



NEW EXECUTIVE ARRANGEMENTS FROM MAY 2011

SUMMARY

- 1.1 This report asks the Committee to agree recommendations to full Council on amendments to the Constitution to bring in the 'strong leader' and cabinet form of executive arrangements from May 2011.

RECOMMENDATION

- 2.1 To recommend Council to approve the proposed amendments to the Constitution set out in Appendix 2.

REASONS FOR RECOMMENDATION

- 3.1 To ensure the Council meets the statutory requirement to change its executive arrangements from May 2011.

SUPPORTING INFORMATION

- 4.1 At its meeting on 3 November 2010, the Committee agreed to recommend the Council to:
- a) Confirm the decision, made in principle at its meeting on 7 July 2010, that the Council will adopt the leader and cabinet model of executive arrangement from May 2011.
 - b) Approve the document Proposals for Executive Arrangements from May 2011 at Appendix 4 (to the report).
 - c) Agree that the Governance Committee make recommendations to the Council on 2 March 2011 on amendments to the Constitution.
- 4.2 The Council approved the Committee's recommendations at a special meeting on 17 November 2010. The Council meeting referred to in paragraph c) will be the extra meeting on 30 March 2011.

- 4.3 Attached at Appendix 2 are proposed amendments to certain sections of the Constitution to give effect to the 'strong leader' model. The changes mainly relate to the fact that, from May 2011, all executive functions will be vested in the Executive Leader. The Executive Leader may then delegate functions to the Council Cabinet a committee of the Council Cabinet, an individual member of the Council Cabinet or an officer. Local matters may be delegated to neighbourhood boards, neighbourhood forums or ward committees. These changes are set out in Part 3 of the Constitution.
- 4.4 Article 7 has also been amended to include provisions for the terms of office of the Leader and Council Cabinet members and the circumstances under which they can be removed from office.
- 4.5 The Committee is asked to consider the proposed amendments and recommend them to full Council, with or without modification.

OTHER OPTIONS CONSIDERED

- 5.1 None.

This report has been approved by the following officers:

Legal officer	Olu Idowu
Financial officer	N/A
Human Resources officer	N/A
Service Director(s)	Stuart Leslie
Other(s)	

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Background papers:	None
List of appendices:	Appendix 1 – Implications Appendix 2 – Proposed Amendments to the Constitution

IMPLICATIONS

Financial

- 1.1 None directly arising.

Legal

- 2.1 The Local Government and Public Involvement in Health Act 2007 requires Councils to change their executive arrangements to either a directly elected Mayor and Cabinet or indirectly elected Leader and Cabinet model. Following consultation, the Council drew up proposals, passed a formal resolution on 17 November 2010 to adopt the Leader and Cabinet model and gave public notice of its proposals. It must cease operating its existing arrangements by the third day after the May 2011 local elections.

Personnel

- 3.1 None directly arising.

Equalities Impact

- 4.1 None directly arising.

Health and Safety

- 5.1 None directly arising.

Carbon commitment

- 6.1 None directly arising.

Value for money

- 7.1 None directly arising.

Corporate objectives and priorities for change

- 8.1 None directly arising.

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PROPOSED CHANGES TO THE CONSTITUTION

- Suspension, interpretation and publication of the Constitution - Article 16

How the Council operates

The Council is currently composed 51 councillors, representing 17 three-member wards with one third elected three years in four.

Councillors are democratically accountable to residents of their ward. The overriding duty of councillors is to the whole community, but they have a special duty to their constituents, including those who did not vote for them.

Councillors have to agree to follow a code of conduct to ensure high standards in the way they undertake their duties. The Standards Committee trains and advises them on the code of conduct.

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 the Council Cabinet Executive Leader, committees, commissions and panels, and approves the budget and policy framework. The Executive Leader appoints the Executive, known as the Council Cabinet.

Council meetings also include a public question time and, in certain circumstances, the consideration of petitions.

