

Council

Executive Arrangements under the Local Government and Public Involvement in Health Act 2007

Report of the Borough Solicitor

16 December 2009

Officer Contact : Paul Entwistle
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Purpose of Report

- 1.1 A report will be presented to the Council at its December meeting requesting approval to new Executive Arrangements.
- 1.2 The report advises the Council of the changes to the Council's Executive Arrangements which are required under the provisions of the Local Government and Public Involvement in Health Act 2007. The report presents the Council with draft proposals for changing the Council's Executive Arrangements after the consultation exercise which has taken place. The report sets out the next steps that the Council must take if it resolves to approve the proposals in order to implement the changes to the Council's Executive Arrangements.

Recommendations

2.1 The Council is recommended:

1. To note and consider the outcome of the consultation into whether the Council should adopt the Elected Mayor and Cabinet form of Executive or the “new style” Leader and Cabinet form of the Executive as set out in this report.
2. To consider, having regards to the consultation the extent to which proposals, if implemented, would be likely to assist in securing continuous improvement in the way the Council’s functions are exercised, whether to approve the proposals set out in the Appendix to this report, including in particular:
 - a. That the Council’s Executive should be the “new style” Leader and Cabinet Executive.
 - b. That the Council should have the power to remove the Leader by way of resolution by a simple majority.
 - c. That the change in governance arrangements should not be subject of a referendum
3. If the draft proposals are approved to agree the proposed time-table.
4. To delegate to the Borough Solicitor the publication of the draft proposals in accordance with Section 33e(8) of the Local Government Act 2000.

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3 **Background**

3.1 Under the Local Government and Public Involvement in Health Act 2007, the Council must resolve by 31 December 2009 to change to one of two model forms of Executive namely:

- Elected Mayor and Cabinet
- “new style” Leader and Cabinet

3.2 The main differences between the forms are:

- The elected Mayor is directly elected, for the 4 year term and cannot be removed by the Council. Under the elected Mayor and Cabinet model, the Executive submits the budget and strategic policy to the Council which can only amend or overturn them by a two thirds majority.
- The Leader is elected by the Council from among Oldham’s 60 directly elected Councillors and will have a 4 year term (unless their term of office as a Councillor has less than 4 years left when they are elected as Leader) The Council may make provisions in its Executive Arrangements for the Leader to be removed from office by resolution of the Council. Under the Leader and Cabinet Model, the Executive recommends the budget and strategic policies to the Council, which may amend or overturn them by a simple majority. The Leader (rather than the Council) can determine the size of the executive within the statutory framework (limiting the executive to a maximum of ten) and appoints the members of the executive. The Leader must appoint one member of the executive to be deputy leader who will act as Leader if the leader is unable to act. The Leader (and not the Council) determines the arrangements for delegation of executive functions

3.3 The procedure for changing Executive Arrangements requires:

- Consultation with electors in Oldham before drawing up proposals for a change in form.
- Draw up proposals.

- Decide whether the change of Executive Arrangements should be subject to approval by a referendum.
- Publicise the proposals.
- Resolve to change the form of Executive before 31 December 2009.
- Implement the new Executive Arrangements which must come into operation no later than the third day after the Local Government elections on the 6 May 2010.

4 Consultation Exercise

- 4.1 The legislation does not provide either for any specific form of public consultation or for any specific consultation period. In addition, the Department for Communities and Local Government decided not to issue any guidance to Local Authorities as to what the Department considers would constitute “reasonable steps”. The matter was considered by the Joint Leadership of the Council who decided that the consultation should consist of a feature on the Council’s website seeking views on the form of executive arrangements. This was displayed on the website from the 1st June- 31st October.
- 4.2 There has only been one response to the consultation exercise from a member of the public who enquired about the referendum process as to whether to adopt an Elected Mayor model and expressed a view that the figure to trigger a referendum was too high.

5 Proposals

- 5.1 Section 33e(7) of the Local Government 2000 Act provides that in drawing up proposals for its change in Executive Arrangements the Council must also 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 Authority’s functions are exercised, having a regard to a combination of economy, efficiency and effectiveness.
- 5.2 The Leadership of the Council is of crucial importance in securing continuous improvement in the exercise of the Council’s functions. There is no clear evidence that adopting an Elected Mayor and Cabinet model would produce greater improvements to the Leader and Cabinet model and there is always a downside risk in electing a Mayor who could not be removed for 4 years. Further, from the consultation exercise, there does not appear to be a high concern for a change to the Executive Arrangements. Taking into account these matters, the draft proposals are attached at Appendix 1 to this report for consideration by the Council.

6 Timetable and Transitional Arrangements

6.1 The draft proposals must include:

- A time-table with respect to implementation of the proposals and
- Details of any transitional arrangements that are necessary for the implementation of the proposals

6.2 The Council's proposals must be published in accordance with the statutory requirements set out in section 33e(8) of the 2000 Act.

