by a power on the part of the executive to raise objections, unless the full council considers that this should be included in its constitution and standing orders.

BUDGET VIREMENT

- 6.19 Once the budget has been adopted by the full council, the executive will need to be able to respond quickly to changing circumstances which might require reallocation of funds from one service to another. A council's standing orders or financial rules/regulations should, therefore, include reasonable provision to allow the executive to make such re-allocations within the budget. This could be done either by specifying limits below which the executive can vire funds or by specifying the broad budget headings within which the executive can vire funds without prior approval.
- 6.20 It will be for the council to determine what form the limitations on the executive's freedoms within the budget should take. In doing so the council must bear in mind that if the executive is minded to determine a matter contrary to or not wholly in accordance with the budget and any freedoms and virement limits conferred by the council (in standing orders or financial rules/regulations) that decision must be taken by the full council (and not delegated) unless it is urgent (in which case the reason for urgency should be recorded). Therefore, if the council sets the executive's freedoms to re-allocate fund within the budget too narrowly this will require a great many full council meetings. Similar provisions exist in respect of capital expenditure and borrowing where the executive may not take any decision, which is contrary to or not wholly in accordance with any plan or strategy the authority may have for controlling capital expenditure and borrowing.

MODIFICATION OF POLICIES

- 6.21 Any subsequent modifications to the plans, strategies or arrangements approved or adopted by the full council must be adopted by the full council unless the council has delegated freedom to make such “in year” modifications to the executive.
- 6.22 The council should, at the same time as approving or adopting the policy in question, agree which elements of it the executive will have the freedom to amend in the light of experience gained in implementing the policy. Again the council should bear in mind that non-urgent decisions which are contrary to the policies agreed by the full council must be taken by the full council (and not delegated).

INDIVIDUAL DECISIONS

- 6.23 Under executive arrangements, individual members of the executive are formally allowed to take decisions. Executives should consider carefully issues of legal responsibility and ensure that individuals are clear what exactly they can and cannot do. This will be particularly true in the exercise of the new power to promote economic, social and environmental well-being conferred by section 2 of the Act.
- 6.24 In particular, it should not be permissible for an individual member to be able to sign a contract. Whilst an individual member may lead the negotiations prior to letting a contract and take the decision on who should be awarded the contract, the appropriate officer – as identified in the Standing Orders or financial regulations – must sign the contract.
- 6.25 All executives should put in place mechanisms or protocols which ensure that an individual executive member obtains advice from relevant officers before taking an executive decision, in the same way that collective decisions by an executive will be based on the advice of officers. This should include taking legal advice, financial advice and professional officer advice. Specifically, they must consult the monitoring officer and/or section 151 officer as appropriate where there is doubt about *vires*. The decision and the reason for it must be communicated to the overview and scrutiny committee and the advice received must also be available to it (see Chapter 5 ‘Openness and Access to Information’).
- 6.26 Executive members should bear in mind that any decisions they take will commit the authority to legal liabilities in the same way as collective decisions.
- 6.27 Where an individual member takes decisions, that member will be subject to scrutiny through overview and scrutiny committees. Overview and scrutiny committees will be able to call such individuals to answer questions about the decisions they have taken. In doing so they can ask the officers who advised them on a particular series of decisions to attend to assist them but it is the member who took the decisions whom the overview and scrutiny committee are holding to account, not the officer or officers.

DECLARATION OF INTERESTS

- 6.28 Where executive members have an interest in a decision to be taken either by the full executive, by a committee of the executive of which they are a member, or where it falls within their individual portfolio, they will have to declare any interests and either withdraw from the executive or committee when it is discussing that decision or, where it is a decision to be taken by an individual, either delegate it to an officer (in which case it should be clear that the officer will decide and that the member concerned will not seek to influence the decision) or ask the executive as a whole to consider it.
- 6.29 Under the Code of Conduct for members under Part III of the Act, members are required to register interests. Separate guidance has been issued on Part III. In exceptional circumstances the local Standards Committee are able to grant a dispensation for a member of the executive to speak but not vote at a meeting of the executive discussing an issue to which the interest relates, provided the interest is declared and recorded at the meeting.

