

MEDWAY COUNCIL

NEW EXECUTIVE ARRANGEMENTS

Under the Local Government and Public Involvement in Health Act 2007, Medway Council is required to change its current system of executive governance.

Background

Medway Council, in accordance with the requirements of section 33E of the Local Government Act 2000, drew up proposals for changes to its governance arrangements with effect from May 2011.

At its meeting on 29 July 2010, the Council indicated that its preferred model is the new-style Leader and Cabinet form of Executive, in accordance with section 11 of the Local Government Act 2000.

Before drawing up proposals for the change in governance arrangements, the Council undertook a consultation exercise to gather the views of local people on the choice of the executive model and the outcome of this was reported to Council on 29 July 2010.

In drawing up these proposals, the Council has considered the outcome of the consultation process, the government's intentions to introduce further legislation regarding local authority constitutions and the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Analysis of the new executive models was set out in the report to Council on 4 March 2010 and 29 July 2010. Copies of these reports are attached to this document.

The new Leader and Cabinet model

At a special meeting of full Council on 25 November 2010 the Full Council resolved to operate the "new style" Leader and Cabinet form of executive.

The main features of the arrangements are:

- The Leader will be elected by the Council at its Annual Meeting after the 2011 local elections and will hold office for a four-year term unless he or she resigns or ceases to be a Councillor.
- The Leader will be responsible for appointing the Deputy Leader. Unless he or she resigns or ceases to be a Councillor they hold this office for the term of the Leader.
- The Leader may, if he or she thinks fit, remove the Deputy Leader from office.
- The Leader will be responsible for appointing the other Executive Members, subject to the statutory maximum of ten, and for determining their Portfolios.
- Full Council may, by resolution, remove the Leader during his or her four-year term of office.
- The allocation of local choice functions between the Executive and the Council will continue as set out in the Council's current Constitution.

The new executive arrangements will be put into place on the third day after the local government elections on 5 May 2011. Full Council has also resolved to amend the Council's Constitution to give effect to the changes.

In terms of transitional arrangements for the implementation of the proposals, the existing form of Leader and Cabinet Executive arrangements will continue in operation until the third day after the 2011 local government election.

A copy of the report and minutes from the special Council meeting on 25 November are attached to this document.

COUNCIL

4 MARCH 2010

CONSULTATION ON CHANGES TO EXECUTIVE ARRANGEMENTS

Portfolio holder: Councillor Rodney Chambers, Leader of the Council

Report from: Deborah Upton, Assistant Director Housing and Corporate Services

Author: Julie Keith, Head of Democratic Services

Summary

The purpose of this report is to advise the Council of the required process and proposed programme of consultation on changes to executive arrangements and to ask the Council if it wishes to express a view on a preferred model for Medway before formal consultation starts.

1. Budget and Policy Framework

1.1 The report deals with the requirement in the Local Government and Public Involvement in Health Act 2007 (LGPIHA) for the Council to consult on changes in executive arrangements. This will generate some changes to the Council's constitution with effect from May 2011.

2. Background

2.1 The Local Government Act 2000 introduced a separation of powers into local government for all but the smallest local authorities with the aim of making council decision-making more efficient, transparent and accountable. This marked the end of the long established committee system and required local authorities with populations of over 85,000 to adopt either a mayoral system or a leader and cabinet. Non-executive councillors were expected to develop a stronger role in community representation and a role in scrutinising executive decision-making.

2.2 316 Councils (or 81%), including Medway, opted for the leader/cabinet system. As at the end of 2008 twelve council areas had a directly elected Mayor: Bedford, Doncaster, Hackney, Hartlepool, Lewisham, Mansfield, Middlesbrough, Newham, North Tyneside, Stoke-on-Trent,

Torbay and Watford. Of the twelve Mayors some are from political parties, others are independent. (Note: In June 2009 Stoke-on-Trent moved to a leader and cabinet executive).

- 2.3 The Government has now legislated in the Local Government and Public Involvement in Health Act 2007 to require all Councils operating executive arrangements to opt for a new leadership model. The option of a directly elected mayor and council manager has been removed and the Council is not able to retain its current system of an indirectly elected leader elected on an annual basis. Local authorities now have to choose between one of two models of governance as the Government believes these executive arrangements most readily deliver strategic leadership, sharp accountability and effective and efficient decision-making. The choice now is between:
- A directly elected mayor with a four year term who then appoints the executive or
 - An indirectly elected leader, appointed for a four year term, who then appoints councillors to the executive
- 2.4 The Act details the procedure that local authorities must follow to make the change to their executive arrangements. The procedure requires the Council to draw up formal proposals for change.
- 2.5 **Before** drawing up formal proposals for new arrangements the Council “must take reasonable steps to consult the local government electors for, and other interested persons in” the Council’s area. The consultation will need to cover both the available models, explaining how they will operate in enough detail and sufficiently in advance of making a decision, for interested persons to consider and respond. The Council may include its preferred option in the initial consultation but must have proper regard to the outcome of the consultation when determining which new executive arrangements to adopt. A referendum can be carried out but is not required.
- 2.6 After the initial public consultation the Council must draw up its formal proposal taking into account the extent to which, if implemented, the proposal is likely to assist in securing continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness (in other words, there is a requirement to take account of best value). Details of which functions are to be the responsibility of the executive and which are not to be their responsibility must be included in the proposals. The proposed new executive arrangements must be advertised in a local newspaper and copies made available at the civic offices for inspection by the public.
- 2.7 The Council must then set up a special meeting of the Council to pass a resolution adopting a new executive arrangement before 31 December 2010 and further advertise its decision.

2.8 Implementation of the new executive arrangements takes place three days after the May 2011 elections.

3. Timetable

3.1 The last day that the Council can continue to operate its current arrangements is the third day following the 2011 local elections but it must pass a resolution deciding on the form of its new executive arrangements before 31 December 2010. (Failure to do so will result in intervention by the Secretary of State).

3.2 The Council is required to agree a timetable with respect to the implementation of the proposals.

3.3 Following the Council decision, work will be required to amend the Council's Constitution to reflect the new model of governance adopted by the Council. Clearly this will be a more extensive process if the mayoral model is chosen. Adjusting the current constitution to reflect the four year leader and cabinet model would be relatively straightforward.

3.4 Should the Council adopt the mayoral model the Medway electorate would be invited to elect a mayor who would serve for the full term of the next Council. The election would take place at the same time as the Council elections in May 2011. A new leader and cabinet model would require the Council to elect its leader for the next four years at the post-election annual Council meeting in 2011.

3.5 The proposed timetable is set out below:

- Report to Council on 4 March advising of process and seeking approval to commencement of consultation
- March to June 2010 - consultation via website, Medway Matters and the Medway Citizens Panel, noting that publicity on this issue on the Council's website and in Medway Matters will not happen during purdah in the run-up to the General Election.
- Report to Council on 29 July on the outcome of consultation and seeking adoption of a formal proposal
- August-October advertise and place formal proposals on public deposit
- Special Council meeting immediately before ordinary Council meeting on 25 November to consider resolution and adopt new executive arrangements and changes required to the Constitution
- Statutory advertisement of adopted proposals
- New executive arrangements come into effect on third day after local elections in May 2011

4. Advice and analysis – the new executive models

4.1 The Council could express a view on its preferred executive model at this stage although it cannot draw up a formal proposal until the

outcome of initial public consultation has been properly considered. Currently Medway operates a leader and cabinet model and has opted for the strong leader model under the provisions of the Local Government Act 2000. This means that the leader (rather than the Council) appoints up to nine other members to serve on the Cabinet, determines their portfolios and the scheme of executive delegations.

- 4.2 In its White Paper “Strong and Prosperous Communities” the Government set out the case for further reforms to local government leadership arrangements. It drew on a 2005 survey of councillors, officers and stakeholders which supported the view that the arrangements introduced by the 2000 Act facilitate visible and effective leadership. However it points out that many local authorities have adopted a cautious approach to change, with only 12 local authorities introducing elected mayors.
- 4.3 Both of the new models for executive arrangements in the 2007 Act place all executive powers in the hands of one individual, who, in the normal course of events, will serve an uninterrupted four year term. An elected mayor cannot be replaced until the next election. In the leader and cabinet model, the Council will be required to appoint a leader for a four year term. There is an option to include provision for the Council to remove the leader during that time and the constitution must state whether or not this option applies. The council leader must appoint and dismiss his or her cabinet of up to nine councillors and decide what (if any) executive powers they will exercise. The LGPIHA has also made it easier for Councils to have a directly elected mayor by repealing the requirement in the 2000 Act for a referendum to take place before a shift to elected mayor takes place.

