

WIRRAL COUNCIL

16 APRIL 2012

SUBJECT:	REPORT OF THE DEMOCRACY WORKING PARTY - CHANGING GOVERNANCE ARRANGEMENTS
WARD/S AFFECTED:	ALL
REPORT OF:	DIRECTOR OF LAW, HR AND ASSET MANAGEMENT
KEY DECISION?	NO

1.0 EXECUTIVE SUMMARY

- 1.1 A letter dated 9 March 2012 from the Department of Communities and Local Government to the Chief Executive has highlighted the flexibility provided by the Localism Act on the way in which the Council can conduct its business. It also informs that the Government intends to bring the further provisions of the 2011 Act, and associated secondary legislation, needed for councils to operate the committee system into force from 4 May 2012.
- 1.2 The letter goes on to say that if the Council wishes to put proposals for some novel form of governance arrangements to the Secretary of State, it should submit the proposal setting out how it considers the following statutory conditions would be met -
- that the operation of the proposed arrangements would be an improvement on the council's current arrangements;
 - that the operation of the proposed arrangements would be likely to ensure that decisions are taken in an efficient, transparent and accountable way; and
 - that the proposed arrangements would be appropriate for all councils or any particular description of council.
- 1.3 Any submission will need to describe how and by whom the functions of the Council are to be discharged under the proposal and the arrangements for delegation.
- 1.4 The Council can keep the Strong Leader and Cabinet Executive model it has at present, or opt for a Committee system, or for some kind of a hybrid arrangement. However, councils preferring to adopt a hybrid model may have to seek the approval of the Secretary of State.
- 1.5 This report details the work required and the progress made by the Democracy Working Party to put the Council in a position where it can change its governance arrangements from the 2013/14 Municipal Year.

2.0 THE LOCALISM ACT 2011

2.1 The Localism Act 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; and
- publish in one or more newspapers circulating in the area, a notice which describes the features of the new system and timescales for implementation.

2.2 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 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.

2.3 Once a council passes a resolution to change its governance arrangements, it may not pass another resolution to change from one form of governance to another (e.g. from a Committee System back to a Strong Leader and Cabinet model of governance) for five years, unless a referendum is held on the issue and a majority of those electors voting support the proposed change.

3.0 BACKGROUND

3.1 On 14 February 2011 the Council welcomed the anticipated flexibility being provided to local authorities through new measures set out in the Localism and Decentralisation Bill which was published on 13 December 2010 and particularly the proposal for the delegation of significant amounts of executive authority to Members.

3.2 The Council was of the view that steps should be taken to enhance the role of all Members by preparing to move towards a modernised committee structure, creating a more democratic Council with the opportunity for all Members to be involved in making real decisions on matters that affect their residents and being held accountable for them. Consequently, the Director of Law HR and Asset Management was instructed to immediately begin holding and facilitating discussions between the three Party Leaders to develop a new governance model for Wirral, within existing resources, to be ready to come into operation at the earliest opportunity within the 2011/12 Municipal Year once the relevant legislation was in place.’

3.3 The Council established an all Party Democracy Working Party on a 2:2:2 basis at its meeting on 17 October 2011 with the following terms of reference:

'To seek to achieve consensus on the most appropriate form of democracy within the Council, taking into account the strengths and weaknesses both of the old Committee System and the current Cabinet System, and of any legislation and subsequent regulations as these become known.' (Minute No. 51 refers.)

- 3.4 The Council also asked that any new system, that had all Party approval, be prepared ready for adoption at its Annual Meeting, in May 2012 or as soon thereafter that the enactment of the Localism Bill and any subsequent regulations allowed.
- 3.5 The Democracy Working Party began to meet regularly and made good progress. The Council considered a report by the Director of Law, HR and Asset Management on this at its last meeting. (See paragraph 3.7 below.)
- 3.6 At the Budget Cabinet meeting held on 20 February 2012, when proposing the Council's 2012/13 Budget, the Leader of the Council stated that:

"We will ensure our business is conducted in the most transparent manner possible involving as many Council Members as possible. We today instruct the Director of Law, HR and Asset Management to bring forward at the earliest possible opportunity a report detailing how this Council will return to the Committee System to ensure that decision making rests in the hands of the many not the few." (Minute No. 137 refers.)