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47. ALTERNATIVE ARRANGEMENTS – “THE FOURTH OPTION”

INTRODUCTION

- 7.1 County and county borough councils in Wales are offered a fourth option of adopting a modernised committee structure with enhanced scrutiny powers in place of the Cabinet system.
- 7.2 This fourth option is made available by regulations under Section 32 of the Local Government Act 2000, The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001.
- 7.3 Under this option an authority does not operate an "executive" of the type set out in Section 11 of the Act, but it must nevertheless have scrutiny committees and a committee structure that is efficient, transparent and accountable in line with the principles of the Act. The fourth option must demonstrate streamlining of committees and clear delegation of responsibilities for decision making. It will need to complement the role of councils in seeking Best Value and providing community leadership.

KEY FEATURES OF ALTERNATIVE ARRANGEMENTS

- 7.4 The Fourth Option is designed to offer a simple and easily understood single set of alternative arrangements. This includes mandatory requirements, but also contains significant discretionary elements to give local authorities the flexibility to tailor it to their local circumstances.
- 7.5 The key features are as follows:-
- (a) The full Council retains the role of agreeing the constitution, including the scheme of delegations. The scheme of delegations will need to make it clear that the full council was responsible for debating and agreeing the overall policy and financial framework within which all decisions should be taken. This will include the approval of the budget and the adoption of strategic plans. Within this framework, the remaining functions of the Council (other than development control and licensing functions and any other quasi-judicial functions) are to be delegated to a Committee of the Council, referred to in this guidance as the Board of the Council. The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001 (as amended by the Local Authorities (Alternative Arrangements) (Amendment) (Wales) Regulations 2002, 2003 and 2004) provide details of those functions which must not be delegated to the Board and those which may or may not be.
- (b) The Board, in common with all committees of the Council to be created under the fourth option (other than Area Committees) is not exempt from the political balance requirements. *[Note – co-opted members of committees are to be treated as additional and not to be included in political balance calculations].* It will have a maximum of ten members or 20% of the Council

(whichever is greater). The Chair and Vice Chair of the Council must not be members of the Board.

(c) The Board of the Council would be able to delegate to individual Board members or sub-committees of its members, and if the Council wishes to establish Area Committees, to those Area Committees also. The Board may also decide to delegate functions to officers. The scheme of delegations, including financial or other limits on delegated authority, will need to be approved by the full Council. The constitution might provide that the scheme of delegation is to be reviewed annually by the full Council but the main delegation to the Board will have to remain a fundamental element.

(d) If the Area Committee option is chosen, the Council's constitution must specify at least three areas, each containing a minimum of 15% of the authority's population, and such that all members of the Council are members of one and only one Area Committee. The chair of an Area Committee may be a member of the Board.

(e) The Council's constitution shall also provide for the delegation of development control, either to a Planning Committee (whose Chair may be a member of the Board) or alternatively to Area Committees. In any event the Council's constitution shall provide that the Board of the Council shall have power to direct that any such delegated decision shall be referred to a meeting of the full Council for decision. The Council's other quasi-judicial functions such as licensing shall similarly be delegated, either to the Planning Committee or to a single, separate committee. The Council may also establish an employment appeals committee and a maximum of four other committees or sub-committees (in addition to an audit committee (see (f) below)) at the discretion of the council. Such committees may only exercise functions appropriate to the full council, not those that are the responsibility of the Board. The Council must inform the Assembly of any decision to establish a discretionary committee within 7 days of that decision. Any functions and powers formally delegated by the Board or the Council, must be included in a published Scheme of Delegation. Where required, by the Constitution, the exercise of such delegation must be published and recorded in writing. Delegation of functions from the council to the Chief Executive or individual officers with Departments should be set out within the Scheme approved by the Council. The officer to whom functions have been delegated should be recorded within a written scheme held within each department.

(f) Local authorities, under both executive and alternative arrangements, are recommended to establish audit committees. Under alternative arrangements, where they so decide, authorities may delegate such powers to these committees as are not prohibited by any enactment. No members of the Board can belong to such a committee and the Chair must be a member of a different political group to the Chair of the Board (where more than one group has been declared). The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001, regulations 4 and 5 describe the precise arrangements.

