

Body: Full Council

Date: 24 February 2010

Subject: New executive arrangements

Report of: Local Democracy Manager

Purpose: To consider the requirements under the Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007) in respect of the Council's executive arrangements.

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Summary:

This report starts the process for the Council to adopt revised "executive arrangements" in line with newly introduced legal obligations.

There are 2 options to choose from. Either a Leader elected by the Council or a directly elected Mayor. Both would carry out all the Council's "executive functions" assisted by a number of councillors appointed by the Leader/Mayor to a Cabinet.

A 3-stage decision making process must be followed. This, the first stage, is about explaining the changes and agreeing the arrangements for public consultation.

A second stage will choose one of the options and the final stage will formally adopt the new executive arrangements (Council resolution to be passed no later than 31 December 2010). Changes will be effective immediately after the May 2011 Borough Council elections.

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Recommendations:

- (1) To note the requirements the Local Government Act 2000 (as amended by the Local Government and Public Involvement in Health Act 2007) places upon the Council relating to changes to the Council's executive arrangements.
 - (2) To endorse the proposed consultation arrangements (paragraph 5.5) and decision making timetable (appendix 2) as set out in this report.
 - (3) To authorise the Head of Strategy and Democracy to finalise the detail of consultation arrangements and take all other necessary steps in relation thereto in accordance with the timetable proposed in this report.
 - (4) Note the intention that Cabinet, on 7 July 2010, will receive a report back on the outcome of the consultation and be asked to frame proposals for full Council consideration and approval (on 21 July 2010) in respect of a new form of executive, transitional arrangements and, if applicable, consider whether or not to hold a referendum.
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1.0 Introduction and legislative background

- 1.1 The Local Government and Public Involvement in Health Act 2007 ("the Act") gave effect to the Government's proposals for local government reform which followed from the 'Strong and Prosperous Communities' White Paper and for reform of the current arrangements for patient and public involvement in the provision of health and social care services. The purpose of this report is to summarise and outline the implications of Part 3 of the Act which deals with mandatory changes to executive arrangements and agree the consultation and timetable arrangements.
- 1.2 The Act inserted new provisions in the Local Government Act 2000 and also amended other local government legislation and requires all local authorities to review their executive arrangements. The timescale depends on the type of local authority. As a "non-metropolitan district" the Borough Council is required to review its own arrangements by 31 December 2010. Any changes must be implemented 3 days after the date of the May 2011 local elections. County councils have already made the change. London boroughs and metropolitan districts are required to pass their resolutions by 31 December 2009.

- 1.3 The Council will be required to adopt one of two executive arrangements:
- New style Leader and Cabinet executive
 - Mayor and Cabinet executive.

Continuing with the status quo is not an option. There is no provision in the legislation to maintain our current executive arrangements, although the new Leader and Cabinet executive proposals are similar in many respects to our current arrangements in that the Leader is already elected at full Council and appoints the members of the Cabinet.

- 1.4 It should be noted that the duties under the legislation for drawing-up proposals, deciding whether or not to hold a referendum and making a final decision are "council" functions and may not be exercised by the Cabinet (by virtue of the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2008). As the Council does not have a committee with terms of reference covering such governance matters, reports may be made either direct to full Council or via a Cabinet recommendation.
- 1.5 The Council's current political management arrangements date from May 2002 when the provisions of the Local Government Act 2000 were formally adopted. The Council adopted what is now referred to as the "old style Leader and Cabinet executive" under the old provisions of S. 11(3) of the Local Government Act 2000. Prior to this (since October 1999) the Council had operated Leader and Cabinet arrangements on a pilot basis.

2.0 The options available

- 2.1 The key features of the two new types of executive arrangements are:

Leader and Cabinet executive – a councillor is elected as Leader by the Council for a 4-year term following the elections (rather than annually as at present). The Council may retain the power to remove the Leader during their 4-year term by a vote of no confidence. The Leader not only appoints the Cabinet but also determines the size of the Cabinet (within the statutory minimum of 3 and maximum of 10, including the Leader). The Leader will decide how executive functions are to be discharged (i.e. what Cabinet portfolios will exist, and how they will be allocated, and delegations to officers). This is a change from the existing arrangements whereby full Council have the final say with regard to delegation arrangements. The executive arrangements must include provision for the appointment of a Deputy Leader with the power to act in the Leader's absence. The Deputy Leader is appointed (and may also be removed) by the Leader.