How decisions are made

The Council Cabinet is the part of the Council that is responsible for most day-to-day decisions. The Council Cabinet is made up of a Leader, with an Executive of no fewer than two and no more than nine other members. When major decisions are to be discussed or made, these are published in the Council Cabinet's forward plan in so far as they can be anticipated. If these major decisions being taken are to be discussed with council officers at a meeting of the Council Cabinet, this will generally be open for the public to attend except where personal or confidential matters are being discussed. The Council Cabinet has to make decisions that are in line with the Council's overall policies and budget. If it wishes to make a decision that is outside the budget or policy framework, this must be referred to the Council as a whole to decide.

Committees deal with regulatory functions such as planning applications, licensing and most other regulatory business.

Overview and Scrutiny

There are four overview and scrutiny commissions, plus a Scrutiny Management Commission, which support the work of the Council Cabinet and the Council as a whole. They allow citizens to have a greater say in Council matters by holding public inquiries into matters of local concern. These lead to reports and recommendations which advise the Council Cabinet and the Council as a whole on its policies, budget and service delivery. Overview and scrutiny commissions also monitor the decisions of the Council Cabinet. They can 'call-in' a decision that has

- e. ~~appointing electing the Leader and members of the Council Cabinet, determining the areas of responsibility of Council Cabinet members and determining the delegation of Executive functions.~~
- f. agreeing and/or amending terms of reference for Commissions, Committees, and Neighbourhood Boards and Forums, deciding on their composition and making appointments to them including the appointments of Chairs and Vice Chairs
- g. appointing representatives to outside bodies unless the function has been delegated by the Council
- h. adopting a scheme for members allowances, following receipt of recommendations from the independent remuneration panel
- i. changing the name of the area, conferring the title of honorary alderman or freedom of the City
- j. confirming the appointment of the Head of Paid Service
- k. making arrangements for the discharge of any of the Council's functions by another Local Authority or a joint Committee with other authorities
- l. making, amending revoking, re-enacting or adopting Byelaws and promoting or petitioning against any bills in parliament, providing that in cases of urgency the Council Cabinet may authorise a petition against a Bill or Order
- m. approving any proposals relating to Local Government areas and the transfer, conferment or withdrawal of powers of Local Authorities
- n. matters relating to the variation of parliamentary and Local Government electoral areas and representation
- o. considering recommendations from the Council Cabinet regarding action following receipt of reports of external auditors, external inspectorate and the Local Ombudsman
- p. dealing with all non Executive policies ,strategies and procedures that do not form part of the policy framework
- q. making decisions about any functions that by law, or as a result of local choice are not the responsibility of the Council Cabinet and have not been delegated to a Committee or Officer.

Article 7 - The Council Cabinet

7.1 Role

The ~~Council Cabinet~~Leader will carry out all of the local authority's functions which are not the responsibility of any other part of the local authority, whether by law or under this Constitution.

7.2 Form and composition

The Council Cabinet will consist of the ~~Council Cabinet~~ Leader together with no fewer than two and no more than nine Councillors, appointed to the Council Cabinet by the ~~Council~~Leader.

7.3 Leader

The Leader will be a councillor elected to the position of Leader by the Council at its annual meeting, or at such other meeting called for that purpose. The Leader will hold office for four years or until: ~~until:~~

- a. s/he resigns from the office; or
- b. s/he is suspended from being a councillor under Part III of the Local Government Act 2000 (although s/he may resume office at the end of the period of suspension); or
- c. his/her term of office as a councillor expires; or
- ~~d. s/he is no longer a councillor; or~~
- ~~e. the next annual meeting of the Council save that the Council may remove the Leader from office at an earlier date but only in the event of a change in political control of the Council. s/he is removed from office by the full Council in the event of a change in political control of the Council.~~

7.4 Other Council Cabinet members

Other Council Cabinet members (including the Deputy Leader) shall be elected by the Council at its annual meeting, or such other meeting called for that purpose appointed by the Leader and shall hold office until: for four years or until:

- a. they resign from office; 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. their term of office as a councillor expires; or

- ed. they are no longer councillors; or
- de. ~~the next annual meeting of the Council unless they are removed from office, either individually or collectively, by resolution of the Council. In the case of a Council Cabinet Member who is a member of a political group, the leader of the political group must also approve his/her removal from office.~~they are removed from office by the Leader; or
- f. the Leader is removed from office under Article 7.3 (e)

7.5 Proceedings of the Council Cabinet

Proceedings of the Council Cabinet shall take place in accordance with the Council Cabinet Procedure Rules set out in Part 4 of this Constitution.

