New council constitutions: guidance to English Authorities
On 5th May 2006 the responsibilities of the Office of the Deputy Prime Minister (ODPM) transferred to the Department for Communities and Local Government.

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Chapter 1 - Introduction and summary

This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities." This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in Chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

Issue date: 26 October 2000.

Introduction

1.1 This guidance is issued to English county councils, English district councils and London borough councils and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

1.2 This guidance underpins the provisions of Part II of the Local Government Act 2000 (c. 22) (the Act) and is issued under section 38 of the Act. Paragraphs to 5.63 in Chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970. It includes a combination of description of the main statutory provisions of the Act and
subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a "tick" in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

1.3 The Secretary of State intends to issue separate guidance on the related issue of councillors allowances under section 18(5A) of the Local Government and Housing Act 1989 (c.42) as inserted by section 99 of the Act.

1.4 The Department of the Environment, Transport and the Regions and the Local Government Association have jointly published guidelines for consulting on new constitutions to accompany this guidance. The Department of the Environment, Transport and the Regions also intends to publish examples of new constitutions (in modular form) shortly.

**Background and key principles**

1.5 Local authorities, in partnership with Government, business, the voluntary sector and others, have a vital role to play in improving the quality of peoples lives, providing vision and leadership for their communities, and delivering high quality services.

1.6 The White Paper *Local leadership, local choice* put in place a radical ten-year programme for the reform and modernisation of local government in England which sits at the heart of the Governments plans to modernise Britain.

1.7 It requires action by Government to put in place the framework for modernisation and, in partnership with local government, actively to motivate and manage the process of change.

1.8 It equally requires action by every local authority, its councillors and employees to find new ways of working which put its people and its communities first. In all they do local authorities need to be, and demonstrate that they are, efficient, transparent and accountable.

1.9 This programme of change is now underway. Crude universal capping has been abolished and, since April 2000, best value has been a reality. The Local Government Act 2000 provides new powers for local authorities to promote the economic, social and environmental well being of their area; a duty to develop Community Strategies; and establishes a new ethical framework for local government.

1.10 Part II of the Act gives the public a real say in how they are governed and makes available to local authorities new constitutions which will deliver identifiable, accountable, corporate leadership for a local authority and the community it serves and provide efficient, transparent and accountable decision making.

1.11 Prior to being introduced to Parliament, Part II of the Local Government Bill, which resulted in the Act, was published for consultation in the paper *Local leadership, local choice* as Part I of the draft Local Government (Organisation and Standards) Bill. The draft Bill was scrutinised by a Joint Committee of Parliament and the Government responded to their report on 2nd December 1999 shortly after introduction of the Local Government
1.12 The Government welcomes the efforts that many local authorities have made prior to commencement of the Act through introducing experimental executive style arrangements to gain experience of new ways of working. These experiments have helped both central and local government learn valuable lessons which have informed the drafting of the legislation and this guidance.

Main statutory provisions

1.13 Part II of the Act applies to county councils, district councils and London borough councils in England and county councils and county borough councils in Wales. This guidance is issued to county councils, district councils and London borough councils in England. Separate guidance for county councils and county borough councils in Wales will be issued by the National Assembly for Wales.

1.14 Section 11 of the Act describes three forms of executive as follows:

- an elected mayor with a cabinet of councillors appointed by the elected mayor mayor and cabinet (section 11(2));
- an executive leader elected by the council with a cabinet appointed either by the council or the executive leader leader and cabinet (section 11(3)); and
- an elected mayor with an officer appointed by the council (known as the council manager) mayor and council manager (section 11(4)).

1.15 Section 11(5) enables the Secretary of State, by regulations, to make provision for other forms of executive including, by virtue of section 11(6), forms of executive where other executive members are directly elected. Section 12 provides that in exercising his powers under section 11(5) the Secretary of State must have regard to, amongst other things, any proposals put forward by local authorities. A local authority putting forward such proposals must consider that certain criteria are met (see Chapter 4).

1.16 Section 13 requires that all functions of a local authority should be the responsibility of the executive unless otherwise specified in regulations. Sections 14 to 20 provide for ways in which functions can be delegated both within and outside the executive and outside the local authority.

1.17 Section 21 requires a local authority’s executive arrangements to include arrangements for overview and scrutiny committees to review or scrutinise decisions of the executive and the local authority and to make reports and recommendations to the local authority or the executive.

1.18 Section 22 deals with access to information under executive arrangements and enables the Secretary of State to make further provision about access to information in regulations.

1.19 Section 25 places a duty on local authorities, subject to section 31, to consult on and
prepare proposals for executive arrangements which involve one of the forms of executive in section 11.

1.20 Sections 26 and 27 require that, where a local authority's proposals include an elected mayor, the local authority may only implement the proposals if they are approved by a local referendum. Section 27 requires the local authority, where the proposals require a referendum, to draw up outline fall-back proposals to be implemented in the event that the referendum rejects the proposals.

1.21 A referendum can also be triggered by a petition signed by at least 5% of local electors (section 34) or by a direction or order from the Secretary of State (sections 35 and 36).

1.22 Section 31 provides that district councils in two tier areas with a population below 85,000 (as estimated by the Registrar General on 30 June 1999) must either draw up proposals for executive arrangements under section 25 or alternative arrangements of a type permitted under section 32. In deciding whether to draw up proposals for executive or alternative arrangements those local authorities must consult local electors and other interested persons in their area. Section 31 also enables the Secretary of State to specify further descriptions of local authority to whom this choice is available.

1.23 Section 32 enables the Secretary of State, by regulations, to specify alternative arrangements which do not involve the creation and operation of an executive. These arrangements must include arrangements for the appointment of committees or sub-committees to review or scrutinise decisions or other action taken in the discharge of the local authority's functions. Alternative arrangements must also be of a type which the Secretary of State considers are likely to ensure that decisions are taken in an efficient, transparent and accountable way.

1.24 Section 37 requires each local authority to prepare, keep up to date and publicise a document referred to in that section and in this guidance as the local authority's constitution.

1.25 Unless the context requires otherwise, throughout this guidance references to the "constitution" or the "new constitution" are references to a constitution which includes either executive arrangements or alternative arrangements.

1.26 Section 38 enables the Secretary of State to issue guidance for the purposes of Part II of the Act. Local authorities must have regard to such guidance.

1.27 Sections 39 to 44 make provisions about elected mayors and elections for elected mayors (including enabling detailed provisions in regulations) and section 45 enables the Secretary of State to make provisions with respect to referendums.

**Summary of chapters**

1.28 The following sections summarise the principal issues covered in each chapter of this guidance:
Chapter 2 - The full council and members roles

- There are varied and powerful roles for all councillors, as representatives of the local community, as members of the full council, overview and scrutiny committees or the executive, and other committees.
- The full council sets the budget and local authority's policy framework.
- There must be a mechanism for resolving conflict between the executive and the full council about the budget and policy framework.

Chapter 3 - Overview and scrutiny under executive arrangements

- Overview and scrutiny committees have varied and powerful roles in:
  
  i. policy development and review;
  
  ii. publicly holding the executive to account; and
  
  iii. examining matters of wider local concern.

- Overview and scrutiny committees need to have effective support from officers.

Chapter 4 - The Executive

- The executive is responsible for proposing the policy framework and budget to full council and for implementing the local authority's policy framework.
- Decisions implementing the councils policy framework and budget can be taken collectively by the executive or delegated to individual members of the executive, officers, committees of the executive or devolved structures.
- As the leadership for the local authority the executive should be the focus for community planning and should lead the search for best value.

Chapter 5 - Responsibility for functions

- The broad approach is that:
  
  i. the full council sets the budget and policy framework;
  
  ii. the executive implements that budget and policy framework;

  iii. "quasi-judicial" functions (including licensing and development control) may not be matters for the executive they can be for the full council, committees, sub-
committees or officers.

- The legislation provides for functions to be allocated between the executive and the council. For this purpose functions are classified as:

  i. functions which must not the responsibility of the executive;

  ii. functions which must be the responsibility of the executive;

  iii. functions which the local authority can decide whether they are to be the responsibility of the executive; and

  iv. functions which are shared between the council and the executive.

Chapter 6 - Other council structures

- The executive can delegate its functions to area committees in addition to any functions delegated to them by the full council.
- The executive can arrange to discharge functions jointly with other local authorities or their executives.
- The executive can delegate functions to another local authority or its executive and the local authority can delegate functions to the executive of another local authority.

Chapter 7 - Accountable decision making

- The executive will have to give advance notice of, and consult on, its key decisions.
- The public will have enhanced access to papers and decision-making.
- Decisions made by the executive, members of the executive or committees of the executive will have to be recorded and published together with the reasons for the decisions and the background papers.

Chapter 8 - Officers roles

- Every local authority will need to have a professional chief executive (head of paid service).
- All staff will be employed by the local authority and serve all the members of the council; appointment of senior staff will involve input from both the executive and the council, and members will not be involved in the appointment of staff below deputy chief officer level.
- The chief executive (head of paid service), chief finance officer and monitoring officer will have key roles within the local authority.
- All local authorities should ensure effective support for all of their functions (including
overview and scrutiny). Whilst there may be separation of officer support for overview and scrutiny and the executive this is not required.

**Chapter 9 - Alternative Arrangements**

- The full council will have an enhanced policy making role under alternative arrangements.
- Alternative arrangements must involve effective overview and scrutiny.
- The local authority will be able to delegate implementation of its policy to streamlined committees.

**Chapter 10 The Constitution**

- All local authorities must have a written constitution.
- The constitution, and other documents referred to in it, should set out everything anyone who has dealings with the local authority would need to know about how the local authority conducts its business, who takes which decisions and how to work with the local authority.
- The constitution should be widely and readily available to the public.

**Chapter 11 Drawing up proposals**

- All local authorities must consult on and draw up proposals for a new constitution which involves executive arrangements or in the case of small shire district councils could involve alternative arrangements.
- If a local authority's proposals involve an elected mayor they must hold a local referendum, the result of which will be binding on the local authority.
- Under normal circumstances all local authorities should have submitted proposals to the Secretary of State by June 2001 and all local authorities should be operating a new constitution by June 2002.

