

Subject:	Localism Act 2011 – Changing Governance Arrangements		
Date of Meeting:	15th December 2011		
Report of:	Monitoring Officer		
Contact Officer:	Name:	Elizabeth Culbert	Tel: 291515
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Key Decision:	No	Forward Plan No:	
Ward(s) affected:	All		

FOR GENERAL RELEASE**1. SUMMARY AND POLICY CONTEXT:**

- 1.1 On 21st July 2010 the Council agreed two Notices of Motion supporting the return to a committee system in Brighton & Hove at the earliest opportunity.
- 1.2 The Localism Act 2011 received Royal Assent on 15th November 2011 and gives flexibility to councils to choose their own governance arrangements. This report sets out the options and timescales available for changing governance arrangements in Brighton and Hove should the Council decide to do so.

2. RECOMMENDATIONS:

- 2.1 That Council notes the provisions in the Localism Act which enable the Council to change its governance arrangements either in May 2012 or at a later Annual General Meeting of the Council.
- 2.2 That Council agrees in principle to change its governance arrangements from Leader and Cabinet to a committee system with effect from annual Council in May 2012.
- 2.3 That Council instructs officers to prepare detailed proposals for a committee system and to bring the proposals to Governance Committee and Full Council for approval.
- 2.4 That officers undertake the necessary preparation including, as appropriate, briefings, training and modifications to ways of working.

3. RELEVANT BACKGROUND INFORMATION/CHRONOLOGY OF KEY EVENTS:

Background

- 3.1 Prior to 2000, decisions in all English local authorities were taken through council committees. These committees were governed by the Local Government Act 1972 and had power delegated to them directly from Full Council and also had power to arrange the discharge their functions through sub-committees or officers. They were required to be politically proportionate, meaning that seats on committees had to be allocated to each political group in the same proportion to the number of seats held by each of those groups on the Council.
- 3.2 The Local Government Act 2000 gave effect to the Government's plans to change the way that local authorities made decisions. The central feature of the new system was a division between executive elected members, who would make decisions, and non-executive elected members who would scrutinise those decisions. The stated aim of separating the roles of executive and non-executive elected members was to improve efficiency, transparency and accountability. The Government gave local authorities three main alternative decision-making models: A directly-elected mayor and cabinet; a leader and cabinet; or a directly-elected mayor and council manager. Where Councils held a referendum to adopt an elected mayor and the referendum result was against a mayoral system, authorities could adopt "alternative arrangements" as a fall back position. Legislation also required councils to set up standards committees to ensure high standards of conduct, and the national Standards Board was also created.
- 3.3 In Brighton and Hove in 2001 the Council agreed to hold a referendum on whether or not to move to a mayor and cabinet system. The referendum did not support a mayor and cabinet and the fallback option of alternative arrangements, commonly referred to as an "improved committee system", was adopted. Under these arrangements the Council operated seven "executive" committees:- Policy & Resources; Environment; Housing; Children, Families and Schools; Adult Social Care and Health, Culture, Recreation and Tourism Committee and Licensing Committee. There were five sub-committees:- Planning Applications; Housing Management; Personnel Appeals and ad hoc Licensing Panels. In addition, the Council operated a Standards Committee with a sub-committee and an Overview and Scrutiny Organisation Committee (OSOC). OSOC was supported by two sub-committees dealing with children's issues and health.
- 3.4 In 2007, the Local Government and Public Involvement in Health Act removed the option of a committee system of decision making for councils with a population over 85,000. This had the effect of requiring Brighton & Hove to adopt an executive system. The current leader and cabinet system was consulted on and adopted in 2008.

The Localism Act 2011

- 3.5 The Localism Bill ('the Bill') was first published in December 2010 with an agenda to devolve power from central government to local people. This included provisions to enable councils to choose to revert to a committee system at the annual meeting of Council following the next local elections. For Brighton and

Hove this would have meant that the earliest available opportunity to revert to a committee system was May 2015. On 21st July 2011 Full Council considered the draft provisions of the Localism Bill and reaffirmed its desire to return to a committee system of governance at the earliest opportunity. The Chief Executive was requested to write to Government and express the Council's concern at the delay in enabling councils to choose to change their decision making arrangements.