Elected mayor

- 4.4 An elected mayor is not a councillor. He or she does not have an electoral division to represent and would work full time as mayor. A directly elected mayor would be elected by the voters of Medway as a whole and would have a direct mandate from them to deliver his or her election promises. Since the mayor is not appointed by the Council it is possible he or she may not be a member of the majority group, assuming there is one, or for that matter of any political party. A mayor would still be reliant on the Council to approve any budget that he or she proposed and would therefore need to work with other members to ensure that this could be agreed. The mayor would have to appoint a cabinet of up to nine councillors. This could be made up of Councillors from different political groups.
- 4.5 The Council would have to decide what action to take in relation to the functions currently performed by the civic and ceremonial Mayor of Medway. There would an option to include this in the role of the new directly elected Mayor or to preserve a separate position for civic and ceremonial matters. In Watford, for example, the traditional position of a civic and ceremonial Mayor has been re-designated as Chairman of the Council and this Councillor performs all civic and ceremonial

functions. In Newham the position of the traditional “chain and gown” mayor has been disestablished and civic and ceremonial functions are handled by the directly elected mayor.

Leader and cabinet model

- 4.6 A leader would, as now, be directly elected by the Council and so have the mandate of the Medway electorate indirectly. There would be a concentration of powers in the hands of the leader who would have a presumptive four-year term of office, which could only be taken away by a majority vote in full Council and only if this were provided for by the constitution. The leader would therefore need to command the support of a majority of the Council. The leader would also be a councillor and as such would be required to combine his or her role representing the views of his or her ward. The leader would also have to appoint up to nine councillors to form a cabinet.
- 4.7 Once in office, there is little difference between the role now required for the new style leader and that of an elected Mayor. In either case an individual will initially hold all of the Council’s executive functions under their personal control. It will then be for him or her to choose whether to exercise some or all of these functions personally or to make arrangements for their discharge by an executive, individual member of the executive or by officers. The executive will normally be able to further delegate the functions allocated to it.
- 4.8 As now, executive members must be appointed from amongst elected councillors, but it is for the council leader or mayor to choose just how many members will join him or her on the executive (between two and nine). The mayor or leader must appoint a deputy who will hold office until the end of the mayor/leaders term (but a deputy can be removed and replaced mid-term by the leader or mayor). There is scope for two formal deputies to be appointed. The Act specifies that the deputy will take up the role of the leader/mayor if the latter is unable to act or the office becomes vacant.
- 4.9 The legislation makes no changes to the allocation of functions between the executive and the council and its committees. There continues to be only a limited number of functions which the council can choose to allocate as either executive or non-executive functions. There is no requirement to make any changes to the allocation currently contained in Medway’s constitution.
- 4.10 It is important that the Council complies with the requirements for consultation contained in the LGPIHA. 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 relevant legislation does not provide for a specified period of consultation, nor detailed requirements, the Council has the flexibility to decide the appropriate level of consultation.

4.11 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 playing “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.

4.12 In light of paragraphs 4.10 and 4.11 above the consultation material will need to outline both of the two possible forms of executive arrangements that are now possible under the 2000 Act and invite views on which of the two possible forms the Council should adopt. It is proposed that the initial public consultation should be fairly broad to enable all interested parties to be able to have their say before the Council draws up its formal proposals in July. It is proposed that the consultation should include:

- A survey of the Medway Citizens Panel in March, which comprises a representative group of 1500 Medway people
- Information on the Council’s website inviting feedback and including an on-line survey
- An article in Medway Matters inviting feedback

The outcome from the consultation will be reported back to the Council on 29 July at which time formal proposals will need to be agreed and advertised taking into account the outcome of the initial consultation.

4.13 The Council is asked to authorise the Assistant Director, Housing and Corporate Services to approve the material on which the consultation will be based taking into account feedback from each party group leader on the draft.

5. Risk Management

5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. The risks associated with this constitutional issue are set out below:

Risk	Description	Action to avoid or mitigate risk
The Council fails to meet the statutory timescale for resolving to adopt new governance arrangements	The Secretary of State will intervene and impose the Leader/Cabinet system if the Council fails to pass a resolution before 31 December 2010	This report sets out a planned timescale for meeting the statutory timescales and undertaking the public consultation required
Unbudgeted expenditure in 2011/12 for election of a Mayor if the Council opts for this model of governance	If the Council chooses to move to a Mayoral system of governance the election of a Mayor would have to take place at the same time as the local elections in May 2011	By planning ahead the Council should have a clear idea of which model it wishes to adopt by July and, if necessary, the potential cost of a Mayoral election can be factored into the preparations for setting the Council's 2011/2012 budget

6. Consultation

- 6.1 This report deals with constitutional changes that are a matter for the full Council. The Monitoring Officer is therefore reporting the matter directly to the Council. Proposals for public consultation to meet statutory requirements are set out in the body of the report.

7. Financial and legal implications

- 7.1 The legislative framework for the required changes to the Council's executive arrangements are set out in full in the body of the report.
- 7.2 There are separate provisions under the Local Government Act 2000 requiring local authorities to draw up proposals which include an elected Mayor (and hold a referendum on those proposals) where a valid petition signed by at least 5% of local electors is received
- 7.3 There will be some costs incurred in carrying out the required statutory consultation during the Spring of 2010 and, with the exception of the survey of the citizens panel, this is currently unbudgeted expenditure.
- 7.4 There would be significant additional costs associated with the organisation of the local elections in 2011 if the Council adopted a mayoral system of governance but these would be mitigated by the action set out in the risk analysis. The costs would need to be reflected in the Councils 2011/12 budget.

8. Recommendations

- 8.1 The Council is asked to note the requirements of the LGPIHA 2007 in relation to adoption of new executive arrangements and to consider whether it wishes to express a preference for one of the two available options at this stage.
- 8.2 That the proposed timetable and process for consultation as set out in this report be agreed.
- 8.3 That the Assistant Director, Housing and Corporate Service be authorised to approve the material for the public consultation exercise taking into account any comments from group leaders on the draft material.

Lead officer contacts

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Background papers

Local Government and Public Involvement in Health Act 2007
New Council Constitutions - A summary of the ELG Research Findings
published by DCLG October 2006

COUNCIL

29 JULY 2010

CHANGES TO EXECUTIVE ARRANGEMENTS

Portfolio Holder: Councillor Rodney Chambers, Leader of the Council
Report from: Deborah Upton, Assistant Director Housing and Corporate Services
Author: Julie Keith, Head of Democratic Services

Summary

The purpose of this report is to advise the Council of the outcome of public consultation on new executive arrangements and seek a decision on which of the two available options the Council wishes to propose.

1. Budget and Policy Framework

1.1 The report deals with the requirement in the Local Government and Public Involvement in Health Act 2007 (LGPIHA) for the Council to draw up proposals for a new leadership model. The choice is between an indirectly elected leader, appointed for a four year term, who then appoints councillors to the executive and a directly elected Mayor with a four year term who appoints an executive. This will generate some changes to the Council's Constitution with effect from May 2011.

2. Background

2.1 The Local Government and Public Involvement in Health Act 2007 requires all Councils operating executive arrangements to opt for a new leadership model. The choice is between:

- An indirectly elected leader, appointed for a four year term, who then appoints councillors to the executive or
- A directly elected Mayor with a four year term who then appoints the executive.

2.2 The last day the Council can continue to operate its current arrangements is the third day following the 2011 local elections but it must pass a resolution deciding on the form of its new executive arrangements before 31 December 2010.