**Chapter 12 Petitions**

- A local authority will be required to hold a referendum on proposals which involve an elected mayor if it receives a valid petition signed by more than 5% of the local electorate.
- Local authorities will have to publicise annually the number of signatures required for a valid petition.
- Petitions which do not meet the 5% threshold can be amalgamated and treated as a single petition.

**Chapter 13 Referendums**

- The Secretary of State intends to make Regulations which will specify the timing of referendums, the questions to be asked, publicity restrictions for local authorities and expenditure limits for individuals or campaign groups.
• A local authority must adopt fall-back proposals to be implemented if the main proposals are rejected by the referendum.
• The Secretary of State can direct any local authority to hold a referendum in circumstances set out in regulations; such as failure to consult in accordance with the legislation or the guidance, or failure to implement proposals.

Chapter 14 Selection of a mayor

• The Secretary of State intends to make regulations which will set out the rules for the conduct of mayoral elections, the timing of elections, publicity restrictions for local authorities, nomination requirements for candidates and expenditure limits for candidates and third parties.
• No-one can be a councillor and the elected mayor in the same local authority.
• There are transitional arrangements for the first election of the elected mayor and the elected mayors first term of office.

Chapter 15 Changing the arrangements

• The Secretary of State intends to make regulations which set out the rules governing how local authorities can amend their executive or alternative arrangements and how they can change between forms of arrangements.

[12] Local leadership, local choice, Cm 4298, TSO 1999, ISBN 0 10 142982 7
Chapter 2 - The full council and members roles

Introduction
This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

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The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.


All members and councillors outside the executive
2.1 All members of the local authority will have important roles under a new constitution and all will be subject to the same ethical framework and code of conduct. The roles of members of the executive are described in chapter 4 of this guidance. This chapter describes the range of roles open to all members and those open to councillors outside the executive. These roles include:

- representing the views of their constituents;
- acting together as the full council;
- membership of committees and sub-committees; and
- membership of overview and scrutiny committees (though not for members of the
Members representational role's

2.2 All councillors and an elected mayor represent their constituents and this should become an even more important role under a new constitution. Councillors (whether or not they are members of the executive) and an elected mayor should play an important role in consulting their communities on the development of policy, in particular in reviews of best value; development of the Best Value Performance Plan; the community planning process; and other local initiatives, for example on community safety and local cultural strategies.

2.3 Local authorities will need to ensure, particularly through overview and scrutiny, that appropriate procedures are in place to ensure that councillors can feed-in the views of the communities they represent to policy development and decision making.

2.4 In putting in place the ethical framework under Part III of the Act, the Secretary of State is minded to revise the approach taken to the registration and declaration of members (councillors and an elected mayor) interests, to make it easier for members to play an active part in council discussions. In particular:

- the interests that are to be registered (and declared) will be spelt out within the new code of conduct;
- clear rules will be established about when members can, and cannot, take part in discussions;
- consideration will be given to allowing members to declare interests, but stay and participate in discussions in certain circumstances; and
- a local authority's own Standards Committee will be able to grant dispensations, subject to clear guidelines set out in regulations.

2.5 Where the local authority has established area committees with delegated responsibilities, all councillors who represent an electoral division or ward wholly or partly within the area for which the committee has functions will be able to be members of those bodies and take decisions in respect of that area.

2.6 As chapter 5 of this guidance makes clear, all members of the local authority will be able to represent the local authority on partnerships and outside bodies if appointed to such posts by either the executive or the council as the executive arrangements in the constitution provide.

Acting together as a full council

2.7 All councillors and an elected mayor, acting together as the full council, will have the following roles:

- adopting the new constitution and any subsequent changes to it;
- adopting the local authority's code of conduct;
- agreeing the local authority's policy framework and budget;
taking decisions in respect of functions which are the responsibility of the executive which are not in accordance with the policy framework or budget agreed by the full council;

taking decisions in respect of functions which are not the responsibility of the executive and which have not been delegated by the council to committees, sub-committees or officers;

making appointments to committees;

making appointments to the executive where the executive arrangements in the constitution so provide;

appointing the council manager (under executive arrangements which involve that form of executive); and

making or confirming the appointment of the chief executive (see chapter 8).

2.8 Local authorities will need to give careful consideration to the role of the full council under a new constitution. In particular, the role of the council in determining the policy framework and budget is likely to require changes to how the council has traditionally conducted its business.

2.9 The council meeting will be the forum at which all members of the local authority (whether they are members of the executive or not) discuss and decide the local authority’s policy framework and budget. Local authorities will need to consider how the role of the council meeting in policy determination can be enhanced, by considering:

- whether it might be appropriate for the council to meet more frequently at certain times of year and less often at others;
- how the structure and style of council meetings may need to change to allow for more debate on the policy framework, perhaps at more than one stage in the policy development process, including how the executive should present proposals for the policy framework and budget;
- what arrangements will be necessary to enable open and informed debate on reports from overview and scrutiny committees; and
- how public participation in the council meeting can be encouraged.

2.10 Figure 2.1 provides examples of innovations in the organisation of council meetings from some local authorities which have been experimenting with executive style arrangements prior to the passing of the Act.

| Figure 2.1 |
| EXAMPLES OF INNOVATION IN THE FULL COUNCIL MEETING |
| A metropolitan authority has established a monthly council meeting as part of its executive style arrangements which, as well as statutory functions, now includes the following in its arrangements: |

- hearing delegations from youth and community groups;
- a leaders report on which the leader takes any questions or
comments from councillors and the public; and
- local councillors reports focussing on particular wards and covering the whole of the local authority over the year.

A unitary council has worked up a proposal for a new type of council meeting which includes four elements:

- community engagement activity;
- debating policy development;
- debating overview and scrutiny reports; and
- receiving and confirming minutes of cabinet, committees and panels.

In this proposal community engagement activity would include:

- agreeing and supporting a community engagement strategy;
- working with external partners including alliance building;
- offering opportunities for public interaction sessions, community spokespersons, etc; and
- recognising staff achievements.

Committees and sub-committees

2.11 The council will be able to appoint any member of the local authority (whether or not they are a member of the executive), including an elected mayor, to committees or sub-committees which take decisions on functions which are not the responsibility of the executive, such as development control and licensing.

Overview and scrutiny

2.12 Chapter 3 provides a description of, and guidance on, overview and scrutiny under executive arrangements. In broad terms the role of overview and scrutiny committees will be:

- to assist in the development of council policy; and
- to question and evaluate the Actions of the executive, both before and after decisions are taken.

2.13 Representing the views of constituents should form an essential element of holding the executive to account and reviewing policy. It will be essential if the local authority’s policies are truly to reflect the needs and aspirations of local people and if the executive
is to be effectively held to account for the impact of its decisions on local communities.

Training development and support

2.14 All members of the local authority, both within and outside the executive, will need to have access to training and development opportunities to ensure that they can carry out their new roles effectively. In particular, effective overview and scrutiny requires a change of culture in the way councillors question decisions and evaluate policy. Experience from local authorities who have experimented with executive style arrangements prior to the Act shows that effective overview and scrutiny needs time to develop and training is needed to help councillors understand and develop these new roles. Therefore local authorities should ensure that all members of the local authority have access to adequate training and development opportunities in particular on overview and scrutiny. Standards Committees also have a specific role to play in advising, training or arranging to train members on matters relating to their local authority's code of conduct.

2.15 Local authorities will need to ensure that the roles of councillors outside the executive are meaningful and well-supported.

2.16 Figure 2.2 provides examples of the wide range of roles and support available for councillors who are not members of the executive.

<table>
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<th>Figure 2.2</th>
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<tr>
<td><strong>Examples of roles for councillors who are not members of the executive</strong></td>
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A district council has established clear roles and well established support for its councillors who are not members of the executive. These include:

- a regular members information pack produced every fortnight and personalised for each member with a briefing on decisions and issues at ward level;
- lead members identified to support executive members in their responsibilities; and
- a member services section made up of two teams executive support and councillor support.

One London borough has developed the role of community councillors to include lead roles on particular issues for their Community Area Forum such as child care or the environment. Community area managers provide support for these roles and the Forums.

One metropolitan council has established cross-council working groups, involving both members from the executive and members who are not members of the executive, to consider cross-cutting issues such as social exclusion. They report their findings to the executive.
The budget and policy framework

2.17 Section 13 of the Act enables the Secretary of State to make regulations in respect of the allocation of responsibilities for functions between the executive and the local authority. The main provisions in section 13 are described in more detail in chapter 5.

2.18 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 are made under section 13 of the Act and regulation 4 requires the following functions and specified actions in connection with the discharge of functions to be exercised by the full council:

- the adoption or approval of specified plans and strategies of the local authority;
- the adoption or approval of the budget and any plan or strategy for the control of the local authority's borrowing or capital expenditure (the capital plan);
- determining the scheme and amounts of members allowances; and
- authorising applications to the Secretary of State for transfer of housing land.

2.19 Schedule 3 to the Regulations requires the following plans and strategies to be approved or adopted by the full council:

- Annual Library Plan;
- Best Value Performance Plan;
- Childrens Services Plan;
- Community Care Plan;
- Community Strategy;
- Crime and Disorder Reduction Strategy;
- Plans and alterations which together comprise the Development Plan;
- Early Years Development Plan;
- Education Development Plan;
- Local Transport Plan; and
- Youth Justice Plan.

2.20 Regulation 5 of, and paragraph 1 of Schedule 4 to, the Regulations also provide that the local authority can choose that certain other plans or strategies (statutory or non-statutory), in addition to those listed above, must be adopted or approved by the full council. The Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 requires local authorities to specify in their proposals for executive arrangements which plans and strategies are to be adopted or approved by the full council.

