

**Manchester City Council
Report for Resolution**

Report to: City Council
Constitutional and Nomination Committee
Executive

Date: 8 July 2009
7 July 2009
24 June 2009

Subject Executive Arrangements

Report of: The City Solicitor

Summary

The report sets out the requirement for the Council to change its governance arrangements by passing a resolution no later than 31 December 2009 with the change coming into effect no later than the third day after the municipal elections in 2010, and invites the Council to embark in a consultation process on its form of governance.

Recommendations

The Council is recommended:

1. To note the report
 2. To approve the proposed timetable set out in paragraph 3 of the report.
 3. To agree that there should be a consultation with local government electors and other interested stakeholders in Manchester to run from 27 July, to approve the consultation strategy set out in paragraph 4 of the report and to determine the length of the consultation period.
 4. To delegate the drawing up of a consultation document and the finalisation of the consultation process to the City Solicitor in consultation of the Leader of the Council and the Leader of the Opposition.
 5. Following the public consultation to request the City Solicitor, in consultation with the Leader of the Council and the Leader of the Opposition to draw up draft proposals for presentation to the Constitutional and Nomination Committee and the City Council on 7 October 2009.
 6. Approve a budget not exceeding £100,000 for the consultation exercise.
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Wards Affected: All

Implications for:

Equal Opportunities

No

Risk Management

No

Legal Considerations

Yes, as set out in report

Financial Consequences for the Revenue Budget

Cost of the consultation is likely to be in the region of £100,000.

Financial consequences for the Capital Budget

None

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Background documents (available for public inspection)

Constitution of the Council – May 2009

EXECUTIVE ARRANGEMENTS

1. Background

1.1. The Local Government Act 2000 (“the 2000 Act”) required most local authorities to operate executive arrangements using one of three model forms of executive provided for in the Act:-

- elected mayor and cabinet
- leader and cabinet
- elected mayor and Council manager

Manchester City Council, like most authorities, opted for the leader and cabinet model following a major consultation exercise.

1.2. Part 3 of the Local Government and Public Involvement in Health Act 2007 (the 2007 Act”) has abolished two of these models, namely, the old-style leader and cabinet and the elected mayor and Council manager, and now requires local authorities in England to operate one of two models, namely:-

- elected mayor and cabinet
- “new-style” leader and cabinet executive (England)

There are transitional provisions which allow Councils operating the old-style leader and cabinet model to continue to do so until the end of the transitional period which in the case of Manchester is the third day after the 2010 municipal elections.

1.3 Under the **elected mayor model**, the executive consists of:

- a mayor elected by the local authority electorate for a four year term, and
- between two and nine councillors of the authority appointed to the executive by the elected mayor.

1.4 Under the **leader and cabinet (England) model**, the executive consists of:-

- a councillor of the authority (“the leader”) elected as leader of the executive by the Council, and
- between two and nine councillors of the authority appointed to the executive by the leader.

1.5 In a change from the old-style model, the leader is elected by the Council for a four year term or (if shorter) the balance of his/her term of office as a councillor. Therefore, in the case of an election in 2010, the leader would be elected for one, two or four years depending on whether his/her term of office as a councillor expires in 2011, 2012 or 2014. However, it is possible to make provision in the Constitution for the Council to be able to remove the leader by resolution before the end of his/her term as leader.

1.6 The leader and cabinet executive (England) differs from the existing Manchester model in a number of different ways:-

- the Leader (rather than the Council) determines the size of the executive within the statutory framework (limiting the executive to a maximum of 10 members)
- the Leader (rather than the Council) appoints the members of the executive and can remove them at any time, effectively enabling mid-term “reshuffles”
- the Leader must appoint one member of the executive to be deputy leader who will act as leader if the Leader is unable to act. The deputy leader’s term of office will be co-terminus with that of the leader (provided that the deputy leader remains a councillor). However, the Leader can remove the deputy leader from office.
- The Leader (and not the Council) will determine the arrangements for the delegation of executive functions which can be personally discharged by the Leader or delegated to:-
 - the executive
 - another member of the executive
 - a committee of the executive
 - an officer of the authority

In all the above respects, the powers of the leader and the elected mayor are now the same.

