

Report to the Council

Committee: Overview and Scrutiny

Date: 17 February 2009

Chairman: Councillor R Morgan

Item: 17

1. REVIEW OF EXECUTIVE CONSTITUTION

Recommending:

(1) That the proposed amendments to the following parts of the Constitution be approved:

Article 3 (Citizens and the Council)	(Appendix 1)
Article 4 (The Full Council)	(Appendix 2)
Article 7 (The Executive)	(Appendix 3)
Council Procedure Rules	(Appendix 4)
Executive Procedure Rules	(Appendix 5)
Scheme of Delegation	(Appendix 6)

(2) That the following schedules which have been compiled by separating those matters which are to be approved by the Leader of Council and those to be determined by the Council be noted:

Delegation to Officers

Appendix 7 - Leader Approval
Appendix 8 - Council Approval

Outside Bodies

Appendix 9 - Leader Approval
Appendix 10 - Council Approval;

(3) That the Council's public statement regarding this review of the Council's executive arrangements as set out in Appendix 11 be approved;

(4) That the deadline for submission of questions by Councillors be amended to "seven days" from "seven working days" in Council Procedure Rule 10.3 (Appendix 4);

(5) That the Local Councils' Liaison Committee, Victoria County History of Essex and the West Essex Area Forum to Appendix 10 be agreed;

(6) That the proposed changes to the Constitution be approved and authority for other minor and consequential amendments be delegated to the Assistant to the Chief Executive; and

(7) That, the support of the Cabinet for this report be noted.

Report:

1. We have received a report of the Constitution and Member Services Standing Scrutiny Panel (SSP) on the 2007 Act which makes a number of changes to the operation of local authority executives and in particular the powers of the Leader of the Council.
2. Previously the Council had a choice between three types of executive but the new Act has reduced this by one to the following options:
 - (a) Elected Mayor and Cabinet; or
 - (b) Leader and Cabinet.
3. This Council has been operating (b) since 2000 but on a different basis from the one which the 2007 Act provides. The Council's Leader and Cabinet Executive is the optional "Weak Leader" model with appointments of the Leader, Deputy and portfolio holders etc made by the Council. Likewise, the number and duties of portfolios, delegation to officers and appointments to outside organisations are not dealt with by the Leader but by the Council.
4. The 2007 Act ends the "Weak Leader" executive and allows the Council to move to the "Strong Leader" model. This means that the various functions summarised in Paragraph 5 are now the sole responsibility of the Leader of the Council. However the Council retains responsibility for non-executive functions and the governance arrangements, which apply to them.
5. Main Changes Summarised
 - (a) the Leader of Council is appointed by the Council at its Annual meeting;
 - (b) if not appointed at the Annual meeting, the Council must make the appointment at its next available meeting;
 - (c) a Leader's term of office starts on the date of election into that role and ceases at the conclusion of his/her term of office as a Councillor unless:
 - (i) the Leader resigns.
 - (ii) the Leader becomes disqualified.
 - (iii) the Leader is removed from office by a majority vote in the Council.
 - (iv) the Leader becomes incapacitated.
 - (d) the Leader may only be removed from office on the grounds mentioned in (c) above or by reason of regulations which have yet to be made by Parliament;
 - (e) the Leader's term of office runs until his/her term of office as a Councillor ends but the 2007 Act extends this by a few weeks to the next Annual Council meeting and for that reason, his/her term of office as a Councillor is extended by the same period.
 - (f) Section 63 of the 2007 Act makes the Leader of the Council responsible for discharge of all executive functions.

Previous Council Discussions

6. We noted that at the Council meeting on 22 April 2008 (Minute 121(b)), the Council resolved:
 - (a) to continue with the Leader and Cabinet executive;
 - (b) to reject the option of a Mayor and Cabinet executive;
 - (c) to vary the Constitution in accordance with statutory requirements;
 - (d) to consider a public statement regarding the Council's decision, set a timetable for implementation and describe any interim arrangements;
 - (e) to retain the provision for the Leader to be removed from office by a majority vote in the Council.