2.21 The Secretary of State recommends that local authorities should consider including the following other plans and strategies for approval or adoption by the full council:

- Food Law Enforcement Service Plan;
- the strategy and plan which comprise the Housing Investment Programme;
• Local Agenda 21 Strategy;
• Adult Learning Plan;
• Quality Protects Management Action Plan; and
• the local authority's Corporate Plan or its equivalent (if the local authority has one).

2.22 Where a local authority does not choose for any such plan or strategy to be subject to full council approval the Secretary of State recommends that the plan or strategy in question should be subject to approval by members of the executive.

2.23 The Secretary of State intends that the general direction to be made under section 37(1)(a) will require that a local authority must set out in its constitution which plans and strategies are subject to approval by the full council.

2.24 Throughout this guidance the plans and strategies which are subject to full council approval or adoption (whether by virtue of regulation 4 and Schedule 3 or regulation 5 and paragraph 1 of Schedule 4) are referred to collectively as the policy framework.

Agreeing/ approving the budget policy framework

2.25 The executive will, for almost all functions, be responsible for implementing the local authority's policies and spending the budget in accordance with the policy framework and the local authority's financial rules/regulations. The executive will be the leadership for the local authority and, where there is an elected mayor, will be implementing a direct mandate. Therefore, regulation 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provides that the executive has overall responsibility for preparing the draft budget, plans and strategies for submission to the full council to consider.

2.26 For plans and strategies which must be sent to a Minister of the Crown for approval, the full council is required to approve or adopt the draft to be sent to the Minister for approval. The executive has responsibility for amending any such plan or strategy as required by the Minister from whom approval is required.

2.26A The Regulations also provide that the council must approve any proposals in connection with the preparation of an altered or replacement development plan, prior to public consultation under regulations 10 and 22 of the Town and Country Planning (Development Plans) (England) Regulations 1999.

2.27 Throughout this guidance, unless the context requires otherwise, the term budget is used to encompass the budget requirement (as provided for in the Local Government Finance Act 1992), all the components of the budget such as the budgetary allocations to different services and projects, proposed taxation levels, contingency funds (reserves and balances) and any plan or strategy for the control of the local authority's borrowing or capital expenditure.

2.28 The executive should adopt an inclusive approach to preparing the draft budget, plans and strategies and to policy development more generally. It should ensure that councillors outside the executive (whether or not they are a member of an overview and scrutiny committee) have the opportunity to put forward proposals to them for the budget or policy development. Overview and scrutiny committees should also play an integral part in policy
development and the executive should consult such committees regularly in the process of preparing the draft budget and draft plans and strategies. In the case of the Development Plan the executive should consult all bodies within the local authority which take development control decisions.

2.29 After considering the executives proposals, the full council has the power to:

- adopt or approve the draft budget, plan or strategy;
- ask the executive to reconsider it; or
- amend the budget, plan or strategy itself.

2.30 Within this basic framework it is up to each local authority to determine the details of the process. Figure 2.3 provides an illustrative example of the type of policy development and implementation process which the Secretary of State considers to be appropriate under executive arrangements.

**Figure 2.3 Policy formulation and implementation in a new constitution**
Partnership plans

2.31 Increasingly, local authorities do not have sole responsibility for the preparation of many plans and strategies, even though they may have the lead role in co-ordinating them. A number of plans (such as the Community Strategy or Crime and Disorder Reduction Strategy) are now prepared under partnership arrangements and include action and targets to which other bodies will be contributing. Local strategic partnerships will take on an increasingly important role in such joint working. In the case of the Early Years Development Plan, the Early Years Development Partnership is, and remains, responsible for the development of the plan.
prior to submission to the full council for approval (see section 119 of the School Standards and Framework Act 1998).

2.32 Such plans need to be negotiated and agreed by the relevant partners, and it would be counter-productive if the full council were, at the final approval stage, to overturn elements of a plan or strategy that had already been agreed with other local partners. Therefore, the Secretary of State recommends that local authorities should ensure that there is effective and regular consultation and communication between the executive, the relevant overview and scrutiny committees and other members of the local authority during the development of plans and strategies which need the agreement of partner organisations.

2.33 Local authorities should, therefore, adopt protocols to ensure that any councillor who is neither a member of the executive nor the partnership responsible for developing the plan or strategy has opportunities to feed their views into the development of any such plan or strategy.

Conflict resolution in setting the budget and policy framework

2.34 In line with the recommendation of the Joint Committee which scrutinised the draft Local Government (Organisation and Standards) Bill, the Secretary of State intends to make provision in secondary legislation to require local authorities to adopt a mechanism for resolving disputes between the executive and the full council in setting the budget and policy framework. The mandatory features which the Secretary of State intends will form part of such a mechanism are:

- the executive leader or elected mayor (as the case may be) must have at least 5 working days to object to a full council decision which is contrary to the executives proposals for either the budget or a plan or strategy before that decision takes effect;
- if the executive leader or elected mayor (as the case may be) registers such an objection the full council must meet to reconsider the issue in light of the objection; and
- the full council can insist on its decision either by resolution of either a simple or greater majority of the members present and voting (it will be for the local authority to decide which through provisions in its standing orders).

2.35 All other provisions of such conflict resolution procedures are for each local authority to determine locally. In effect, such a mechanism is a power for the executive leader or elected mayor (as the case may be) to delay a decision of the full council for a short time and to ask the full council to reconsider the issue.

2.36 The Secretary of State considers that such a process is particularly important under arrangements which include an elected mayor because she or he will have a direct mandate for her or his policies which can be different from the mandate of the local authority. Therefore the Secretary of State considers that under arrangements which include an elected mayor, a two thirds majority of those voting and present at the council meeting should be needed for the council to insist on its decision.
2.37 Such a conflict resolution mechanism would apply only to approval or adoption of the budget and policy framework. It could not be employed in respect of functions which are the sole responsibility of the executive where the legislation requires that, under normal circumstances, only the executive can take the decisions (or delegate them). In this case, overview and scrutiny committees have specific powers to challenge the executive and to require that the decision maker reconsiders any decision which has been made but not implemented (see Chapter 3).

2.38 An illustrative example of such a conflict resolution process is provided in figure 2.4.

**Figure 2.4**

Example provisions for a conflict resolution mechanism

- The executive, individual member of the executive or committee of the executive (as the case may be) submits the draft budget, plan or strategy to the full council to consider.
- Within 2 working days of the council meeting, minutes are provided to the elected mayor or executive leader and the monitoring officer.
- Decisions taken by the council at that meeting which are different to the proposals made by the executive can only come into effect after the 7th working day after the council meeting.
- The executive leader or elected mayor (as the case may be) may object, before the decision comes into effect, in writing, giving reasons to the chairman of the authority, to a decision taken at that meeting in respect of the budget, plan or strategy under consideration.
- The council must meet to reconsider its decision in the light of the executive leaders or elected mayors (as the case may be) objection and may insist on its decision by resolution which requires a simple majority of those present and voting (for arrangements which involve a leader and cabinet form of executive) or a two thirds majority of those present and voting (for arrangements which involve a form of executive which includes an elected mayor).
- The decision can then be implemented immediately.

**Moving monies between budgetary allocations**

2.39 Once the budget has been adopted by the full council, the executive will need to be able to respond quickly to changing circumstances which might require reallocation of funds from one service to another. A local authority’s standing orders or financial rules/regulations will need, therefore, to include reasonable provision to allow the executive to reallocate monies within the budget. Those provisions will also need to allow for situations where the executive needs to make an urgent decision which would otherwise be contrary to the budget without reference to the full council (see below).

2.40 The Secretary of State recommends that provisions in a local authority’s standing orders or financial rules/regulations should enable the executive to take any decision which is contrary to or not wholly in accordance with the budget or the capital plan providing that any additional
costs incurred can be offset by additional (unforeseen) income, contingency funds (reserves and balances) or savings from elsewhere within the budgetary allocations to functions which are the responsibility of the executive. The Secretary of State advises that provisions in a local authority's standing orders or financial rules/regulations should not enable the executive to incur additional expenditure which cannot be offset in these ways without reference to the full council.

2.41 Local authorities will need to consider whether an upper limit to such virement should be set (either as an absolute amount or as a percentage of the budgetary allocations involved). Local authorities may also wish to consider different upper limits for different service allocations particularly where funds are ring-fenced, e.g. by central Government. The upper limit(s) for urgent decisions will usually need to be set higher than for non-urgent decisions.

2.42 In setting such limits local authorities should take account of the provisions in the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 which require that if the executive is minded to determine a matter contrary to or not wholly in accordance with the budget/capital plan and any provisions made in standing orders or financial rules/regulations that decision must be taken by the full council (see below). Therefore, if in its standing orders or financial rules/regulations the local authority sets the executives freedoms too narrowly this will require very many full council meetings.

2.43 In addition, a local authority's standing orders or financial rules/regulations should include mechanisms for moving monies between budgetary allocations for functions which are the responsibility of the executive and budgetary allocations for functions which are not the responsibility of the executive.

Modification of the policy framework

2.44 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 provide that any modifications to the plans or strategies which comprise the policy framework must be approved or adopted by the full council unless at the time of approving the plan or strategy the local authority has delegated freedom to make such "in year" modifications to the executive.

2.45 The local authority should, at the same time as approving or adopting the plan or strategy in question, agree which elements of it the executive will have the freedom to amend in the light of experience gained in implementing the policy. Again the local authority should bear in mind that non-urgent decisions (see below) which are contrary to the plans or strategies agreed by the full council must be taken by the full council.

2.46 The Secretary of State recommends that if the executive makes any such modifications to the policy framework then those modifications should be reported to the full council at the next available council meeting.

Decisions contrary to the budget and policy framework

2.47 The Local Authorities (Functions and Responsibilities) (England) Regulations 2000
require that a decision must be taken by the full council, unless the decision is urgent (see paragraph below), if the executive is minded to determine a matter in a manner which would be:

- contrary to any plan or strategy approved by the full council (unless the executive has delegated power to vary the plan or strategy in question);
- contrary to or not wholly in accordance with the budget and provisions in standing orders or financial rules/regulations in respect of the budget; or
- contrary to or not wholly in accordance with the plan or strategy for the control of the local authority's capital expenditure or borrowing and provisions in standing orders or financial rules/regulations in respect of such a plan or strategy.

