

CHESHIRE EAST COUNCIL

Corporate Scrutiny Committee Constitution Committee

Date of Meeting: 10th January 2012
26th January 2012
Report of: Borough Solicitor
Subject/Title: Cheshire East Governance Arrangements – Localism Act 2011

1.0 Report Summary

- 1.1 To explore the options available to the Council to review its governance arrangements under the Localism Act 2011.
- 1.2 The Corporate Scrutiny Committee considered this report at its meeting on 10th January 2012. The Committee's resolutions are set out in the Appendix.

2.0 Recommendations to Council

That

- (1) the report be noted and the Monitoring Officer be requested to report back to both committees as soon as is appropriate; and
- (2) the Corporate Scrutiny Committee and Constitution Committee set up a Joint Member Working Group on a 5:1:1 basis with a view to investigating in detail all available options to review governance arrangements under the Localism Act 2011, to begin when additional guidance has been issued by DCLG.

3.0 Reasons for Recommendations

- 3.1 Although the Act received Royal Assent on 15 November, the sections relating to the powers which allow local authorities to change governance arrangements have not yet been enacted, although it is anticipated that the Secretary of State will issue regulations which underpin the process in the spring of 2012.

4.0 Wards Affected

- 4.1 All

5.0 Local Ward Members

- 5.1 Not applicable.

6.0 Policy Implications (including carbon reduction and health)

- 6.1 In accordance with the requirements of the Local Government and Public Involvement in Health Act 2007, the Council resolved to adopt the 'Strong Leader' and Cabinet Model of executive arrangements. These arrangements came into effect in May 2011.

7.0 Financial Implications

- 7.1 Not known at this stage.

8.0 Legal Implications

- 8.1. The Localism Act describes the process that needs to be followed to change governance arrangements. These are set out below. A change in governance arrangements will require the constitution to be redrafted.

9.0 Risk Management

- 9.1 There are no identifiable risks.

10.0 Background and Options

- 10.1 Council at its meeting held on 15 December 2011, referred the following notice of motion, submitted by Councillor Brickhill, to the Constitution Committee for consideration:
- 'In view of the obvious and continued failure of the Cabinet system, as evidenced by their inability, for a second year running, to manage their budget, letting it overrun by a predicted £16,000,000, with the resultant reductions of reserves to a dangerously low level, this Council instructs its Constitution Committee to prepare the necessary amendments to bring about a proven successful system of governance, similar to the earlier committee systems of the successful predecessor Councils, to begin from the start of the 2012/13 financial year.'
- 10.2 Corporate Scrutiny Committee had previously expressed an interest in this subject and accordingly, this report will also be considered by that committee.
- 10.3 The Localism Act proposes to devolve greater powers to councils and neighbourhoods and to give local communities more control over housing and planning decisions.
- 10.4 In addition the Act allows Councils to choose to return to the 'committee system' of governance and also allows for referendums for elected mayors in certain authorities.

- 10.5 So far, there has been little additional information released by the government to guide authorities as to the options likely to be available to return to a committee based structure or to any variation of hybrid models which would retain some kind of Overview and Scrutiny function.
- 10.6 Any return to a Committee based system or a more hybrid model involving decision making committees to replace the current Executive arrangements will have to have regard to secondary legislation which is expected to follow which will provide detail about delegation of powers.
- 10.7 Most authorities last used a committee based system in 2000. The change to that system was brought about by the Local Government Act 2000. This was influenced in part by the Audit Commission paper 'We can't go on meeting like this' published in 1990. The report highlighted many aspects of the old style committee system and in particular commented about the amount of time that Members spent on Committee business and the fact that rather than concentrating on performance and strategic issues, committees were often drawn into the detail of operational issues. To illustrate the amount of time Members were spending on committee business, the report reported the findings of the Widdicombe committee which stated that the average councillor spent 74 hours in a typical month on Council duties, of which 60% of that time was accounted for by attending, preparing for and travelling to and from official meetings of the Council.
- 10.8 The 2000 Act therefore was intended to provide an opportunity for members to break out of the traditional committee-dominated way of doing business and to be more community based.