1.7 The main differences between the two models (apart from the method of election) are:

- The Mayor (unlike the Leader) is not a Councillor and being directly elected by the whole city electorate does not have his/her own ward
- Under the leader and cabinet model, the executive recommends the budget and strategic policies to the council which may approve, amend or overturn them by a simple majority; under the mayor and cabinet model, the executive submits the budget and strategic policies to the Council which ultimately at the end of the process can only amend or overturn them by a two-thirds majority

2. Changing Executive Arrangements

2.1 Even if the Council is minded to opt for the new-style leader and cabinet (England) model, this will be regarded as a change to a different form of executive under section 33A of the 2000 Act, as amended, and the Council must follow the procedures for such a change as set out in the Act. These require the following:-

- the Council must draw up proposals for the change
- the proposals must include a time-table for implementation of the proposals and details of any necessary transitional arrangements

- the proposals may provide for the change in governance arrangements to be subject to approval in a referendum
- before drawing up the proposals, the Council must take reasonable steps to consult local government electors and other interested persons in Manchester.
- In drawing up the proposals, the Council must consider the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way the Council's functions are exercised
- After drawing up the proposals, the council must publish them as prescribed
- The Council must then pass a formal resolution to make the change. The resolution must be passed no later than 31 December 2009 with the new arrangements becoming effective no later than the third day after the municipal elections in 2010

2.2 There was previously a requirement that before the Council could implement proposals for an elected mayor there must be a referendum. This has changed and now the holding of a referendum is discretionary unless the authority's current form of executive was itself approved in a referendum (which was not the case in Manchester). This does not affect the requirement to hold a referendum if at least 5% of the local electorate petitions for a referendum on the council's governance arrangements.

3. Proposed Timetable

- 3.1 Report to be considered by the Executive at its meeting on 24 June 2009.
- 3.2 Report to be considered by the Constitutional and Nomination Committee at its meeting on 7 July 2009.
- 3.3 Report to be considered by the Council at its meeting on 8 July 2009.
- 3.4 Public Consultation in accordance with the requirements of Section 33E(6) of the 2000 Act from 27 July 2009 for a period to be determined by the Council.
- 3.5 City Solicitor in consultation with the Leader and the Leader of the Opposition to consider the response received to the Public Consultation and to prepare draft Proposals as a result of the Public Consultation.
- 3.6 Report to Constitutional and Nomination Committee and Council on outcome of Public Consultation and submission of draft Proposals for approval. If Council approves the draft Proposals, then Council to authorise the publication of the draft Proposals in accordance with Section 33E(8) of the 2000 Act.
- 3.7 Publication of draft Proposals in accordance with Section 33E(8) of the 2000 Act.
- 3.8 Council to pass Resolution to make the change in governance arrangements and amend the Constitution to give effect to the draft Proposals at its meeting on 2 December 2009.

3.9 The new form of Executive shall operate from no later than the third day after the local government elections in May 2010.

4. Consultation

4.1 The 2000 Act provides that “**Before** drawing up its proposals” for change to the form of the Executive, the Council “must take reasonable steps to consult the local government electors for, and other interested persons in” the Council’s area.

4.2 The Department for Communities and Local Government has confirmed that it does not intend to issue any Guidance to Local Authorities as to what will constitute “reasonable steps” to consult local government electors, and that since the 2000 Act does not provide for a “specified period of consultation, nor detailed requirements - the authority has the flexibility to decide the appropriate level of consultation”.

4.3 Case law has established that in order to achieve procedural fairness a statutory obligation to carry out public consultation must:

- (i) be undertaken when the decision that is being consulted upon is still at a formative stage (i.e. no pre-determined decision has been made and the public body is not merely paying “lip-service” to its obligation to undertake a consultation).
- (ii) include sufficient information to allow interested parties to consider the decision that is being consulted upon and formulate their response.
- (iii) allow adequate time for interested parties to consider and respond to the consultation.
- (iv) take all the responses from the interested parties conscientiously into account when the ultimate decision that is the subject of the public consultation is taken.

4.4 In the light of points 4.2 and 4.3 above, the Consultation Document will need to outline both of the two possible forms of new Executive arrangements that are possible under the 2000 Act and ask for interested parties to give their views on which of the two possible forms they would prefer the Council to adopt.

4.5 It is proposed that the consultation should include the following:

- (i) Sending a copy of the Consultation Document to local electors;
- (ii) Putting a public notice in the local press announcing the beginning of the Consultation period and inviting a response to the Consultation Document;
- (iii) Putting copies of the Consultation Document in public buildings such as local libraries;
- (iv) Putting an article in Ward newsletters;
- (v) Putting a copy of the Consultation Document on the Council’s website and publicity as to the Consultation on the Council’s website;

- (vi) Using any existing forums that already exist where the Council communicates with local electors and other interested persons routinely (including the Manchester Partnership, the Community Network for Manchester, the Chamber of Commerce, the Business Leadership Team and Manchester trade unions)

5. Recommendations

The recommendations appear at the front of the report.