

## **COUNCIL**

**4 MARCH 2010**

### **CONSULTATION ON CHANGES TO EXECUTIVE ARRANGEMENTS**

Portfolio holder: Councillor Rodney Chambers, Leader of the Council

Report from: Deborah Upton, Assistant Director Housing and Corporate Services

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#### **Summary**

The purpose of this report is to advise the Council of the required process and proposed programme of consultation on changes to executive arrangements and to ask the Council if it wishes to express a view on a preferred model for Medway before formal consultation starts.

#### **1. Budget and Policy Framework**

1.1 The report deals with the requirement in the Local Government and Public Involvement in Health Act 2007 (LGPIHA) for the Council to consult on changes in executive arrangements. This will generate some changes to the Council's constitution with effect from May 2011.

#### **2. Background**

2.1 The Local Government Act 2000 introduced a separation of powers into local government for all but the smallest local authorities with the aim of making council decision-making more efficient, transparent and accountable. This marked the end of the long established committee system and required local authorities with populations of over 85,000 to adopt either a mayoral system or a leader and cabinet. Non-executive councillors were expected to develop a stronger role in community representation and a role in scrutinising executive decision-making.

2.2 316 Councils (or 81%), including Medway, opted for the leader/cabinet system. As at the end of 2008 twelve council areas had a directly elected Mayor: Bedford, Doncaster, Hackney, Hartlepool, Lewisham, Mansfield, Middlesbrough, Newham, North Tyneside, Stoke-on-Trent,

Torbay and Watford. Of the twelve Mayors some are from political parties, others are independent. (Note: In June 2009 Stoke-on-Trent moved to a leader and cabinet executive).

- 2.3 The Government has now legislated in the Local Government and Public Involvement in Health Act 2007 to require all Councils operating executive arrangements to opt for a new leadership model. The option of a directly elected mayor and council manager has been removed and the Council is not able to retain its current system of an indirectly elected leader elected on an annual basis. Local authorities now have to choose between one of two models of governance as the Government believes these executive arrangements most readily deliver strategic leadership, sharp accountability and effective and efficient decision-making. The choice now is between:
- A directly elected mayor with a four year term who then appoints the executive or
  - An indirectly elected leader, appointed for a four year term, who then appoints councillors to the executive
- 2.4 The Act details the procedure that local authorities must follow to make the change to their executive arrangements. The procedure requires the Council to draw up formal proposals for change.
- 2.5 **Before** drawing up formal proposals for new arrangements the Council “must take reasonable steps to consult the local government electors for, and other interested persons in” the Council’s area. The consultation will need to cover both the available models, explaining how they will operate in enough detail and sufficiently in advance of making a decision, for interested persons to consider and respond. The Council may include its preferred option in the initial consultation but must have proper regard to the outcome of the consultation when determining which new executive arrangements to adopt. A referendum can be carried out but is not required.
- 2.6 After the initial public consultation the Council must draw up its formal proposal taking into account the extent to which, if implemented, the proposal is likely to assist in securing continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (in other words, there is a requirement to take account of best value). Details of which functions are to be the responsibility of the executive and which are not to be their responsibility must be included in the proposals. The proposed new executive arrangements must be advertised in a local newspaper and copies made available at the civic offices for inspection by the public.
- 2.7 The Council must then set up a special meeting of the Council to pass a resolution adopting a new executive arrangement before 31 December 2010 and further advertise its decision.

2.8 Implementation of the new executive arrangements takes place three days after the May 2011 elections.

### **3. Timetable**

3.1 The last day that the Council can continue to operate its current arrangements is the third day following the 2011 local elections but it must pass a resolution deciding on the form of its new executive arrangements before 31 December 2010. (Failure to do so will result in intervention by the Secretary of State).

3.2 The Council is required to agree a timetable with respect to the implementation of the proposals.

3.3 Following the Council decision, work will be required to amend the Council's Constitution to reflect the new model of governance adopted by the Council. Clearly this will be a more extensive process if the mayoral model is chosen. Adjusting the current constitution to reflect the four year leader and cabinet model would be relatively straightforward.

3.4 Should the Council adopt the mayoral model the Medway electorate would be invited to elect a mayor who would serve for the full term of the next Council. The election would take place at the same time as the Council elections in May 2011. A new leader and cabinet model would require the Council to elect its leader for the next four years at the post-election annual Council meeting in 2011.