Mayor and Cabinet executive – a directly elected Mayor who appoints the Cabinet. The Mayor decides how executive functions are to be discharged (i.e. what Cabinet portfolios will exist, and how they will be allocated, and delegations to officers). Unlike a Leader, the Mayor cannot be removed from office by the Council. The current

“ceremonial” post of Mayor will become Chairman of the Council. The directly elected Mayor may, however, carry out the ceremonial functions of a traditional Mayor, but he/she cannot chair meetings of the full Council.

A useful briefing paper on the choice of executive models and in particular on the subject of directly elected mayors can be found at <http://www.parliament.uk/commons/lib/research/briefings/snpc-05000.pdf>

- 2.2 As at present, under both models, the executive must operate within the annual budget set by full Council and within the framework of Council adopted “top level” policies. In addition there are a range of responsibilities which the executive may not deal with, including regulatory matters (e.g. planning and licensing applications), staffing appointments and conditions of service, electoral and governance functions.
- 2.3 **Appendix 1** to this report sets out in greater detail the main differences between the current executive arrangements and the new executive options.

3.0 Process for agreeing changes

- 3.1 The Council will have to follow the following procedures to make the required changes to its executive arrangements:
- It must first take “reasonable steps” to consult the local government electors for, and other interested persons in, the authority’s area, about the different options.
 - It must draw up proposals for change, including a timetable for implementation, and details of any transitional arrangements.
 - In drawing up proposals, it must consider “the extent to which proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the local authority’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness”.
 - The proposals must state the extent to which the ‘local choice’ functions specified in regulations are to be the responsibility of the executive.
 - The proposals may include a provision for the change in governance arrangements to be subject to the approval of a referendum.
 - After drawing up its proposals, the Council must:
 - make copies of a document setting out the proposals available at its principal office for public inspection at all reasonable times, and
 - publish in one or more local newspapers a notice describing the main features of the proposals, and how to inspect details of them.
 - By no later 31 December 2010, at a special meeting of the full Council convened for the purpose, pass a resolution to make the changes.
 - As soon as practicable after that, comply with section 29(2) of the Local Government Act 2000 by giving public notice by various means

- of what the new arrangements will be and when they will take effect.
- Implement the new executive arrangements by no later than the 3rd day after the ordinary day of elections in 2011 (i.e. 8 May, assuming election date of 5 May is unchanged).

3.2 Special transitional arrangements within the 2007 Act (in Schedule 4) allow the current arrangements to continue in operation no later than the 3rd day after the day of elections in May 2011. Under the proposed timetable, this transitional period will therefore run from the date of passing the adoption resolution (15 September 2010) until the 8 May 2010. After this date the new style arrangements must operate. Special arrangements will need to be put in place for the period from 8 May until the day of the Annual Meeting when the Leader is elected. It will be suggested that the current Leader continue in office and should exercise full executive powers in this period. The new legislation provides that even if the Leader is not re-elected he/she remains in office until the day of the Annual Meeting. In the event of a change in political control a protocol will need to be put in place requiring liaison with other political group leader(s) before any decisions are taken in the post-election period running up to the Annual Meeting.

4.0 Timetable

4.1 **Appendix 2** to this report set out a proposed timetable for the actions necessary to comply with the legislation.

5.0 Consultation with local residents and others

5.1 Section 33E (6) of the Local Government Act 2000 says that "*Before drawing up its proposals, the local authority must take reasonable steps to consult the local government electors for, and other interested persons in, the authority's area.*"

5.2 The Government has declined to issue statutory guidance as to the nature and extent of such consultation. It is therefore for the Council to decide its chosen method. A review of the steps taken by other local authorities suggests that the preferred option is to use the council's website to provide information and seek feedback. Some went further and included articles in their council newspaper. In a few cases, councils undertook citizen surveys. I have not been able to find reference to a council choosing to hold referendum on its proposals for change (presumably due to a perceived lack of public interest and/or regard to the significant cost of a referendum).

