

Extraordinary Council Meeting	Agenda Item: 3
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Meeting Date	Wednesday 11th August 2010
Report Title	LOCAL GOVERNMENT & PUBLIC INVOLVEMENT IN HEALTH ACT 2007 GOVERNANCE MODELS – TIMETABLE FOR CONSULTATION AND IMPLEMENTATION
Portfolio Holder	The Leader
SMT Lead	Corporate Services Director
Head of Service	Interim Head of Legal
Lead Officer	Democratic and Electoral Services Manager
Key Decision	Yes
Classification	Open
Forward Plan	The consultation will result in changes to the Council’s Constitution and this is a decision for Council

Recommendations	1. That the timetable as set out in Para. 5.4 of the report, for consulting on and implementing the executive governance arrangements under Schedule 4 of the Local Government & Public Involvement in Health Act 2007, be agreed
	2. That the draft Consultation Notice, at Appendix B to the report, be agreed for publication in the local press and on the Council’s website.

Purpose of Report and Executive Summary

1.1 To consider the Consultation Notice and timetable for implementing the executive governance arrangements required under Schedule 4 of the Local Government & Public Involvement in Health Act 2007 (the 2007 Act) and to recommend a basis for initial consultation.

2 Background

2.1 Schedule 4 of the 2007 Act requires local authorities which presently operate a leader and cabinet executive (referred to in the legislation as the ‘old-style leader and cabinet executive’ or ‘indirectly elected leader’), to change to either an elected mayor and cabinet executive or to a new style leader and cabinet.

2.2 The preferred model must be submitted to Department for Communities and Local Government (DCLG) by 31 December 2010 and be introduced as part of the electoral cycle, in May 2011. The Council cannot continue current arrangements of an indirectly elected leader on an annual basis, beyond 8 May 2011.

2.3 In drawing up proposals to change governance arrangements, there is a statutory requirement to consult the public on both executive options. The Minister for Housing and Local Government wrote to the Leader on 7th July stating

“Whilst it is for each council to decide how it will meet these requirements, I would wish to highlight the Government’s view that councils need not incur any significant expenditure on these requirements, and our expectation in today’s circumstances that all councils will pursue this at minimal cost”

2.4 The Council is required to consider the extent to which the changes are likely to assist in securing continuous improvement in the way in which the Council’s functions are exercised, having regard to a combination of economy, efficiency and effectiveness (i.e. the duty of best value).

2.5 Section 63 of the 2007 Act vests in the new style leader or directly elected mayor, all the authority’s executive functions. The person who leads the Council, whether this is a directly elected mayor or a council appointed leader, will initially hold all the council’s executive functions under their personal control. It will then be for him/her to choose whether to exercise some or all of these functions personally, or to make arrangements for their discharge by an executive, by an individual member of the executive, or by officers.

2.6 Frequently Asked Questions on the 2007 Act governance models and a summary of the main differences between the Council’s current executive governance arrangements and the two models, are set out at Appendix I to the report.

2.7 The 2007 Act executive arrangements transfer some functions from the council to the leader. However, they do not alter the underlying split in functions between the executive and council that was introduced by the Local Government Act 2000. It therefore remains the case, that broadly speaking, Council is responsible for adopting the budget and the policy framework and the Cabinet is responsible for all other (non-regulatory) matters.

Option 1 - Leader and cabinet executive

2.8 The Leader would, as now, be elected by the Council and indirectly have the mandate of the electorate. The 2007 Act model does however concentrate executive powers into the hands of the Leader and grants to him/her the powers listed below. A leader would be a councillor and as such, would be required to combine his/her roles with local work and in representing the view of his/her ward:

(a) Chooses and appoints his/her cabinet (statutory maximum of ten Cabinet members, including the Leader and Deputy Leader);

(b) Determines how his/her powers are to be discharged, whether by him/her or delegated to the executive, a committee of the executive, individual members of

the executive or officers (currently the Leader has that power, only insofar as the Council (through its Constitution) has not established arrangements for delegation);

(c) Is appointed for a fixed four year term (at the 2011 Annual Meeting), unless he/she resigns, is suspended etc from being a Councillor. It remains for the Council to decide in what circumstances the leader may be removed from office mid-term, by resolution e.g. vote of no confidence;

(d) Chooses and appoints a Deputy Leader, who holds office for the term of the Leader (the Deputy may be removed and replaced mid-term by the Leader) – the legislation specifies that the deputy will take up the role of the Leader if the latter is unable to act or the office becomes vacant.