7.6 Responsibility for functions

Part 3 of this Constitution sets out which individual members of the Council Cabinet, committees of the Council Cabinet, officers or joint arrangements are responsible for the exercise of particular Council Cabinet functions.

7.7 Decision making

The Council Cabinet will operate on the basis of majority decision-making.

Responsibility for Functions

Council Functions

1. Council functions fall into 4 categories:
 - those that are the responsibility of the full Council unless delegated to regulatory committees or officers;
 - those that are partly the responsibility of the Council and partly the responsibility of the Council Cabinet;
 - those where there is a local choice whether they are the responsibility of the Council or the Leader;
 - all other functions, these being the responsibility of the Council Cabinet Leader.

The Council

2. Decisions about the Council's policy framework and budget, and other constitutional matters may only be taken by all Councillors acting together. A full list of these matters is shown in Article 4.
3. In most cases the Council is also responsible for regulatory functions. A full list of those functions is given in the Appendix to the scheme of delegations.

Functions that are partly the responsibility of the Council and partly the responsibility of the Council Cabinet Leader

4. Some functions are partly the responsibility of the Council and partly the responsibility of the Council Cabinet Leader. These are:
 - the budget and any plan or strategy for the control of the Council's borrowing or capital expenditure (capital plan).
 - the policy framework, that is the plans and strategies which the Council approves or adopts.
5. The Council Cabinet will be responsible for preparing the draft budget, draft plans and strategies and proposing them to the full Council.
6. The Council will be responsible for:
 - adopting or approving the draft budget, plan or strategy.
 - asking the Council Cabinet to reconsider it, or
 - amending the budget, plan or strategy.

SCHEME OF DELEGATIONS

INTRODUCTION

The following scheme gives details of the allocation of responsibilities within the Council. It includes details of any delegations from the Council to its Regulatory Committees and Officers and those from the Council Cabinet Leader to Council Cabinet, individual Council Cabinet Members to, Officers, and Neighbourhood Boards, and Neighbourhood Forums. Details are also given of the Council's advisory committees and its other statutory committees.

Within this scheme decisions of the Council are divided into:

- A Matters that are reserved to the Council.
- B Matters that are reserved to the Council Cabinet.
- C Matters that are delegated to Neighbourhood Boards and Neighbourhood Forums and Advisory Committees.
- D Matters that are delegated to the Standards Committee, Overview and Scrutiny Commissions and the Adoption Panel.
- E Matters that are delegated to Regulatory and Appeals Committees.
- F Matters that are delegated to Officers.

PART B

MATTERS RESERVED TO THE COUNCIL CABINET, NEIGHBOURHOOD BOARDS, NEIGHBOURHOOD FORUMS AND WARD COMMITTEES

By law the Council Cabinet, Executive Leader, Council Cabinet or individual members of the Council Cabinet cannot deal with the matters reserved to the Council in Part A and some functions mainly relating to regulatory matters that are dealt with in Part E and the Appendix.

~~Part C of the Appendix shows the local choice functions that will be the responsibility of the Council Cabinet, Executive Leader or individual members of the Council Cabinet unless they are delegated to Officers or Neighbourhood Boards and Neighbourhood Forums.~~

By law, all functions which are the responsibility of the Executive (Council Cabinet) are discharged by the Leader unless the Leader has arranged for any of them to be discharged by:

- a) the Council Cabinet, or
- b) another member of the Council Cabinet, or
- c) a committee of the Council Cabinet, or
- d) an officer

The Leader has directed that the executive functions of the Council shall be discharged in accordance with this Part of the Constitution and Part C of the Appendix.

Part C of the Appendix shows the local choice functions that will be the responsibility of the Executive Leader, Council Cabinet or individual members of the Council Cabinet unless they are delegated to Officers or Neighbourhood Boards and Neighbourhood Forums.