7. The SSP has recommended various drafting changes to align its Constitution to accord with the 2007 Act. These are set out in the following Appendices to this report:
 - ... (a) Article 3 (Citizens and the Council) - Appendix 1.
 - ... (b) Article 4 (The Full Council) - Appendix 2.
 - ... (c) Article 7 (The Executive) - Appendix 3.
 - ... (d) Council Procedure Rules - Appendix 4.
 - ... (e) Executive Procedure Rules - Appendix 5.
 - ... (f) Scheme of Delegation - Appendix 6.

8. These show the existing wording and proposed changes to comply with the 2007 Act.

Delegation to Officers

- ... 9. Appendices (7) and (8) relate to the Schedule of Delegation to Officers. Appendix 7 indicates those which are to be approved by the Leader because they relate to executive services. Appendix 8 shows the remaining delegations which are to be approved by the Council.

10. The SSP has drawn our attention to the fact that these appendices represent a subdivision of the existing schedule. The criterion for the executive list is that the delegations relate to Cabinet services. For the Council/Regulatory list, delegations relate to corporate governance and non-Cabinet services have been included.

11. Outside Organisations (Appendices 9 and 10), show outside organisations. The SSP has made recommendations about which of the bodies should be in the Leader list (Appendix 9) and which in the Council List (Appendix 10):

12. We made specific proposals to the Cabinet about the Local Councils' Liaison Committee (5 representatives). This body was listed under Appendix 7 by the SSP but two of the appointments are the Chairman and Vice-Chairman of the Council whilst a third representative is the Chairman of the Overview and Scrutiny Committee. The two remaining places are occupied by a Cabinet member and a past Chairman of the Council.

We felt that these five seats should be allocated by the Council as they are not strictly related to Cabinet functions. The Committee is, in any event, not a decision-making body. We are pleased to say that the Cabinet agreed with our view.

13. We also queried why the Victoria County History of Essex was included in the Cabinet List. The organisation is distantly related to a Cabinet Portfolio (Leisure) but we felt that it is not a true "executive" body. Likewise we felt that the West Essex Area Forum might be better placed in the Council list (Appendix 9). This body is run by Essex County Council and the Council can nominate one representative. Currently this is the Leader of the Council and the body is included in the "executive" category.
14. We are happy to say that the Cabinet accepted our view.
15. Later this year, the SSP will be conducting the annual review of the list.

Notes on Delegation to Officers and Outside Organisations

16. All the Council is being asked to do is to approve how the two lists are to be configured, not actual appointments.
17. Outside organisations are subject to a pro rata division between political groups, although the executive local and ex-officio categories are excluded from that calculation.

Notice for Questions

18. During our review of Council Procedure Rules, our attention was drawn to an anomaly relating to the period of notice for submission of questions by the public (Rule 9.3) and Councillors (Rule 10.3). Under Rule 9.3 the period of notice is 7 days before the Council meeting but in Rule 10.3, the deadline is seven working days. We feel that the notice period should be "seven days" for both types of question. Appendix 4 shows the relevant wording to effect the change.

Action which the Council must take pursuant to the Act

19. Although some government regulations have yet to be published, we feel that the changes needed to the Constitution are clear. The Act requires the Council to publish a statement indicating:
 - (a) the Council's decision on the form of executive and the reasons for this decision;
 - (b) the changes to the Leader and Cabinet Executive which are now proposed;
 - (c) the timescale for introducing the changes;
 - (d) any interim arrangements which will operate.
- ... 20. A draft statement is set out in Appendix 11 for consideration by the Council. Once approved, we suggest that this be published:
 - (a) on the website;
 - (b) in The Forester;
 - (c) by means of press releases.
21. We recommend as set out at the commencement of this report.