

Cabinet – 18 November 2009

Local Government Public Involvement in Health Act 2007

Portfolio: Councillor Bird , Leader of the Council

Service: Legal and Constitutional Services

Wards: None

Key Decision: No

Forward Plan: No

1. Summary of Report

To update Cabinet members since the last report to Council in May this year of the process followed for implementing further provisions of the above Act and to seek a recommendation of the proposal to Council on the new executive arrangements to be effective from the third day after the next local elections.

2. Recommendations

That the Cabinet

- 2.1 recommend the proposal to Council, to adopt the new model of leader and cabinet executive arrangements under the 2007 Act.
- 2.2 recommend that the proposal be considered at specially convened council meeting before the 31 December 2009.
- 2.3 request the Assistant Director for Legal and Constitutional Services to ensure that:
 - 2.3.1 copies of the proposal be made available for inspection at the civic centre for the public;
 - 2.3.2 an advert be placed in a local newspaper setting out the main features of the proposal.

3. Background Information

Prior to the Local Government Act 2000 (the 2000 Act) most local authorities operated and discharged the responsibility for their functions through a committee system. The 2000 Act 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:

- an elected mayor and councillors appointed to the executive by the elected mayor
- leader and cabinet appointed by the leader or the authority
- elected mayor and council manager
- alternative arrangements.

Those forms have now been amended by the Local Government Public Involvement in Health Act 2007, the 2007 Act, to

- an elected mayor and executive or
- a leader and cabinet.

The 2007 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, the 2007 Act places the responsibility upon the senior executive member. Further it 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.

Process

Prior to drawing up proposals for changes in governance arrangements the authority must take reasonable steps to consult with the local government electors and other interested parties within the administrative area. The 2007 Act is silent on what amounts to consultation and this is left to be determined at local level.

Following consultation, the local authority is under an obligation to draw up proposals for the arrangements, setting out a timetable for the implementation which details any transitional arrangements. Those proposals must be available at the 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.

The proposals must be considered a specially convened meeting of the Council for the sole purpose of determining the issue by 31st December 2009. The new governance arrangements will subsequently take effect in accordance with a timetable contained within the proposals, noting however that the new executive arrangements will have to be statutorily applicable from the third day after the relevant elections which are held after the above date.

Statutory considerations

In drawing up proposals to make changes to executive arrangements the Council must consider the extent to which the proposals if implemented would be likely to assist in securing continuous improvement in the way in which the local authorities functions are exercised having regard to a combination of economy, efficiency and effectiveness.

In changing the current form of executive to the new leader and cabinet model the council is not obliged to conduct a referendum, whereas if it wishes to move to an elected mayor model then it would. In holding a referendum the decision making process would be delayed for the process to be conducted over a minimum 12 week statutory period as well as diverting member and officer attention to facilitate the process. There would also be the financial expense of approximately £160,000.

The current leader and cabinet model has been in effect since 2002. Whilst there is a spectrum of views regarding the current model, it is now widely understood by participants and stakeholders. Process and procedures that support and supplement the decision making processes are embedded, facilitating effective and efficient decision making. Any significant changes to the executive arrangements will have a negative impact on both the efficiency and effectiveness as all that are involved in the process undergo a learning curve to adopt to the new systems.

In both cases there will need to be incidental changes to the Councils constitution however those changes would be greater in number and more far reaching if the change was to an elected mayor model.

The Council has a long tradition and history of having a Mayor dating back to at least 1377. If the Council were to propose to move to a directly elected mayor, there may be confusion in the minds of some regarding the differing roles.

Transitional Provisions

If the Council resolve to change the governance arrangements to the new form of leader and executive model there will need to be a number of changes made to the Councils constitution to reflect the changes in decision making which would naturally flow, i.e. that all decision making for executive decisions rests with the leader unless delegated otherwise and the powers in relation to the appointment of the cabinet members. The changes that need to be made would be discussed with the working group and members briefed on the same before they would be considered by the Council.

Local Choice functions

A plethora of regulations have been issued under the 2000 Act setting out functions which are in the responsibility of the executive, those which only the Council can exercise and those which are of a local choice, Section 13(3) b 2000 Act. The latter category are set out in table 1 of part 3 of the constitution (page 3.1.1) and are attached as **Appendix 1** to this report. It is proposed that there are no changes made to the schedule, save that if the proposal approved further consideration be given to the actual decision making process, e.g. whether the leader makes executive decisions, that the cabinet as whole makes executive decisions or that the specific executive decisions be delegated to individual cabinet members

Timetable

It is proposed that that the cabinet will consider this report at its meeting on 18 November 2009 and the recommended proposal be considered at specially convened meeting of the Council on 21 December 2009.