The following matters are reserved to the Council Cabinet:

1. making recommendations to Council on the Budget and the policy framework
2. implementing the Budget and policy framework in respect of all functions except non executive functions
3. making key decisions about implementation of any of the Council's functions except non-Executive functions. This includes all policies procedures and strategies not included in the policy framework
4. coordinating and securing Best Value within the budget and policy framework agreed by the Council

5. undertaking activities relating to virement and other issues specified under Financial Procedure Rules
6. making recommendations to Council on intended action following the receipt of reports from the external auditor, external inspectorates and the local Ombudsman.
7. forming partnerships
8. monitoring performance indicators, general service performance and financial management.
9. functions relating to the Local Area Agreement.

The following matters are reserved to the Executive Leader

1. making executive, non-key decisions, within his/her area of responsibility, and within the limitations of the Financial Procedure Rules, which result in the Council incurring expenditure or making savings of between £100,000 and £249,999
2. monitoring service performance, within his/her area of responsibility, and taking action to improve performance where necessary, in conjunction with the relevant service director
3. approving minor policies and procedures that do not have a significant impact on two or more wards, within his/her area of responsibility
4. approving consultation arrangements and initial proposals for policies, plans and strategies within the Budget and Policy Framework in accordance with the Budget and Policy Framework Rules
5. making recommendations to the Council Cabinet, within his/her areas of responsibility, on matters reserved to the full Council Cabinet
6. other than executive matters reserved to the Council Cabinet, to discharge executive functions which have not been allocated by the Council to an individual member of the Council Cabinet or an officer, or to arrange for the discharge of those functions by an individual member of the Council Cabinet or an officer
7. performing the functions of, or taking decisions on matters reserved to, an individual member of the Council cabinet if the Monitoring Officer determines that the relevant individual member is unable to act
8. taking decisions in cases of urgency in respect of any executive matter, including key decisions.

9. responding to Neighbourhood Boards and Neighbourhood Forums on petitions on local issues in accordance with procedures laid down by the Council.

The following matters are reserved to an individual member of the Council Cabinet

1. making executive, non-key decisions, within his/her area of responsibility, and within the limitations of the Financial Procedure Rules, which result in the Council incurring expenditure or making savings of between £100,000 and £249,999
2. monitoring service performance, within his/her area of responsibility, and taking action to improve performance where necessary, in conjunction with the relevant service director
3. approving consultation arrangements and initial proposals for policies, plans and strategies within the Budget and Policy Framework in accordance with the Budget and Policy Framework Rules
4. approving minor policies and procedures that do not have a significant impact on two or more wards, within his/her area of responsibility
5. making recommendations to the Council Cabinet, within his/her areas of responsibility, on matters reserved to the full Council Cabinet
6. responding to Neighbourhood Boards and Neighbourhood Forums on petitions on local issues in accordance with procedures laid down by the Council.

The following matter is reserved to the individual member of the Council Cabinet with responsibility for housing management:

1. Exercise of the Derby Homes Single Shareholder Vote.

In addition, any member identified by the Council Executive Leader as the Deputy Leader will deputise for the Executive Leader in his/her absence in respect of any matters reserved to the Executive Leader.

When taking decisions, an individual member of the Council Cabinet must take into account professional advice from officers, including the statutory officers.

PART C

MATTERS THAT ARE DELEGATED TO NEIGHBOURHOOD BOARDS, NEIGHBOURHOOD FORUM, WARD COMMITTEES AND ADVISORY COMMITTEES

All delegated powers and duties must be exercised and performed on behalf of and in the name of the Council and in accordance with the Constitution:

Neighbourhood Boards

- 1) To consult, involve and engage local residents; voluntary and community groups; businesses, services and partner organisations in agreeing an annual Neighbourhood Agreement for the neighbourhood.
- 2) To produce a neighbourhood plan and profile that reflects the priorities for the local neighbourhood and is driven by the aims and aspirations of local residents.
- 3) To produce an annual neighbourhood agreement for the neighbourhood that compliments the Sustainable Community Strategy and the Local Area Agreement.
- 4) To manage and monitor the implementation of the Neighbourhood Agreement within a set performance management framework, ensure its proper monitoring and evaluation.
- 5) To hold all partners within the neighbourhood, residents, public agencies and service providers accountable within the terms of the Neighbourhood Agreement.
- 6) To increase and improve local community involvement in the neighbourhood and to involve and engage residents in improving their neighbourhood.
- 7) To provide links with the Derby City Partnership and the local neighbourhood.
- 8) To facilitate enforcement work and its procedures within the neighbourhood.
- 9) To deal with petitions on local issues in accordance with procedures laid down by the Council.
- 10) To recommend the use of funds allocated to the Board for approval by the Ward Committee

