

11 September 2008

10. CONSTITUTIONAL MATTERS

(a) New Models of Governance for the Council's Executive Arrangements

Recommendations

1. The Director of Corporate Services recommends that the Council:

- a) notes the legislative position regarding the governance models for executive arrangements from 2009;**
- b) authorises the Head of Legal and Democratic Services and Director of Planning, Economy and Performance to consult electors and other interested parties in respect of the 2 potential governance models; and**
- c) receives a further report at a specially convened meeting of the Council before the end of December 2008 to determine proposals for a change in its governance model with effect from the 3rd day after its 2009 elections.**

Summary

2. The Council needs to select a new form of governance for its executive arrangements, to be implemented after its elections in May/June 2009. The Council must consult the public and other interested persons before drawing up proposals for a change in governance, and resolve by 31 December 2008 which of the 2 governance models it proposes to adopt.

Background

3. The Local Government and Public Involvement in Health Act 2007 followed the previous White Paper (Strong and Prosperous Communities) and requires a "strong leader" in governance terms.

4. This person will be either the Leader of the Council appointed by the Council or a directly elected Mayor. All of the executive functions of the Council will technically vest in the new-style Leader or Mayor, who will decide how those powers are to be discharged. He or she will



Options

appoint the Cabinet directly and allocate responsibility for the discharge of executive functions - whether by him or herself, the Cabinet collectively, individual members of the Cabinet, or officers. Non-executive functions (e.g. Planning, Scrutiny and Standards and Ethics) remain unaffected.

5. In common with other County Councils, the Council must:

- decide by the end of December 2008 which governance model to adopt for executive arrangements, and
- implement the new model 3 days after the 2009 elections.

6. The current leader and cabinet model is no longer an option. All 318 authorities with existing leader and cabinet models will therefore have to adopt a new governance model on a rolling programme (County Councils form the first tranche).

There are only **2 options**:

- An **elected Mayor and Cabinet executive** (as currently adopted by 12 authorities)
 - A Mayor is elected directly by the electorate for a 4 year period
 - Proposals to adopt this model are subject to referendum
 - At least 2 councillors must be appointed to the Cabinet by the Mayor

or

- A **“new style” Leader and Cabinet executive**
 - A Leader is appointed by Council for a 4 year period
 - At least 2 councillors must be appointed to the Cabinet by the Leader
 - Councils can choose whether to adopt procedures to allow the removal of the Leader during the 4 years

7. If a County Council does not make a governance decision by the end of December 2008, it will by default have to draw up and adopt the new-style Leader and Cabinet model to take effect after the 2009 elections. If necessary, the Secretary of State can order this.

8. The vast majority of local authorities have to date favoured the leader and cabinet model. The Government may offer more incentives for directly elected mayors (e.g. the recent White Paper suggested that an elected mayor



would be expected to chair the LSP).

9. A new-style Leader will have a strengthened role and become directly responsible for the discharge of executive functions as he or she wishes to arrange it. The Leader must also appoint a deputy.

10. Under the new-style Leader model, a Council appoints the Leader who then appoints the Cabinet and allocates responsibilities. Cabinet Members will no longer be appointed by or removed by Councils. Councils will no longer fix the size of Cabinet (the 10 maximum remains) nor areas of responsibility.

11. For stability (particularly aimed at Councils with elections by thirds), all Leaders will have a fixed term of office for 4 years - subject to any provision made for early removal. Whether a Leader can be removed once appointed is a secondary choice for those Councils adopting the new Leader and Cabinet model.

12. These would be significant technical variations from the current Leader model, but not the leap that the original executive arrangements were. These are high-level models and it is open to Councils to make or retain their own detailed arrangements under them e.g. for annual reports from the Leader and individual Cabinet members, question time etc.

13. Councils continue operating existing models until the end of the transitional period (which for County Councils is just after the elections in May/June 2009).

14. The processes are subject to guidance and detailed regulations but so far there is nothing from Government on the detail. However, the Council must:

- take reasonable steps to consult the electorate and other interested persons in the county before drawing up proposals for its governance model
- in drawing up proposals, consider the extent to which they would be likely to assist in securing continuous improvements in the exercise of its functions, having regard to economy, efficiency and effectiveness
- make the proposals open to public inspection, and place notice in newspapers.

15. Council must come to a formal resolution on its governance structure at a special meeting before the end of December 2008. In order to allow sufficient time for

Procedure

Timescales



**(b) Political balance on committees
Recommendations**

proper consultation and formulation of proposals, it is proposed elsewhere that a special meeting of the Council is convened on 18 December 2008 to do this.

16. The Director of Corporate Services recommends that the Council:

- a) determines the allocation of seats on its Committees to the different political groups of the Council;**
- b) determines the allocation of its seats falling to be appointed to the Hereford and Worcester Fire and Rescue Authority and the West Mercia Police Authority to the different political groups of the Council;**
- c) reviews its appointments of lead scrutiny members as necessary or appropriate in the light of (a) above.**

Summary

17. Members will be aware that the July by-election for Arrow Valley East in Redditch has led to a change in the overall political balance of the Council. This has triggered a request to review the allocation of seats on the Council's committees and its appointments to the Fire and Rescue and Police Authorities as between the different political groups. As a result, the Council is under a legal duty to review the representation of the different political groups on those bodies and to determine their allocation. That legal duty requires the Council to make only such determinations as give effect, so far as is reasonably practicable, to the statutory principles of political balance. Councils may only make determinations which depart from those principles if no member objects.