11.0 Options within the Localism Act

- 11.1 The Act requires all authorities to operate governance arrangements in one of 3 forms:
- Executive arrangements (either Leader, cabinet and scrutiny or executive mayor, cabinet and scrutiny);
 - Committee system
 - Another prescribed arrangement (where a local authority submits a proposal to the Secretary of State for a different form of governance, which the Secretary of State must then approve).
- 11.2 Authorities operating Executive arrangements must continue to have at least one Scrutiny Committee. Authorities operating under a committee system may have one or more scrutiny committees.

12.0 The Process to Change Governance Arrangements

- 12.1 In order to change governance arrangements, a local authority will be required to pass resolution at Full Council giving notice that the Council intends to change its governance arrangements. An authority will also have to give public notice of that decision in the local press. The relevant proposals will also have to be placed on deposit for a prescribed amount of time. The precise details of the process are not yet known and will be contained in regulations to be issued by the Secretary of State (but it is likely some form of public consultation may be required). It is anticipated that arrangements can then only be changed with effect from an Annual Council meeting.
- 12.2 There are also provisions to allow referenda to be held when it is proposed to change governance arrangements in certain circumstances. This can be at the request of the local authority or as directed by the Secretary of State. There would be no requirement, however, for Cheshire East to hold a formal referendum if it wished to return to a committee system unless it resolved to do so.
- 12.3 It is intended that in May 2012 Mayoral referendum will be held in the 11 core cities, including Manchester and Liverpool, to determine whether the public would wish to move to an Elected Mayor and Cabinet Executive. This will not however directly impact upon Cheshire East and there will be no requirement to hold a similar referendum in May 2012.

13.0 Health and Social Care Bill and other Statutory Scrutiny Requirements

- 13.1 The Health and Social Care Bill establishes Health and Wellbeing Boards and will be extending scrutiny powers in respect of health matters. The Council will also have regard to statutory requirements that exist in relation to community safety, flood risk management and to any additional duties that may be put in place in respect of such matters as Police and Crime Panels.

14.0 Other Local Authorities considering a return to the committee system

- 14.1 The National Overview and Scrutiny Forum reports that, anecdotally, around 45 authorities in England appear to be taking significant steps to prepare for a return to the committee system. Of these, perhaps 15 (again, the figure is a supposition) will actually take the step. The most likely authorities appear to be Nottinghamshire, Brighton and Hove, Bristol and Barnet, although a number of small districts are also considering making the change. However, rather than a “return” to a committee system it is expected to be more likely that councils will adopt a streamlined, hybrid model.

15.0 Conclusion

- 15.1 Although a number of authorities have expressed an interest in exploring alternative arrangements to the Executive/ Scrutiny model, all are awaiting further advice from government as to how this may be achieved. That advice is not expected to be issued until the spring of 2012. Those authorities which decide to revert back to a system analogous to the pre- 2000 governance arrangements, will have to await the publication of regulations which will spell out delegation arrangements under a committee system. Authorities preferring to adopt a hybrid model may have to seek Secretary of State approval.
- 15.2 In the absence of further evidence and in the light of the Health and Social Care Bill, it is suggested that the prudent way to proceed would be to await the publication of regulations which underpin the new legislation and then to consider all options which will also involve assessing the budgetary implications which will include such matters as the likely impact on the Members allowances scheme and on resources generally within the Council and specifically within Democratic Services to support a new system. It should also be noted that any change in governance arrangements will mean that significant changes to the constitution will be required.

16 Joint Member Working Group

- 16.1 In order to consider the various options in greater detail once the legislation is in force and guidance available it is recommended that the Corporate Scrutiny Committee and Constitution Committee jointly establish a Joint Member Working Group on a 5·1·1 basis with a view to reporting back to the main Committees and full Council

17 Access to Information

The background papers relating to this report can be inspected by contacting the report writer:

Name: Mark Nedderman

Designation: Senior Scrutiny Officer

Tel No: 01270 686459

Email: mark.nedderman@cheshireeast.gov.uk