(g) The Council's constitution shall create one Scrutiny Committee referred to in this guidance as the Principal Scrutiny Committee of which no member of the Board may be a member. Where there is more than one recognised party group on the Council, the chair of the Principal Scrutiny Committee, who must be a member of the authority, shall not be a member of the same party group as the chair of the Board. The Principal Scrutiny Committee may scrutinise any decisions taken in relation to Board functions.

(h) The Council's constitution shall create not fewer than three or more than eight further scrutiny committees of each of which up to three Board members may be members (but may not be the Chair), referred to in this guidance as Subject Committees. The constitution shall provide that each Subject Committee shall not be a decision-taking committee but shall have an important role in reviewing and making proposals to the Board or to the Council itself for the development of council policies, as well as scrutinising decisions taken in effecting the discharge of functions of either the board or the Council. Standing orders should provide for the ability of scrutiny committees to "call-in" decisions made but not implemented. However, authorities are encouraged to make clear in their Rules of Procedure the boundaries limiting the call-in of such decisions in accord with certain defined impacts or levels of spend, to prevent relatively minor decisions being routinely called-in. This would include any decisions made by officers under delegated functions. However, authorities are encouraged to limit the call-in of such decisions in accord with certain defined impacts or levels of spend, to prevent relatively minor decisions being routinely called in. However the constitution may not fetter the Board's freedom of action by requiring that matters be routinely considered by subject committees before decisions are taken by the Board. The limitation on the number of formal subject committees is not intended to preclude the establishment of informal member or member/officer working groups to tackle crosscutting task and finish policy reviews. It should not be permissible for more than one scrutiny committee to call-in the same decision. This applies to the principal scrutiny committee as well as subject committees.

(i) In the case of all Scrutiny/Subject committees, the majority of the membership must consist of members of the authority who are not members of the Board. In the case of a Scrutiny/Subject committee which deals with education matters (probably a Subject committee and the Principal Committee) the same rights of membership for parent governor and church representatives apply as in executive arrangements.

(j) All Board and committee meetings are to take place in public with full public access to relevant papers, in accordance with the requirements of Part VA of the Local Government Act 1972 (inserted by the Local Government (Access to Information) Act 1985). Where decision-making powers are delegated to individuals, local authorities will be expected to include in their standing orders similar rules for recording of decisions as are stipulated within executive arrangements. As a matter of good practice, standing orders should contain similar provisions to those outlined in Chapter 5 ('Openness and Access to Information') regarding the recording of reasons for decisions and any consultation undertaken. All decisions by the Board, sub-committees

of the Board or individual members should be based on the impartial and professional advice of officers set out in Chapter 6, paragraphs 6.23 and 6.24.

(k) Decisions which fall outside the policy and financial framework would need to be referred back to the full council. The Principal Scrutiny Committee, and the Subject Committees, exercising their scrutiny role, would have powers to refer back any decision made but not implemented which they believed did not comply with the scheme of delegation or the policy and financial framework agreed by the council. An appropriate mechanism by which the Council could call in and review decisions of the Board before they are implemented would form part of the scheme of delegation.

(l) No committee can have a membership of more than ten or 20% of the Council, whichever is the larger (except for area committees). Where the proportion of 20% is appropriate but this does not lead to a whole number, the figure should be rounded up to give the maximum number of councillors on a committee. Any Planning Committee (or Area Committee to which development control decisions were to be delegated) is required to have a minimum membership of eight. Committee chairs are to be shared between party groups in line with the political balance of the full council.

(m) Section 55 of the Children Act 2004 removed the requirement for councils not operating executive structures to have a social services committee. Once it is brought into force, timetabled for April 2006, social services functions will fall to the Board and must be scrutinised by the appropriate subject scrutiny committee. The Local Authorities (Alternative Arrangements) (Wales) Regulations 2001 (as amended) will be amended at the earliest opportunity to reflect this.

(n) Nothing in the council's constitution is to inhibit the ability of the Council's committees to delegate functions to officers of the Council.

(o) The Alternative Arrangements regulations permit the authority to exercise functions which have been delegated to the Board. Authorities are encouraged to define within their standing orders procedures for use of this power.

7.6 Authorities operating alternative arrangements should be mindful of the content of paragraph 1.9.

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8. DEVELOPING A NEW CONSTITUTION

8.1 Under Section 37 of the Act, each authority is required to prepare, keep up to date and publicise a document known as the council's 'constitution'. This must include their proposals for the discharge of functions, standing orders and code of conduct. The Assembly issued separate guidance on Modular Constitutions for Welsh Local Authorities in 2001.