Neighbourhood Forums

- 1) To provide the neighbourhood with a regular open forum to discuss and raise concerns at a local level.

- 2) To identify and agree key priorities for action for inclusion in the neighbourhood tasking and co-ordination framework.
- 3) To agree on an annual basis resident representatives to serve on the Neighbourhood Board.
- 4) To enable the involvement and participation of residents in the workings of their neighbourhood.

Ward Committees

- 1) To consider recommendations of the Neighbourhood Board relating to provisionally approved applications for funding.
- 2) To authorise the allocation of the Neighbourhood Board's delegated budget.

Conservation Area Advisory Committee

- 1) To consider applications for planning permission, statutory notifications and related consents which could affect the character, appearance or setting of a World Heritage Site, Conservation Area, buildings of architectural or historic interest, ancient monuments and other sites of archaeological interest, and to give appropriate advice on such matters to the Planning Control Committee.
- 2) To consider proposals for new Conservation Areas and for the extension or alteration of the boundaries of existing ones.
- 3) To make recommendations to the Strategic Director of Neighbourhoods for action in existing and proposed Conservation Areas.
- 4) To foster interest in Conservation Areas, Buildings of Architectural or Historic interest, Ancient Monuments and Archaeological sites and through the organisations and associations represented on the Advisory Committee to encourage positive action by private individuals both acting alone and in support of the actions to be carried out by the Council including the operation of award schemes approved by the Planning Control Committee.

Fostering Panel

To deal with all matters referred to it and make recommendations to the Council Cabinet or Corporate Director, Children and Young People about matters required to be considered by the Fostering Services Regulations 2002.

The above section to be transferred to Part C

PART D~C

MATTERS THAT ARE DELEGATED TO THE STANDARDS COMMITTEE, OVERVIEW AND SCRUTINY COMMISSIONS, THE APPOINTMENTS PANEL, THE ADOPTION PANEL AND THE PERSONNEL COMMITTEE

All delegated powers and duties must be exercised and performed on behalf of and in the name of the Council and in accordance with the Constitution:

Standards Committee

- a) Promoting and maintaining high standards of conduct by councillors, co-opted members and church and parent governor representatives;
- b) Assisting the councillors, co-opted members and church and parent governor representatives to observe the Members' Code of Conduct;
- c) Advising the Council on the adoption or revision of the Members' Code of Conduct;
- d) Monitoring the effectiveness of the Members' Code of Conduct;
- e) Advising the Council on the adoption or revision of related codes or protocols;
- f) Monitoring the effectiveness of related codes or protocols;
- g) Advising, training or arranging to train councillors, co-opted members and church and parent governor representatives on matters relating to the Members Code of Conduct;
- h) Granting dispensations to councillors, co-opted members and church and parent governor representatives from requirements relating to interests set out in the Members' Code of Conduct;
- i) Assessing, reviewing and determining complaints about Members;
- j) Determining complaints referred by the Chief Executive for independent consideration in accordance with the Complaints Procedure;
- k) Providing independent members (other than the Chair) for panels determining the final stage of Social Services complaints.
- l) Granting exemptions for politically restricted posts.

Assessment Sub Committee

To carry out initial assessments of complaints about alleged breaches of the Members' Codes of Conduct.

For the appointment of an Assistant Director, three Members of the Council, to be determined by the Chief Executive, provided that the Panel shall include at least one member of each political group and one member of the Council Cabinet.