Background

18. Members may recall that political balance on the Council's Committees was last considered by the Council in May 2006 (Min No 786 refers). The Council determined at that time without objection to depart from the principles of political balance. Since then there had been no need to review those arrangements until the recent trigger request.

19. The current membership of the Council comprises 30 Conservatives, 16 Labour, 8 Liberal Democrats, 2 Liberals and 1 Health Concern member (although the latter does not form a group for the purposes of political balance).

20. Currently, political balance provisions are applied to most of the Council's Committees. The only exceptions to this are the Standards and Ethics Committee (which is not a



Political balance

Committee to which the strict rules of political balance are applied due to its specific statutory nature) and the Overview and Scrutiny Steering Committee (OSSC). The Council in 2005 and 2006 accepted the principle that places on OSSC need not be allocated strictly in accordance with the rules of political balance. Instead, it agreed the allocation of seats amongst Committees so that although the administration group had a minority of seats on the OSSC, the overall number of seats on Committees reflected the approximate proportion of seats held by each political group within the total membership.

21. This was a departure from the rules of political balance, albeit to the detriment of the group forming the administration, and was agreed unanimously by Council. As a result, there has been no requirement to review the political balance on Committees on an annual basis.

22. Accordingly, the Council must now review and determine the allocation of seats on specified member bodies to the different political groups. In doing so, the Council is under a duty to give effect, so far as is reasonably practicable, to the political balance principles set out in legislation. This is the default position. It is open to the Council to depart from these principles only if no member objects to an alternative arrangement.

23. These principles are, in descending order of importance, that:

- Not all the seats are allocated to the same group
- The majority of seats on each Committee or body is allocated to the majority political group
- Subject to the above, the number of Committee seats should bear the same proportion to the total of all the seats across the Committees as is borne by the overall membership
- Subject to all the above, the number of seats on each Committee or body bears the same proportion as the overall political balance of the Council.

OSSC

24. As a result of the previous Council decisions, the constitution currently states that places on the OSSC need not be allocated strictly in accordance with the political balance of the Council. There are currently 3 Conservative, 3 Labour, 1 Liberal Democrat and 1 Liberal members on OSSC. As the majority group is in the minority on OSSC, this allocation is not in accordance with the political balance rules. As it falls to be reviewed it may only now continue



Standards and Ethics Committee

through a decision of Council without objection, and the constitution may need to be annotated to reflect the Council's decision.

25. As a consequence of the Council's review of the allocation of seats on OSSC, the Council may need to reconsider the designation of the specific Scrutiny lead members upon OSSC

26. As mentioned above, the Standards and Ethics Committee is not a Committee to which the strict rules of political balance are applied due to its specific statutory nature. However, Council has previously determined that the political seats upon that Committee be allocated on the basis of political balance and included in the overall number of seats. Accordingly, it has been included in the calculations as before but there is room for a degree more flexibility in respect of it – in particular there is no legal requirement for a majority of seats to be held by the majority group.

27. The constitution also requires that chairmanship of the OSSC and Audit and Governance Committee are selected from a non-administration political group. This is not a matter of political balance and it is not proposed that these constitutional provisions be altered.

28. The current allocation of places on Committees agreed by Council in May 2006 is attached as appendix 1. Given the number of variables, there are a number of ways that the legal obligations in respect of the principles of political balance may be met. It is open to Council to make such determination as it thinks fit provided it complies with the legal principles of political balance, or depart from those principles only if no member objects. A proposal will be circulated to members in advance of the meeting.

Representation on Other Bodies

29. The Council also appoints 19 members to serve on the Hereford and Worcester Fire and Rescue Authority. The current allocation of seats is 9 Conservative, 6 Labour, 3 Liberal Democrat and 1 Liberal. Based on revised political balance calculations, the number of seats allocated to each political group would need to be reconsidered.

Fire and Rescue Authority

30. A proposed allocation on seats on the Hereford and Worcester Fire and Rescue Authority is given in Appendix 2.

Other External Bodies

31. The County Council also makes appointments to a number of other bodies and external organisations. Predominantly these include:-

- Local Strategic Partnerships
- Highway Partnership Forums



- West Mercia Police Authority
- Local Government Association (inc. Urban and Rural Commission and associated Sub-Groups)
- West Midlands Local Government Association/Regional Assembly (and associated Sub-Groups)

32. The current allocation of seats on West Mercia Police Authority is 3 Conservative and 1 Labour. No changes are necessary to either to this or any other external organisation to which the County Council makes appointments.

Supporting Information

None

Contact Points

County Council Contact Points

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Specific Contact Points for this Report

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Background Papers

In the opinion of the Proper Officer (in this case the Director of Corporate Services) there are no background papers relating to the subject matter of part (a) of this report. In relation to part (b) they are the Agenda reports and Minutes of the meetings of Council held on 26 May 2005 and 11 May 2006.

