

Annual Council – 18 May 2009

Local Government and Public Involvement in Health Act 2007

1 Summary

The Local Government and Public Involvement in the Health Act 2007 received royal assent on 30th October 2007. Whilst aspects of the Act came into force on the same date, large parts of the Act are subject to commencement orders made by the Secretary of State. To date eight such orders have been issued.

The Act proposes changes to local government structures and governance arrangements in numerous areas, and this report seeks to establish the Council's view in relation to a number of those. The Council has already received reports in relation to some aspects of the Local Government and Public Involvement in Health Act 2007 (LGPIH Act) and implemented actions in particular in relation to the ethical governance arrangements for Standards Committees and local involvement networks (links).

2. Recommendations

The Council is recommended to

- (a) determine if it is minded to change the scheme of elections.
- (b) if (a) above is in the affirmative, to delegate to the Chief Executive in consultation with the working group the production of material for the purposes of consulting such persons as are appropriate
- (c) approve the amendment to Article 7 of the Constitution regarding the appointment and removal of the Leader contained in paragraph 5 of this report, to be effective immediately.
- (d) request the group leaders to inform the Chief Executive of their nominee to sit on a working group to oversee the changes to the executive arrangements
- (e) delegate authority to the Chief Executive to carry such consultation as is required to facilitate a consideration by the Council of a new model of executive arrangements within the permitted period

3. Background

The Local Government and Public Involvement in Health Act 2007 received royal assent on 30 October 2007. Some aspects of the considerable act which runs into 246 sections and contains 18 schedules, each of which are sub-divided into sub-schedules, covers large aspects of the governance arrangements for local authorities. The LGPIH Act, as well as covering structural changes to local government in relation to the districts and counties moving from two tier

government to single tier government, also has implications for changes brought about by the Local Government Act 2000 and the executive decision making arrangements but also deals with numerous other aspects associated with the functions and responsibilities of local authorities.

Whilst aspects of the LGPIH Act have already been implemented by this authority, in particular in relation to the ethical standards arrangements for receiving and determining allegations regarding breaches of the code of conduct by elected members and the establishment of local involvement networks, further aspects of the LGPIH Act are now in force and require the Council to make determinations on the options available to it.

This report details those aspects of the LGPIH Act which the Council need to consider, which may result in subsequent action to be taken within a prescribed timescale and procedure.

4. Elections

The Council is currently subject to a scheme for elections which provides for retirement of one third of its Councillors in each election year, save for every fourth year when there are no retirements. The LGPIH Act permits a Council to pass a resolution changing the scheme of election to move from its current scheme, whether it is retirement by halves or by thirds to a scheme for whole Council elections. The provisions within the Act are discretionary and not mandatory.

Prior to the consideration of such a resolution the local authority must take reasonable steps to consult such persons as it thinks appropriate on the proposed change. The LGPIH Act is not specific in setting out the method, time period or persons to be consulted and leaves this as a matter of local choice, other than the authority must be satisfied that it has taken reasonable steps to consult, and that it has consulted such persons as it thinks are appropriate.

Following consultation the authority must convene a special meeting to decide the issue and if it is to move to whole Council elections, the resolution must be approved by a majority of at least two thirds of the members voting on it. The resolution must be taken within the permitted period which ends on 31st December 2009.

In the event that the authority resolves to move to whole Council elections, the first elections that would be subject to that scheme would be in 2010 and every fourth year thereafter.

Having passed the resolution the Council is also under a mandatory duty to produce an explanatory document which must be made available to the public at its principal offices and more generally available by such means as the Council thinks appropriate. There are detailed guidelines as to what must be contained within the document. Further, the Council would be under a mandatory obligation to inform the Electoral Commission that such a resolution has been passed.

In giving such notice the local authority may request that the Electoral Commission give notice to the Boundary Commission for England to conduct a review and make recommendations as to single member electoral areas. Even where a local authority does not make a request for single member electoral areas, the Electoral Commission of its own volition may direct the Boundary Commission for England to conduct a review and make recommendations as regards single member electoral areas.

If the Council were to pass a resolution for whole Council elections, these are not irreversible and the LGPIH Act contains provisions allowing for a local authority to revert back to its original scheme for elections following a similar process to that which has to be followed when moving to whole Council elections. However, such a decision could not be taken until the annual Council in 2011 and every fourth year thereafter. Such a resolution would have to be passed in the time period between the annual Council and 31st December in each of those years.

5. Council Leader

The LGPIH Act sets out detailed mandatory provisions regarding the election and removal of the executive leader of the local authority which is operating a Leader and Cabinet executive.

The Council currently is operating a Leader and Cabinet executive in one of the forms permitted by the Local Government Act 2000. The current Council procedure rules provide for the election of the leader of the Council at each annual Council. However, the rules are silent as regards the removal of the Leader and his/ her term of office. Whilst it is implicit within the rules that such action could take place and that the period of office is for each municipal year, the LGPIH Act makes express provisions in relation to both.