- 2.3 Before drawing up formal proposals for new arrangements the Council “must take reasonable steps to consult the local government electors for, and other interested persons” in the Council’s area.
- 2.4 The Council then has to draw up its formal proposal and advertise the proposed new executive arrangements in a local newspaper and make copies available at the civic offices for inspection by the public.
- 2.5 Finally a special meeting of the Council must be convened before 31 December 2010 to pass a resolution adopting new executive arrangements. The resolution has to be advertised with implementation of the new executive arrangements taking place three days after the May 2011 elections.
- 2.6 On 4 March 2010 the Council agreed a timetable for this process involving public consultation between March and June, drawing up of a formal proposal at this Council meeting and a special Council meeting to adopt a new executive arrangement on 25 November, immediately before the ordinary Council meeting on that date (minute no. 644(B)/2010).
- 2.7 The Council decided not to express a preference for one or other of the options in March and agreed that consultation should take place primarily through a survey of the Medway Citizens Panel – which as the panel is representative of Medway’s community will give a representative view, whilst additionally inviting comments from residents through an article in Medway Matters and information on the Council’s website inviting feedback through an on-line survey. As part of the consultation exercise the Council decided to seek views on whether the Council should include a provision in its Constitution which allows for the removal of the Leader by resolution of the Council. Information about the consultation was also provided as a press release to all local media on 10 May 2010 resulting in a news story in The Medway News.

3. Outcome of consultation

- 3.1 The explanatory material and questions posed in the consultation exercise are attached at Appendix 2 to this report. All Group Leaders were fully consulted on the content and format of this material together with the article in Medway Matters. The article signposted readers to the more detailed information on the Council’s website and also offered the option of sending a written response to the Head of Democratic Services. Appendix 3 summarises the results of the consultation and a selection of comments received as part of the feedback.
- 3.2 718 members of the citizens panel responded (a 50% response rate). Of those, 33.7% were in favour of the leader/cabinet model and 29.9% were in favour of the elected mayor model. 36.4% had no preference. Overall this topic has not generated great public interest. A very low level (78) of additional comments have been received, representing 0.04% of the local government electorate in Medway. Of those 18 were in favour of the leader/cabinet model and 59 in favour of the elected mayor model.
- 3.3 The public consultation has not identified clear public desire for change to current arrangements, with the representative survey indicating marginal

support for the leader/cabinet model.

- 3.4 Of those respondents who expressed a preference for a Leader and Cabinet, 94.23% expressed the view that the Council should include provision to enable removal of the Leader by resolution during the four-year term. 1.54% expressed the view that the Council should not include this provision with the remaining 4.23% either not providing a preference or response.

4. Drawing up proposals and next steps

- 4.1 Now that the Council has concluded the consultation on the options for new executive arrangements it must draw up proposals for change, taking into account the extent to which, if implemented, the proposal is likely to assist in securing continuous improvement in the way in which its functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Appendix 4 sets out a draft proposal for an indirectly elected Leader and Cabinet and appendix 5 sets out a draft proposal for a directly elected Mayor model.
- 4.2 Details of which functions are to be the responsibility of the executive and which are not to be their responsibility must be included in the proposal. Currently, Chapter 3 – responsibility for functions, in the Council’s constitution, sets out the responsibility for functions. These are divided by between the executive and Council. In both cases, some functions are subject to onward delegations to employees. In addition, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 (as amended) provides additional direction as to the responsibilities for functions between the executive and Council. There is no reason to make any changes at this stage as the current arrangements have been approved by the Council and work well.
- 4.3 The proposals must be advertised in a local newspaper and copies made available at the civic offices before the Council formally adopts a new executive arrangement on 25 November.
- 4.4 Depending on which option is selected by the Council some changes will be required to the Constitution and these will be recommended to the Council at its meeting on 25 November. The election of an Executive Leader would take place at the Annual Council meeting after the local elections in May 2011 or alternatively a directly elected Mayor would be elected at the Council elections in May 2011.

5. Risk management

- 5.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. The risks associated with this constitutional issue are set out below:

Risk	Description	Action to avoid or mitigate risk
The Council fails to meet the statutory timescale for resolving to adopt new governance arrangements	The Secretary of State will intervene and impose the Leader/Cabinet system if the Council fails to pass a resolution before 31 December 2010	The Council has already agreed a planned timescale for meeting the statutory deadline including a clearly defined period of public consultation
Unbudgeted expenditure in 2011/12 for election of a Mayor if the Council opts for this model of governance	If the Council chooses to move to a Mayoral system of governance the election of a Mayor would have to take place at the same time as the local elections in May 2011	By planning ahead the Council will have a clear idea of which model it wishes to adopt by July and, if necessary, the potential cost of a Mayoral election can be factored into the preparations for setting the Council's 2011/2012 budget.

6. Consultation

- 6.1 This report deals with constitutional changes that are a matter for the full Council. The Monitoring Officer is therefore reporting the matter directly to the Council. The Council agreed the process for public consultation at its meeting on 4 March 2010, the outcome of which is summarised above in paragraph 3.

7. Financial and legal implications

- 7.1 The legislative framework for the required changes to the Council's executive arrangements are contained in the Local Government and Public Involvement in Health Act 2007 and summarised in the body of the report.
- 7.2 There are separate provisions under the Local Government Act 2000 requiring local authorities to draw up proposals which include an elected Mayor (and hold a referendum on those proposals) where a valid petition signed by at least 5% of local electors is received.
- 7.3 Since the Council last considered this matter a new coalition Government has been formed. The Coalition, in its programme for Government, has published a five-year programme which states it will create directly elected Mayors in the 12 largest English Cities and also allow Councils to return to the Committee system should they wish to do so. However in recent advice to a neighbouring local authority, Communities and Local Government (CLG) has stated these changes will require legislation and in the short term, local authorities required to change governance arrangements under the Local Government and Public Involvement in Health Act 2007 remain under a statutory duty to act in accordance with these provisions.

- 7.4 This advice has been reinforced in a letter to Council Leaders from Grant Shapps MP, Minister for Housing and Local Government on 7 July 2010 stating that although the Government also intends to remove the necessity to elect a Leader for four years, requirements for Councils to adopt a new governance model from May 2011 remain in force, i.e. the Council is required to make a decision on either of the proposed models by 31 December 2010. The letter is attached at Appendix 1.
- 7.5 The Minister also asks local authorities to take account of the current financial climate and to incur only minimal expenditure on consultation with local government electors and other interested parties on new governance models.
- 7.6 The cost of public consultation on new executive arrangements in Medway has been contained within existing budgets although there will be some unbudgeted expenditure associated with publication of subsequent statutory notices.
- 7.7 There would be significant additional costs associated with the organisation of the local elections in 2011 if the Council adopted the mayoral system of governance but these would be mitigated by the action set out in the risk analysis. The costs would need to be reflected in the Council's 2011/12 budget.

8. Recommendations

- 8.1 The Council is asked to determine whether to draw up proposals either:
- (i) for an indirectly elected Leader, appointed for a four year term, who then appoints councillors to the Executive or,
 - (ii) a directly elected Mayor with a four year term who appoints an executive and
 - (iii) in so doing, to determine at this stage not to make any changes to the allocation of functions between the executive and Council as set out in the Council's Constitution.
- 8.2 The Council is asked to decide if it would wish to include provision in the Constitution which allows for removal of the Leader by resolution of the Council, if it draws up a proposal for an indirectly elected Leader.
- 8.3 The Council is asked to delegate authority to the Assistant Director, Housing and Corporate Services, to draw up and publish the Council's proposal in an appropriate format to meet the requirements of the Local Government and Public Involvement in Health 2007 Act based on either:
- (i) the draft Leader and Cabinet proposals (appendix 4 to the report) or
 - (ii) the draft directly elected Mayor proposals (appendix 5 to the report).

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Appendices

Appendix 1 – Letter from Grant Shapps MP, Minister for Housing and Local Government, to Council Leaders 7 July 2010

Appendix 2 – Consultation material – changes to executive arrangements

Appendix 3 – Summary of outcome of consultation

Appendix 4 – Draft proposals – Leader and Cabinet model

Appendix 5 – Draft proposals – Directly Elected Mayor model.

Background papers

Local Government and Public Involvement in Health Act 2007

New Council Constitutions – A summary of the ELG Research Findings published by DCLG October 2006

Report to Full Council 4 March 2010 – item 11B

Report of Citizens Panel April 2010

Online Survey June 2010

Consultation responses – held by the Head of Democratic Services.



Leaders of Non-Metropolitan District Councils
in England

The Rt Hon Grant Shapps MP
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7 July 2010

Dear Leader

Requirement to consult under the Local Government and Public Involvement in Health Act 2007

I am writing to you about the requirements on your council to adopt a new governance model from May 2011, and before doing so to consult your local electorate and interested parties in the area. Whilst it is for each council to decide how it will meet these requirements, I would wish to highlight the Government's view that councils need not incur any significant expenditure on these requirements, and our expectation in today's circumstances that all councils will pursue this at minimal cost.