2.48 These restrictions do not apply to decisions in respect of functions which are not the responsibility of the executive. In the case of development control decisions section 54A of the Town and Country Planning Act 1990 continues to apply to decisions which are departures from the Development Plan.

2.49 The policy framework adopted by the full council on the basis of the executive's proposals in effect sets out for the plans and strategies the executive is responsible for implementing. Together with the budget it is therefore the framework within which the executive must work. Therefore, if any person or body responsible for making decisions in respect of functions for which the executive is responsible is in any doubt as to whether a decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget they should seek advice from officers. In particular they should seek advice from the monitoring officer, chief finance officer (section 151 officer) or chief executive as well as any relevant chief officers.

2.50 If the monitoring officer or other appropriate officers advise that a decision is likely to be considered contrary to the policy framework then the Secretary of State recommends that the decision should be treated as if it is indeed contrary to the policy framework and handled accordingly.

2.51 Similarly, if the monitoring officer, chief finance officer or other appropriate officers advise that a decision is likely to be considered contrary to or not wholly in accordance with the budget/capital plan and provisions in standing orders or financial rules/regulations in respect of the budget/capital plan, then the Secretary of State recommends that the decision should be treated as if it is indeed contrary to or not wholly in accordance with the budget/capital plan and provisions in standing orders or financial rules/regulations in respect of the budget/capital plan and handled accordingly.

2.52 As chapter 3 of this guidance describes, overview and scrutiny committees have a power to refer certain decisions made in respect of functions which are the responsibility of the executive but which have not yet been implemented to the full council to decide whether the executive decision maker should reconsider the decision. Overview and scrutiny committees may wish to use this option if, following advice from the appropriate officers, they consider that the decision may have been contrary to the policy framework. In such a case the council could either:
• determine that the decision was contrary to the policy framework and therefore a matter for them to decide and take the decision themselves; or
• determine that the decision was not contrary to the policy framework and therefore a matter for the executive to decide. In this case the council would then have the option of requesting that the decision maker reconsider the decision if they believe that a different decision would have been more appropriate.

**Urgency**

2.53 The [Local Authorities (Functions and Responsibilities) (England) Regulations 2000](https://www.legislation.gov.uk) also provide that an urgent decision which is contrary to the policy framework may be taken by the executive if the chair of a relevant overview and scrutiny committee agrees that the decision may reasonably be regarded as urgent in the circumstances.

2.54 If a chair of a relevant overview and scrutiny committee is not available then the chairman of the local authority (or in her or his absence the vice chairman of the local authority) must decide if the decision may reasonably be regarded as urgent in the circumstances. If the relevant person does not agree that the decision may reasonably be regarded as urgent in the circumstances then the matter must be referred to the full council for decision.

2.55 This procedure should only be used if it is impractical to convene a quorate meeting of the full council in the time available before the decision must be made.

2.56 For some urgent decisions there may be more than one relevant chair of an overview and scrutiny committee. The regulations require the agreement of only one relevant overview and scrutiny committee chair. Therefore the Secretary of State recommends that each local authority's executive arrangements should set out protocols for determining which chair should be consulted for each category or description of executive function.

2.57 After making such an urgent decision the person responsible for it must, as soon as reasonably practicable, provide to the full council a report explaining the decision, the reasons for it and the reasons why the decision was urgent.

2.58 Urgency provisions for decisions which would be contrary to or not wholly in accordance with the budget or the capital plan should be made in a local authority's standing orders or financial rules/regulations.
Chapter 3 - Overview and scrutiny under executive arrangements

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". It replaces the existing chapter 3 issued on 26 October 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (c.22) (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. Paragraphs 3.87 to 3.151 of this chapter provide supplementary guidance on The Parent Governor Representatives (England) Regulations 2001. The statutory guidance is presented in bold text with a 'tick' in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities' experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

Issue date: 15 March 2001, with additional Guidance from 21 June 2001 and 20 July 2001

Previous versions of this chapter were issued on: 26 October 2000.

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

Enquiries about the supplementary guidance on parent governor representatives should be addressed to:

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School Admissions, Organisation and Governance Division
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Sanctuary Buildings
Great Smith Street
London SW1P 3BT
Main legislative provisions

3.1 Section 21(1) of the Act requires a local authority's executive arrangements to include provision for the appointment of overview and scrutiny committees.

Powers of Overview and Scrutiny Committees and Their Members

3.2 Section 21(2) requires the provisions in executive arrangements to ensure that a local authority's overview and scrutiny committee has power (or its overview and scrutiny committees have power between them) to:

- review or scrutinise decisions or action taken in respect of any functions which are the responsibility of the executive;
- make reports or recommendations to the local authority or the executive in respect of any functions which are the responsibility of the executive;
- review or scrutinise decisions or action taken in respect of any functions which are not the responsibility of the executive;
- make reports or recommendations to the local authority or the executive in respect of any functions which are not the responsibility of the executive; and
- make reports or recommendations to the local authority or the executive in respect of matters which affect the local authority's area or its inhabitants.

3.3 Section 21(3) provides a power for overview and scrutiny committees to recommend that a decision made but not implemented and taken in respect of a function which is the responsibility of the executive be reconsidered by the person or body which made the decision. An overview and scrutiny committee may also arrange for the full council to review or scrutinise such a decision and decide whether or not to recommend that the decision be reconsidered.

3.4 A local authority's executive arrangements should therefore include provisions as to how this involvement of the full council by overview and scrutiny committees should operate.

3.5 Sections 21(4) and (5) together provide that an overview and scrutiny committee may not discharge any functions other than the functions conferred on it by section 21 of the Act and the function of conducting best value reviews under section 5 of the Local Government Act 1999.

3.6 Sections 21(6) and (7) enable an overview and scrutiny committee to delegate any of its
functions to a sub-committee of itself.

3.7 Section 21(8) provides that any member of an overview and scrutiny committee (or sub-committee) may ensure that any matter relevant to the remit of the committee (or sub-committee) be placed on the agenda and discussed at a meeting of the committee (or sub-committee).

3.8 Members of the executive may not, by virtue of section 21(9), be members of overview and scrutiny committees (or sub-committees).

3.9 Local authorities should take into account this restriction on members of the executive and the requirements for political balance (see below) when deciding on the size of their executive (see chapter 4). This may be of particular relevance in local authorities with a relatively small number of councillors.

3.10 By virtue of section 21(10) an overview and scrutiny committee may include anyone who is not a member of the local authority but (with the exception of church and parent governor representatives - see paragraphs 3.31 to 3.38 below) such members are not entitled to vote.

3.11 Section 21(11) provides that:

- where party groups have been declared in the local authority, overview and scrutiny committees (and sub-committees) must reflect the political balance of the local authority, in accordance with sections 15 to 17 of, and Schedule 1 to, the Local Government and Housing Act 1989. Section 17(1)(b) of that Act provides that a local authority may adopt different arrangements for the allocation of seats if the local authority so approves without any member present voting against; and
- overview and scrutiny committees (and sub-committees) must meet in public in accordance with the access to information provisions in sections 100A to 100K of, and Schedule 12A to, the Local Government Act 1972, as amended by sections 97 and 98 of the Local Government Act 2000, except where those provisions allow the public to be excluded.

3.12 Section 21(13)(a) provides a power for an overview and scrutiny committee (or sub-committee) to require members of the executive and officers of the local authority to appear before it and answer questions. By virtue of sections 21(14) and (15) it is the duty of such persons to comply with this requirement except that she or he would not be obliged to answer any question which she or he would be entitled to refuse to answer in a court of law. An overview and scrutiny committee (or sub-committee) may also invite, by virtue of section 21(13)(b), any other persons to attend its meetings but cannot require them to do so.

3.13 The power in section 21(13)(a) does not relate solely to scrutiny of decisions and should therefore also be used to ask an executive member, for example, about forthcoming issues. In using this power, the committee should ensure that it consults with the executive about who might be the most appropriate person to answer questions and discuss issues.
3.14 Paragraph 7 of Schedule 1 to the Act make provisions providing rights for Church of England and Roman Catholic representatives to be members of any overview and scrutiny committee of a local education authority whose functions relate to education and to have full voting rights on those committees in respect of education matters. This paragraph also provides for similar rights to be granted by direction to representatives of other denominations and faiths. Paragraph 9 of that Schedule makes provision for regulations to grant parent governor representatives the right to be full voting members of the same committees. Those regulations are the Parent Governor Representatives (England) Regulations 2001.

Overview and scrutiny arrangements

3.15 To achieve enhanced accountability and transparency of the decision making process, effective overview and scrutiny is essential. Overview and scrutiny committees are the key element of executive arrangements. Their roles should, therefore, include both:

- developing and reviewing policy; and
- holding the executive to account.

3.16 Where an overview and scrutiny committee is reviewing the work of another committee of the local authority it should not normally scrutinise individual decisions made by such committees, particularly decisions in respect of development control, licensing, registration, consents and other permissions. In particular a local authority will need to ensure such scrutiny is not an alternative to normal appeals procedures. However, overview and scrutiny committees do have the power to make reports and recommendations on functions which are not the responsibility of the executive and the Secretary of State recommends that this should normally be used as part of wider policy reviews.

3.17 Overview and scrutiny committees should be a key mechanism for enabling councillors to represent the views of their constituents and other organisations to the executive and local authority and hence to ensure that these views are taken into account in policy development.

3.18 These committees are the main way by which the executive is held to account in public for the discharge of the functions for which it is responsible. They should have important roles in reviewing the local authority’s policies and other matters of more general local concern and making recommendations, either to the full council or to the executive, on future policy options.

3.19 The Local Government Act 2000 (Proposals for Executive Arrangements) Direction 2000 requires a local authority’s proposals for executive arrangements to include a description of the arrangements for overview and scrutiny. Subject to the requirements of section 21 (including the requirement for comprehensive coverage of the local authority’s functions) and Schedule 1 in respect of church and parent governor representatives, the arrangements for overview and
scrutiny (including the membership and remits of the committees) are a matter for local choice.

