

Report to the Overview and Scrutiny Committee

Date of meeting: 9 April 2013



Report of: Constitution and Member Services Standing Scrutiny Panel

Subject: Localism Act 2011 – Executive Constitution

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Recommendations:

That a report be submitted to the Council recommending that Article 7 (The Executive) of the Constitution be amended reflecting the requirements of the Localism Act 2011 as set out in the Appendix to this report.

Report

1. Introduction

1.1 The Localism Act 2011 consolidates a number of previous statutory provisions regarding Local Authority Executives (i.e., the Cabinet). Most of these provisions merely draw together previous Acts and Regulations which the Council already reflects in its Constitution. However, Article 7 of the Constitution dealing with the Executive has not been reviewed for some time and we found changes to be necessary.

2 Article 7 – Proposed Revisions

2.1 The Appendix to our report sets out in bold type and underlined the sections of Article 7 which we recommend should be altered to reflect the Act. Dealing with these in turn:

(a) Article 7.02 (Form and Composition of the Executive)

2.2 We have amended the wording to align more closely with the Act. The last sentence has been added to reflect the previous statutory position regarding the Chairman of Council who are not to be members of the Executive. The Localism Act has also introduced a new restriction on the Vice Chairman of Council.

(b) Article 7.03 (Leader of Council)

2.3 The main change in relation to this section is regarding disqualification from being a Councillor. Previously, it was possible under the standards arrangements for the Leader of Council to be subject to a complaint investigation which might lead to either suspension or disqualification as a Councillor. The Localism Act has removed these provisions and the only remaining disqualifications relate to bankruptcy and criminal proceedings leading to imprisonment. We have amended sub-paragraph (b) accordingly.

2.4 One feature of the Localism Act is a provision regarding the term of office of the Leader of the Council. The Leader must be appointed by the Authority and under previous regulations, once appointed, the Leader would serve until the conclusion of their term of office (i.e., the Annual Council meeting following their retirement as a Councillor). The only circumstances whereby Leaders may not continue were set out in paragraph 7.03. The Act introduces a new option for the Council, namely of specifying the term of office of the Leader. At one time, the Leader was appointed on an annual basis but from the advent of 2007 Act, this ceased and the Council was required to ensure that the member continues to the end of their term as a Councillor unless they resigned, became disqualified or are the subject of a negative vote at a Council meeting.

2.5 Article 7.03 has been amended to refer to a term for the Leader as decided by the Council. The Council can then determine how long the Leader was to serve including the current option of serving to the end of his or her term of office as a Councillor.

2.6 A footnote has been added to Article 7 in relation to the Leader of Council who remains a Councillor during the period of his/her appointment by the Council. The exception to this is where the person concerned resigns or becomes disqualified.

(c) Article 7.04 (Deputy Leader)

2.7 More detail is provided in the Localism Act concerning the role and responsibilities of the Deputy Leader. Previously, these positions were optional although they were common in practice. It is now mandatory for the Leader of Council to appoint a Deputy Leader and the Act goes on to deal with the question of removal of a Deputy Leader from office and the power of the Leader to appoint a replacement. These provisions have been added into this Article.

(d) Article 7.05 (Deputy Leader – Powers to Act)

2.8 Revisions have been made to reflect what the Act says should happen if the Leader of Council is unable to act or if that office is vacant. In those circumstances, the Deputy Leader would assume responsibility.

(e) Article 7.06 (Leader and Deputy Leader unable to Act)

2.9 We are proposing that a new section is added to reflect the Act's clarification of the situation where the Leader and Deputy Leader are unable to act or the office of Leader or Deputy Leader is vacant. In these circumstances, the Act says that the Executive itself must then step in and either carry out the Leader's functions collectively or appoint a member of the Executive to act in the Leader's place.

(f) Article 7.05 (Other Executive Members)

2.10 The same alterations have been made in this section in relation to disqualification as Councillors (sub-paragraph (b)) and in sub-paragraph (c), some clarification has been included regarding the appointment of Executive members, making it clear that these are to be made by Leader of Council and can be for more than one term of office.

(g) Article 7.08 (Responsibility for Functions)

2.11 A new sentence has been added to Article 7.08 to include the Localism Act requirement that any function which is the responsibility of the Executive may not be discharged by the full Council. This was understood to be the position previously but has now been set out in the new legislation. Some decisions will continue to be made only by the Council, whilst others may be considered by the Executive but are required to be confirmed by the Council.

3. Next Steps

3.1 The changes to Article 7 are part of the Constitution and we recommend that the Council be recommended to approve these changes prior to publication.