CONTENT OF THE CONSTITUTION

8.2 The constitution must include:

- information with respect to the discharge of all the council's functions as directed by the Local Government Act 2000 (Local Authority Constitution) (Wales) Direction 2001 made under section 25(5);
- standing orders;
- the code of conduct for members (including co-opted members); and
- such other information as the authority considers appropriate.

8.3 The Assembly Direction also requires that the council's constitution must include the following information:

- all details of the executive or alternative arrangements including the arrangements for overview and scrutiny committees and how they will operate their referral procedures;
- details of the arrangements for the discharge of functions;
- the scheme of delegations including those functions and responsibilities delegated to area committees;
- details of who in the authority is entitled to make decisions and about what. The constitution should also make clear how the executive is to involve all stakeholders and the kind of information it should provide to them in addition to the forward plan before the executive reach a final decision;
- the roles, responsibilities and rights of officers and members and establishing the key principles governing officer/member relationships;
- details of who within the authority will be responsible for carrying out the best value reviews;
- the allocation of responsibilities for social services and in particular for children and young people in need;

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- arrangements for appointment of the council leader and/or other executive members; and
- the code of conduct for officers.

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8.4 The arrangements for the discharge of non-executive functions should be a statement of who or which body within the council is responsible for the discharge of non-executive functions, (as described in the Local Authorities Executive Arrangements (Functions and Responsibilities) (Wales) Regulations 2001 made under Section 13(3)(a) of the Act) together with a description of the role of the full council under the new constitution.

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8.5 There is considerable scope for local choice and diversity in the content of the new constitution and the way in which it operates. Many of the matters to be included in the constitution may be included in an authority's standing orders.

8.6 There will be other matters governing the conduct of the authority's affairs which will not be included in standing orders, executive or alternative arrangements, the arrangements for the discharge of non-executive functions, the code of conduct for members or the code of conduct for officers. Councils may, if they choose, include any of these other matters in their constitution. For example, a council may choose to include a description of locally developed protocols governing the relationships between the executive, other councillors and officers. The code of conduct for officers should make clear that that code of conduct is incorporated into the officers' contract of employment.

8.7 Importantly, the constitution should be drafted as a flexible document. For example, it should not be necessary to produce a revised constitution every time an ad-hoc committee or sub-committee is appointed to undertake a particular task. However, this needs to be balanced against the need for a constitution to be detailed enough so that anyone who has dealings with the council can use it to determine who is responsible for the matter with which they are concerned.

SOCIAL SERVICES

8.8 Section 102 of the Act dis-applies sections 2 to 5 of the Local Authority Social Services Act 1970 from local authorities operating the new executive arrangements. This means that those councils will no longer be required to have a social services committee to discharge social services functions (see Chapter 3 'Responsibility for Functions').

8.9 Member responsibilities for social services will, however remain crucial under the new arrangements. All social services functions (including those regulatory functions which will transfer to the Care Standards Inspectorate for Wales, following implementation of the Care Standards Act 2000) will be the responsibility of the executive and they must ensure that social services gets the leadership and clarity of direction it needs.

- 8.10 With these changes to management structures for social services it will be all the more important for a council's constitution and the scheme of delegation within the executive to make clear who is responsible for the full range of the authority's social services functions and how, through overview and scrutiny committees, they will be held to account. It is essential that local people have confidence in their social services and those who run them.

CHILDREN IN NEED INCLUDING LOOKED AFTER CHILDREN, YOUNG PEOPLE AND CARE LEAVERS

- 8.11 Services for children in need, including looked after children, young people and care leavers, require a particular commitment from senior officers and elected members in local authorities. Councils should pay particular attention to the *Waterhouse Report*¹ and to joint WLGA/LgiU/Assembly Government guidance on corporate parenting, *If This Were My Child* (May 2005), when considering how they will deal with the matter of responsibility for these services. It is particularly important at a time of significant change in the management structures that the roles and duties of officers and of elected members in respect of children in need are given the priority attention they require. Constitutions must provide robust arrangements for the fulfilment of those roles and duties. The constitution should make it clear what role the individual members, the executive and the overview and scrutiny committees have in dealing with this matter and how reports dealing with children in need will be handled.