5.3 Case law has established that in order to achieve procedural fairness a statutory obligation to carry out public consultation must:

- Be undertaken when the decision that has been consulted upon is still at a formative stage (i.e. no pre-determined decision has been made and the public body is not merely paying "lip service" to its obligations to undertake a consultation. It is, however, permissible for the Council to have a preferred option, provided that the Council consults on all

possible options and not merely its preferred option.

- Includes sufficient information to allow interested parties to consider the decision that is being consulted upon and formulate their response.
- Allow adequate time for interested parties to consider and respond to the consultation.
- Take all the response from the interested parties, conscientiously into account, when the ultimate decision that is the subject of the public consultation is taken.

5.4 It would be appropriate to specify a 12 week consultation period. This would be in line with the national code of practice for consultation and policy appraisal (the code that underpins the compact on relations between Government and the Voluntary and Community Sector in England, published in November 1998).

5.5 The Council is recommended to approve a consultation in the period commencing Monday 15 March and closing on Monday 7 June. The main method of consultation would be information provided on the Council's website with an opportunity being given for comments to be made. The launch of the consultation would be announced via a press release. The website information would be available in printed leaflet form at Council reception points and on request (with large print, audio and interpretation options available if requested). The question to be asked of residents and other interested persons will be if they believe the Council should continue to operate with a Leader and Cabinet or move to a directly elected Mayor and Cabinet. Background information will be provided explaining the difference between the 2 options.

6.0 Consultations undertaken in respect of this report

6.1 The Lawyer to the Council has been consulted on the content of this report and has confirmed the relevant legal and constitutional matters highlighted.

7.0 Legal implications/risk assessment

7.1 If the Council fails to pass a resolution and/or implement the changes before the deadlines imposed by the legislation then the Secretary of State can implement a change to a new style Leader and Executive by Order.

7.2 Although the new arrangements transfer some functions from the Council to the Leader or Mayor they do not alter the underlying split in functions between the executive (i.e. the Cabinet) and council that was introduced by the Local Government Act 2000. It therefore remains the case that broadly speaking the Council is responsible for adopting the budget and the policy framework and the executive is responsible for all other (non-regulatory) matters.

- 7.3 The Council's Constitution currently prevents Cabinet members from exercising executive functions individually. The Act now requires the Leader or Mayor to make that decision. The Constitution will therefore need to be amended to reflect this. However, as is the case now, any Leader or Mayor will be advised not to delegate decision making to individual members until appropriate rules for the exercise of individual powers are established. It should also be noted that where an individual Cabinet member makes an executive decision that decision must be formally recorded in a public document with reasons for the decision being given. In addition, if the decision is classed as a "key decision" (see article 13.4 of the Constitution at [key decision](#) for the definition), the decision must be made in public at a time and place for which notice has been given and an agenda published.
- 7.4 As part of the process of change a new scheme of delegation for the Council's executive functions will need to be drawn up. As mentioned in the paragraph above, this may provide for delegation to individual Cabinet members and will also need to set out the matters on which officers will be empowered to deal.

8.0 Policy and performance implications

- 8.1 These changes can be seen as linked to the "Thriving Communities" priority in the draft Corporate Plan 2010/15 (currently before Council for adoption). The Council is expected under the legislation to ensure that the chosen executive model will be "... *likely to assist in securing continuous improvement in the way in which the local authority's functions are exercised.*" The effectiveness of the Council's governance and political management arrangements will of course be key to the delivery of the priority actions in the Plan.