These requirements are in the Local Government and Public Involvement in Health Act 2007 and necessarily remain in force unless or until that Act is repealed by fresh primary legislation. It is our intention to do this. For your council the requirements mean that you must resolve by 31 December 2010 to move to either the new leader and cabinet model or mayor and cabinet model, and before so resolving you must take reasonable steps to consult the local electorate and other interested parties in your council's area.

In considering how to approach these requirements you will wish to have regard to the circumstances of today, including both the priority of cutting out all wasteful spending and the Government's commitments to allow councils to return to the committee system, should they wish to, and on elected mayors. We also intend to remove the necessity to elect a leader for four years. We intend to provide for these commitments in our Localism Bill to be introduced later in this Parliamentary session. This may mean that any governance model you adopt in May 2011 may be further changed within a year or so. Your decisions about consultation will also be taken in the context of the greater transparency and openness agenda which I am confident you will be putting in place throughout your council.

Accordingly, the case is strong for any consultation now about future governance arrangements to be the minimal cost option. It will be for each council to decide, but in our view no more than a small newspaper advert/article or press release on your website may be proportionate and right in these circumstances.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Grant Shapps', written in a cursive style.

GRANT SHAPPS MP

Appendix 2

CONSULTATION MATERIAL - CHANGES TO EXECUTIVE ARRANGEMENTS

All local authorities have to adopt executive arrangements which determine how executive decision-making takes place within the Council.

Currently, each year Medway Council's 55 elected Councillors elect a Leader. The Leader then appoints up to nine other councillors to form a Cabinet. The Cabinet is collectively responsible for recommending an overall budget and the policies that make up the Council's policy framework to the Full Council. The Cabinet then delivers and implements the budget and policies that have been decided by the Full Council and is also the focus for forming partnerships with other key organisations to address local needs. The Leader and Cabinet are held to account by Overview and Scrutiny Committees which are made up of Councillors from all the political groups represented on the Council. The Mayor chairs Full Council meetings and has a traditional ceremonial role.

Under the Local Government and Public Involvement in Health Act 2007, local authorities have to reconsider their decision-making arrangements. As a result, Medway Council is required to consider two alternative options for how executive decision-making by Councillors should operate from May 2011.

The two options now available to the Council are:

Option A: Leader and Cabinet

This is similar to the current arrangements, where Full Council elects a Councillor to become the Leader. However under the new law the Leader would be elected for a period of four years instead of just one. Again, as at present, the Leader would appoint up to nine Councillors who would act as Cabinet members. As now, the Leader would decide on the size of the Cabinet and appoint Cabinet members as well as deciding their portfolios of responsibility and the extent to which each Cabinet member could make decisions on an individual basis. The Leader would appoint a Deputy Leader who would also serve a four-year term. Other Councillors would continue to scrutinise the decisions of the Leader and Cabinet and undertake in-depth reviews into topics of local concern.

The Council could also make provision in its constitution for removal of the Leader by resolution.

Option B: Directly elected Mayor and Cabinet

The Mayor would be directly elected by voters in Medway, at the same time as they elect the other Councillors, to serve for a period of four years. The Mayor would then choose a Cabinet of not more than nine Councillors. The remaining elected Councillors would continue to have a role on the Council's Overview and Scrutiny Committees and to hold the directly elected Mayor and Cabinet to account. The Mayor would appoint a Deputy Mayor who would also serve a four-year term. The Council would have to decide whether to continue to have a traditional, civic and ceremonial Mayor and, if so, the position would have to be given another name to differentiate the political Mayor's role from the ceremonial Mayor. Alternatively, the directly elected Mayor could carry out civic and ceremonial functions.

There is no provision for the removal of a directly elected Mayor during the four-year term of office.

The following table directly compares how each of the options differ:

Leader and Cabinet Executives compared with Elected Mayor and Cabinet Executives

	Leader and Cabinet	Elected Mayor and Cabinet
Status	As now, the leader would be elected by the Council in May 2011 from among the 55 Councillors who are elected to serve on Medway Council	The mayor is not a councillor but is directly elected by Medway voters.
Term of office	The leader's term of office would start on the day of his or her election as leader and ends four years later on the day of the post-election annual Council meeting.	The term of office of an elected mayor is expressly said to be four years.
Discharge of functions	The leader may discharge executive functions or may arrange for their discharge by: the cabinet, a member of the cabinet, a committee of the cabinet or an employee of the Council.	The mayor may discharge executive functions or may arrange for their discharge by: the cabinet, a member of the cabinet, a committee of the cabinet or an officer of the authority.
Appointment of Cabinet	The Council's constitution must provide for the leader to determine the number of councillors appointed to the Cabinet but this must be no less than two and no more than ten.	The constitution must provide for the mayor to determine the number of councillors appointed to the Cabinet but this must be no less than two and no more than ten.
Deputy	The leader must appoint a deputy leader, who will hold office as such until the end of the leader's term of office unless he or she resigns as deputy leader, ceases to be a member of the Council, or is removed by the leader. If the office of deputy leader is vacant, the leader must appoint one .	The mayor must appoint a deputy mayor, who will hold office as such until the end of the mayor's term of office unless he or she resigns as deputy mayor, ceases to be a member of the authority, or is removed by the elected mayor. If the office of deputy mayor is vacant, the mayor must appoint one.

	Leader and Cabinet	Elected Mayor and Cabinet
Provisions if unable to act	If the leader is unable to act or the office of leader is vacant, the deputy leader must act in his or her place. If neither the leader nor the deputy leader is able to act, the cabinet must act in the leader's place or arrange for a member of the cabinet to do so.	If the elected mayor is unable to act or the office of elected mayor is vacant, the deputy mayor must act in his or her place. If neither the mayor nor the deputy mayor is able to act, the cabinet must act in the mayor's place or arrange for a member of the cabinet to do so.
Removal	A local authority's constitution may provide for the council to remove the leader by resolution.	No provision.
Appointment of assistants	In the Leader and Cabinet model, there is not a direct equivalent to the power for the Secretary of State to provide for the appointment of a person to provide assistance to an elected mayor. However, the Local Government and Housing Act 1989 contains provisions for the appointment of assistants by political groups.	The Secretary of State may by regulations make provision for or in connection with the appointment of a person to provide assistance to an elected mayor. The (Elected Mayor and Mayor's Assistant) (England) Regulations 2002 have been made to provide for this.
Civic and ceremonial duties	The Council would be entitled to retain a civic and ceremonial Mayor who would chair meetings of the full Council.	The Council could decide to disestablish the position of a civic and ceremonial Mayor. The directly elected Mayor would decide to what extent he or she would wish to perform civic and ceremonial functions. A Councillor would have to be appointed to chair Council meetings if the traditional position of civic and ceremonial Mayor was disestablished

Appendix 3

NEW EXECUTIVE ARRANGMENTS – SUMMARY OF OUTCOME OF CONSULTATION

Citizens Panel

There were 718 responses received in total which represents 50 % of the total membership of the Panel:

	Indirectly elected Leader	Directly Elected Mayor	No preference (including those who disagreed with both options)/No response	Those who favour provision for removal of Leader by Council
No of responses	242	215	261	227*
%	33.7%	29.9%	36.4%	93.8%*

*There were 242 responses to this question

On-line survey and written responses received in response to article in Medway Matters

There were 78 responses received in total which represents 0.04% of the local government electorate in Medway (please note that one respondent indicated that he wished to formally register his opposition to either proposal):

	Indirectly elected Leader	Directly Elected Mayor	No preference (including those who disagreed with both options)/No response	Those who favour provision for removal of Leader by Council
No of responses	18	59	1	18*
%	23.08%	75.64%	1.28%	100%*

*There were 18 responses to this question

Selection of reasons and comments received from those in favour of an indirectly elected Leader

- Requires less change
- Therefore easier and cheaper to adopt
- Councillors are in a better position to elect a Leader than the public as they would be aware of individual's strengths and weaknesses and the attributes required of a Leader
- Directly elected Mayor could undermine the democratic process and result in conflict between the functions of the Mayor and the majority party group
- Directly elected mayor represents unnecessary layer that could not be removed
- Public have insufficient knowledge of the role to elect the best Mayor
- Extra costs of mayoral option eg "more costly and bureaucratic", "very expensive" and increased costs in both administration and other ancillary costs
- I feel that the Leader and Cabinet option has more stability and will give a more productive and positive approach to the running of Council business.