AVAILABILITY OF THE CONSTITUTION

- 8.12 The Act requires that copies of the constitution are available at the local authority's principal office for inspection at all reasonable times and that members of the public should be able to take away copies of the constitution for a reasonable fee. It is recommended that local authorities should make copies of the constitution available more widely, for example at all their offices, libraries, community buildings and on their web site.

REVISIONS TO CONSTITUTIONS

- 8.13 The council's constitution should be kept up to date at all times.
- 8.14 An individual councillor may propose additions, amendments, suspensions or withdrawals to the council's constitution, but in doing so would have to declare any interest they have in obtaining a decision of the full council.
- 8.15 All proposed changes have to be debated by the full council and require a majority vote of those members voting to be accepted.

¹ Lost in Care: the report of the Inquiry into Child Abuse in North Wales (available on the Internet at www.doh.gov.uk/lostincare/20102.htm)

- 8.16 Any changes the council has resolved to make will come into immediate effect unless the decision specifies otherwise.
- 8.17 The constitution document should be amended within 5 days of the making of a resolution to ensure that the most up to date version of the constitution is always available.

9. CONSULTATION

Note: This chapter has been replaced by the statutory guidance issued on 24th August 2005 in support of The Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004.

10. MEMBER DEVELOPMENT AND SUPPORT

(This chapter has been written in collaboration with the WLGA)

Introduction

- 10.1 The introduction of executive arrangements was intended to bring greater clarity to the decision-making, overview and scrutiny, and representational roles of elected office in Welsh local government. Public accountability for individual performance in office, particularly for those in executive positions, is now much greater. This combination of greater role definition and increased individual public accountability has made elected members more aware of the importance of training and development if they are to succeed in their roles.
- 10.2 It is generally recognised that in the past councils had relied upon political parties to prepare their candidates for public office (where candidates had such an affiliation) and that induction and post-entry training and development support was very limited. Councillors were expected to learn and develop in the role with the support and guidance of their senior peers, and the professional advice of officers. Support was traditionally geared towards the accrual of knowledge through briefings, seminars, and close working with professional officers, with little attention given to personal skills development. Investment in member development and training was very low compared to investment in the professional development, and latterly the personal development, of officers.
- 10.3 Over recent years the support for member development and training, the investment in national agencies providing member development services, and the take-up of those member development services at the local level has grown substantially.
- 10.4 Councils have continued to develop their support services for elected members, ranging from research and briefing services, to secretarial services, to policy advice, to dedicated support for specialist roles such as overview and scrutiny and the executive member. Many councils have invested in personal information technology systems and hardware for members including portable computer equipment and remote access. This support allows members to organise and manage their time, appointments and information more easily, and to organise their pressured workloads in a more systematic way.
- 10.5 It is nevertheless necessary to develop further the approaches to member training and development and support services.

National Developments and Local Strategies

- 10.6 The Welsh Assembly Government is committed to supporting and resourcing training and development for elected members across Wales. The Assembly has financially assisted the Welsh Local Government Association (and the predecessor organisation Syniad) to co-ordinate training and development

activity. The Association is the lead agency for elected member development in Wales. The Association adopted the first Member Development Strategy for Wales in July 2003, with the support of the Assembly, and will be reviewing and republishing the Strategy annually from 2006. The Strategy has had notable successes in the fields of leadership development, overview and scrutiny development, specialisms such as the national training programme in planning policy development control sponsored by the Assembly and delivered by the Association, and post-election induction following the June 2004 elections. The Strategy aims:-

- to provide national direction in anticipating, and planning to meet, the training and development needs of elected office
- to provide expertise, advice and support to councils through the Association and its partners
- to provide national and regional specialist programmes of training and development
- to promote commonly high standards in the local provision of training and development
- to encourage collaboration and the sharing of resources to provide high quality and cost-effective training and development

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10.7 The Strategy has as its main areas of activity:-

- leadership development
- coaching and mentoring
- constitutional role development
- personal development plans and personal review
- national and regional skills programmes
- overview and scrutiny development
- applied knowledge development in specialist areas (e.g. planning)
- local strategies for individual councils
- succession planning and developing prospective councillors
- training resources and research