3.5 The proposed timetable is set out below:

- Report to Council on 4 March advising of process and seeking approval to commencement of consultation
- March to June 2010 - consultation via website, Medway Matters and the Medway Citizens Panel, noting that publicity on this issue on the Council's website and in Medway Matters will not happen during purdah in the run-up to the General Election.
- Report to Council on 29 July on the outcome of consultation and seeking adoption of a formal proposal
- August-October advertise and place formal proposals on public deposit
- Special Council meeting immediately before ordinary Council meeting on 25 November to consider resolution and adopt new executive arrangements and changes required to the Constitution
- Statutory advertisement of adopted proposals
- New executive arrangements come into effect on third day after local elections in May 2011

### **4. Advice and analysis – the new executive models**

4.1 The Council could express a view on its preferred executive model at this stage although it cannot draw up a formal proposal until the

outcome of initial public consultation has been properly considered. Currently Medway operates a leader and cabinet model and has opted for the strong leader model under the provisions of the Local Government Act 2000. This means that the leader (rather than the Council) appoints up to nine other members to serve on the Cabinet, determines their portfolios and the scheme of executive delegations.

- 4.2 In its White Paper “Strong and Prosperous Communities” the Government set out the case for further reforms to local government leadership arrangements. It drew on a 2005 survey of councillors, officers and stakeholders which supported the view that the arrangements introduced by the 2000 Act facilitate visible and effective leadership. However it points out that many local authorities have adopted a cautious approach to change, with only 12 local authorities introducing elected mayors.
- 4.3 Both of the new models for executive arrangements in the 2007 Act place all executive powers in the hands of one individual, who, in the normal course of events, will serve an uninterrupted four year term. An elected mayor cannot be replaced until the next election. In the leader and cabinet model, the Council will be required to appoint a leader for a four year term. There is an option to include provision for the Council to remove the leader during that time and the constitution must state whether or not this option applies. The council leader must appoint and dismiss his or her cabinet of up to nine councillors and decide what (if any) executive powers they will exercise. The LGPIHA has also made it easier for Councils to have a directly elected mayor by repealing the requirement in the 2000 Act for a referendum to take place before a shift to elected mayor takes place.

### **Elected mayor**

- 4.4 An elected mayor is not a councillor. He or she does not have an electoral division to represent and would work full time as mayor. A directly elected mayor would be elected by the voters of Medway as a whole and would have a direct mandate from them to deliver his or her election promises. Since the mayor is not appointed by the Council it is possible he or she may not be a member of the majority group, assuming there is one, or for that matter of any political party. A mayor would still be reliant on the Council to approve any budget that he or she proposed and would therefore need to work with other members to ensure that this could be agreed. The mayor would have to appoint a cabinet of up to nine councillors. This could be made up of Councillors from different political groups.
- 4.5 The Council would have to decide what action to take in relation to the functions currently performed by the civic and ceremonial Mayor of Medway. There would an option to include this in the role of the new directly elected Mayor or to preserve a separate position for civic and ceremonial matters. In Watford, for example, the traditional position of a civic and ceremonial Mayor has been re-designated as Chairman of the Council and this Councillor performs all civic and ceremonial

functions. In Newham the position of the traditional “chain and gown” mayor has been disestablished and civic and ceremonial functions are handled by the directly elected mayor.

### **Leader and cabinet model**

- 4.6 A leader would, as now, be directly elected by the Council and so have the mandate of the Medway electorate indirectly. There would be a concentration of powers in the hands of the leader who would have a presumptive four-year term of office, which could only be taken away by a majority vote in full Council and only if this were provided for by the constitution. The leader would therefore need to command the support of a majority of the Council. The leader would also be a councillor and as such would be required to combine his or her role representing the views of his or her ward. The leader would also have to appoint up to nine councillors to form a cabinet.
- 4.7 Once in office, there is little difference between the role now required for the new style leader and that of an elected Mayor. In either case an individual will initially hold all of the Council’s executive functions under their personal control. It will then be for him or her to choose whether to exercise some or all of these functions personally or to make arrangements for their discharge by an executive, individual member of the executive or by officers. The executive will normally be able to further delegate the functions allocated to it.
- 4.8 As now, executive members must be appointed from amongst elected councillors, but it is for the council leader or mayor to choose just how many members will join him or her on the executive (between two and nine). The mayor or leader must appoint a deputy who will hold office until the end of the mayor/leaders term (but a deputy can be removed and replaced mid-term by the leader or mayor). There is scope for two formal deputies to be appointed. The Act specifies that the deputy will take up the role of the leader/mayor if the latter is unable to act or the office becomes vacant.
- 4.9 The legislation makes no changes to the allocation of functions between the executive and the council and its committees. There continues to be only a limited number of functions which the council can choose to allocate as either executive or non-executive functions. There is no requirement to make any changes to the allocation currently contained in Medway’s constitution.
- 4.10 It is important that the Council complies with the requirements for consultation contained in the LGPIHA. The Department for Communities and Local Government has confirmed that it does not intend to issue any guidance to local authorities as to what will constitute “reasonable steps” to consult local government electors, and that since the relevant legislation does not provide for a specified period of consultation, nor detailed requirements, the Council has the flexibility to decide the appropriate level of consultation.