- 3.7 At the Council meeting on 1 March 2012 the Director of Law, HR and Asset Management presented a report about changing governance arrangements and, in particular about a proposed reintroduction of a Committee System, which would involve all Member decisions being made by committees made up of Members from all political groups to reflect the political balance of the authority. However, because of the lateness of the hour and the need for the matter to be fully debated, consideration of the report was deferred to 7 March 2012 when the Council reconvened (Minute No. 134 refers).
- 3.8 At the reconvened meeting of the Council on 7 March 2012 consideration was given to the following motion, moved by Councillor T Harney and jointly seconded by Councillors J Green and S Foulkes, and it was resolved:

'That

Council notes the Report of the Director of Law, HR and Asset Management and welcomes the progress made following the Council decision of 14 February, 2011.

Council thanks all those who have contributed to the work to date including members of the Democracy Working Party.

Council recognises that it does not at this time have sufficient information to make any substantive decisions concerning a possible change to its governance arrangements.

Council resolves:

- (1) To refer the report to the Democracy Working Party (DWP) to progress this matter.
- (2) To ask the Democracy Working Party to continue its work and report to Council in April.
- (3) The report of the Democracy Working Party will contain a risk assessment of any proposals or options outlined in the report, an analysis of the benefits of piloting a new system prior to its introduction, and an assessment of the financial and staffing implications.
- (4) To authorise the Director of Law, HR and Asset Management to discharge the costs of any external advice from balances.
- (5) The Director of Law, HR and Asset Management is also requested to explore whether organisations such as the Local Government Association could provide advice and assistance.
- (6) The Democracy Working Party be asked to include consultation with the public as part of further work on the new governance arrangements.'

4.0 THE DEMOCRACY WORKING PARTY

- 4.1 The Council established the Democracy Working Party with a view to it reaching a consensus on a recommendation to be put forward on the most appropriate governance arrangements for the Council to adopt. The Working Party has met, so far, on nine separate occasions and has made good progress. It has examined the draft schemes of delegation for Brighton and Hove City Council and the London Borough of Sutton. It has also met with the Head of Democratic Services at Brighton and Hove City Council to discuss its proposed new Committee System and related issues, looked at best practice and how to avoid any pitfalls. A draft Constitution has been prepared and work in a number of areas is well in hand but Members have not yet studied the detail of that work. Consequently, the Working Party is not yet in a position to recommend any governance model to the Council for adoption.
- 4.2 It had been hoped that the Democracy Working Party may be able to conclude its work in sufficient time for the Council to introduce a new governance model at its Annual Meeting on 14 May 2012. Unfortunately, this is not the case, as the timetable to bring this about is too tight and there is still a considerable amount of work to do. Although there is clearly an appetite for change, the Working Party has agreed that the risks associated with it need to be thought through and mitigated. To do this a risk register (which is currently in the first draft stage) must be completed and agreed. The Working Party has yet to come to an agreement on a new structure and meeting cycle. Following on from this, it will also need to propose a Calendar of Meetings. Therefore, it wants to spend some time on these matters to ensure that what it proposes is fit for purpose. It also wants to facilitate the drawing up a robust Constitution to take the Council forward.

- 4.3 Public consultation on any proposed governance changes must be undertaken, in accordance with the Council's Constitution, and there is not sufficient time available to do this and report the results to the Council in the current Municipal Year.
- 4.4 With effect from 4 May 2012, the obligation to have an Overview and Scrutiny Committee has been removed. However, some Members are interested in retaining some elements of the scrutiny function and the Democracy Working Party has work still to do on this. 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 expected secondary legislation which will provide detail about the delegation of powers.
- 4.5 The Council has recognised that it has improvement needs and is working with the Local Government Association on this. It has put in place an Improvement Board to provide support and help continue to improve performance. The Improvement Board is providing advice and informing of best practice and what works well in other local authorities. The Democracy Working Party is keen to work with the Improvement Board and to receive its endorsement to any recommendations it puts forward regarding the future governance arrangements of the Council.
- 4.6 Under these circumstances, the Democracy Working Party has concluded that it is not practical to make any changes to the Council's governance arrangements to come into force in May 2012.
- 4.7 The three Party Leaders attended the last meeting of the Democracy Working Party and gave a joint commitment to the work of the Democracy Working Party continuing.
- 4.8 Since the Democracy Working Party's last meeting Officers have become aware of some research being undertaken by the Centre for Public Scrutiny (CfPS). CfPS intends to publish a report, later this month entitled 'Musical Chairs' which will examine the opportunities and pitfalls presented by the Localism Act 2011 to move away from Strong Leader and Cabinet models. The Working Party may wish to consider this report.