Conservation Area Advisory Committee

- 1) To consider applications for planning permission, statutory notifications and related consents which could affect the character, appearance or setting of a World Heritage Site, Conservation Area, buildings of architectural or historic interest, ancient monuments and other sites of archaeological interest, and to give appropriate advice on such matters to the Planning Control Committee.
- 2) To consider proposals for new Conservation Areas and for the extension or alteration of the boundaries of existing ones.
- 3) To make recommendations to the Strategic Director of Neighbourhoods for action in existing and proposed Conservation Areas.
- 4) To foster interest in Conservation Areas, Buildings of Architectural or Historic interest, Ancient Monuments and Archaeological sites and through the organisations and associations represented on the Advisory Committee to encourage positive action by private individuals both acting alone and in support of the actions to be carried out by the Council including the operation of award schemes approved by the Planning Control Committee.

Fostering Panel

To deal with all matters referred to it and make recommendations to the Council Cabinet or Corporate Director, Children and Young People about matters required to be considered by the Fostering Services Regulations 2002.

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THE FORWARD PLAN

Period of forward plan

- AI23 Forward Plans will be prepared by the Council Cabinet to cover a period of four months, beginning with the first day of any month. They will be prepared on a monthly basis and subsequent plans will cover a period beginning with the first day of the second month covered in the preceding plan.

Contents of Forward Plan

- AI24 The forward plan will contain matters which the Council Cabinet has reason to believe will be subject of a key decision to be taken by the Executive Leader, Council Cabinet or a committee of the Council Cabinet, during the period covered by the Plan. It will describe the following particulars in so far as the information is available or might reasonably be obtained:
- a. the matter in respect of which a decision is to be made
 - b. who is to take the decision and details of membership
 - c. the date on which, or the period within which, the decision will be taken
 - d. the identity of the principal groups whom the decision taker proposes to consult before taking the decision
 - e. the means by which any such consultation is proposed to be undertaken
 - f. the steps any person might take who wishes to make representations to the Council Cabinet or decision taker about the matter in respect of which the decision is to be made, and the date by which those steps must be taken; and
 - g. a list of the documents submitted to the decision taker for consideration in relation to the matter.

Publication of Forward Plan

- AI25 The forward plan must be published at least 14 days before the start of the period covered. The Director of Legal and Democratic Services will publish once a year a notice in at least one newspaper circulating in the area, stating:
- a. that key decisions are to be taken on behalf of the Council
 - b. that a forward plan containing particulars of the matters on which decisions are to be taken will be prepared on a monthly basis
 - c. that the plan will contain details of the key decisions to be made for the four month period following its publication

Council Cabinet Procedure Rules

Operation of the Council Cabinet

EP1-CCP1 Executive functions may be discharged by:

- a. the Executive Leader
- ab. the Council Cabinet as a whole
- bc. a committee of the Council Cabinet
- ed. a Individual member of the Council Cabinet
- de. an officer
- ef. a Neighbourhood Board/Forum/Ward Committee
- fg. joint arrangements; or
- gh. another local authority.

Sub-delegation of Executive functions

EP2-CCP2 Where the Executive Leader, Council Cabinet or a committee of the Council Cabinet is responsible for an Executive function, they may delegate further to an executive member, a Neighbourhood Board/Forum/Ward Committee, joint arrangements or an officer.

EP3-CCP3 Where Executive functions have been delegated, this does not prevent the discharge of delegated functions by the person or body who delegated.

The Council's Sscheme of Ddelegation and Executive functions

EP4-CCP4 In so far as it relates to executive functions, ~~the~~ the Council's scheme of delegation will be ~~subject to adoption~~ determined by the Council Executive Leader and may only be amended by the Council Executive Leader. It will contain the details required in Article 7.

Conflicts of Interest

EP5-CCP5 Where a member of the Council Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

EP6-CCP6 If every member of the Council Cabinet has a conflict of interest this should be dealt with as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

EP7-CCP7 If the exercise of an Executive function has been delegated to a committee of the Council Cabinet, a Council Cabinet member or an officer, and should a conflict of interest arise, then the function will be exercised in the first instance by the person or body by whom the delegation was made and otherwise as set out in the Council's Code of Conduct for Members in Part 5 of this Constitution.

Council Cabinet meetings – Frequency and Venue