2.9 On the powers of delegation referred to at Para. (b) above, the Leader may decide that he/she wishes to continue with the Council's current 'collective' Cabinet decision making arrangements and Scheme of Delegations to Officers and allow delegated decision making to him/her and individual Cabinet members as set out in the current constitution.

2.10 Cabinet members must be elected councillors, but the Leader can choose how big the cabinet would be (between two and ten). As cabinet members would no longer need to be elected annually, they could be appointed or dismissed at any time in 'cabinet reshuffles', in response to need or events.

2.11 The 2007 Act Leader and cabinet model most closely reflects the Council's current governance arrangements and is the most cost effective to implement. Under the current Leader and cabinet executive, the Council has been improving, particularly over the last twelve months, and has a clear sense of vision and purpose. The continuous operation by the Council of the Leader and cabinet executive arrangements is likely to ensure that decisions of the Council are taken in an efficient, transparent and accountable way.

Option 2 - Directly elected mayor and cabinet

2.12 The Mayor:

(a) Is directly elected by the Borough's electorate for a fixed 4 year term, but is not a councillor;

(b) Leads the Council in the discharge of the executive functions;

(c) Has the same powers as a leader in the leader and cabinet executive model arrangement (refer to para. 2.8 above).

2.13 In essence, the directly elected mayor will have the same powers as the 2007 Act leader model. The only significant differences being that the mayor, unlike the leader, is not a councillor and does not have an electoral ward to represent, but would

work full time as mayor, would be elected by the voters and would have a personal mandate from them to deliver his/election promises. Since a mayor is not appointed by the Council, it is possible that he/she may not be a member of the majority group, or for that matter, any political party. A directly elected mayor would of course, be reliant upon the Council to pass any budget that he/she proposed and would therefore need to work with Members to ensure that this could be agreed.

2.14 There is no mechanism to remove a directly elected mayor from office. A vote of 'no confidence' in a directly elected mayor could not compel him/her to resign. A directly elected mayor may only be removed from office, by voters at the next election. The directly elected mayor's deputy, will be a councillor.

2.15 Under the Leader and cabinet model, the executive recommends the budget and strategic policies to council which may approve, amend or overturn them by a simple majority.

2.16 Under the directly elected mayor model, the executive submits the budget and strategic policies to council, which ultimately at the end of the process, can only amend or overturn them by a two thirds majority.

2.17 The Council would have to decide what action to take in relation to the functions currently performed by the Mayor of Swale. There would an option to include the civic and ceremonial functions in the role of the 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 redesignated 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 dis - established and civic and ceremonial functions are handled by the directly elected mayor.

2.18 Changing to a directly elected mayor and cabinet model would be a radical shift in governance and culture for the Council and must be seen in the context of the move to four yearly elections. The potential costs associated with this model are outlined in the implications part of the report.

Other considerations

Referendum

2.19 Section 33 E(5) of the Local Government Act 2000, provides the Council with the power to hold a referendum, but it is not bound to do so, unless its existing arrangements were approved by a referendum (which they were not), or a petition is received.

2.20. Local authorities are required to publish the number that was equal to 5% of the local government electors in the authority's area as shown in the register of electors, having effect on 15 February each year. The number that is equal to 5% of the number of local government electors in the revised version of the electoral registers for the

Borough of Swale having effect on 15 February 2010 is 4852 (the 'verification number'). This verification number will have effect for the purposes of determining the validity of any petitions which are presented after 31 March 2010 and before 1 April 2011, asking the Council to hold a referendum on the question of whether the Council should operate a directly elected mayor and cabinet model.