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10.8 The Welsh Local Government Association introduced a new Member Development Charter in late 2005. The Charter, which replaces the first Charter launched in 2000, will act as a framework for planning and reviewing support for elected members at the local level against a set of collectively agreed national guidelines. It aims to promote high standards of common practice, and encourage the sharing of practice and resources, through self-assessment and peer accreditation. The Charter will have four themes – support services for members, facilities for member, constitutional arrangements and member training and development. Councils will be invited to make a declaration of intent followed by a submission to the Association. The Council's self-assessment will be supported by an external peer assessment. Councils who are progressive against the guidelines will receive recognition through the conferring of an award. All councils are encouraged to use the Charter as a framework to consolidate and improve local provision for members, and to seek recognition under the Charter awards.

- 10.9 The Member Development Strategy for Wales and the Member Development Charter are entirely consistent with, and in support of, the recommendations made by the Local Government and Public Services Committee in its report *The Operation of New Political Management Structures in Local Government* (published May 2004). The terms of reference of the review were “to consider the operation in Wales of the new political management structures introduced by the Local Government Act 2000, their success in delivering more transparent, efficient and accountable decision-making, and to make recommendations to encourage the development of good practice”.
- 10.10 The Welsh Local Government Association will produce an annual report on elected member training and development activity across Wales from 2006. The report will highlight innovation, leading practice, successful initiatives and future training and development needs. The Association works in partnership with a number of local government and public sector agencies in England, and with a number of expert private sector agencies, in the design and delivery of training and development support. Councils can access U.K. wide programmes such as the Leadership Academy (managed by the IDeA) as part of the National Strategy.

Constitutional Reform

- 10.11 In Wales we now have five years of operating the new executive arrangements in trial or final form. Research and experience show that the success of the new constitutional arrangements is influenced as much by the commitment, attitude and open-mindedness of elected members and senior officers as it is by the provisions of the locally adopted constitutions which are derived from, and conditioned by, statutory guidance and the modular constitutions. Constitutions are intended to enable effective and inclusive decision-making by clarifying roles and responsibilities, and ensuring that there are appropriate ‘checks and balances’ within the constitutional framework in the interests of democratic and public accountability.
- 10.12 In a number of councils the constitutions have been reviewed and amended since their adoption with refinements made, such as the number and coverage of executive portfolios, and the number and portfolios of the overview and scrutiny committees, as a consequence of the learning from the first years of their operation. The collective and individual learning of elected members and senior officers has been highly influential in this progressive constitutional reform. This underlines the importance of role definition in the new constitutions with training and development support for individuals to succeed in those roles. The development of the new constitutions has been driven by both individual and organisational development and the practice of constitutional law.

Roles and Responsibilities

- 10.13 A number of councils are adopting role descriptions for elected members, particularly for those roles which carry special responsibility, and are beginning to introduce forms of personal target setting and review in keeping with the principles of accountability for performance in public office.

- 10.14 Role descriptions are an extension of the descriptions of areas of responsibility and the powers of office which are included in a constitution (such as a description of a cabinet portfolio with any delegated powers of decision-making specified), and can describe more fully the responsibilities of office, reporting and accountability lines, the attributes required of the post holder, and performance objectives. Councils are encouraged to adopt role descriptions as they make clear the responsibilities of office to the post holder and to others to whom they are accountable. Role descriptions are an essential source of information for post holders to consider, and be advised on, their respective training and development needs.
- 10.15 In positions of office of high responsibility and accountability it is important that there is some form of review of personal performance in support of the achievement of organisational objectives. Performance reviews are viewed positively as aids in setting direction and personal targets, in ensuring that individual objectives contribute to the goals and priorities set for the whole organisation, in reflecting on individual performance and in establishing personal training and development needs.

