

Background to legislation

1. The Local Government Act 2000 (as amended by the Localism Act 2011) sets out the governance models that must be operated by local Authorities. These are:
 - a. A leader and cabinet executive
 - b. A mayor and cabinet executive
 - c. The committee system
 - d. The Secretary of State also has powers to prescribe other arrangements that may be permitted by regulations, (which may include the Council suggesting an approach of their own)

Certain hybrid versions of these systems are also permissible.

2. Briefly, the key components of the 3 main systems (a-c above) are as follows:

Leader and Cabinet Executive

This is the most common form of governance since the introduction of executive arrangements by the Local Government Act 2000. Cabinet is led by an Executive Leader who is elected by full Council for a term determined by the Council itself or on a four-yearly term (and will usually be the Leader of the largest party on the Council).

Up to ten members of the Cabinet are appointed by the Executive Leader. In many councils, individual members of the Cabinet have decision making powers and in others the decisions have to be made by the whole Cabinet. Some Committees are required for certain types of decisions such as regulatory matters, audit, and pensions. There are detailed regulations which set out which powers and functions are executive powers and those which may not be exercised by the executive.

Councils operating this model are required to have at least one overview and scrutiny Committee of which members of the Executive cannot be a part. A Forward Plan of certain significant "Key Decisions" which are due to be made by the Cabinet, individual Cabinet members or the Leader must be published in advance and may be "Called in" for scrutiny before they may be implemented and may involve being referred back to the decision maker for further consideration/to look at other options.

Mayor and Cabinet Executive

A mayor, directly elected by the people who live in the Local Authority area, with similar decision-making powers to the Executive Committee or Cabinet in the Leader and Cabinet model. The mayor then appoints their Cabinet of Councillors who may also have their own decision-making powers.

This system also requires at least one overview and scrutiny committee as well as the need for a Forward Plan of key decisions and call-in powers. Members of the Executive cannot be members of an overview and scrutiny Committee.

The Secretary of State may, by order, require a referendum to be held on whether a specified authority should operate a mayor and cabinet executive.

Committee System

Under this system councils are divided into politically balanced Committees that make the decisions. As a result, these councils are not required to have overview and scrutiny Committees, though some do have one or more.

Statutory Provisions/Requirements

3. Once a Council has passed a resolution to change its system of governance it may not do so again for a period of five years from the date of the last resolution taken to change its governance arrangements. The Council last passed a resolution to change its governance system (to the Committee system) on 29 March 2012, so it is quite lawful to now pass another resolution if the Council wishes to.
4. The legal and procedural requirements for making a change to Council governance arrangements are set out in the Local Government Act 2000, (as amended by the Localism Act 2011) (the Act).

Council Resolution

5. The Act requires that a local authority must make a formal resolution to make a change in its governance from Committee to an Executive (e.g. Leader and Cabinet) form of arrangements. If it did so, the Council may not pass another resolution changing its governance arrangements, (i.e. back to a committee system), for five years. However, the Council would have the power to vary or amend its executive arrangements, (whilst still providing for the same form of Executive decision making), during this period if it so wished.

Publicity

6. The law requires that as soon as practicable after passing a resolution to change the system of governance to a different model the Council must:
 - a. Make available for public inspection documents setting out the provisions for the arrangements which are to bring the resolution into effect, and
 - b. Publish a newspaper notice which:
 - i. States the Council has resolved to change its governance arrangements
 - ii. States the date on which the change is to take effect
 - iii. Describes the main features of the change
 - iv. States that copies of documents setting out the provisions of the arrangements are available for inspection at the Council's principal office by members of the public, and
 - v. Provides the address of the Council's principal office

7. The parts of the legislation regarding changes to the Council's governance arrangements do not require the Council to carry out any formal public consultation on the proposed changes but simply to take the steps set out in the paragraph above. However, public and stakeholder engagement is recommended to ensure the public and partner organisations are aware of the proposals in line with the Council's Public Engagement Policy and have an opportunity to comment.

Implementation

8. Where a resolution to change form of governance has been passed, section 9L of the Act requires that the Council must cease operating the old form of governance and start operating the new form of governance at a "relevant change time". That time must be at an annual meeting of the Council.

Nature of arrangements

9. The legislation gives the Council considerable discretion on how to shape any new Leader and Cabinet executive arrangements to suit its local requirements. However, the Act does set out some parameters that must be observed. The Executive must consist of at least two, but no more than ten Members. The Act also sets out the functions that are the responsibility of the full Council, (such as Council Tax and budget setting, determining the Council's Policy Framework, approving the Members Allowances Scheme etc.), and those that can be discharged by the Executive within a Leader and Cabinet Executive system. It allows for the discharge of functions within the responsibility of the Executive by individual portfolio holders who make up the Executive; by a 'committee' of the Executive, (i.e. Cabinet collectively); by an area committee(s); or by officers of the Council. The Executive Leader must be elected by the Council.
10. Whilst any retained committees would be required to reflect the political balance of the Council, there is no such requirement for Cabinet. Meetings and reports of the Council, Cabinet, and any committees would be open to members of the public just as they are under the Committee system in accordance with the Local Government Access to Information provisions and specific regulations relating to Executive Arrangements (S.I. 2012/2089).

Overview and Scrutiny

11. As touched on above, executive arrangements by a local authority must also include provision for one (or more) committees to exercise the role of overview and scrutiny committee (OSC). The membership of any such committees must reflect the political balance of the Council but must not contain members of the Executive. However, such committees may include people who are not members of the authority, although they will be non-voting members unless a specific scheme is put in place which allows them to vote. The authority must also designate a specific officer as a "scrutiny officer" to promote and support the OSC and its members.
12. The Act stipulates that the OSC must have within its remit the power to:

- a. review or scrutinise decisions made by portfolio holders/Cabinet and also those functions within the remit of Council or any of its other committees,
- b. make reports or recommendations to the Council or Cabinet with respect to any of the functions which are the responsibility of the Executive and also those functions within the remit of Council or any of its other committees, and
- c. make reports or recommendations to the Council or Cabinet on matters which affect the authority's area or the inhabitants of that area.