Elections

2.21 Should the Council adopt the directly elected mayor model, the electorate would be invited to elect a mayor who would serve for the full term of the Council. The election would take place at the same time as the Council elections in May 2011.

2.22 The rules which apply to voting in mayoral elections differ to those which apply to a councillor. Where there are two candidates, a simple majority vote applies, but where there are three or more candidates the 'supplementary vote' system is compulsory, so that if no candidate obtains more than half of the first preference votes, the second preference votes of all but the two candidates with the highest number of first preference votes, are added in, to return one of the two front running candidates. The winner will have the greatest number of first and second preference votes. It is possible for an individual to stand for election as both the mayor and a councillor, but they cannot hold both roles and if returned as mayor, their seat as councillor becomes immediately vacant.

2.23 Should the Council adopt the 2007 Act Leader and cabinet model, the Council would elect its leader for the next four years, at the Annual Meeting, in May 2011. If the Council fails to elect the executive leader at the Annual Meeting, an executive Leader must be elected at a subsequent meeting of the Council.

3 Proposal

3.1 The Council will initially seek the views of the public, through the publication of a consultation notice in the local press and on the Council's website. **Council is asked to agree the draft Consultation Notice at Appendix B to the report for publication in the local press and on the Council's website.**

4 Alternative Options

4.1 This two options available to the council are set out in the background section of the report.

4.2 Implementation of the Council's preferred Option is by full Council resolution, under Section 29 of the Local Government Act 2000. Following the Council's resolution, the Council's Constitution will need to be amended to reflect the 2007 Act model of governance adopted by the Council. Clearly, this will be a more extensive process, if the directly elected mayor model is chosen. Adjusting the current Constitution to reflect the four year leader and cabinet model would be relatively straightforward.

5 Consultation Undertaken or Proposed

5.1 Consultation

5.1 The Council is required to take 'reasonable steps' to consult with the public before formal publication of its proposals for its preferred Option. The consultation paper should contain sufficient information about the current arrangements and the 2007 Act models, to enable the public to make an informed decision on their preferred Option. The Council must have proper regard to the outcome of the consultation when determining which of the 2007 Act executive arrangements to adopt.

5.2 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 2007 Act executive arrangements must be advertised in a local newspaper and made available at Swale House, for inspection by the public.

5.3 The Council must then convene a special meeting, to pass a resolution adopting the preferred Option, before 31 December 2010 and further publicise its decision. It is intended that this meeting be held on the same night as the programmed meeting of Council in December.

Timetable

5.4 The following timetable is recommended:

(a) Statutory public notice of consultation - public consultation to be conducted between 12th August and 23rd September 2010, on the executive options of either an elected mayor and cabinet executive or a leader and cabinet – publicise in local press, on the Council's website and place report, minutes and public notice of consultation, on deposit for inspection by the public, at Swale House;

(b) Report to Executive on the results of the public consultation – 6th October 2010 – Cabinet recommends proposals to the Council on 13th October 2010;

(c) Publish statutory notice of proposals and place documents on deposit, for inspection by the public, at the Civic Centre;

(d) 1st December 2010 - the Council (special meeting) resolves to adopt the executive governance arrangements, agrees constitutional amendments and submits its proposals to DCLG, by no later than 31 December 2010;

(e) Executive governance arrangements implemented on 8 May 2011 (3 days after the May 2011 elections).

6 Implications

Issue	Implications
Corporate Plan	The Council's governance arrangements are an important part of becoming a high performing organisation.
Financial, Resource and Property	The process of electing a mayor would incur additional election expenses and in the longer run, holds potential for increasing administrative costs of the support and advice for an independently mandated mayor, who would also be entitled to claim an Allowance. The 2007 Act makes no provision for meeting such costs, which would fall to the General Fund and be required to be contained within any Government capping limits on council tax. There is no separate provision in the budget for the costs associated with a mayoral election. It is difficult to estimate what these might amount to, but as a comparator, the costs attributable to the mayoral election in Mansfield in 2007 (with a population a 67,885), were £40,000). Continuing with broadly the existing leader and cabinet model would incur only the further expense of the public notices required by the legislation which would be contained within the existing budget for 2010/11. There are also costs associated with publishing the consultation notice in the local press
Legal and Statutory	As discussed in the body of the report.
Crime and Disorder	The report anticipates that there will be a neutral impact on Crime and Disorder
Risk Management and Health and Safety	The formal resolution must be passed by 31 December 2010 or the Council runs the risk of government intervention.
Equality and Diversity	The report anticipates that there will be a neutral impact on Equality and Diversity
Sustainability	Not applicable at this stage