3.20 The Secretary of State advises, however, that all but the smallest local authorities should have more than one overview and scrutiny committee, and that they should meet frequently (for example on a monthly or six-weekly cycle).

3.21 Overview and scrutiny committees should take a cross-cutting rather than narrow service-based view of the conduct of the local authority’s business and therefore the aim should be for local authorities to have, at any given point in time, a relatively small number of such committees.

3.22 Overview and scrutiny arrangements should be set out clearly in the executive arrangements as part of the constitution to ensure it is clear which committees are responsible for overseeing which functions and policy areas: i.e. the remit and terms of reference of each committee. The workplan of each overview and scrutiny committee needs careful consideration and local authorities need to consider how these workplans are decided upon, bearing in mind the resources available, time constraints and the interests of the local community.

3.23 Overview and scrutiny committees should have considerable flexibility to determine most of their workplan, particularly in the light of changing circumstances. There should also be effective protocols to ensure that the concerns of all members of the committee (including members who are not members of the local authority) are taken into account when deciding the committee’s workplan. In doing so they should bear in mind that on a day-to-day basis any member of an overview and scrutiny committee has a right to ensure that any item relevant to the remit of that committee is placed on the agenda and discussed at a meeting of the committee.

3.24 In addition, the executive will often wish to request a policy review study from an overview and scrutiny committee before formulating its policies for submission to the full council for approval. As chapter 2 of this guidance says, the executive should always consult and involve the relevant overview and scrutiny committees in developing draft policies to propose to the full council.

3.25 Local authorities are, therefore, encouraged to consider and adopt mechanisms for coordinating the work of overview and scrutiny committees. Such mechanisms should be set out clearly in the local authority’s executive arrangements and constitution.

3.26 Figure 3.1 provides some examples of co-ordinating mechanisms for overview and scrutiny in local authorities which have experimented with executive style arrangements prior to the Act.

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<th>Figure 3.1:</th>
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<td><strong>Examples of Co-ordination Mechanisms for Overview and Scrutiny</strong></td>
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<td>Several local authorities have appointed a single &quot;Scrutiny Management Committee&quot;. They do not typically carry out specific reviews but consider, consult on and in some cases recommend to the council a programme of overview and scrutiny activity. In one example, the</td>
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committee establishes time limited ad hoc panels to examine agreed issues, sets their broad terms of reference, and requires each panel to report regularly but briefly on progress against its objectives and timetable. The aim of such an approach is to allow flexibility and experimentation and to ensure that a balanced programme of overview and scrutiny is set and achieved each year.

In one metropolitan council, the overview and scrutiny co-ordinating group includes in its remit:

- co-ordination and action on all requests for the call in of an executive decision;
- liaison with its individual standing committees - each with a cross-cutting theme and each chaired by a member of the co-ordinating group;
- overall management of the work programme; and
- regular liaison and joint discussion of future policy issues and the best value review programme with the executive.

Another local authority sets its overview and scrutiny programme by considering the whole range of performance data available to it. It uses sources such as opinion surveys, best value performance data, external audit and inspection reports, surveys of its own members, and so on, to determine its programme. It ensures that overview and scrutiny complements rather than competes with programmes of best value reviews and feeds into community planning and other statutory timetables. It also takes into account the capacity of the organisation to undertake overview and scrutiny work.

One district council has drawn up arrangements for overview and scrutiny where a Scrutiny Management Board co-ordinates and plans the work of three overview and scrutiny committees entitled:

- environment and economy;
- cultural and social; and
- finance and resources.

The arrangements include a 12-month scrutiny plan which is approved by the full council.

3.27 Overview and scrutiny committees are encouraged to consider different approaches and formats for their meetings for their different roles: scrutinising decisions and decision making; reviewing policy; and investigating other matters of local concern. These different roles are discussed in more detail later in this chapter.

3.28 Figure 3.2 provides some examples of good practice and innovation in overview and
Examples of Good Practice and Innovation in Overview and Scrutiny

Examples of innovation in overview and scrutiny practice include:

- holding time limited inquiries;
- new style meetings outside the town hall involving informal dialogue with local residents, linked to the community planning process;
- co-optees from a wide range of community and voluntary groups who in turn are helping to change the character and style of meetings; and
- annual reports and reports of individual reviews in a new style, drafted by members of the committee

Membership

3.29 In deciding the membership of overview and scrutiny committees, local authorities will need to take into account the particular skills and expertise required to ensure that thorough and informed reviews take place. They should consider whether to include those who are not members of the local authority to bring outside views to the work of such committees. This is in addition to the requirements in Schedule 1 to the Act.

3.30 Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent governor representatives. Overview and scrutiny should be constructive and not merely be there either always to oppose the executive or to rubber-stamp the executive’s decisions.

The Role of Church and Parent Governor Representatives

3.31 Prior to the Act, church and parent governor representatives had the right to sit and vote on a committee of a local education authority dealing with education matters in accordance with regulations made under section 499 of the Education Act 1996 (as amended by section 9 of the School Standards and Framework Act 1998). Where local authorities have been experimenting with executive style arrangements, in advance of the Act, the Department for Education and Employment (DfEE) has stated in Circulars 13/99 (paragraph 18) and 19/99 (paragraphs 12 to 14) that such representatives should sit on relevant overview and scrutiny committees where education matters are being discussed.

3.32 Once a local authority is operating executive arrangements under Part II of the Act, such representatives will continue to have a right to membership of overview and scrutiny committees in recognition of the important contribution which those they represent make to
education at a local level. Representatives of the Church of England and Roman Catholic Church have that right by virtue of the Act directly. Representatives of other faiths and denominations may be granted such rights on an authority-by-authority basis by direction from the Secretary of State.

3.33 Under section 21(10) of the Act, members of overview and scrutiny committees who are not members of the local authority will not be allowed to vote, with the exception of church representatives who have been appointed to committees in accordance with the provisions in paragraph 7 of Schedule 1 to the Act or individual directions made by the Secretary of State under that paragraph and parent governor representatives elected to the committees under the Parent Governor Representatives (England) Regulations 2001.

3.34 Where the remit of a committee goes wider than matters related to education, church and parent governor representatives are entitled to vote only on any matter relating to education, whether in respect of schools or wider educational issues. They may in addition speak on any other matters within the remit of the committee.

3.35 By virtue of section 21(8) of the Act these representatives have the individual right to ensure their concerns are put onto the agenda of such committees.

3.36 In deciding the workplan of an overview and scrutiny committee the concerns of these representatives should be borne in mind.

3.37 Church and parent governor representatives are eligible to chair such committees. In such a case should a non-education matter come before the committee, local authorities may wish to include provisions in the standing orders of the committee for a voting member to take over the chair of the committee for such non-education matters, to allow the chair a casting vote if necessary.

3.38 By virtue of provisions in paragraph 7 of Schedule 1 to the Act and the Regulations, the minimum number of church and parent governor representatives which an authority must appoint to a committee dealing with education will be four - one Church of England and one Roman Catholic Church representative and the minimum requirement of two parent governor representatives. In certain circumstances, for example where the area of the local education authority is covered by more than one Diocesan Board of Education, a local authority should consider representation from each such Board. The maximum number of parent governor representatives a local authority may appoint to any committee dealing with education will be five. In addition, a local authority may also have been directed to include, with voting rights, a representative of another faith or denomination. Where there is more than one committee covering educational matters, the same representatives may be appointed to each committee.

### Consulting Others

3.39 Overview and scrutiny committees should also seek advice from other committees of the local authority. Where a local authority has area committees or forums, the programme of work for overview and scrutiny committees should include a facility for those committees or forums to feed in their views and recommendations as part of any
review which impacts on their area.

3.40 Moreover, the Secretary of State encourages overview and scrutiny committees to seek views from as many communities and interested parties as necessary to get a balanced picture of the effects of policy and executive decisions. In particular, an overview and scrutiny committee could conduct a review of how certain decisions have affected a particular community or area, taking advice from area committees or forums and other community groups and representatives.

**Declaration of Interests**

3.41 Where any member of an overview and scrutiny committee has an interest in a decision or policy under review, she or he must declare an interest and may be required to withdraw from the meeting at which that issue is under discussion unless given a dispensation. When the ethical framework under Part III of the Act enters into force, this will be covered in the code of conduct and it will be for the local Standards Committee, in exceptional circumstances, to grant a dispensation to speak and exceptionally to vote at a meeting discussing the issue. Interests will normally have been declared in advance in the register of interests.

3.42 It is intended that the code of conduct will make provision allowing greater freedom for members, including those on overview and scrutiny committees, to declare an interest and take a full part in meetings, or alternatively to receive a local dispensation to speak, even if they have a direct interest in the matter being discussed. Church and parent governor representatives will normally be able to speak and vote on education matters. Where they have a particular personal interest they should declare that interest but remain to speak and vote at the meeting.

3.43 The Secretary of State intends that the code of conduct for members to be issued under Part III of the Act will provide that a member of an overview and scrutiny committee or sub-committee will not normally be able to be involved in scrutiny of any decision made by a committee or sub-committee (including area committees) or joint committee of which she or he is a member. In the transitional period between a local authority implementing a new constitution and adopting their code of conduct, similar provisions apply by virtue of article 45 of the *Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001*.

**The Party Whip**

3.44 Overview and scrutiny committees are to hold decision makers to account. To do so effectively will require a change in the way members have traditionally questioned decisions. Although this is a matter for political parties to consider, both locally and nationally, the Secretary of State believes whipping is incompatible with overview and scrutiny and recommends that whipping should not take place.
Officers and Overview and Scrutiny

3.45 To be effective, overview and scrutiny committees must have effective and properly resourced support from officers. Members, including church and parent governor representatives, will need help in researching the policy area or decisions they are examining and in deciding which avenues of enquiry to pursue and which witnesses to call. Experience from local authorities operating interim overview and scrutiny arrangements before the passing of the Act shows that focussed overview and scrutiny enquiries with a well-defined set of aims, albeit often looking at cross-cutting issues, are generally more successful than wide ranging enquiries.