- 3.6 The Bill was the subject of intense scrutiny in the House of Lords and was extensively amended at Report Stage. One set of amendments moved by the Government at this stage was to remove the delay between a council agreeing proposals for new governance arrangements and its being able to implement them. Baroness Hanham moved the amendments and stated:-

"In Committee, there were concerns clearly that there was a hiatus between a proposal being put for new governance arrangements and its being able to be implemented. It seemed quite a long time, so we have taken account of that and I hope the amendments make it clear that there need not be any delay.

Local Authorities therefore will be able to resolve at any time to change their governance arrangements and implement those changes without any unnecessary delay and at a time that best suits their circumstances."

- 3.7 Following the Lords amendments, the Localism Act (the Act) now specifies that, in order to change from a cabinet system to a committee system, local authorities must:-

- Pass a resolution to change their governance arrangements;
- As soon as practicable after passing the resolution, make the provisions of the new arrangements available for inspection;
- Publish in one or more newspapers circulating in the area a notice which describes the features of the new system and timescales for implementation.

- 3.8 Having passed a resolution and complied with the publicity requirements above, authorities are required to cease operating their old form of governance arrangements and start operating their new arrangements. This is must take place "at the relevant change time" which, in the case of a move from a cabinet system to a committee system, is defined as:-

- (a) The first annual meeting of the local authority to be held after the resolution to make the change in governance arrangements is passed, or
- (b) A later annual meeting of the local authority specified in that resolution.

- 3.9 This means that the forms of governance available to Brighton & Hove City Council now include a committee system and that this can be introduced at the Council's AGM in May 2012, or at a later AGM.

- 3.10 The Act gives the Secretary of State power to make transitional arrangements in connection with bringing in the powers to change governance arrangements. Until an order is made to bring the powers to change governance arrangements into force, the council will not be permitted to return to a committee system.

Indications from Government are that they do not wish to see any delay in enabling councils to change their governance arrangements and the commencement order is expected to be made any time soon.

- 3.11 The Act also specifies that if the Council passes a resolution under the Act to change governance arrangements, it may not pass another resolution to change from one form of governance to another (eg from a committee system back to a leader and cabinet system) for 5 years unless a referendum is held on the issue.

Permitted forms of governance under the Act

- 3.12 Under the Act, the options available to councils in terms of decision making structures are:-

- (a) A leader and cabinet executive;
- (b) A mayor and cabinet executive;
- (c) A committee system;
- (d) Other arrangements approved by the Secretary of State.

- 3.13 The Secretary of State has power to approve alternative forms of governance arrangements on request from local authorities, provided that they demonstrate that the proposed arrangements would be an improvement on the current arrangements, that they would ensure efficient, transparent and accountable decision making and that they would be appropriate for all local authorities, or a particular type of local authority.

Overview and Scrutiny

- 3.14 The Act is clear that a local authority with committee based governance arrangements may appoint one or more committees as the authority's overview and scrutiny committee or committees. There is a specific requirement to review and scrutinise flood risk management functions and to carry out scrutiny of health and crime and disorder. The Secretary of State has power to make regulations about the function, composition and procedure for overview and scrutiny committees in a committee system. Regulations are not required in order to proceed with a change in governance arrangements. Initial conversations with the Centre for Public Scrutiny indicate that the Government is intending to produce regulations and/or guidance in this area in early 2012.

- 3.15 The debate in the House of Lords did focus on the role of overview and scrutiny committees in a committee system and there was cross party support for retaining a scrutiny role to both hold decision makers to account and to look forward at policy development. Baroness Hanham confirmed:-

“Nothing in these arrangements would stop a local authority from having scrutiny committees. If it has a committee system, it can have a scrutiny system running alongside those arrangements. Nothing here would put those arrangements under threat.”

