

# **Report to the Council**

**Committee:** Overview and Scrutiny Committee

**Date:** 2 November 2010

**Subject:** Deputies to Portfolio Holders

**Chairman:** Councillor Richard Morgan

**Item:** 11

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## **Recommending:**

- (1) That positions of Deputy Portfolio Holders be introduced and included in the Council's Constitution;**
- (2) That the proposed amendments to Article 6 of the Constitution and the Executive Procedure Rules as shown in Appendix 2 to this report be approved;**
- (3) That the Member Role Statement for Deputy Portfolio Holders set out in Appendix 3 to this report be approved;**
- (4) That the application of Special Responsibility Allowance to Deputy Cabinet Member positions be deferred until 2011/12 to allow more time for these new positions to be assessed in their initial period of operation.**

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1. At our meeting 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. A copy of this proposal is attached as Appendix 1.
  2. We asked the Constitution and Member Services Standing Scrutiny Panel (SSP) to undertake a review of this idea and we have now received the SSP's report.
  3. Five specific review items are raised in Appendix 1 and these are dealt with in turn below:
    - (a) Statutory restrictions on what a Deputy Portfolio Holder can undertake on behalf of a Cabinet member or the Cabinet itself**
  4. The SSP has advised that Section 11(3) of the Local Government Act 2000 prescribes that a Leader and Cabinet Executive must consist of no less than 3 Councillors (including a Leader) and no more than 10 (including a Leader). Section 15(2) of that Act also prescribes that Executive functions can be carried out in the following ways:
    - (i) by the Cabinet itself;
    - (ii) by Members of the Cabinet individually;
    - (iii) by Cabinet Committees; and

- (iv) by Officers of the Council under delegation.
5. We accepted the SSP's view that Cabinet functions can only be delegated so far as members are concerned to those appointed to the Executive. Thus, Deputy Portfolio Holders could not be full members of the Cabinet and therefore cannot participate in its decisions either individually or collectively.
  6. The Panel has drawn our attention to the guidance on Council Constitutions issued in 2000 by the then Secretary of State, in which he comments:

“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 to 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 will 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”.
  7. The Secretary of State's 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 are absent (for example on sick leave) or unable to act (for example if they have an interest), that function will therefore have to be discharged in accordance with delegations under Section 15 of the Act”. (See paragraph 3 above).
  8. We agree the conclusion of the SSP that Deputy Portfolio Holders can assist Cabinet members in carrying out their duties. We are clear however that they may not substitute for them in making decisions. Responsibility for the Portfolio and accountability for decisions must under the present legal arrangements continue to rest with the appointed Cabinet member. We have been told by the SSP that in some authorities arrangements are in place for Deputy Portfolio Holders to prepare decision documentation for Cabinet reports or Portfolio Holder decisions. In this, they are known to liaise with officers, consult relevant parties and draw up reports. However, in all cases, decisions and Cabinet reports are submitted under the name of a Portfolio Holder who remains accountable for those proposals.
  9. We noted that the SSP paid particular attention to the comments made by the Secretary of State under Paragraph 5 above in connection with possible conflicts of interests between Deputies who are also members of the Overview and Scrutiny Committee. We have not thought it necessary to prescribe in the Constitution that a Deputy Portfolio Holder must not be a member of the Overview and Scrutiny Committee. We are content to rely on the provisions of the Local Government Code of Conduct whereby a Cabinet member (or in this case a Deputy) is precluded from participating in an Overview and Scrutiny review of a decision in which they have been involved. In these circumstances, if a Deputy Portfolio Holder had been involved in compiling a Portfolio Holder decision which is subsequently reviewed by Overview and Scrutiny, this will probably mean that the member would be excluded from that review. We support the recommendation of the SSP that the Code of Conduct should regulate any conflicts of interest which may arise.

**(b) List of Duties and Responsibilities which could be given to Assistant Portfolio Holders**

10. Appendix 3 sets out a proposed “Job Description” for Deputy Portfolio Holders

prepared by the SSP. This is based on a version recently agreed by Essex County Council and was drawn up specifically with questions of remuneration in mind.

11. The job description is divided into two parts:
    - (i) Duties and Responsibilities – which we trust is self-explanatory; and
    - (ii) Skills Required, which is divided into two sections:

Basic skills which Deputy Portfolio Holders would need to demonstrate; and

Developmental skills which a Deputy would be expected to develop so that they can contribute to the work of the Cabinet and the Council as a whole.
- (c) Amendments to the Constitution including Terms of Office appointment etc**
12. We have set out in Appendix 2 to this report suggested amendments to Article 7 of the Constitution and the Executive Procedure Rules. These appointments would be made by the Leader of the Council who would have discretion as to the number of deputies and the individuals to be selected. The Leader would report to each Annual Council meeting on the Deputy Portfolio Holders to be appointed for the ensuing year. Any changes made during the year would also be reported to Council.
  13. It is important in our view to retain clarity and accountability in these appointments. We propose that the Leader should specify precisely the nature of the duties to be undertaken by the individual concerned. It should be noted that up to 10 appointments each year can be made.
- (d) Whether Assistants should be “paired” with specific Portfolio Holders**
14. We feel that it will be a matter for the Leader of Council to decide how many Deputies are required and how they should be organised in relation to Portfolio Holders.
- (e) Payment of Special Responsibility Allowances**
15. The SSP has briefed the Committee on whether Deputy Portfolio Holders may receive allowances for undertaking those duties. We understand that this could be by means of a Special Responsibility Allowance. This would require consideration by the Independent Remuneration Panel before it could be adopted. The Panel would report to the Council and the latter would have to take account of its report before making a decision.
  16. At this stage, we recommend that as the Deputy Portfolio Holder is a relatively new position, the Council should assess the initial period of operation of these appointments before referring the matter to the Remuneration Panel. The proposed Job Description referred to earlier in this report will be part of that submission.
  17. We recommend as set out of the commencement of this report.