Selection of reasons and comments received from those in favour of directly elected Mayor

- A more democratic option
- Would help residents feel more involved and empowered
- Mayor would be directly accountable to voters
- Easily identifiable and because of direct accountability may have more interest and concern for views of electorate
- Mayor would have greater prestige and operational freedom and may be separate from anyone political party
- A recognisable high profile figure would encourage civic pride
- Leader model has potential to prevent new individuals from joining the Cabinet e.g. "it seems to me that our current civic leaders are the same little group of people who reshuffle themselves from time to time"
- We have had over ten years' experience of a directly elected Mayor in London. In my view it has worked extremely well. I am certain it is right that there is no provision for the Council to remove a directly elected Mayor, and that this is a strength. It means that the democratic connection between the Mayor and the electorate is undamaged.
- I consider that there must be the greatest link between the Council and the public in all areas. At present, very often the Council seems remote and distant, making decisions that do not represent the view of the public. Whilst a directly elected Mayor does not mean this will improve it does seem to be a better way forward.

Selection of general comments

- There should be provision for the Council to remove the Mayor or Leader from office
- The whole Council should be able to choose the Cabinet – otherwise the Leader could fill it with his cronies
- Whoever leads should be honest and educated and elected by people who are the community
- Both models appear to invest a huge amount of power in very few people – brings the purpose of overview and scrutiny members into question
- Selected option should be economical, provide political transparency, enable voices to be heard and be responsive to a diverse community
- Medway should not have an elected Mayor, but neither do I like local government by diktat of the council cabinet. Members of all parties, or not parties at all, should sit on the council committees
- There should be provision for removing said Mayor if they are not up to the job.
- The election of a Mayor, accompanied by an increase in necessary staff, would just be another financial burden on hard-pressed residents.
- This survey has not been advertised widely enough. Please remedy this quickly or extend the consultation
- Needs to be better advertised. I don't know anyone who was aware consultation was happening.
- Some real publicity of this vote/decision process would be welcome, or have the Council already made up their minds.
- It would be nice to have a ceremonial mayor in the same lines as now, a elected mayor as he or she will be busy running the council he or she would not have the time to carry out ceremonial duties as well therefore the two roles should be separate

Appendix 4 – Draft proposals – Leader and Cabinet Model

DRAFT NOTICE

New executive arrangements – the Council's proposals

Medway Council, in accordance with the requirements of section 33E of the Local Government Act 2000, has drawn up the following proposals for changes to its governance arrangements with effect from May 2011.

At its meeting on 29 July 2010, the Council indicated that its preferred model is the new-style Leader and Cabinet form of Executive, in accordance with section 11 of the Local Government Act 2000.

Before drawing up proposals for the change in governance arrangements, the Council undertook a consultation exercise to gather the views of local people on the choice of the executive model and the outcome of this was reported to Council on 29 July 2010.

In drawing up these proposals, the Council has considered the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

The proposals will be considered at an Extraordinary Council meeting on 25 November 2010. The key features of the proposals are:

1. Under the new arrangements, the Leader will be elected by the Council at its Annual Meeting on 25 May 2011, after the local government elections on 5 May 2011. The Leader will hold office for a four year term unless he or she resigns or ceases to be a Councillor.
2. The Leader will be responsible for appointing the Deputy Leader. Unless he or she resigns or ceases to be a Councillor they hold this office for the term of the Leader.
3. The Leader may, if he or she thinks fit, remove the Deputy Leader from office.
4. The Leader will be responsible for appointing the other Executive Members, subject to the statutory maximum of ten, and for determining their Portfolios.
5. The Council may, by resolution, remove the Leader during his or her four year term of office.
6. The allocation of local choice functions between the Executive and the Council will continue as set out in the Council's current Constitution.
7. The Council will be asked to agree the detailed changes to the Constitution on 25 November 2010 to give effect to these proposals.

The proposals will come into effect on the third day after the local government elections on 5 May 2011. In terms of transitional arrangements for the implementation of the proposals, the existing form of Leader and Cabinet Executive arrangements will continue in operation until the third day after the 2011 local government election. The necessary amendments to the Council's constitution, to give effect to the changes, will be made in preparation for implementation following the 2011 local government elections, and agreed by Council on 25 November 2010.

Timetable

August 2010 – proposals publicised in accordance with legislation.

25 November 2010 – report to an Extraordinary Council meeting outlining response to the publicity, seeking a resolution to move to new executive arrangements and to amend the constitution to give effect to the proposed changes.

May 2011 – new form of Executive shall operate on the third day after the local government elections.

Neil Davies
Chief Executive
Medway Council

Dated:

Appendix 5 – Draft proposals – Directly elected Mayor Model

DRAFT NOTICE

New executive arrangements – the Council's proposals

Medway Council, in accordance with the requirements of section 33E of the Local Government Act 2000, has drawn up the following proposals for changes to its governance arrangements with effect from May 2011.

At its meeting on 29 July 2010, the Council indicated that its preferred model is the Directly Elected Mayor and Cabinet form of Executive, in accordance with section 11 of the Local Government Act 2000.

Before drawing up proposals for the change in governance arrangements, the Council undertook a consultation exercise to gather the views of local people on the choice of the executive model and the outcome of this was reported to Council on 29 July 2010.

In drawing up these proposals, the Council has considered the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.

The proposals will be considered at an Extraordinary Council meeting on 25 November 2010. The key features of the proposals are:

1. Under the new arrangements, the Mayor will be elected by the holding of a local election on 5 May 2011. The Mayor will hold office for a four year term.
2. The Mayor will be responsible for appointing the Deputy Leader. Unless he or she resigns or ceases to be a Councillor they hold this office for the term of the Leader.
3. The Mayor may, if he or she thinks fit, remove the Deputy Leader from office.
4. The Mayor will be responsible for appointing the other Executive Members, subject to the statutory maximum of ten, and for determining their Portfolios.
5. The allocation of local choice functions between the Executive and the Council will continue as set out in the Council's current Constitution.
6. The Council will be asked to agree the detailed changes to the Constitution on 25 November 2010 to give effect to these proposals.

The proposals will come into effect on the third day after the local government elections on 5 May 2011. In terms of transitional arrangements for the implementation of the proposals, the existing form of Leader and Cabinet Executive arrangements will continue in operation until the third day after the 2011 local government election. The necessary amendments to the Council's constitution, to give effect to the changes, will be made in preparation for implementation following the 2011 local government elections, and agreed by Council on 25 November 2010.

Timetable

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May 2011 – new form of Executive shall operate on the third day after the local government elections.

Neil Davies
Chief Executive
Medway Council

Dated:



SPECIAL MEETING OF THE COUNCIL

25 NOVEMBER 2010

ADOPTION OF NEW EXECUTIVE ARRANGEMENTS

Portfolio Holder: Councillor Rodney Chambers, Leader

Report from: Deborah Upton, Assistant Director, Housing and Corporate Services

Author: Julie Keith, Head of the Democratic Services

Summary

The Local Government and Public Involvement in Health Act 2007 places a requirement on councils to adopt new executive arrangements, which in Medway's case will have to be implemented on the third day after the May 2011 local elections.

1. Budget and Policy Framework

1.1 The report deals with the requirement in the Local Government and Public Involvement in Health Act 2007 for the Council to adopt new executive arrangements.

2. Background

2.1 The Local Government and Public Involvement in Health Act 2007 requires all Councils operating executive arrangements to opt for a new leadership model. The Council is therefore not able to retain its current system of an indirectly elected Leader appointed on an annual basis. The choice is between:

- An indirectly elected leader, appointed for a four year term, who then appoints councillors to the executive or
- A directly elected Mayor with a 4-year term who then appoints the executive.

2.2 On 29 July 2010, following consideration of the outcome of public consultation on the two options, the Council decided that proposals should be drawn up for the "indirectly elected leader" form of executive arrangements. It was also agreed that provision be included in the Council's Constitution which allows for removal of the Leader by resolution of the Council. The Council agreed there will not be any changes to the allocation of functions between the Executive and Council as currently set out in the Council's Constitution.

- 2.3 In accordance with the decision of the Council on 29 July 2010 the Assistant Director, Housing and Corporate Services has advertised the proposal to move to the “new style” Leader and Cabinet in a local newspaper and made copies available at the civic offices for inspection by the public. The proposals have also been published on the Council’s website.
- 2.4 The Council must hold a special meeting to pass a resolution adopting new executive arrangements before 31 December 2010. The resolution has to then be advertised with implementation taking place 3 days after the 2011 local elections.