Training and Development at the Local Level

- 10.16 All Councils are encouraged to adopt a local strategy for the provision of training and development support for elected members. A number of Councils have done so in recent years. As good practice, it is recommended that the strategy for offering training and development support begins with a training needs analysis. This analysis will establish personal and collective skills development needs and the preferred learning styles of the elected members, thereby ensuring that the style and not just the content of the training and development sessions matches the needs of the participants. The Welsh Local Government Association has developed, in collaboration with a number of Councils, a member development framework which can be used and adapted as a tool to conduct a training needs analysis. The framework distinguishes between knowledge skills, role skills and personal skills. Councils are commended to use the framework and its thinking as good practice in conducting training needs analyses. A good strategy will be comprehensive and will aim to support training and development in the types of area listed in 10.7 above. Joint development of elected members and senior officers, where appropriate, is to be encouraged. The local strategy should aim to support the training and development of officers who work closely with elected members, in areas such as political sensitivity, strategic thinking, policy development and review, overview and scrutiny and research and presentation skills.
- 10.17 Councils are recommended to establish an internal elected member forum to oversee the planning, implementation and evaluation of the local strategy. It is essential that members themselves have a leading role in determining their own priorities for training and development. Access to training and development should be equal, across political parties, with positive action supported for those who are under-represented (e.g. the fast-tracking of training for young members).

10.18 Councils are encouraged to set aside a dedicated and sufficient budget for training and development which is proportionate to the budget provision for officer professional training and development.

10.19 Elected members serving on particular committees, such as the quasi-judicial committees of planning development control and licensing, will have particular knowledge skills and role skills development needs. Due to the importance of observing law, policy and codes of conduct in the discharge of the duties of these committees, councils are advised to make knowledge and roles skills training a prerequisite of serving on such a committee.

Support for Members

10.20 Many councils have a tradition of providing support services and facilities for elected members. A progressive council will aim to provide:-

- dedicated space/meeting rooms for political groups/office holders
- members' library and research area/services
- full access to a well development council intranet facility for self-research
- on-site information technology facilities for elected members at the civic offices
- portable information technology and/or home based information technology equipment with full training support and helpdesk maintenance services
- remote access for e-mail and internet
- support for e-mail management and advice and support on personal website maintenance
- telephony services including call referral/handling services
- research support services through either dedicated support or the apportionment of time of corporate officers such as policy officers
- dedicated officer support and budget provision for the overview and scrutiny function
- secretarial services and clerical and administrative support
- ward casework management support services
- an adequate members' allowances scheme
- support for members with special circumstances to attend meetings and undertake their duties (e.g. childcare facilities, carer support, full disability access)
- advisory and support services for elected members to fulfil their duties on external bodies to which they are appointed by the council

10.21 The Member Development Charter for Wales will include standards for the above, and will encourage the consolidation and improvement of support services currently provided by councils. In adopting the Charter councils will review the comprehensiveness of their support services in these areas.

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ANNEX A

The Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004

STATUTORY GUIDANCE

1. Sections 38 and 106 of the Local Government Act 2000 (“the Act”) have the effect of requiring local authorities to have regard to any guidance issued by the Assembly for the purposes of Part 2 of the Act.
2. The Local Authorities (Changing Executive Arrangements and Alternative Arrangements) (Wales) Regulations 2004, (“the Regulations”) are made under sections 30 and 33, in Part 2 of the Act. This guidance must be read in conjunction with the Regulations.
3. Assembly powers under the Act have been delegated to the Minister for Finance, Local Government and Public Services. Further references to “the Assembly”, other than when referring to the making of legislation, may therefore be read as referring the Minister.

Background

4. The provisions of the Act came into force in Wales in July 2001. Local authorities were required to send proposals to the Assembly, describing the political structure the authority intended to adopt. These were limited to the models described in section 11(2) to (4) or in regulations made under sections 31 and 32 of the Act. These provisions enabled an authority to choose from four options, namely an elected mayor and executive, a leader and executive, an elected mayor and council manager, or alternative arrangements (including a council committee known as the board and popularly known in Wales as “the Fourth Option”). A referendum of local electors would be required before an authority could adopt either of the two models involving an elected mayor.
5. In the event, 19 county or county borough councils opted to operate a leader and executive model and 3 chose alternative arrangements.
6. Regulations were made under sections 30 and 33 of the Act in November 2002, “The Local Authorities (Operation of Different Executive or Alternative Arrangements) (Wales) Regulations 2002”, which enabled local authorities to change their constitutional arrangements in ways which fell short of changing the model, in some cases requiring Assembly consent.
7. These earlier regulations are revoked by the Regulations covered by this guidance.

