

Report to the Constitution and Member Services Standing Scrutiny Panel



Date of meeting: 23 September 2010

Portfolio Holder: Leader

Subject: Deputies to Portfolio Holders

Responsible Officer: I Willett (01992 564243)

Democratic Services Officer: M Jenkins (01992 564607)

Recommendations:

- (1) To consider the following matters relating to Deputy Portfolio Holders:
 - (a) whether this idea is to be pursued as a formal part of the Council's Constitution;
 - (b) if so, to amend Article 6 and the Executive Procedure Rules as shown in Appendix 3 and to recommend these for adoption by the Overview and Scrutiny Committee and the Council;
 - (c) To consider the member role statement set out in Appendix 3 to this report if the question of Special Responsibility Allowance for these positions is to be pursued and to recommend accordingly.

Report:

1. At the meeting of the Overview and Scrutiny Committee on 1 June 2010 (Minute 9(b)(ii)), a proposal of Councillor C Whitbread concerning a review of the desirability of establishing Deputies to Portfolio Holders was referred to this Panel for consideration.
2. A copy of the scrutiny review proposal is attached as Appendix 1. Five specific review items are raised in the proposal which are dealt with in turn below:

(a) Statutory restrictions on what an assistant can undertake on behalf of a Cabinet Member or the Cabinet itself

Section 11(3) of the Local Government Act 2000 prescribes that a Leader and Cabinet Executive must consist of no less than three Councillors (including a Leader) and no more than 10 (including a Leader).

Section 15(2) of that Act prescribes that arrangements for the carrying out of Executive functions can be delegated in the following manner:

- (a) to the Cabinet itself.
- (b) to members of the Cabinet individually.
- (c) to any Committees of the Executive; and
- (d) to officers of the Council.

3. The 2000 Act therefore prescribes that Cabinet functions can only be delegated, so far as Councillors are concerned to those members who are appointed to the Executive. Were the Council to adopt Deputies to Portfolio Holders, they could not be full members of the Cabinet and therefore could not participate in its decisions either individually or collectively.

4. In the guidance on Council Constitutions issued in 2000 by the then Secretary of State, the following statement is made:

“The Executive may invite any person it considers appropriate to attend its meetings and to speak on behalf of an absent member of the Executive. However, that person will not be able to take formal decisions. Such a role might help provide an effective link between the Executive and other Councillors and could be an effective developmental role for some Councillors. The Secretary of State advises that it would be inappropriate for such members also to be members of the Overview and Scrutiny Committee dealing with matters on which that person has assisted the Executive”.

5. The guidance goes on to say that:

“The Secretary of State believes that allowing formal substitution of Executive Members would reduce transparency and blur accountability. An Executive is not therefore able to have formal substitute or deputy members who are not themselves members of the Executive. For the same reason, the Executive has no powers to co-opt other Councillors or anyone else onto the Executive. If members of the Executive who have a function delegated to them is absent (for example on sick leave) or unable to act (for example if they have an interest), the function will therefore have to be discharged in accordance with the delegations under Section 15 of the Act”.

6. It seems therefore that Deputy Portfolio Holders can assist Portfolio Holders in carrying out their duties but not substitute for them in making decisions. The responsibility for the Portfolio and accountability for decisions must rest with the appointed Cabinet member. It is known that in some large authorities (e.g. Essex County Council), arrangements are in place for Assistants or Deputy Portfolio Holders to prepare decision documentation for Cabinet reports or Portfolio Holder decision). In this they are known to liaise with officers, consult relevant parties and draw up relevant reports. However in all cases decisions and Cabinet reports are submitted under the name of the Portfolio Holder who remains accountable for those reports.

(b) A list of duties and responsibilities which could be given to Assistant Portfolio Holders

7. Attached as Appendix 2 are the duties of Deputies to Portfolio Holders agreed earlier in the year by Essex County Council. The Panel may like to consider whether this could be a blueprint for this Council. It should be noted that this document was drawn up specifically with questions of remuneration in mind.