3.46 Local authorities should provide overview and scrutiny committees with a discrete budget to allow them, for example, to engage independent consultants to assist in their enquiries or to cover the expenses of witnesses they may wish to call.

3.47 Overview and scrutiny committees should seek the advice of the monitoring officer where they consider that there is doubt about the vires for a decision. An overview and scrutiny committee should also seek the advice of the monitoring officer and other appropriate officers where it considers that a decision of the executive might be contrary to the policy framework. In this latter case, if, bearing in mind the relevant advice, the committee decides the decision was contrary to the policy framework and it has not yet been implemented, it may refer the matter to full council in line with procedures set out in chapter 2. If the decision has already been implemented, the committee should make a report to full council suggesting any remedial action it considers necessary.

3.48 Where an overview and scrutiny committee exercises the power in section 21(13)(a) to require officers to attend to answer questions or discuss issues it should also consider the seniority of officers it would be appropriate to require to appear before it. Local authorities may wish to adopt conventions that overview and scrutiny committees would normally only require officers above a certain grade to attend to ensure that more junior officers are not put under undue pressure.

3.49 Overview and scrutiny committees should always bear in mind that when officers appear to answer questions their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions.

3.50 Officers may explain: what the policies are; the justification and objectives of those policies as the executive sees them; the extent to which those objectives may have been met; and how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

3.51 Officers may, and in many cases should, be asked to explain and justify advice they have given to members of the executive prior to decisions being taken and they should also be asked to explain and justify decisions they themselves have taken under delegations from the executive.

3.52 As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on
the executive’s policies and actions should always be consistent with the requirement for officers to be politically impartial.

**Training and Development**

3.53 Local authorities should ensure that all those who undertake overview and scrutiny duties (councillors, officers, church and parent governor representatives and any co-opted members of overview and scrutiny committees) are given adequate training to adapt to their new roles. Members of the executive, officers and other stakeholders and experts should also receive training for appearances to answer questions and discuss issues with overview and scrutiny committees and in how to respond to the reports and recommendations from overview and scrutiny committees. Standards Committees also have a specific role to play in advising, training or arranging to train members on matters relating to their local authority’s code of conduct.

**Policy development and review**

3.54 A key element of the work of an overview and scrutiny committee is to be able to review and make recommendations either to the executive or to the full council and assist in development of future policies and strategies. Again, how precisely such arrangements work is a matter for local choice.

3.55 The Secretary of State encourages local authorities to make arrangements for policy reviews with cross-cutting themes rather than focusing on single functions. This will be particularly important in the community planning process.

3.56 Policy development and review will benefit from input from all key stakeholders including the local community and other local public, private and voluntary organisations, and such organisations and representatives should be involved in policy reviews by overview and scrutiny committees. In particular local authorities and their overview and scrutiny committees should pay particular attention to obtaining views from 'hard to reach' groups such as minority ethnic communities and people with disabilities.

3.57 The views of tenants could also be sought through a variety of consultation mechanisms, for example by asking tenants (or their representatives) to attend to answer questions and discuss issues or by co-opting tenants’ representatives onto the relevant overview and scrutiny committee (without voting rights). A local authority’s Tenants’ Participation Compact needs to set out how the local authority (including overview and scrutiny committees) will involve tenants and their representatives in policy development and review.

3.58 Where an overview and scrutiny committee includes people who are not members of the local authority (without voting rights), the local authority should ensure that the committee’s standing orders enable those representatives to have an opportunity to influence the committee’s lines of enquiry and workplan for the review in question.
3.59 The policy development and review work of an overview and scrutiny committee will draw directly from the outputs of scrutinising executive decisions and proposed decisions. It should also involve the consideration of policy themes and matters of local concern which may have potential implications for the policies of the local authority. Executive arrangements should also make provision for overview and scrutiny committees to be consulted by the executive or full council about issues falling within the remit of the committee. This might involve the executive requesting an overview and scrutiny committee to conduct an enquiry into a particular issue.

3.60 Local authorities should also consider whether policy development and review in relation to a particular function or policy area should be carried out by the same committee which scrutinises decisions in that policy area or whether separate committees are needed for policy development depending on local circumstances. The Secretary of State believes that this is a matter for local choice.

3.61 Local authorities will need to make proper arrangements for the findings of such policy reviews to be considered by the executive or other relevant bodies in the local authority including the full council.

3.62 Figure 3.3 provides illustrative examples of arrangements for the executive to consider and respond to overview and scrutiny committee reports and recommendations.

Matters of Wider Local Concern

3.63 Part I of the Act provides powers for local authorities to promote the economic, social and environmental well-being of their community. It also confers a duty on local authorities to draw up a Community Strategy. The Government intends that this will enable local authorities to work more effectively with partner organisations for the benefit of the local community as a whole.

3.64 By virtue of section 21(2)(e), overview and scrutiny committees can make reports or recommendations to the local authority or the executive in relation to matters which are not the responsibility of the local authority but which nevertheless affect the local authority’s area or its inhabitants. Any recommendations which overview and scrutiny committees make in such areas cannot be binding on outside bodies.

3.65 Local authorities should consider carefully whether and how such reviews take place. In particular, they should consider the roles of partnership organisations that deliver services and will wish to consider how they should be involved in such reviews. The executive and the local authority should take account of the outcomes of such reviews in developing the local authority’s policy framework. Local authorities should have local procedures and conventions for such reports to be debated and, if appropriate, acted upon.

3.66 The Secretary of State considers that overview and scrutiny committees should, from time to time, examine healthcare provision within their area, for example as part of a review of the Health Improvement Programme.
3.67 The NHS Plan published in July 2000 builds on emerging good practice of partnership working between local authorities and health bodies and signals the Government’s intention, when legislative time is available, to legislate to provide powers for overview and scrutiny committees to require chief executives of local NHS organisations to attend to answer questions; to refer major planned changes in local NHS services to the Secretary of State; and to refer contested major service reconfigurations to the new Independent Reconfiguration Panel.

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<tr>
<th>Figure 3.3:</th>
<th>Examples of an Executive Response to Overview and Scrutiny</th>
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<tbody>
<tr>
<td>The executive and an overview and scrutiny chair (from different political parties) of one county jointly identified young people leaving care as a priority for the coming year. On their joint recommendation, the council agreed that issue as a priority for review, leaving the precise work programme and approach to be agreed between the executive and that overview and scrutiny committee.</td>
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<tr>
<td>The overview and scrutiny committee &quot;took evidence&quot; on the successes and failures of the current service. They canvassed the views of young people about to leave care and those of care leavers, as well as their families or carers, staff and other stakeholders immediately concerned. This identified a number of steps that the council itself could take to improve matters immediately. These were considered, agreed and implemented by the executive as they were within the existing budget and policy framework of that council.</td>
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<tr>
<td>The overview and scrutiny committee also identified a number of wider recommendations for other external stakeholders such as the Police, employers, and other agencies. The executive and the overview and scrutiny committee held a joint meeting in public and, after some detailed debate, agreed a final list of recommendations. The executive oversaw the detailed discussion and negotiation with the external agencies, combining them with other parallel negotiations arising from the council’s community planning consultation process.</td>
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### Best Value Reviews

3.68 Overview and scrutiny committees cannot under the Act discharge any function of the local authority other than overview and scrutiny and conducting best value reviews. This is to ensure there is a clear separation between the discharge of functions and the review and oversight of functions.

3.69 Depending on local circumstances overview and scrutiny committees which have developed expertise in a particular service area are well placed to be involved in best value reviews of those services in accordance with orders made under section 5 of the Local Government Act 1999. Under the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, it is a matter for local choice who in the local authority carries out best value reviews. This applies only for the specific function of conducting a statutory review under

3.70 Overview and scrutiny committees should have a role in best value reviews. For example:

- overview and scrutiny committees could have sole responsibility for such reviews reporting to the executive and/or the authority;
- responsibility could be shared between the executive and overview and scrutiny committees; or
- an ordinary committee of the authority which includes members of both the executive and the relevant overview and scrutiny committees could be established to carry out best value reviews.

3.71 It is for local authorities to decide how best to involve overview and scrutiny committees in best value reviews and figure 3.4 provides some illustrative examples of how overview and scrutiny committees could be involved.

3.72 Where it is decided that an overview and scrutiny committee is to undertake a best value review, local authorities should make arrangements for such reports to be considered by the executive or by the full council (or both) as appropriate.

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<tr>
<th>Figure 3.4: Illustrative Examples of Involvement of Overview and Scrutiny Committees in Best Value Reviews</th>
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<tr>
<td>In one council a &quot;budgets and best value scrutiny committee&quot; is responsible for agreeing the best value review programme and the final report and action plan. It also receives bi-monthly progress reports on each review and monitors the implementation of the action plan. Its best value reviews to date (five year 1 and six year 2 reviews) range from the school meals service and parks and open spaces to social inclusion and young people.</td>
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<tr>
<td>A metropolitan council involves its five overview and scrutiny committees formally in the best value process, with the help of a team of 6 officers who are each individually responsible for both best value and scrutiny. Overview and scrutiny committees:</td>
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<td>• approve the terms of reference for reviews;</td>
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<tr>
<td>• receive outputs from best value reviews;</td>
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<tr>
<td>• review improvement plans; and</td>
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<tr>
<td>• are consulted annually about the five year programme.</td>
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**Holding the executive to account**
3.73 A key function of overview and scrutiny committees is to hold the executive to account for the discharge of its functions. This can have four principal elements:

- scrutinising decisions which the executive is planning to take (for example, those on the forward plan - see chapter 7);
- scrutinising executive decisions before they are implemented (a so-called 'call-in' mechanism);
- scrutinising executive decisions after they have been implemented, whether shortly afterwards or as part of a wider review of policy, to measure their effect; and
- reviewing the performance of the executive and the local authority's senior officers.