Making proposals for change

8. Local authorities are now able to change their constitutional arrangements in ways which include changing their model. For changes which fall short of a change of model, authorities are required to carry a resolution of the council in order to make the changes. Such a resolution is also required in order to change the model but additional considerations also apply.
9. Before drawing up formal proposals for a change of model, a local authority must consult with their electors and other interested persons in their area. This means that an authority must be satisfied that every elector, and every organisation or grouping with whom an authority might normally consult, have an opportunity to express an opinion on the changes being proposed. (Guidance issued by the Assembly in 2001 – “Consultation Guidelines for County and County Borough Councils in Wales” – should be referred to). The Regulations allow for consultation carried out up to six months before the Regulations are made to be taken into account.
10. Following this process, a local authority must draw up proposals which describe the changes the authority wishes to make, a timetable for their implementation and any transitional arrangements required to facilitate the change from one model to another. The proposals would need to include a description of the functions which the authority proposes should be discharged by its executive or board. They would also need to include an explanation of how the authority believes the proposed changes would improve the economy, efficiency and effectiveness of the authority’s operations.
11. If an authority proposes to adopt a model including an elected mayor they would need to hold a referendum of local electors. In such an instance, the authority would need to draw up “fall-back” proposals explaining how the authority would operate if the referendum rejected the proposed mayoral model. These “fall-back” arrangements would be the arrangements already in existence. The referendum could not be held until after the Assembly had approved the authority’s proposals and also no less than two months after the authority submitted its proposals to the Assembly.
12. When submitting proposals to the Assembly, a local authority must include with the proposals a description of its consultation process, the results of that process and how they are reflected in the proposals, and also an explanation of why the authority thinks its proposals will ensure that decisions of the authority are made in an efficient, transparent and accountable fashion.

Deciding on the proposals

13. Whether or not a referendum is required, a local authority cannot implement its proposed change of model without the Assembly’s written consent. In considering whether to give that consent a number of issues would be taken into consideration.
14. Firstly, the authority would need to have submitted a description of its consultative procedure which included evidence to show that everyone who should have been consulted had the opportunity to express a view. The results of the consultation

should be described and the extent to which the majority views are reflected within the proposals.

15. Secondly, the authority would need to show why the authority believes that the proposed model would improve, or, at least, not detract from the effectiveness of the decision-making structure within the council. This would need to include some detail on the attitude of significant political groups, where such groups exist. It is preferable that a major constitutional change carries a degree of cross-party support, particularly if the co-operation of other parties would be required under new structures. Such evidence would add weight to the likely stability of any new model. This would be particularly important in the case of a proposal to move from an executive model to alternative arrangements.. Local authorities need to have regard to the practicality of their proposals. The leadership of the authority in such a model would rest with a politically balanced Board. If it were clear that one or more of the major political groups, who would normally be entitled to a number of seats on the Board, were not intent on participating in the new structure, it is unlikely that the proposals would receive Assembly approval. This is because the council would be asking for approval of a new model which was designed to operate in an environment of political co-operation.

Implementing the proposals

16. Once proposals have been approved, the local authority must implement them in keeping with the timetable included in the proposals.
17. In the case of proposals which require a referendum, the authority cannot introduce those proposals if the referendum produces a negative result. The authority must, instead, continue with its existing arrangements. This does not prevent an authority from submitting further proposals for a change to their arrangements, so long as those proposals do not require a referendum. (The Act forbids a further referendum taking place within 5 years of the previous one).
18. If, on the other hand, a referendum produces a positive result, the local authority must introduce the model which was the subject of the referendum, in accordance with the timetable included in its proposals.
19. In all cases, a resolution of the authority is required before the new arrangements may come into being.

Publicising the changes

20. Once a decision has been made, the local authority must make details of the new arrangements available for public inspection at the council's main office. The authority will also need to publish a notice in local newspapers. This notice must inform the public of the council's decision and the date on which the new arrangements come into practice. It should also include an outline of the major changes involved and tell people where and when they can examine the detail if the new arrangements.

21. Where the local authority's proposed changes have been rejected in a referendum, the authority must publish a similar notice but which would describe the rejected proposals and explain that the previously existing arrangements will continue.

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This Guidance was laid before the National Assembly for Wales in accordance with Standing Order 29 of the National Assembly's Standing Orders and is made on 30th July 2006