- 3.16 Based on the above indications from Government and the council's previous arrangements, the assumption would be that in any new committee system there would be a desire to retain elements of the current overview and scrutiny system.

Members have previously indicated that overview and scrutiny under a committee system should be streamlined, partnership based and inclusive. It is clear it would require reducing the number of formal overview and scrutiny committee meetings from its current level of over 40 per annum.

- 3.17 Elements of the current overview and scrutiny system that it is proposed could be retained under a new system could include:- in-depth reviews; policy development workshops, call-in, councillor call for action, tenant scrutiny, health scrutiny and overview and scrutiny of crime and disorder. There are a number of options in terms of how best to structure these arrangements which can be brought forward in the process of designing and approving the new system.

Standards

- 3.17 The Act requires authorities to promote and maintain high standards of conduct by members and co-opted members of the authority. This includes a requirement to adopt a code of conduct which must be consistent with the principles of selflessness, integrity, objectivity, accountability, openness, honesty and leadership. The code is also required to cover disclosure of pecuniary and non pecuniary interests.
- 3.18 Local authorities are required to have in place arrangements under which allegations of breaches of the code can be investigated and decisions on allegations are made. These arrangements must include the appointment of at least one independent person (who has not been a member or co-opted member of the authority in the last 5 years).
- 3.19 The Standards Board for England will be abolished and therefore councils are required to deal with their investigations and decisions internally.

Proposals for developing a new constitution

- 3.20 If Council instructs officers to proceed, the timeline for approval would be as follows:-

Meeting/activity	Date	Purpose
Council	15/12/11	Agree in principle to change governance arrangements and instruction to develop arrangements for a committee system
Governance Committee	10/01/12	Consider the options under the Act and agree outline principles for designing the new system.
Governance Committee	20/03/12	Agree arrangements and draft constitution for recommend to Council.
Special Council	26/04/12	Resolution to move to a committee system
Publication of proposals	30/04/12	Publication of detailed proposals

Council AGM	17/05/12	Adoption of new constitution
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- 3.21 An officer working group, working closely with lead Members nominated by their Groups, will develop the proposals and take these to Leaders Group meetings which would meet regularly for the purpose of progressing this work. The proposals will then be reported to Governance Committee and Full Council for approval as set out above. This timetable assumes that there will be a Special Council meeting on 26th April 2012.
- 3.22 The duty to consult local government electors in relation to a change in political management arrangements (Section 33E Local Government Act 2000) has been replaced by the requirements in the Localism Act described in paragraph 3.7 above. The requirement is to publish details of the proposals following a council resolution and to make the detailed proposals available for inspection.

Resource Implications

- 3.23 In order to progress proposals to move to a committee system, a working group of officers, including the Monitoring Officer, will be required to draw up the arrangements and draft a new constitution. In order to meet the timescales set out at paragraph 3.19 above, this is likely to require the equivalent of 3 officers to work on the documentation and facilitate member involvement between now and May 2012. Member involvement will be key and the Leaders Group and Member Working Group will need to meet regularly.
- 3.24 Based upon previous arrangements, servicing a committee system would require an increase on democratic support of approximately two democratic support officers because of the increase in the number of meetings that is likely. This may be offset by changes to overview and scrutiny arrangements but that will depend on the model of overview and scrutiny that is adopted. In addition, printing costs would also be likely to rise.

Adopting a committee system – issues to consider

- 3.25 The decision as to whether or not to return to a committee system is a decision for Full Council. Council has already indicated its support for such a move. In considering the arrangements further, there are a number of potential issues that Members should be aware of:-
- Resources – the ongoing costs to support a committee system are estimated to be higher than those of supporting an executive system. There will also be a need for considerable officer and member time to be spent in preparing for and implementing a new system of governance.
 - Timing – if the Council agrees to move to a committee system in May 2012 this will mean that there is very little time to design a new system. It will effectively require the Council to adopt a system very similar to the previous committee system which can then be reviewed at a later stage. This could be seen as missing an opportunity to design a system that really strikes a new course for the City and incorporates best practice and

ideas from around the country and from around the world. The timing may also mean progressing arrangements without all the relevant guidance.