7 Appendices

7.1 The following documents are to be published with this report and form part of the report:

Appendix I – Frequently asked Questions on 2007 Act Models and summary of the main differences between the Council’s current executive governance arrangements

Appendix II – Draft Public Consultation Notice on 2007 Act Models

8 Background Papers

8.1 Letter from Grant Shapps MP dated 7th July

Frequently Asked Questions

LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007 – GOVERNANCE MODELS

Leader and Cabinet model (N.B Cabinet is used as a generic term but means the Executive in Swale)

Q - Does the legislation allow for the Council Leader to be selected annually?

A - No - A Council leader will be voted in for a term of 4 years.

Q - What happens if the Council Leader, during their term of office, loses their seat in the local elections, would they retain their role as Leader?

A - No, a new Council Leader would need to be appointed by the full Council.

Q - If there is a vote of no confidence in the Council Leader and the Council Leader is removed - is the new Council Leader appointed for a new term of 4 years or for the remainder of the term of the outgoing Leader?

A - They would be appointed for the remainder of the term of the outgoing Council Leader.

Q - What would happen if we disregarded the legislation and continued with our current model (old style Council Leader and Cabinet)?

A - To ignore the legislation would be unlawful. The Monitoring Officer would be involved and a new model would be imposed on the Council by Government. This would be the Council Leader and Cabinet model.

Q - If there was a change of political power in Swale, could the Council change the Leader to reflect this?

A - No, he/she is voted in for a 4 year term, only a vote of no confidence or major impropriety would remove him/her during their term.

Q - What number of votes are required to elect a new Council Leader?

A - A simple majority is required.

Q - What percentage of Councillors would need to vote in favour of a vote of no confidence in order to remove the Council Leader from office?

A - A simple majority is likely to be required to take a vote of no confidence in the Leader and for this vote to be carried.

Q - Does a new style Council Leader have to delegate executive functions?

A - No, but it would be very difficult for one person to carry out all executive functions.

Q - Who appoints the members of Cabinet?

A - The Council Leader will appoint his/her own cabinet members from existing councillors - up to a total of 9 cabinet members.

Q - Does the Council Leader have to appoint a deputy?

A - Yes, it is a legal requirement to appoint a Deputy Council Leader.

Directly Elected Mayor model

Q - How often does the legislation allow the Mayor to be elected?

A - The Mayor will be elected every 4 years.

Q - Can the Mayor be removed by the Council during their term of office?

A - No, there is no mechanism by which the Mayor can be removed by the Council.

Q - Can we retain the current old style Council Leader and Cabinet model in Swale?

A - No, this would be contrary to legislation and would result in a new, strong Council Leader and Cabinet model being imposed by Government.

Q - What happens to a directly elected Mayor if, during their term of office, there is a change of political power in Swale?

A - Nothing. The Mayor is elected for a four year term.

Q - How do executive powers have to be exercised by the directly elected Mayor?

A - The directly elected Mayor will determine how the Council's executive functions are exercised and who they are delegated to.

Q - Who appoints the Cabinet?

A - The directly elected Mayor will choose who the cabinet members are and what portfolios they will hold.

Q - Will the directly elected Mayor have a deputy?

A - Yes. It is a legal requirement for the directly elected Mayor to appoint a deputy.

Q – Can there still be a ‘Civic’ Mayor when a directly elected Mayor is in place?

A – Yes – subject to a new name/style for the ‘Civic’ Mayor e.g. Chairman.