Thereafter there will be detailed consideration of the consequential amendments required to the constitution and any others considered be prudent at that time. It is proposed that any amendments to the constitution be considered by the council during the remainder of the current municipal year in 2010, with all changes coming into effect from the third after the relevant elections.

4. Resource Considerations

- 4.1 **Financial:** None arising directly from this report.
- 4.2 **Legal:** These are contained within the body of the report.
- 4.3 **Staffing:** None arising directly from this report.

5. Citizen Impact

None arising directly from this report..

6. Community Safety

None arising directly form this report.

7. Environmental Impact

None arising directly from this report.

8. Performance and Risk Management Issues

8.1 Risk:

8.2 Performance Management:

None arising directly from this report.

9. Equality Implications

None arising directly from this report.

10. Consultation

In May 2007 the Council requested group leaders to inform the Chief Executive of a representative to participate in a working group to steer the implementation of the 2007 Act. Councillors Bird, Oliver and I Shires were nominated. The working group met on 17 September 2007 and considered the options for consulting with relevant stakeholders and determined that:

1. there would be four week consultation period.
2. a page be created on the Council's website setting out the options under the 2007 Act allowing members of the public to respond.
3. paper copies of the consultation materials be provided to all members of the authority for distribution at their surgeries to constituents and other members of the public that may visit them during the consultation period.
4. the local MPs be contacted and informed of the consultation exercise, with an opportunity to participate,

5. partners at the Walsall Borough Strategic Partnership, WBSP, be invited to participate in the consultation period. The matter was raised at the WBSP meeting on 5th October 2007.
6. That an advert be placed informing citizens of the consultation process and seeking their involvement. An advert was placed in the Express and Star on 25 September 2007.

A web page was created and that went live on 24 September. All members of the Council were written to and provided with paper copies of a questionnaire and the three local MPs were also written to. As result of the consultation exercise a total of 100 valid responses were received, the table shows the break down of the responses.

	Web page	Paper results	Total
Elected Mayor	18	6	24
Leader and cabinet	65	11	76

The Council has 187,000 citizens registered on the electoral register and at the last census (2001) the population was 254,000.

Background Papers:

None

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Bhupinder Gill
 Assistant Director
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13 October 2009



Rory Borealis
 Executive Director Resources

9 November 2009



Councillor M Bird
 Leader of the Council

5 November 2009

Table 1 RESPONSIBILITY FOR LOCAL CHOICE FUNCTIONS

Function	Decision making body
1. Any function under a local Act other than a function specified or referred to in Regulation 2 or Schedule 1 of the Functions Regulations	The Council, subject to delegation.
2. The determination of any appeal against any decision made by, or on behalf, of the Authority.	The Council, subject to delegation.
3. Making arrangements for admission appeals.	Education Admission Appeals Panel
4. Making arrangements for appeals against exclusion of pupils	Exclusion Appeals Panel
5. Questions on Police matters (Section 20 Police Act, 1996)	The Council
6. Arrangements for the appointment of Police Authorities	The Council
7. The conducting of Best Value reviews in accordance with the provisions of any order of the time being having effect under Section 5 (Best Value Reviews) of the Local Government Act, 1999	The Executive (Note: Scrutiny and Performance Panels will review implementation.)
8. Any function relating to contaminated land.	The Executive, subject to delegation.
9. The discharge of any function relation to the control of pollution or management of air quality.	The Executive, subject to delegation.
10. The service of an abatement notice in respect of statutory nuisance.	The Council, subject to delegation.
11. The passing of a resolution that Schedule 2 of the Noise and Statutory Nuisance Act, 1993, should apply to the authority's area	The Council, subject to delegation.
12. The inspection of the authority's area to detect statutory nuisance.	The Council, subject to delegation.

Function	Decision making body
13. The investigation of any complaint as to the existence of a statutory nuisance	The Council, subject to delegation.
14. The obtaining of information under Section 330 of the Town and Country Planning Act, 1990 as to interests in land.	The Council, subject to delegation.
15. The obtaining of particulars of persons interested in land under Section 16 of the Local Government (Miscellaneous Provisions) Act, 1976.	The Council. subject to delegation.
16. The making of agreements for the execution of highway works.	The Council, subject to delegation.
17. The appointment of any individual:- (a) to any office other than an office in which he is employed by the authority (b) to any body other than:- (i) the authority (ii) the Joint Committee or two or more authorities or; (c) any Committee or Sub-Committee of such a body, and the revocation of any such appointment.	The Council, subject to delegation.
18. The making of arrangements with other local authorities for placing staff at the disposal of other local authorities	The Executive, subject to delegation.