9.0 Financial and resourcing implications

- 9.1 These will be dependent on whether the Council wishes to continue with a Leader and Cabinet form of executive or change to a Mayor and Cabinet. In the case of the former no significant additional costs will arise, although officer time will need to be sent revising relevant sections of the Council's Constitution. In the case of the latter, the costs would be significant and are described below. The cost of the different public notices the council will be required to place in a local newspaper should be met from the existing budget that meets the cost of local democracy related statutory notices.
- 9.2 Costs of the Mayoral option:
- Cost of a referendum (if chosen), estimate £100,000.
 - The financial implications of electing a Mayor along with the election of councillors in May 2011 are significant. The legislation requires the council to print and distribute a booklet to every person on the electoral roll containing details of the mayoral candidates. Voting would have to be on a "supplementary" system, rather than "first past

the post”, and this would also lead to some additional costs. It is difficult to estimate what these costs might amount to, but as a comparator, the cost attributable to the mayoral election (as distinct from the election of councillors) in Mansfield in May 2007 was about £35,000. (Mansfield electorate c.81,000, Eastbourne electorate c.73,000.)

- In the longer run the potential for increasing administrative costs of the support and advice retinue of an independently mandated Mayor are also highlighted.

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Background papers:

- Local Government and Public Involvement in Health Act 2007
http://www.opsi.gov.uk/acts/acts2007/pdf/ukpga_20070028_en.pdf
- Local Government Act 2000
http://www.opsi.gov.uk/Acts/acts2000/ukpga_20000022_en_1
- House of Commons Library briefing note (SN/PC/05000 dated 30 July 2009)
<http://www.parliament.uk/commons/lib/research/briefings/snpc-05000.pdf>

(dr/P:council/10.02.24/exec arrangements)

Appendix 1

Main differences between the current executive arrangements and the new executive arrangements

Current executive arrangements	New style Leader and Cabinet	Mayor and Cabinet
Split of functions. The Council sets the budget and the policy framework. The Cabinet is responsible for all other (non-regulatory) functions of the authority.	No change.	No change.
The Leader is elected by the Council.	No change.	Mayor is elected by popular vote. The Mayor need not be a standing Councillor.
The Council determines the term of office of the Leader and has agreed, by way of the Constitution, that a Leader is appointed until the next Annual Meeting. i.e. One year unless there is a change of Leader during the year.	The Act now states that the Leader remains in office until the first meeting after the next election i.e. four years unless there is a change of Leader between elections. The Leader remains in office even if not re-elected as a Councillor.	A Mayor is appointed for four years.
The Council has agreed, by way of the Constitution provides that the Leader can be removed by resolution of the Council.	The Act provides that the executive arrangements may (but do not have to) provide for the removal of the Leader by a vote of no confidence.	A Mayor cannot be removed by a vote of no-confidence.
The Act provides that a Council's executive arrangements may provide for the exercise of executive functions by the Leader, the Cabinet or a Cabinet member. The Constitution provides that executive decisions will be made collectively by the Cabinet or by officers.	The Act states that the Leader may exercise any executive function and may arrange for the Cabinet, a Cabinet member, committee of the Cabinet or officer to discharge any executive function.	The Act states that the Mayor may exercise any executive function and may arrange for the Cabinet, a Cabinet member, committee of the Cabinet or officer to discharge any executive function.

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Current executive arrangements	New style Leader and Cabinet	Mayor and Cabinet
The Cabinet must consist of the Leader and at least two other Councillors but not more than 9 i.e. a max of 10 members.	No Change.	The Cabinet must consist of the Mayor and at least two Councillors but not more than 9 i.e. a max of 10 members.
The Council has agreed, by way of the Constitution, that the Cabinet shall have between 4 and 6 members.	The Act provides that the Leader will decide the number of members of the Cabinet.	The Act provides that the Mayor will decide the number of members of the Cabinet.
The Leader appoints the members of the Cabinet.	The Leader appoints the members of the Cabinet.	The Mayor appoints the members of the Cabinet.
The Leader allocates portfolios.	No change.	The Mayor allocates portfolios.
The Council can decide whether to permit individual members of the Cabinet to exercise executive functions. The Council has agreed, by way of the Constitution, that individual members cannot exercise executive functions.	The Act allows the Leader to decide whether individual members can exercise executive functions Any Leader would be advised that members should not be authorised to exercise individual functions until appropriate rules have been put in place.	The Act allows the Mayor to decide whether individual members can exercise executive functions Any Mayor would be advised that members should not be authorised to exercise individual functions until appropriate rules have been put in place.
The Act does not require a Deputy Leader to be appointed but at Eastbourne a Deputy Leader is appointed by the Leader.	The Act requires the Leader to appoint a member of the Cabinet as the Deputy Leader who will be entitled to exercise the Leader's functions whenever he or she is absent.	The Act requires the Mayor to appoint a member of the Cabinet as the Deputy Mayor who will be entitled to exercise the Mayor's functions whenever he or she is absent.
The Mayor and Deputy Mayor cannot be on the Executive.	No change.	The Council Chairman and Deputy Chairman cannot be on the Cabinet.