Summary of main differences between Swale Borough Council's current executive model and the two options under the Local Government and Public Involvement in Health Act 2007

	Current leader and Executive Model	2007 Act Leader and Cabinet Model	Directly Elected Mayor and Cabinet Model
Appointment and term of office	Leader appointed by full Council annually	Leader appointed by full Council for a 4 year term (or until the expiry of the Leader's term of office as a councillor)	Elected directly by the electorate for a 4 year term
Status	Leader is a member or councillor for all purposes	Leader is a member or councillor for all purposes	Directly Elected Mayor is not to be considered a member or councillor unless legislation indicates otherwise
Removal	Leader can be removed by vote of no confidence	Council adopts procedures which allow for the removal of the Leader from office, during the 4 year period	Cannot be removed during his/her term of office
Executive Functions	Full Council agrees the delegation of executive functions	All executive functions vested in the Leader who can then delegate	All executive functions vested in the directly elected Mayor who can then delegate
Appointment of Cabinet	Full Council appoints Cabinet members	Full Council appoints Leader who then appoints his/her Cabinet members and allocates responsibility	Directly elected Mayor appoints his/her Cabinet members and allocates responsibility
Deputy Leader	No legal requirement to have a deputy leader	Legal requirement to have a deputy leader - appointed by leader	Legal requirement to have a deputy Mayor - appointed by the directly elected Mayor
(Civic Mayor)	[Civic] Mayor appointed by full Council annually	[Civic] Mayor appointed by full Council annually	The term [Civic] Mayor cannot be used - the person who undertakes civic duties and chairs full Council meetings will have a different title e.g. Chairman - the person concerned will be elected annually by full Council

**PUBLIC CONSULTATION NOTICE
SWALE BOROUGH COUNCIL – LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT
2007 - EXECUTIVE GOVERNANCE ARRANGEMENTS**

The Council is required by the Local Government and Public Involvement in Health Act 2007 to change its current executive arrangements to one of the following models. The Council invites your views (supported by reasons), as to your preferred Option.

Option 1

Leader and Cabinet Model – under this system, the Council would be led by a leader appointed by the councillors. The leader would remain in office for four years and would choose a cabinet of councillors to work with him/her to run the Council and to make decisions on Council policies and budgets. The leader would have to appoint a deputy leader and can choose up to eight other councillors to work with him/her on the cabinet. This system is similar to the current leader and cabinet governance arrangements, operated by most councils, including Swale. The difference is that under the legislation, the leader is appointed for a four year term, may choose to exercise some or all of the executive functions himself/herself, and has the right to appoint his/own cabinet.

Option 2

Directly elected Mayor and Cabinet Model – this system involves a council being led by a directly elected mayor. The mayor would be elected for a four year period. He/she would not be a councillor or represent an area or ward of Swale and could not be removed from office by the Council. He/she would appoint his/her cabinet of councillors to offer advice on running the Council and decisions on Council policies and budgets. The directly elected mayor would have to appoint a deputy mayor (a councillor) and choose up to eight other councillors to work with him/her on the cabinet.

These options are not new – apart from recent changes in legislation, they have been available since 2001. A major borough-wide consultation exercise with residents at that time, established that the majority view favoured a leader and cabinet option.

At its meeting on 11 August 2010, the full Council agreed in principle and subject to public consultation, that its preference was Option XXXXXX . You can view the full report and minutes of the meeting. Alternatively, the documents are available for public inspection at the Council Offices.

The proposed timescale:

The Council consults on the Options between **12 August to 23rd September 2010;**

The outcome of the consultation is reported to the Council's Executive on **6th October 2010**

Executive recommends the proposal to the full Council and the proposal is published in **October 2010;**

The full Council passes its resolution to adopt the 2007 Act executive arrangements in **December 2010;**

The revised arrangements come into operation three days after the local elections in **May 2011.**

Please send your comments in writing to:

Democratic Services
Swale Borough Council
Swale House
East Street
Sittingbourne
Kent ME10 1HT

or email: democraticservices@swale.gov.uk

Closing date for comments: NOON – 23rd September 2010