5.0 RELEVANT RISKS

- 5.1 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. Further work will be undertaken on risk assessments and the draft risk register.

6.0 OTHER OPTIONS CONSIDERED

- 6.1 The Council could decide that there is insufficient benefit in continuing the work necessary to introduce a different system of governance.

7.0 CONSULTATION

- 7.1 A Member/Chief Officer survey has already been carried out with a 79% return rate. The findings were that 70% of those who responded to the survey said they would prefer the Council to have a Committee System.

7.2 As 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.

7.3 The Localism Act does not require the Council to consult with local people on a proposal to move to a different form of governance. However, the Council's Constitution states that a public consultation must be carried out over any proposal to change the Council's governance arrangements.

8.0 IMPLICATIONS FOR VOLUNTARY, COMMUNITY AND FAITH GROUPS

8.1 None

9.0 RESOURCE IMPLICATIONS: FINANCIAL; IT; STAFFING; AND ASSETS

9.1 There is limited officer capacity available to carry out the work required. Therefore, a Legal Advisor from Weightmans has already been appointed on a fee of £16,600 to provide advice and assistance to the Democracy Working Party to undertake work relating to a potential change in the Council's governance arrangements. He is redrafting parts of the Constitution.

9.2 If the Council agrees to adopt alternative governance arrangements there will be costs associated with the work that must be carried out by the Independent Remuneration Panel to produce a new Scheme of Members' Allowances. The Chair of the Panel is the only Panel Member who will receive payment for the work, but all Panel Members will receive payment for out-of-pocket expenses. The total cost of convening the Panel is expected to be in the region of £3000.

9.3 If the Council agrees change its governance arrangements and more meetings result from this, then, there may be a requirement for an increase in democratic support. This may be offset by changes to overview and scrutiny arrangements but that will depend on whether scrutiny will be part of the new model of governance. In addition printing costs may increase.

10.0 LEGAL IMPLICATIONS

10.1 The Localism Act describes the process that needs to be followed to change governance arrangements. This is set out above. A change in governance arrangements will require the Council's Constitution to be redrafted.

11.0 EQUALITIES IMPLICATIONS

11.1 Has the potential impact of your proposal(s) been reviewed with regard to equality?

No.

12.0 CARBON REDUCTION IMPLICATIONS

12.1 There are implications associated with a possible increase in meetings as a result of new governance arrangements e.g. heating, lighting, extra journeys made by

Members' attending more meetings at the Town Hall. There may be an increase in the number of agendas printed, paper, ink and electricity used.

13.0 PLANNING AND COMMUNITY SAFETY IMPLICATIONS

13.1 None.

14.0 RECOMMENDATIONS:

14.1 The Democracy Working Party recommended unanimously that the Council be recommended to agree that:

- (a) it is not practical to introduce new governance arrangements from the beginning of the 2012/13 Municipal Year;
- (b) the Democracy Working Party be asked to continue with its work, with a view to making recommendations and ensuring everything is in place to enable a possible change to the Council's governance arrangements, from the 2013/14 Municipal year and in so doing:
 - (i) draw up a time specific work programme to be rigidly adhered to;
 - (ii) investigate and review all possible governance arrangements, looking particularly at the scrutiny function, and consider the possibility of adopting a hybrid model as an alternative to a committee system, having regard to the pros and cons of each;
 - (iii) agree the constitutional changes required;
 - (iv) continue with its work on risk assessments and draw up an agreed risk register; and
 - (vi) agree the timing of and carry out a two stage public consultation exercise, firstly on key principles and secondly on its preferred model of governance.
- (c) the Democracy Working Party, in fulfilling its remit, is to work very closely with the Improvement Board with a view to receiving its endorsement, to the recommendations that it puts forward, regarding the future governance arrangements of the Council.

18.0 REASON/S FOR RECOMMENDATION/S

18.1 To ensure that it has the agreement of the Improvement Board and that all necessary work has been completed so that the Council has arrangements in place and a new Constitution if it resolves to change its model of governance from the beginning of the 2013/14 Municipal Year.

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APPENDICES

None

REFERENCE MATERIAL

Letter from the Department of Communities and Local Government to the Chief Executive dated 9 March 2012.

SUBJECT HISTORY (last 3 years)

Council Meeting	Date
Council	14 February 2011
Council	17 October 2011
Budget Cabinet	20 February 2012
Council	1 and 7 March 2012
Democracy Working Group	15 November and 1 December 2011, 10 and 18 January, 9 February, 14, 23 and 29 March and 3 April 2012