3. Proposals for the change in governance arrangements

- 3.1 The 2007 Act requires local authorities to draw up proposals for the change in governance arrangements. The proposals must include a timetable for implementation and details of any necessary transitional arrangements.
- 3.2 Following the decision of the Council in July to draw up proposals for the “indirectly elected leader” form of executive arrangements these were produced and publicised in accordance with statutory requirements. A copy of the proposals are attached at Appendix A to this report (excluding the previous reports to Council in March and July which are available on the Council’s website).

4. Implications of the new indirectly elected Leader model

- 4.1 Medway currently operates a leader and cabinet model of governance and opted for the strong leader model under the provisions of the Local Government Act 2000. This means that the Leader (rather than the Council) already appoints up to nine other members to serve on the Cabinet, determines their portfolios and the scheme of executive delegations. The Council’s Constitution also already provides for removal of the Leader at any time by way of a majority of Councillors supporting a motion to do this at a full Council meeting. Therefore the only real change to current arrangements in Medway to give effect to the new indirectly elected leader model is that the Leader (and deputy leader) will serve for a four- year term instead of being elected by the Council annually. In addition the Act stipulates that if for any reason the Leader or deputy Leader are unable to act or these offices are both vacant, the Cabinet must act in the Leader’s place or must arrange for a member of the Cabinet to act in his place.

5. Proposed amendments to the Council’s constitution

- 5.1 The changes required to the Constitution, to take effect from the third day after the local government elections on 5 May 2011, are set out in detail at Appendix B for approval by the Council.
- 5.2 The Leader has taken the opportunity to put in place a delegation to the Chief Executive to take executive decisions in the unlikely event of the Leader, Deputy Leader or Cabinet being unable to act, subject to compliance with the Access to Information Rules in the Constitution.

6. Risk management

- 6.1 Risk management is an integral part of good governance. The Council has a responsibility to identify and manage threats and risks to achieve its strategic objectives and enhance the value of services it provides to the community. The risks associated with this constitutional issue are set out below:

Risk	Description	Action to avoid or mitigate risk
The Council fails to meet the statutory timescale for resolving to adopt new governance arrangements	The Secretary of State will intervene and impose the Leader/Cabinet system if the Council fails to pass a resolution before 31 December 2010	The Council has agreed a planned timescale for meeting the statutory deadline including a clearly defined period of public consultation

7. Consultation

- 7.1 Consultation was undertaken between March and July 2010 and included information on the council's website, an article in Medway Matters and a survey of the Medway Citizens' Panel. The results of the consultation process were reported the Council at its meeting on 29 July 2010.

8. Financial and legal implications

- 8.1 The legislative framework for the required changes to the Council's executive arrangements are contained in the Local Government and Public Involvement in Health Act 2007 and summarised in the body of the report.
- 8.2 A letter to Council Leaders from Grant Shapps MP, Minister for Housing and Local Government on 7 July 2010 stated that although the Government also intends to remove the necessity to elect a Leader for four years, requirements for Councils to adopt a new governance model from May 2011 remain in force, i.e. the Council is required to make a decision on either of the proposed models by 31 December 2010. The letter is attached at Appendix C.

9. Recommendations

The Council is recommended to:

- 9.1 formally resolve to adopt the new Leader and Cabinet model as defined by the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007 to be introduced from the 3rd day after the Council elections in May 2011
- 9.2 agree consequential changes to the Council's constitution as detailed in Appendix B to this report to take effect from the third day after the Council elections in May 2011
- 9.3 note that the current executive arrangements and Constitution will remain in operation until the 3rd day after the local elections.

Lead officer contacts

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Background papers

Local Government and Public Involvement in Health Act 2007
Report to Full Council 4 March 2010 – “Consultation on Changes to the Executive Arrangements” Item 11B
Report to Full Council 29 July 2010 – “Changes to Executive Arrangements” Item 11E

MEDWAY COUNCIL

NEW EXECUTIVE ARRANGEMENTS – THE COUNCIL'S PROPOSALS

Medway Council, in accordance with the requirements of section 33E of the Local Government Act 2000, has drawn up the following proposals for changes to its governance arrangements with effect from May 2011.

At its meeting on 29 July 2010, the Council indicated that its preferred model is the new-style Leader and Cabinet form of Executive, in accordance with section 11 of the Local Government Act 2000.

Before drawing up proposals for the change in governance arrangements, the Council undertook a consultation exercise to gather the views of local people on the choice of the executive model and the outcome of this was reported to Council on 29 July 2010.

In drawing up these proposals, the Council has considered the outcome of the consultation process, the government's intentions to introduce further legislation regarding local authority constitutions and the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Council's functions are exercised, having regard to a combination of economy, efficiency and effectiveness. Analysis of the new executive models was set out in the report to Council on 4 March 2010 and 29 July 2010. Copies of these reports are attached to this document.

The proposals will be considered at an Extraordinary Council meeting on 25 November 2010. The features of the proposals are:

1. Under the new arrangements, the Leader will be elected by the Council at its Annual Meeting in 2011, after the local government elections on 5 May 2011. The Leader will hold office for a four year term unless he or she resigns or ceases to be a Councillor.
2. The Leader will be responsible for appointing the Deputy Leader. Unless he or she resigns or ceases to be a Councillor they hold this office for the term of the Leader.
3. The Leader may, if he or she thinks fit, remove the Deputy Leader from office.
4. The Leader will be responsible for appointing the other Executive Members, subject to the statutory maximum of ten, and for determining their Portfolios.
5. The Council may, by resolution, remove the Leader during his or her four year term of office.
6. The allocation of local choice functions between the Executive and the Council will continue as set out in the Council's current Constitution.
7. The Council will be asked to agree the detailed changes to the Constitution on 25 November 2010 to give effect to these proposals.

The proposals will come into effect on the third day after the local government elections on 5 May 2011. In terms of transitional arrangements for the implementation of the proposals, the existing form of Leader and Cabinet Executive arrangements will continue in operation until the third day after the 2011 local government election. The necessary amendments to the Council's constitution, to

give effect to the changes, will be made in preparation for implementation following the 2011 local government elections, and agreed by Council on 25 November 2010.

Timetable

August/September 2010 – proposals publicised in accordance with legislation.

25 November 2010 – report to an Extraordinary Council meeting outlining response to the publicity, seeking a resolution to move to new executive arrangements and to amend the constitution to give effect to the proposed changes.

May 2011 – new form of Executive shall operate on the third day after the local government elections.

New Executive arrangements – Schedule of Changes

<p>Chapter 1 – Summary and Explanation</p>	
<p>Section 3 How the Council operates Page 1.2 Paragraph 3.3</p>	<p>All Councillors meet together as the Council. Meetings of the Council are normally open to the public. Here Councillors decide the Council's overall policies and set the budget each year. The Council appoints a Leader <u>for a 4 year term</u> who appoints the Cabinet. <u>The Council</u> and also appoints Committees.</p>
<p>Chapter 2 – Articles of the Constitution</p>	
<p>Article 4 – The Full Council Functions of the Full Council Page 2.8 Paragraph 4.2</p>	<ul style="list-style-type: none"> • appointing <u>and removing</u> the Leader;
<p>Article 7 – The Leader and Cabinet Introduction Page 2.15 Paragraph 7.1</p>	<p>Medway Council has decided to adopt the Leader and Cabinet form of executive, and the Cabinet is at the heart of the decision-making process.</p> <p>Chapter 4 sets the rules for how the Leader and Cabinet will operate. These include arrangements for meetings, individual decision-making, and the scheme of delegation and sub-delegation of functions.</p> <p>The Cabinet <u>(meaning the Leader and such other Members of the Council as the Leader may appoint)</u> will carry out all the authority's functions which are not the responsibility of any other part of the Council, whether by law or under this constitution.</p>