6.3 The Council must resolve before the 31 December 2009 to change its Executive form, taking into account any representations received following the publicity about the proposals, unless the Council resolves to hold a referendum.

6.4 The Council must stop operating its current form of Executive and start operating the new form of Executive 3 days after the relevant elections. If a Leader and Cabinet form of Executive is adopted, these will be the first elections of Councillors after December 2009 (i.e. those due to be held on the 6 May 2010). For an elected Mayor and Cabinet form the relevant election is the first election of a Mayor.

6.5 Until the new form of Executive comes into operation, the old arrangements will continue to apply.

6.6 If the Council moves to a new style Leader and Cabinet form the Leader must be elected at the first annual meeting of the Council following the adoption of the new arrangements and their term of office will start that day. There will therefore, be a number of days between the date of adoption of the new form of Executive (which must be no later than the 9 May 2010) and the date on which the new Leader is elected at the Council's annual meeting on the 26 May 2010.

6.7 In terms of transitional provisions, therefore, the draft proposals provide for the Leader in office at the time of the local elections on the 6 May 2010 to remain in place until the Annual Meeting of the full Council on the 26 May 2010, provided that person is still a Councillor, even though the form of Executive itself must have changed by the 9 May 2010. The draft proposals also provide that the delegations in respect of the Council's Executive functions that are set out in the Council's Constitution at the time of the local elections on the 6 May 2010, are to remain in place until such time as the Council's new administration may decide to make amendments to them.

6.8 If the Council were to decide to move to an elected Mayor and Cabinet form of Executive, the Mayor would be elected on the ordinary day of election. Given the more significant change in form, further consideration would need to be given to transitional arrangements if the Council were minded to move to this form of Executive.

6.9 The draft proposals at appendix 1 provide a suggested time-table if the Council is minded to move to the new style Leader and Cabinet form of Executive.

7 Arrangements to Remove the Leader

7.1 If the Council is minded to adopt the Leader and Cabinet form of Executive, the Council may also include provisions in its Constitution whereby the Council may remove the Leader from office at any time (if the Council does not include provisions for the mid term removal of the Leader in its Constitution, the Leader would remain in office for their full term).

8 Constitutional Amendments

8.1 Constitutional amendments will be required whichever form of Executive the Council decides to adopt. The main amendments would be to:-

- Article 6 (which relate to the Executive)
- Cabinet procedure rules
- Responsibility of the Council's Executive functions

8.2 There will also be a number of consequential minor amendments throughout the Constitution.

8.3 If the Council approves the draft proposals to move to the "new style" Leader and Cabinet form of Executive, then responsibility of the Council's Executive functions will not be finally determined until after the election of the "new style" Leader on the 26 May 2010. This is because under the new form of Executive it is the Leader (and not the Council) who will decide the allocation of the Council's Executive's functions.

9 Options/Alternatives

9.1 Contained in the report.

10 Legal Services Comments

10.1 Contained in the report

11 **Background Papers**

- 11.1 The following is a list of background papers on which this report is based in accordance with the requirements of Section 100(1) of the Local Government Act 1972. It does not include documents which would disclose exempt or confidential information as defined by the Act:

Records held in Room 442, Level 4, Civic Centre
Officer Name : Paul Entwistle
Contact No : 0161 770 4822

12 **Appendices**

- 12.1 Appendix 1 – Draft proposals for change to Executive Arrangements.

Draft Proposals for change to Executive Arrangements

1. The Executive form of Oldham Council should be “new style” Leader and Cabinet Executive (England)
2. Oldham Council should have the power to remove the Leader by way of resolution by a simple majority.
3. No referendum as to the Executive form of Oldham Council should be held.

Transitional Arrangements

4. The Leader of Oldham Council who is in office at the time of the local elections on 6 May 2010, should remain in office until the Annual Meeting of the Council on the 26 May 2010.
5. The Scheme of responsibility for Oldham Council’s Executive functions in the Council’s Constitution at the time of the Local Elections on the 6 May 2010 should remain in force until such time as they are amended by the Council’s new administration.

Timetable

6. The timetable for the implementation of Oldham Council’s proposals is set out below:

Recommendations to full Council on the form of Executive	16 December 2009
Publicise new arrangements	Mid December 2009
New form of Executive comes into operation (and constitutional amendments implemented).	3 days after local elections 6 May 2010 (if Council decides to adopt Leader and Cabinet form)
Leader elected (if Council decides to accept Leader and Cabinet form).	First Annual meeting of Council after elections 26 May 2010

<ul style="list-style-type: none"> a) Appointment of Deputy Leader b) Appointment of Executive Members c) Appointment of Portfolio holders 	<p>The Leader following the Leaders election on 26 May 2010</p>
<p>Amendments to the Council's Constitution</p>	<p>Following the Leaders election on 26 May 2010</p>