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

- (i) be undertaken when the decision that is being consulted upon is still at a formative stage ( i.e. no pre-determined decision has been made and the public body is not merely playing “lip-service” to its obligation to undertake a consultation).
- (ii) Include sufficient information to allow interested parties to consider the decision that is being consulted upon and formulate their response
- (iii) Allow adequate time for interested parties to consider and respond to the consultation
- (iv) Take all the responses from the interested parties conscientiously into account when the ultimate decision that is the subject of the public consultation is taken.

4.12 In light of paragraphs 4.10 and 4.11 above the consultation material will need to outline both of the two possible forms of executive arrangements that are now possible under the 2000 Act and invite views on which of the two possible forms the Council should adopt. It is proposed that the initial public consultation should be fairly broad to enable all interested parties to be able to have their say before the Council draws up its formal proposals in July. It is proposed that the consultation should include:

- A survey of the Medway Citizens Panel in March, which comprises a representative group of 1500 Medway people
- Information on the Council’s website inviting feedback and including an on-line survey
- An article in Medway Matters inviting feedback

The outcome from the consultation will be reported back to the Council on 29 July at which time formal proposals will need to be agreed and advertised taking into account the outcome of the initial consultation.

4.13 The Council is asked to authorise the Assistant Director, Housing and Corporate Services to approve the material on which the consultation will be based taking into account feedback from each party group leader on the draft.

## **5. Risk Management**

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. The risks associated with this constitutional issue are set out below:

Risk	Description	Action to avoid or mitigate risk
The Council fails to meet the statutory timescale for resolving to adopt new governance arrangements	The Secretary of State will intervene and impose the Leader/Cabinet system if the Council fails to pass a resolution before 31 December 2010	This report sets out a planned timescale for meeting the statutory timescales and undertaking the public consultation required
Unbudgeted expenditure in 2011/12 for election of a Mayor if the Council opts for this model of governance	If the Council chooses to move to a Mayoral system of governance the election of a Mayor would have to take place at the same time as the local elections in May 2011	By planning ahead the Council should have a clear idea of which model it wishes to adopt by July and, if necessary, the potential cost of a Mayoral election can be factored into the preparations for setting the Council's 2011/2012 budget

## 6. Consultation

- 6.1 This report deals with constitutional changes that are a matter for the full Council. The Monitoring Officer is therefore reporting the matter directly to the Council. Proposals for public consultation to meet statutory requirements are set out in the body of the report.

## 7. Financial and legal implications

- 7.1 The legislative framework for the required changes to the Council's executive arrangements are set out in full in the body of the report.
- 7.2 There are separate provisions under the Local Government Act 2000 requiring local authorities to draw up proposals which include an elected Mayor (and hold a referendum on those proposals) where a valid petition signed by at least 5% of local electors is received
- 7.3 There will be some costs incurred in carrying out the required statutory consultation during the Spring of 2010 and, with the exception of the survey of the citizens panel, this is currently unbudgeted expenditure.
- 7.4 There would be significant additional costs associated with the organisation of the local elections in 2011 if the Council adopted a mayoral system of governance but these would be mitigated by the action set out in the risk analysis. The costs would need to be reflected in the Councils 2011/12 budget.

## **8. Recommendations**

- 8.1 The Council is asked to note the requirements of the LGPIHA 2007 in relation to adoption of new executive arrangements and to consider whether it wishes to express a preference for one of the two available options at this stage.
- 8.2 That the proposed timetable and process for consultation as set out in this report be agreed.
- 8.3 That the Assistant Director, Housing and Corporate Service be authorised to approve the material for the public consultation exercise taking into account any comments from group leaders on the draft material.

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### **Background papers**

Local Government and Public Involvement in Health Act 2007  
New Council Constitutions - A summary of the ELG Research Findings  
published by DCLG October 2006