3.74 While overview and scrutiny committees must between them have power to scrutinise all decisions of the local authority, it would clearly be detrimental to efficient decision making if every individual decision were as a matter of course called before such committees and therefore this should not happen.

3.75 In addition, local authorities should also consider setting limits in particular on how decisions made by officers (other than the council manager) can be scrutinised individually. Such scrutiny of officer decisions should occur only as part of a review of service plans or during the best value process. However, it may be appropriate for key decisions (see chapter 7) made by officers to be subject to individual call-in.

**Scrutiny of Proposed Decisions**

3.76 Overview and scrutiny committees should regularly review forward plans (see chapter 7) with a view to deciding which, if any, of the forthcoming decisions they wish to enquire into. Such an enquiry might consist of questioning members of the executive and officers and seeking the views of local stakeholders and other interested parties. The executive should take into account any views expressed by overview and scrutiny committees when determining the final decision.

**Call-in of Decisions**

3.77 Sections 21(2)(a) and (3) of the Act mean that a local authority's executive arrangements must ensure that overview and scrutiny committees have specific powers, in respect of functions which are the responsibility of the executive, to recommend that a decision made but not yet implemented be reconsidered by the person who made the decision or to recommend that the full council consider whether that person should reconsider the decision.

3.78 Local authorities should make provision in their executive arrangements and standing orders, for procedures by which members of the local authority can request that a meeting of an overview and scrutiny committee be held to consider whether or not to use these powers in respect of a decision made but not yet implemented (a so called 'call-in procedure). Such provisions may include a standard period of delay before
decisions are implemented. Those provisions should ensure that there is an appropriate balance between effectively holding the executive to account, being able to question decisions before they are implemented and allowing effective and efficient decision making by the executive within the policy framework and budget agreed by the full council. The provisions should ensure that a decision maker could only be asked to reconsider a decision once. Day-to-day management and operational decisions taken by officers should not be subject to any call-in procedure.

3.79 In addition, where the executive wishes to take an urgent key decision by seeking the agreement of the chair of a relevant overview and scrutiny committee (or where there is no chair of the overview and scrutiny committee with the chairman or vice-chairman of the authority) that the matter is urgent the local authority’s call-in procedure should include provisions which prevent such urgent decisions from being called-in or in any other way delayed.

3.80 Local authorities should also agree how called-in decisions are responded to. If an overview and scrutiny committee examines a decision and decides to recommend an alternative course of action, local authorities should set out how this should work. In particular local authorities should consider the following questions:

- how should the executive (or other body within the local authority as the case may be) respond?
- what should the timescale for such a response be?

3.81 Figure 3.5 provides an illustrative example of one possible procedure for call-in.

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<tr>
<th>Figure 3.5: Illustrative Example of One Possible Procedure for Call-in</th>
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<tr>
<td>The executive publishes decisions made either at an executive meeting or which have been taken by an individual member.</td>
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<td>The executive arrangements provide that decisions which can be subject to call-in will come into force after, say, 5 working days have passed following the decision being published unless an overview and scrutiny committee calls it in.</td>
</tr>
<tr>
<td>Within that period any two or more members of an overview and scrutiny committee can request a meeting of the relevant overview and scrutiny committee to review the decision.</td>
</tr>
<tr>
<td>If a valid request for a meeting is made within the specified period, all action to implement the decision is suspended for up to two weeks from the date of the decision within which time the overview and scrutiny committee meets to decide whether to exercise the powers in section 21(3) of the Act.</td>
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<tr>
<td>If the committee decides it disagrees with the decision it may exercise the powers in section 21(3) having regard to this statutory guidance.</td>
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</table>
The decision maker reconsiders the decision and decides whether or not to change it explaining her or his reasons to the next meeting of overview and scrutiny or full council as appropriate. For example: the decision is re-examined at the next meeting of the executive with one or more representatives of the overview and scrutiny committee attending to put their case.

3.82 Local authorities should ensure that the executive arrangements ensure that any call-in procedure is not abused or used unduly to delay decisions or slow down the process of decision making. In particular the executive will, from time to time, need to take decisions which need to be implemented quickly. Local authorities will need to develop local conventions and protocols to prevent abuse of an overview and scrutiny committee’s power to recommend that a decision made, but not yet implemented, be reconsidered. Local authorities should keep the operation of any call-in arrangements under review to ensure that they are not abused with an associated negative effect on the efficiency of executive decision making.

3.82A A call-in mechanism provides a process by which a decision made but not yet implemented can be discussed at a meeting of an overview and scrutiny committee within a specified timescale during which implementation of the decision is suspended. A call-in mechanism cannot circumscribe the power in section 21(8) of the Act for an individual member of an overview and scrutiny committee to ensure that any matter relevant to the remit of the committee be placed on the agenda and discussed at a meeting of the committee. However, the exercise of the powers in section 21(8) does not have the effect of suspending implementation of a decision. Any call-in power for members to request a meeting and suspend implementation of a decision must, therefore, be in addition to the powers in section 21(8).

3.83 A safeguard which could be adopted as part of a call-in procedure could be to include provision requiring a certain number of committee (or local authority) members to call in a particular decision (although in the case of a church or parent governor representative they may be given an individual power to call in a decision).

3.84 Some examples of safeguards are given in 3.6.

| Figure 3.6: |
| Safeguards to Prevent Abuse of Call-in |

One unitary council with six "Review and Scrutiny" committees operates a procedure as follows:

- call-in of any executive decision must be within 3 days of the decision (the executive meets fortnightly in public);
- 5 members of any Review and Scrutiny committee are needed to request a decision be called in; and
- the 5 members must involve representation of at least 2 political groups.
Another local authority operates a procedure by:

- publishing a fortnightly members' information sheet with all recommendations (for decisions) made by the executive or executive members;
- at least 3 members need to request the call-in of a decision; and
- a 'call-in committee' of members who are not members of the executive considers the request for call-in.

There are 3 call-in committees, each looking at one of the following areas:

- corporate issues;
- education and leisure; and
- housing and social services.

3.85 Local authorities will need to consider, when designing such mechanisms, that under normal circumstances where a decision relates to a function which is the responsibility of the executive, ultimately only the executive can decide the matter.

3.86 To avoid the possibility of very many emergency council meetings the Secretary of State recommends that overview and scrutiny committees should only use the power in section 21(3)(b) to refer matters to the full council if they consider that the decision is contrary to the policy framework or contrary to or not wholly in accordance with the budget. Where an overview and scrutiny committee refers a decision to the full council there should be clear timescales set out in the local authority’s constitution within which the debate should take place to avoid decisions being unnecessarily delayed.

Supplementary Guidance on Parent Governor Representatives

3.87 The purpose of this supplementary guidance is to provide guidance on the Parent Governor Representative (England) Regulations 2001 made under paragraph 9 of Schedule 1 to the Local Government Act 2000. The Regulations require local education authorities operating executive arrangements to appoint parent governor representatives to overview and scrutiny committees and sub-committees dealing wholly or partly with education functions. They also cover the number of parent governor representatives to be elected, their speaking and voting rights and the procedure for their election.

3.88 This guidance replaces DfEE Circular 13/99: Parent governor representatives on local authority committees dealing with education. It relates only to county councils, district councils and London borough councils in England which are local education authorities.

3.89 The Regulations come into force on 15 March 2001.

Number of representatives on overview and scrutiny committees

3.90 Local education authorities operating executive arrangements must appoint at least two and not more than five parent governor representatives to each overview and scrutiny committee and sub-committee whose functions relate wholly or partly to any education functions. The purpose of this is to avoid a situation where individual representatives could feel isolated on a committee, but without swelling the number of members to the extent that the committee becomes unwieldy.

3.91 Where a local authority has more than one such committee or sub-committee, it may appoint the same representatives to all, different representatives to each, or adopt a mixture of these approaches.

3.92 Local authorities must comply with the political balance requirements in sections 15 to 17 of, and Schedule 1 to, the Local Government and Housing Act 1989 which provide in particular that:

- the majority of any committee or sub-committee where there are non-councillor members with voting rights should be preserved by appointing additional councillor members where necessary;
- subject to this, membership of all committees and sub-committees of a local authority should in total reflect the political balance of the local authority itself; and
- subject to these two requirements membership of any committees or sub-committees of a local authority should as closely as possible reflect the political balance of the local authority itself.

Elections
Eligibility to Vote in Elections

3.93 All parent governors at maintained schools funded by a local education authority at the date of the election are eligible to vote in that local authority's elections for parent governor representatives. Where a school is located in one local authority and funded by another, the parent governors are only eligible to vote in the elections of the local authority which funds the school of which they are governors.

3.94 In addition, if local education authorities decide to divide parent governor representatives into different categories, representing particular types of school or schools in a particular geographic area, such local authorities may also decide that only parent governors in the type of school or in schools in the geographic area selected will be eligible to vote. If they wish, these local authorities may decide not to split the electorate in this way, in the interest of administrative simplicity. They could, for example, hold one ballot under which the parent governors in each category receiving the most votes would be elected for those categories.

3.95 Local authorities should think carefully about the implications before deciding to divide parent governor representatives into different categories, as this could have the effect of limiting the pool of candidates for vacancies.

Eligibility to Stand as a Parent Governor Representative

3.96 To be eligible to stand, a parent governor must, at the date of the election, be a parent of a child at one of the local education authority's schools or a parent of a child who is educated by the local education authority in some other way. The child does not have to be at the same school at which the candidate is a parent governor. Although not ideal, it does not matter if the person standing only has a very short time left to serve as a parent governor, or if all his or her children will have left school very soon after the election. The key point is that a candidate should be both a parent governor and a parent on the date of the election.

3.97 If a local education authority decides to divide parent governor representatives into different categories, representing particular types of school or schools in a particular geographic area, only eligible parent governors in the types of school or in schools in the geographic area selected will be eligible to stand for those particular vacancies.

3.98 It is open to any parent governor representative, on coming to the end of a term of office, to stand for re-election, provided the eligibility requirements are still met.