- Ability to change to other governance arrangements – once a resolution is passed, the Council will not be able to change from a committee system to a leader and cabinet system, a mayoral system or a system approved by the Secretary of State for a further five years unless a referendum is held. It is possible to review and amend the new system at any time, without the need for a referendum, as long as the overall model of decision making (ie a committee system) is retained.
- Preparing the organisation – operating under a committee system is a very different model of decision making as compared with executive arrangements. Decisions are taken at cross party committees and this will require the organisation to review how it engages with and supports Members. New arrangements will need to be implemented which adequately support Members to operate effectively under the committee system. This will need to happen very quickly to meet a May 2012 timetable.
- On the other hand, as evidenced by previous resolutions, there is considerable support to changing the governance arrangements and a committee system does allow greater participation in decision-making by Members of all political groups. The system is also likely to be more effective in securing that different perspectives are represented and greater challenge and robust debate at the decision-making stage.

Members Allowances

- 3.25 Operating under a committee system will mean that the Independent Remuneration Panel (IRP) will need to review the new arrangements and make proposals for changes to Members Allowances. The role of chair of a committee is significantly different to that of a Cabinet Member. Based on the Council's previous committee arrangements, there are likely to be more decision making meetings taking place but possibly with fewer chairs as compared to the number of Cabinet Members. This means the IRP would be likely to propose changes to the current allowances scheme to align with roles and responsibilities under a committee system.
- 3.26 If Council resolves in principle to change its governance arrangements, and there is a degree of consensus on the number of and remit of committees, it is suggested that, the IRP should commence a review with a view to progressing their work and reporting to the same meeting of Council that adopts the new arrangements.

4. COMMUNITY ENGAGEMENT AND CONSULTATION

- 4.1 This report has been prepared following consultation with the Leaders Group who requested the option of a return to a committee system be brought to Governance Committee and Full Council.

5. FINANCIAL & OTHER IMPLICATIONS:

Financial Implications:

- 5.1 The ongoing costs and savings and impact on resources will be considered as part of developing the new arrangements, but it is likely that there will be additional net cost implications of approximately £90k. There will be additional costs of preparing detailed proposals for which financial provision will need to be made.

Finance Officer Consulted: Anne Silley

Date: 02/12/2011

Legal Implications:

- 5.2 These are incorporated in the body of the report.

Lawyer Consulted: Elizabeth Culbert

Date: 29/11/2011

Equalities Implications:

- 5.3 At this stage no adverse impact has been identified to any protected groups in making a change in governance arrangements but this will need to be assessed as proposals are developed. There is the possibility of engaging with more residents under new arrangements.

Sustainability Implications:

- 5.4 When detailed proposals are brought forward the likely environmental impact will be quantified in relation to energy and carbon emissions and from increased paper use. The potential social and community benefits will also be considered with the potential to engage more residents more often in decision making affecting their lives.

Crime & Disorder Implications:

- 5.5 None

Risk and Opportunity Management Implications:

- 5.6 Risks and opportunities relating to any change to decision making arrangements will be considered and planned for using the council's approved risk management methodology. A risk register will be drafted at the appropriate time to guide the implementation.

Public Health Implications:

- 5.7 None

Corporate / Citywide Implications:

- 5.8 As the proposals for new decision making arrangements are developed, the relationship of the committees with the Local Strategic Partnership and other partnerships will need to be considered and addressed.

SUPPORTING DOCUMENTATION

Appendices:

1. None

Documents in Members' Rooms

1. None

Background Documents

1. None