(adapted from a Brent Council publication for which grateful acknowledgement is given)

Appendix 2

Change in Executive Arrangements Decision Making Timetable

Report to/date:	Purpose and decisions required:	Comments:
Council 24 February 2010	To note requirements of legislation. Approve consultation and timetable arrangements.	
<i>12 week consultation period: 15 March to 7 June 2010</i>		
Scrutiny Committee 5 July 2010	See outcome of consultations. Review executive proposal being recommended to Cabinet (see below) and express views on whether referendum should or should not be held.	Timetable allows for Scrutiny Committee to comment if desired. Committee will receive the same report as that intended for the Cabinet meeting 2 days later and will have opportunity to feed back comments to Cabinet prior to submission to full Council.
Cabinet 7 July 2010	Report back on consultations. Draw-up formal proposal (this will describe the form of executive, timetable for implementation, transitional arrangements and which "local choice" functions are to be exercised by executive). Consider if referendum on the proposal should be held.	
Council 21 July 2010	To approve proposal and authorise publication of public notice.	<i>This assumes referendum NOT held. If referendum held then a significantly revised timetable will be required including provision for a special meeting of the Council to be called within 28 days of the day of the referendum. Proposal can only be approved if referendum approves it.</i>

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Report to/date:	Purpose and decisions required:	Comments:
Council 15 September 2010	<p>To pass resolution formally adopting chosen form of executive and authorise publication of a further public notice.</p> <p>Note. The period from the date of passing the resolution up to the date the new arrangements are effective is known as the "transitional period". During this period it is proposed that the current arrangements should continue to operate, albeit with special provisions for the period between the May elections and the Annual Meeting.</p>	<p>This must be at a meeting specially convened for the purpose of passing the resolution although it is intended to hold this on the same evening as the ordinary Council meeting.</p>
Council *17 November 2010	<p>Submit necessary changes to wording of Council's Constitution for approval.</p> <p>To include proposals for the scheme of delegation in respect of executive functions. The latter to be the subject of the transitional arrangements and subsequently confirmed (or amended) by the Leader following election at 2011 Annual Council.</p>	<p>*If more time needed to complete this work could leave till 23 February 2011 or 20 April 2011 at the latest.</p> <p>Unless dealt with at an earlier date, this could also include any desired revisions to committee structure and delegation arrangements including delegation to officers in respect of non-executive functions.</p>

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Report to/date:	Purpose and decisions required:	Comments:
Sunday 8 May 2011	Last possible date on which new executive arrangements must be effective (and the recommended implementation date) and last day of the transitional period.	In the period from date new arrangements effective up to date of the Annual Meeting (when Leader elected) special arrangements will need to be put in place to ensure that any urgent executive decisions outside officers' delegated powers can be taken. Initial view is that the Leader will be empowered. The new style executive arrangements provide that Leader remains in office until the Annual Meeting even if no longer a councillor. In event of change in political control, a requirement to liaise with other Leader(s) before making executive decisions will need to be built into protocols.
Annual Council 25 May 2011	Election of Leader. (Leader then appoints Deputy Leader, Cabinet members, approves any individual delegations to portfolio holders and delegations to officers in respect of executive functions.)	Annual Council has no say in constitutional arrangements relating to the executive. This will now be in the hands of the Leader. Council may however remove Leader by resolution if such a provision is included in the new executive arrangements.