<p>Article 7 – The Leader and Cabinet Role (7.2) Page 2.15</p>	<p>The Leader and Cabinet will may take decisions on every matter that is not assigned to anyone else by this constitution. The Leader may however, make arrangements to delegate some matters to the Cabinet, a Cabinet Committee, individual Cabinet members, or to employees.</p>
<p>Article 7 – The Leader and Cabinet Leader (7.4) Page 2.15</p>	<p>Leader</p> <p>The Leader will be a Councillor elected by the Council <u>at the Annual Meeting of the full Council following on from the ordinary election of all Councillors. The Leader will be elected for the first time at the meeting of the Council that brings into force the new political arrangements.</u> The Leader will hold office for 4 years and will remain in position until the day of the next Annual meeting following the ordinary election of all Councillors unless:</p> <ul style="list-style-type: none"> (a) he/she resigns; or (b) he/she is suspended from being a Councillor under Part III of the Local Government Act 2000 (although he/she may resume office at the end of the period of suspension); or (c) he/she is no longer a Councillor <u>except where the Leader fails to be returned as a Councillor following an ordinary election of all Councillors when unless the Leader resigns, is disqualified or is otherwise removed from office he/she shall continue as Leader until the day of the Annual Meeting; or until</u> (d) the next Annual Council meeting, except that the Council may remove the Leader from office at an earlier date in the event of a change in political control of the Council, or following a motion of no confidence in the Leader being passed by a majority of Councillors; until the Council passes a resolution to remove the Leader

<p>Article 7 – The Leader and Cabinet</p> <p>Cabinet Members</p> <p>Page 2.16</p> <p>Paragraph 7.5</p>	<p><u>Deputy Leader and Cabinet members</u></p> <p>Only Councillors may be appointed to the Cabinet. Neither the Mayor nor Deputy Mayor of the Council may be appointed to the Cabinet. The Leader and Cabinet members may not be members of an Overview and Scrutiny Committee.</p> <p><u>The Leader must appoint one Member of the Cabinet to be his deputy. The Deputy Leader, unless he resigns as Deputy Leader, is removed by the Leader, is suspended following a standards investigation, or ceases to be a Member of the Council, will hold office until the end of term of office of the Leader.</u></p> <p>Cabinet members <u>appointed by the Leader</u>(including Deputy Leader) shall hold office until:</p> <ul style="list-style-type: none"> (a) they resign; or (b) they are suspended from being Councillors under Part III of the Local Government Act 2000 (although they may resume office at the end of the period of suspension); or (c) they are no longer Councillors; or (d) they are removed from office by the Leader who must deliver written notice of any removal to the Chief Executive and to the Cabinet member concerned. The removal will take effect immediately after receipt of the notice by the proper officer; or (e) the Leader resigns, is removed from office, or otherwise ceases to be leader. <p><u>If for any reason the Leader is unable to act or the office of Leader is vacant the Deputy Leader must act in his place.</u></p> <p><u>If for any reason the Leader is unable to act or the office of the Leader is vacant and the Deputy Leader is unable to act or the office of Deputy Leader is vacant the Cabinet must act in the Leaders place or must arrange for a member of the Cabinet to act in his place.</u></p>
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	<p><u>In the event of there being no Leader, Deputy Leader or Cabinet members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules.</u></p>
<p>Article 10 – Joint Arrangements</p> <p>Arrangements to promote well-being (10.1)</p> <p>Page 2.25</p>	<p>The Cabinet Leader, in order to promote the economic, social or environmental well-being of its area, may:</p> <ul style="list-style-type: none"> • enter into arrangements or agreements with any person or body; • co-operate with, or facilitate or co-ordinate the activities of, any person or body; • exercise on behalf of that person or body any functions of that person or body.
<p>Article 10 – Joint Arrangements</p> <p>Joint Arrangements (10.2)</p> <p>Page 2.25</p>	<ul style="list-style-type: none"> (a) the Council may establish joint arrangements with one or more local authorities; (b) the Cabinet Leader may establish joint arrangements with one or more local authorities to exercise functions which are Cabinet-executive functions. Such arrangements may involve the appointment of joint Committees with these other local authorities; (c) except as set out below, the Cabinet Leader may only appoint Cabinet members to a joint Committee and those members need not reflect the political composition of the local authority as a whole; (d) the Cabinet Leader may appoint members to a joint Committee from outside the Cabinet in the following circumstance: <ul style="list-style-type: none"> • the joint Committee has functions for only part of the area of the authority, and that area is smaller than two-fifths of the authority by area or population. In such cases, the Cabinet Leader may appoint to the joint Committee any

	<p>Councillor who is a member for a ward which is wholly or partly contained within the area.</p> <p>In this case the political balance requirements do not apply to such appointments;</p> <p>(e) details of any joint arrangements including any delegations to joint Committees will be found in the Council's scheme of delegation in chapter 3 of this constitution, with the exception of joint overview and scrutiny arrangements, details of which will be found in the Overview and Scrutiny Rules in chapter 4, part 5 of the constitution.</p>
<p>Article 10 – Joint Arrangements</p> <p>Delegation to and from other local authorities (10.4)</p> <p>Page 2.25</p>	<p>(a) The Council may delegate non-executive and, in some circumstances, with the agreement of the Cabinet, executive functions to another local authority, or in certain circumstances the Cabinet of another local authority;</p> <p>(b) The Cabinet Leader may delegate executive functions to another local authority or the Cabinet of another local authority subject to the Council's Overview and Scrutiny Committees being able to require employees and/or members of the other local authority to co-operate with and if requested appear before any relevant Overview and Scrutiny Committee;</p> <p>(c) The decision whether or not to accept such a delegation from another local authority shall be reserved to the Council meeting.</p>
<p>Article 11 – Employees</p> <p>Functions of the Monitoring Officer (11.3)</p> <p>Page 2.25</p>	<p>(a) Ensuring lawfulness and fairness of decision making</p> <p>After consulting with the Head of Paid Service and Chief Finance Officer, the Monitoring Officer will report to the Council or to the Leader and Cabinet in relation to an executive function if he or she considers that any proposal, decision or omission would give rise to unlawfulness or if any decision or omission has given rise to maladministration. Such a report will have the effect of stopping the proposal or decision being implemented until the report has been considered by the Council or Cabinet as appropriate.</p>

<p>Article 11 – Employees Functions of the Chief Finance Office (11.4) Page 2.25</p>	<p>(a) Ensuring lawfulness and financial prudence of decision making After consulting with the Head of Paid Service and the Monitoring Officer, the Chief Finance Officer will report to the Council or to the <u>Leader and Cabinet</u> in relation to an <u>executive Cabinet</u> function and the Council’s external auditor if he or she considers that any proposal, decision or course of action will involve incurring unlawful expenditure, or is unlawful and is likely to cause a loss or deficiency or if the Council is about to enter an item of account unlawfully.</p>
<p>Chapter 3 Responsibility for functions Part 3 – Employee Delegation Scheme</p>	<p>Where responsibility is marked as being delegated from “Cabinet” replace with “<u>Leader/Cabinet</u>”</p>
<p>Part 3 – Responsibility for Cabinet Functions Page 3.19</p>	<p>3.1 All the responsibilities of the Leader of the Council are to be exercised by the Deputy Leader when the Leader is away, or in the view of the Chief Executive, otherwise unavailable. If for any reason the Leader is unable to act or the office of Leader is vacant the Deputy Leader must act in his place. If for any reason the Leader is unable to act or the office of the Leader is vacant and the Deputy Leader is unable to act or the office of Deputy Leader is vacant the Cabinet must act in the Leaders place or must arrange for a member of the Cabinet to act in his place.</p> <p>3.2 For the avoidance of doubt the Council has adopted the strong leader model and decisions which fall during recess or are required urgently may be made by the Leader subject to compliance with the Access to Information Rules. The Leader has presently delegated functions to Portfolio Holders to the extent necessary to permit collective decision making by Cabinet. <u>In the event of there being no Leader, Deputy Leader or Cabinet members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules.</u></p> <p>3.3 Nothing in the above table or rule 3.2 above shall fetter or restrict the right of the Leader:</p>

	<ul style="list-style-type: none"> • subject to compliance with rule 7.3 of Article 7 of Chapter 2 of this constitution to increase or decrease the size of Cabinet • subject to compliance with rule 7.5 of Article 7 of Chapter 2 of this constitution to appoint or dismiss members of the Cabinet. <p>3.3.1 To reorganise the portfolios.</p> <p>3.3.2 To reorganise or re-allocate the portfolio theme.</p> <p>3.3.3 To delegate executive functions or withdraw any delegation.</p> <p>3.3.4 To exercise all rights contained in Article 7 of Chapter 2 of this constitution or the Leader and Cabinet Rules.</p> <p>3.3.5 To exercise any other rights set out in the constitution.</p> <p>3.4 The Cabinet as a whole has responsibility to ensure the effective operation of risk management in the Council and this is also included in the themes allocated by the Leader to the Deputy Leader and Finance Portfolio Holder.</p>
<p>Part 3 – Employee Delegation Scheme</p> <p>Page 3.23</p> <p>NEW</p>	<p><u>4.2. Matters reserved to Cabinet:</u></p> <p><u>In the event of there being no Leader, Deputy Leader or Cabinet members, executive functions shall in the interim be carried out by the Chief Executive subject to the Access to Information Rules.</u></p>
<p>Part 3 – Employee Delegation Scheme</p>	<p>6. Chief Executive</p> <ul style="list-style-type: none"> • To be responsible for policy development, the overall strategic direction of the Council and the governance of the Council save for matters which should be referred to the Council or

