

Addendum to Item 3.1 'New Executive Arrangements'
Cabinet 22 December 2010
Council 22 December 2010

Legal implications

The current law:

- Leicester City Council is required to adopt a new model of governance as set out in the Local Government and Public Involvement in Health Act 2007:
 - Leader and Cabinet Executive model, known as the “Strong Leader” model
 - Mayor and Cabinet Executive model.
- Consultation undertaken between 20th November to 6th December was designed to meet the requirement to “*consult the Local Government electors for, and other interested persons in, the Authority's area*” (Section 33E(6) LGA, 2000).
- Proposals may provide for the change in governance arrangements to be subject to approval in a referendum but this is not obligatory and full Council decided not to have one.
- In drawing up its proposals the Council was obliged to consider the extent to which the proposals, if implemented, would be likely to assist in securing continuous improvement in the way in which the Local Authority's functions are exercised, having regard to a combination of economy, efficiency and effectiveness.
- At its meeting on 9th December full Council decided on its preferred model (i.e. the Elected Mayor and Cabinet Executive). Following this, proposals were published and an appropriate “Notice” placed in the local press. The public were entitled to submit any representations to the Council and these must be considered before the Council passes a final resolution on the 22nd December. A decision must be made by the 31st December.
- Section 245 of the Local Government Act, 1972, as amended, provides that where a Council decides to operate an Elected Mayor and Cabinet Executive, then the “style” of Mayor previously used by the Chairman of the Council shall no longer be used. This means that the current Lord Mayor position may have to be re-titled but every effort can be made to retain civic traditions within the current legal framework.

The proposed new law:

- The Decentralisation and Localism Bill was published on the 13th December. It is a major piece of legislation, covering a wide range of functions. Numerous readings and committee stages and amendments will happen before the Bill becomes The Localism Act 2011 (likely in around November 2011).
- In relation to Executive arrangements, the Bill continues to place emphasis on Local Authorities being required to adopt one of the two models set out above. More importantly, it makes changes in governance arrangements subject to mandatory referenda (new section 9M & 9MB(2) LGA 2000). There is also a new power (section 9N) enabling the Secretary of State, by Order, to compel a Local Authority which is operating a Leader and Executive model to cease to do so and to operate a Mayor and Executive model immediately (the extant Leader is converted into a “shadow mayor” in such circumstances, and holds such position pending compliance with section 9M – the holding of a Mayoral referendum etc)
- What is clear from the tenor of the provisions is a concerted drive to (i) push for more elected mayoral forms of executive and (b) to make such moves subject firstly to the will of the local population by holding referendums on the issue.
- Beyond this, it is unwise to speculate further. As is always the case with major pieces of legislation there are provisions within the Bill which will allow the Secretary of State to apply, amend or disapply particular requirements in particular cases (by Order or by Statutory Instrument). In the case of Leicester City Council’s current proposals, it is conceivable therefore that the Secretary of State could disapply the requirement to hold a referendum under section 9MB(2) if Leicester had already moved to a Mayor and Cabinet form of executive before the Act is implemented. Equally, there is no indication as yet as to which, if any, cities would have shadow Mayoral arrangements imposed under section 9N. In any event, the provisions of section 9N would not apply to Leicester City if we already had in place a Mayoral model before the Act is implemented.

Risk Analysis:

- That the current proposals for change of governance in Leicester City will be declared legally invalid by the proposed Localism Act 2011, specifically that our choice not to hold a referendum will deem the whole process leading to an Elected Mayor in May 2011 to be flawed.

Comment - it is extremely rare for future legislation to be retrospectively applied. Domestic, European and International law militates against this. Council have been advised that the current process being followed is valid according to the current law (2007 amendments to the LGA 2000). It is highly unlikely that the 2011 Act

will have any impact on the validity of any Mayoral elections held in Leicester in May 2011.

- That by failing to heed the direction of travel (vis-à-vis mandatory referenda) in the Bill we are setting-up a governance model which is inevitably fragile and temporary

Comment - as a matter of legal principle, decision-makers must not base current decisions upon speculation about future changes. The Bill will endure multiple readings, amendments and votes before, and if, it becomes law. Leicester may be on the list of cities that are required to alter its governance arrangements and hold a referendum. Whilst it is by no means possible to predict whether the Secretary of State would exercise powers to disapply provisions of the 2011 Act (namely to remove from Leicester the requirement to hold a referendum in 2012 on the grounds that we had recently elected a Mayor) those powers are likely to be available to the Secretary of State. Beyond that, it is a matter of speculation as to whether the Secretary of State would in fact apply such provisions in Leicester's case (see mitigating actions below)

- That the Bill will become law before Leicester's own proposed Mayoral elections in May 2011

Comment - this is highly unlikely. The Bill contains 206 sections and 24 Schedules. It is one of the biggest pieces of legislation in recent years, and is highly unlikely to become law before the end of 2011.

- That Leicester will receive a legal challenge to the current (2007 Act) decision-making process, regardless of the Bill, which compromises the proposals to validly elect a Mayor in May 2011

Comment - It is a matter, again, of speculation as to whether a challenge would be received. Thereafter the timing and quality of any challenge would be pertinent to the question of whether it impacted upon the timeline currently envisaged. A public law challenge, if of good quality, would first have to be granted "permission" to proceed. Thereafter, it is likely that the Courts would afford the case a high degree of urgency in dealing with the substantive challenge.

- That Leicester will receive a valid petition before May 2011 compelling the holding of a referendum on the issue, and thereby undermining any move to elect a Mayor in May 2011.

Comment - The law (section 34 LGA 2000 & The Local Authority (Referendums)(Petitions & Directions) Regulations 2000) requires the Council to hold a referendum between months 2 and 6 of receipt of a valid petition.

Mitigating measures:

- Officers are in direct liaison with officials from the Department for Communities and Local Government (DCLG) responsible for the Bill to clarify its scope and potential impact on Leicester.
- In respect of the consultation undertaken to date, the Council followed the guidance offered by the Rt. Hon. Grant Shapps MP concerning its size and scope, as well as internal advice from officers.
- Officers will seek to make the case that the Secretary of State should recognise the validity of any subsequent mayoral election and disapply the provisions of the Localism Act 2011, if enacted, for Leicester, if as expected, it is one of the 12 cities named.