The LGPIH Act requires that the executive leader is elected at the first post election annual meeting of the authority and if the authority is unable to agree that position at the annual meeting, it should take place at the subsequent meeting of the authority. The period of office is determined by whether the authority is subject to whole Council elections or partial Council elections. Where an authority has resolved to undertake whole Council elections, the term of office ends on the day following the annual meeting of the Council after the elections. Whereas, if the authority is subject to partial Council elections, the term of office ends the day after the annual meeting of Council following the Leader's normal date of retirement as a Councillor.

The LGPIH Act also provides that an executive leader can only be removed from office if the Council passes such a resolution (subject to existing provisions regarding disqualification or resignation) and that the leader cannot be removed by any other means.

It is recommended that Article 7 of the Constitution be amended to reflect the statutory requirements. A set of proposed rules are :

Appointment of the Leader

The Leader will be a Councillor elected to the position of Leader by the Council.

Where there is vacancy or imminent vacancy in the office of Leader the Chairperson shall request if there are any nominations for the office of Leader. Where nominations are received the normal voting rules shall apply.

The Leader's term of office ceases on earliest of

- the day after the annual Council following the normal date of retirement for the Councillor or
- the date he resigns office or
- the date the Council resolves that (s)he be removed from the office of Leader.

(imminent vacancy is defined as due to retire from office the following day)

Removal of the Leader

The Leader of the Council can only be removed from office if the Council so resolve following a notice of motion (subject to resignation, retirement or disqualification).

6. Executive Arrangements

Prior to the Local Government Act 2000 most local authorities operated and discharged the responsibility for their functions through a committee system. The Local Government Act 2000 changed the committee decision making structure and sought to replace it by local authority executives which could take one of four forms. The permitted forms included:

- (a) an elected Mayor and Councillors appointed to the executive by the elected mayor
- (b) Leader and Cabinet appointed by the Leader or the authority
- (c) elected Mayor and Council manager
- (d) alternative arrangements.

The permitted forms of local authority executive in England have now been amended by the LGPIH Act, as a result they have been restricted to that of

- an elected Mayor and executive or
- a Leader and Cabinet.

The Act now defines the Leader as the senior executive member. Whereas under the 2000 Act the Cabinet could be appointed by the Leader or the authority, as in our case, the LGPIH Act places the responsibility upon the senior executive member. Further the LGPIH Act places the responsibility for the

discharge of the executive functions upon the senior executive member or that he or she may arrange for the discharge of those functions by either

- the executive
- a member of the executive
- a committee of the executive or
- an officer.

The existing provisions excluding the Chairman or Vice-Chairman of the authority being on the executive remain, as does the maximum size of the executive being 10.

The Local Government Act 2000 has provision for transitional arrangements for an authority to vary its executive arrangements in any respect but to still provide for the same form of executive.

Where a local authority proposes to make changes to its governance arrangements, the authority is under an obligation to draw up proposals for those, setting out a timetable for the implementation, the details of any transitional arrangements and the authority must take reasonable steps to consult with the local government electors and other interested parties within the administrative area. Those proposals must be available at their principal offices for inspection by members of the public and the Council must also publish in one or more newspaper a notice setting out the main features of the proposals.

Following the consultation period a resolution of the authority is required if it is to change its governance arrangements. The new governance arrangements will subsequently take effect in accordance with a timetable contained within the proposals. The proposals can also provide for the change in governance arrangements to be subject to an approval in a referendum although members will note that this provision is discretionary and not mandatory. The new executive arrangements would apply from the third day after the relevant elections which are held at the end of the period during which the resolution by the authority can be taken. Such a resolution has to be undertaken by 31st December 2009.

7. Politically restricted posts

The LGPIH Act introduces a new regime for the reconsideration of posts which have been classified as politically restricted. Under the new provisions the duty to consider applications for exemption from political restrictions must be made to the Standards Committee of the local authority. Upon receiving such applications the Standards Committee must, having regard to any advice provided by the Secretary of State, make a determination as to whether the post is to be regarded as politically restricted or not, and whether it should then be maintained in the list kept by the authority for such purposes

8. Resource Considerations

- 8.1 **Financial:** None arising directly from this report.
- 8.2 **Legal:** These are contained within the body of the report.
- 8.3 **Staffing:** None arising directly from this report.

9. Citizen impact

The LGPIH Act proposes a number of opportunities for making changes to the administration of local government, with such decisions being taken at a local level to reflect local wishes. There are various options available to the Council which are set out in the report for both the scheme of elections and for executive arrangements. There are well rehearsed arguments which members are familiar with for and against each of the options on both topic areas.

10. Consultation

The Chief Executive and group leaders have been consulted in the production of this report.

Background papers

None

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Signed:

Chief Executive

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