Page 3.23	the <u>Leader /</u> cabinet;
Part 3 – Employee Delegation Scheme Page 3.31	<p>Chief Finance Officer</p> <ul style="list-style-type: none"> Determine relief from non-domestic rates in accordance with the approved guidelines. Any appeal arising from a disputed decision made under these delegated powers or where the guidelines do not cover the circumstances surrounding the claim for relief shall be to the <u>Leader / Cabinet</u>;
Part 3 – Employee Delegation Scheme Page 3.31	<p>Director of Children and Adults</p> <p>To consider and determine urgent matters in relation to individual cases in consultation with the <u>Leader / Cabinet</u>.</p>
Part 3 – Employee Delegation Scheme Page 3.37	<p>So far as this scheme relates to delegations to employees for Cabinet<u>executive</u> functions it is provisional pending confirmation by the Leader of the <u>Council</u>Cabinet.</p>
Chapter 4 – Rules Part 1 – Council Rules Page 4.3	<p>The annual meeting shall:</p> <ul style="list-style-type: none"> elect a person to chair the meeting if the Mayor is not present; elect the Mayor; elect the Deputy Mayor; approve the record of the last annual meeting; hear any announcements from the Mayor; elect the Leader (<u>in the year of local elections</u>); appoint members of the Overview and Scrutiny Committees, a Standards Committee and

	<p>other Council Committees;</p> <ul style="list-style-type: none"> • make appointments of Councillors to outside bodies; • agree any amendments to the scheme of delegation relating to Council functions; • approve a programme of ordinary meetings for the year ahead; • consider any other business set out in the agenda, if any.
<p>Chapter 4 – Rules Part 5 – Overview and Scrutiny Rules Pages 4.41 – 4.45</p>	<p>References to the submission of reports to Cabinet should be revised to read "<u>Leader/Cabinet</u>" (as <u>appropriate</u>)</p>
<p>Chapter 4 – Rules Part 5 – Overview and Scrutiny Rules Pages 4.46</p>	<p>16.1 When a decision is made by the <u>Leader</u>, Cabinet, an individual member of the Cabinet or a Committee of the Cabinet, or a key decision is made by an employee with delegated authority from the Cabinet, or under joint arrangements, the decision shall be published, including where possible by electronic means, and shall be available at the main offices of the Council normally within two working days of being made. All Councillors will be sent copies of the records of all such decisions within the timescale, by the person responsible for publishing the decision.</p> <p>16.11 Call-in and urgency</p> <p>The call-in procedure set out above shall not apply where the decision being taken by the <u>Leader / Cabinet</u> is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Council's or the public's interests. The record of the decision, and notice by which it is made public shall state whether in the opinion of</p>

the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The chair of the relevant Overview and Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of the relevant overview and scrutiny chair, the vice-chair's consent shall be required. The chair or vice-chair of more than one Overview and Scrutiny Committee shall be consulted if the proper officer considers that an urgent decision falls within the remit of more than one Overview and Scrutiny Committee. In the absence of these consultees the head of paid service or his/her nominee's consent shall be required. All members of a relevant scrutiny Committee will be notified in writing (including electronic communication) as soon as it is practicably possible to do so when agreement to waive call-ins is given under this rule.



Leaders of Non-Metropolitan District Councils
in England

Appendix C

The Rt Hon Grant Shapps MP
Minister for Housing and Local Government

**Department for Communities and Local
Government**

Eland House
Bressenden Place
London SW1E 5DU

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www.communities.gov.uk

7 July 2010

Dear Leader

**Requirement to consult under the Local Government and Public Involvement in
Health Act 2007**

I am writing to you about the requirements on your council to adopt a new governance model from May 2011, and before doing so to consult your local electorate and interested parties in the area. Whilst it is for each council to decide how it will meet these requirements, I would wish to highlight the Government's view that councils need not incur any significant expenditure on these requirements, and our expectation in today's circumstances that all councils will pursue this at minimal cost.

These requirements are in the Local Government and Public Involvement in Health Act 2007 and necessarily remain in force unless or until that Act is repealed by fresh primary legislation. It is our intention to do this. For your council the requirements mean that you must resolve by 31 December 2010 to move to either the new leader and cabinet model or mayor and cabinet model, and before so resolving you must take reasonable steps to consult the local electorate and other interested parties in your council's area.

In considering how to approach these requirements you will wish to have regard to the circumstances of today, including both the priority of cutting out all wasteful spending and the Government's commitments to allow councils to return to the committee system, should they wish to, and on elected mayors. We also intend to remove the necessity to elect a leader for four years. We intend to provide for these commitments in our Localism Bill to be introduced later in this Parliamentary session. This may mean that any governance model you adopt in May 2011 may be further changed within a year or so. Your decisions about consultation will also be taken in the context of the greater transparency and openness agenda which I am confident you will be putting in place throughout your council.

Appendix C

Accordingly, the case is strong for any consultation now about future governance arrangements to be the minimal cost option. It will be for each council to decide, but in our view no more than a small newspaper advert/article or press release on your website may be proportionate and right in these circumstances.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Grant Shapps', written in a cursive style.

GRANT SHAPPS MP

Medway Council
Meeting of Medway Council
Thursday, 25 November 2010
7.05pm to 7.15pm

Record of the meeting

Subject to approval as an accurate record at the next meeting of this committee

Present: The Mayor (Councillor Brake)
The Deputy Mayor (Councillor Hewett)
Councillors Andrews, Baker, Kenneth Bamber, Janice Bamber, Bhutia, Bowler, Burt, Carr, Rodney Chambers, Mrs Diane Chambers, Chitty, Clarke, Crack, Doe, Etheridge, Filmer, Gilry, Godwin, Griffin, Griffiths, Gulvin, Harriott, Haydock, Hicks, Hubbard, Jarrett, Jones, Juby, Sheila Kearney, Stephen Kearney, Kemp, Mackinlay, Maisey, Maple, Mason, Murray, O'Brien, Reckless, Royle, Ruparel, Shaw, Smith, Stamp, Sutton, Wicks and Wildey

In Attendance: Rose Collinson, Director of Children and Adults
Robin Cooper, Director of Regeneration, Community and Culture
Neil Davies, Chief Executive
Mick Hayward, Chief Finance Officer
Richard Hicks, Assistant Director, Customer First, Leisure, Culture, Democracy and Governance
Julie Keith, Head of Democratic Services
Jane Ringham, Head of Elections and Member Services
Caroline Salisbury, Overview and Scrutiny Co-ordinator
Deborah Upton, Assistant Director, Housing and Corporate Services/Monitoring Officer

543 Apologies for absence

Apologies for absence were received from Councillors Brice, Bright, Chishti, Tony Goulden, Val Goulden and Hunter.

544 Declarations of interest

There were none.

545 Adoption of New Executive Arrangements

Discussion:

This report asked Members to pass a resolution adopting new executive arrangements as the Local Government and Public Involvement in Health Act 2007 placed a requirement on councils to adopt new executive arrangements, which in Medway's case will have to be implemented on the third day after the May 2011 local elections.

The Leader, supported by Councillor Jarrett, proposed that the council adopts the new executive arrangements as set out in the report.

Decision:

The Council agreed to:

- (a) formally resolve to adopt the new Leader and Cabinet model as defined by the Local Government Act 2000, as amended by the Local Government and Public Involvement in Health Act 2007 to be introduced from the third day after the Council elections in May 2011;
- (b) the consequential changes to the Council's constitution as detailed in Appendix B to this report to take effect from the third day after the Council elections in May 2011;
- (c) note that the current executive arrangements and Constitution will remain in operation until the third day after the local elections.

Mayor

Date:

Julie Keith, Head of Democratic Services

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