(c) Amendments to the Constitution including Terms of Office Appointment etc.

8. Currently, Portfolio Holders are appointed by the Leader of Council on an annual basis. It is assumed that their Assistants would be appointed for the same period. These would be dealt with by the Leader of Council under the current Constitution, the requirement being that at each Annual Council those appointed to the Deputy Portfolio Holder positions and their portfolios would be reported. Likewise any changes made during the year would be reported by the Leader of Council.

9. In terms of the Constitution, Article 7 (the Executive) would require amendment if the position of Deputies to Portfolio Holders is to be recognised formally. Appendix 3 shows a suggested additional paragraph (to be numbered 7.06) which deals with these appointments, together with the Executive Procedure Rules where a new Paragraph 1.6 is suggested.

(d) Whether Assistants should be “paired” with specific Portfolio Holders

10. The Panel is free (within legal requirements) to decide how a system of Deputy Portfolio Holders should function. The number of appointments could be the same as the number of Cabinet members and each of the Deputies could be allocated to a specific Portfolio Holder to assist with those duties. Alternatively, a smaller number of Deputies could be appointed to act as a “pool” of Deputies for all Cabinet members. However, it would seem preferable that the appointment of the Deputy should be clear from the outset and paired Deputies and Portfolio Holders would seem the easier system to operate. Such an arrangement also has the benefit of offering a larger group of members the opportunity to become familiar with Cabinet procedures.

11. The option of a smaller "pool" of Deputies may cause difficulties in defining duties for the purpose of remuneration.

(e) Payment of Special Responsibility Allowances

12. Based on the policy of Essex County Council, payments could be made to Deputy Portfolio Holders by way of a Special Responsibility Allowance. These allowances allow the Council to determine remuneration for responsibilities which are over and above those of a Councillor, these being reflected in the basic allowance. However, the Council cannot determine payments to Deputy Portfolio holders because at the present time these are not included in the Remuneration Scheme. If members wished to pursue this option, they should refer this to the Independent Remuneration Panel who must make recommendations to the Council before any payments can be considered.

13. Special Responsibility Allowance must only be paid if the responsibilities concerned are clearly stated. If this is intended, it is suggested that the “Job Description” for Deputy Portfolio Holders set out in Appendix 3 with any amendments thought appropriate should be referred to the Remuneration Panel for consideration and report. Once they have reported, the Council is obliged to take account of their views before making decisions on the SRA to be applied.

Conclusion

14. The Council can determine whether it wishes to appoint Deputy Portfolio Holders. In practice, these appointments will be made at the discretion of the Leader of the Council. It is suggested that:

- (a) appointments should be for one Council year; and
- (b) that Deputies should be assigned to specific Portfolio Holders so that roles are clear;
- (c) that Deputy Portfolio Holders do not have decision making powers but could, if the Leader so determines, assist Portfolio Holders in compiling decision reports and reports to the Cabinet but with no change to the accountability of the Portfolio Holder for the decisions made;
- (d) that in the absence of a Portfolio Holder, another Cabinet would make decisions not the Deputy;
- (e) that Portfolio Holders would still sign portfolio holder reports and present Cabinet reports;
- (f) that if Deputies are to be involved in drafting reports etc, close liaison arrangements between the Portfolio Holder, the Deputy and the Service Director(s) concerned would be necessary;
- (g) that Article 6 of the Constitution and the Executive Procedure Rules should be altered in order to introduce Deputy Portfolio Holders as formal appointments within the Council. (If

such appointments are to be made informally by the Leader from within her own political group, there is no requirement to include these in the Constitution. It is understood that this option has been pursued before and the current proposal seems to imply that more formality is being sought.)

(h) that questions of payment of Special Responsibility Allowance to Deputy Portfolio Holders is a matter for the Independent Remuneration Panel and in order to facilitate this the Panel and the Council will need to agree the "Job Description" for these Deputy positions.