Persons Not Eligible to Stand

3.99 Parent governors are not eligible to stand as parent governor representatives if they are:

- employees of the local authority;
- employees of schools maintained by the local education authority (including teachers, non-teaching and other staff); or
• councillors of any local authority.

3.100 A parent governor can only be a representative on an overview and scrutiny committee of one local education authority at a time.

Nomination Procedures
3.101 Local education authorities must decide nomination procedures - for example, who can nominate a parent governor to stand, whether self-nomination is acceptable and whether proposers and seconders are required.

3.102 Local education authorities should set up a system for inviting and receiving nominations.

Duty to determine entitlement to vote or eligibility to stand
3.103 Local education authorities must determine any question that arises about a particular person's entitlement to vote or eligibility to stand. They will need to know who is eligible to vote (or will need to communicate with those who know) in order to announce an election. A local education authority is only required to determine eligibility to stand where questions arise about an individual case.

Terms of office

Deciding the Standard Term of Office
3.104 Local education authorities must decide the term of office of parent governor representatives, within the range from a minimum of two to a maximum of four years, and when it should start. A local education authority must make this decision before it invites nominations to fill vacancies. The invitation itself must include the length of the term of office.

Deciding the Term of Office After an Incomplete Term
3.105 Where a parent governor representative does not complete the term of office, the local education authority may set the term of office of his/her successor as:

- the remainder of the original term;
- the normal full term; or
- the remainder of the original term added to the normal full term, provided this does not exceed four years.
3.106 For example, where a parent governor representative resigned as parent governor after six months of a two year term, the local education authority could set the successor’s term as:

- eighteen months (the remainder of the original term);
- two years (the normal term); or
- three and a half years (the remaining period and the normal term).

3.107 When the election is announced, the local education authority must explain the chosen option to those eligible to vote and stand.

**When a Parent Governor Representative Must Stand Down**

3.108 A parent governor representative must stand down from office if he or she:

- resigns as parent governor;
- is disqualified from being a parent governor;
- ceases to be a parent governor for any reason other than: coming to the end of the term of office; closure of the school at which the parent governorship is held; or a change in the constitution of the governing body of that school;
- is elected as a member of a local authority;
- is elected as a parent governor representative in another local authority where the term of office would overlap;
- fails to attend meetings of a committee or sub-committee of which he or she is a member for 6 months, without having apologies for absence accepted by that committee or sub-committee;
- becomes employed by the local authority; or
- becomes employed by a school maintained by the local education authority.

3.109 Local authorities should explain to parent governor representatives at the beginning of their term of office that they must inform the local authority of any circumstances which would disqualify them. Local authorities should make the same request of the schools at which the representatives are parent governors.

**The election process**

3.110 Local education authorities have wide discretion on the detailed arrangements for the elections. All local education authorities, however, must adopt the broad principles set out in the Regulations, explained below.
Responsibility for Election Arrangements

3.111 Local education authorities are responsible for making sure that all the arrangements for an election are made, whether it is contested or not. They can, however, choose to appoint another body, such as the local governor association, to conduct or oversee the election. The Secretary of State does not approve or issue a prescribed list of bodies which might conduct these ballots.

3.112 Local education authorities need not hold a ballot where an election is uncontested. If the election is contested, the ballot must be secret.

Timetable

3.113 Local authorities must follow statutory timescales when holding an election. A local authority must:

- announce or publish the result of the election within one week of the final date for casting votes and within three months of the announcement of the vacancy and invitation of nominations;
- appoint the parent governor representatives to the appropriate overview and scrutiny committees and sub-committees no more than one month after the announcement of the result;
- where the number of eligible candidates is the same as or less than the number of places available, appoint those candidates within four months of the invitation of nominations (that is, the three months within which representatives must in normal circumstances be elected plus the one month within which they must be appointed); and
- where there is a vacancy due to lack of an eligible candidate, re-announce the vacancy and make arrangements to hold another election (holding a ballot only if needed) within one year of the original vacancy having arisen, and at six-monthly intervals thereafter until the vacancy is filled.

3.114 An illustrative timetable, which includes these statutory timescales, is at Annex A.

Consultation on Election Procedures

3.115 There is no statutory requirement that local education authorities should consult on their election procedures. They should, however, consult at least a representative sample of parent governors if they propose to:

- introduce a variation on the one person one vote method (for example, allowing two votes to a parent governor of two schools);
- introduce a variation on the basic voting method of 'first past the post' (such as providing for a single transferable vote);
• introduce a voting mechanism to elect parent governor representatives for different types of school or schools in particular geographic areas;
• specify a term of office other than that originally agreed.

3.116 Local education authorities should also consult on any other matter relating to the election and terms of appointment of parent governor representatives on which there may be substantial differences of view locally.

Returning Officer

3.117 The local authority must appoint one person as 'returning officer'. The 'returning officer' is not a Returning Officer in the statutory sense (as set out in the Representation of the People Acts). The role of this 'returning officer' is to ensure that the elections are fair and run in accordance with the procedures laid down in Regulations and by the authority. It is recommended that the 'returning officer' should monitor the elections, intervene where necessary, and make arrangements for the announcement or publication of the result; but should not otherwise have any responsibility in relation to the elections.

3.118 The 'returning officer' must ensure that the statutory requirements on announcing the election detailed below are complied with; investigate any complaints that they have not been complied with; and instruct the local education authority to issue a corrected announcement where appropriate.

3.119 The 'returning officer' may be an officer of the local authority, including the chief executive (head of paid service) or the director of education.

Publication of Information About Elections

3.120 Local authorities are required to take such steps as are reasonably practicable to inform those who can vote and stand for election that the elections are to take place. Local authorities can make their own judgements on what those steps might be. They would not be expected to compile an electoral roll.

3.121 Local authorities must inform those who are eligible about:

• the vacancy, including the term of office, and whether it is for a parent governor representative to represent a particular type of school or schools in a particular area;
• their entitlement to vote;
• the qualifications required of those who wish to stand for the office;
• a description of the role of a parent governor representative (see Annex B);
• the election; and
• the timetable and procedures for the election.
3.122 This will include providing details of the election procedures, including an explanation of how and when nominations should be made to the local authority; and a contact point for the returning officer.

3.123 Local education authorities may distribute election details to parent governors via their schools. If they choose to send the information direct to parent governors, they should compile an up-to-date list of parent governors.

3.124 Local authorities may decide the medium through which they make the election announcement.

**Vacancies**

3.125 Local education authorities should fill vacancies as quickly as possible.

3.126 Vacancies must not be left open for longer than six months unless there are no candidates to fill them. In practice, this means that the announcement of an election, the balloting process and appointments must be completed within six months of the vacancy arising.

**Voting methods**

**Secret Ballot**

3.127 All ballots must be secret. The method of voting is the local authority's choice, except that participants must have the opportunity of a postal vote. This is to ensure that, where other election processes are used (such as voting at a polling station, or by telephone or by other electronic means), some voters are not denied an opportunity to vote. A local authority may simply decide to hold a postal ballot.

**The Ballot Paper**

3.128 There are no specific requirements about what to include on the ballot paper. As a minimum, it should include the candidate's first name and surname and the name of the school at which the candidate is a parent governor. It can also include the names of the schools their children attend; and, if the election is for a representative of a particular type of school, or schools in a particular area, details of the type of school, or the area where the school in which the candidate is a parent governor is located. Alternatively, candidates can be advised to give these details in their election addresses.

3.129 The ballot paper must not include any reference to membership or other affiliation to any political party.
Ballot Method and Postal Voting

3.130 If the ballot is by post only, local education authorities should state when ballot papers will be sent out and by what date they must be returned. They should allow a reasonable amount of time - a minimum of three weeks - for voters to consider election materials and return their voting forms.

3.131 If methods other than a postal ballot are used, the local education authority must include in the election material details of how to vote by post. It must also ensure that the timetable for postal voting does not put those who choose this option at a disadvantage.

The election campaign

3.132 Candidates should be given an opportunity to explain to voters why they want to become parent governor representatives. This can be done in several ways. Perhaps the fairest and most obvious is for them to prepare a written election address, which would be included with the ballot paper. Local education authorities should ensure that all candidates have the same opportunity to put forward their election address.

3.133 Candidates should be responsible for preparing their own election addresses, and for meeting the costs of doing so; while local education authorities should be responsible for printing and distributing the election addresses to the electorate and for the related costs.

3.134 There are no statutory requirements about the conduct of candidates in the election campaign. Local education authorities are, however, strongly advised to ensure that campaigns to elect parent governor representatives are non-party political. Local education authorities should advise candidates that references during the election campaign to any candidate’s support for any political party are not appropriate and will be removed from any literature.

3.135 The ‘returning officer’ should take care to monitor election addresses and the campaigns.

Announcing or publishing the result

3.136 The results must be announced or published not more than one week after the election is held. How the result is made known is for the authority to decide. There is no requirement for every eligible voter to be notified individually.

Appointing the representatives to overview and scrutiny committees and sub-committees

3.137 A parent governor representative’s term of office must begin no more than a month after
the election result is announced.

3.138 Local education authorities should provide induction and other appropriate support to the elected representative, including full details of committee meetings, as soon as possible after the result has been announced.

3.139 Parent governor representatives should be provided with a copy of the local authority's constitution, which must include its standing orders, executive arrangements and code of conduct for councillors.

Right to vote in overview and scrutiny committees and sub-committees to which appointed

3.140 In certain circumstances, members of overview and scrutiny committees will need to disclose their interest in a matter being discussed by that committee and, sometimes, withdraw from the meeting. The rules governing the participation and disclosure of interests will be set out in the members' code of conduct, which is being established under the Local Government Act 2000.

3.141 Under proposals recently published by the Government[^1], parent governor representatives on overview and scrutiny committees and sub-committees will be entitled to participate and, where necessary, vote on any question which relates to the education functions of the authority's executive, unless they have a personal financial interest in the matter under discussion.

3.142 Local education authority officers should advise parent governor representatives on these and other matters in the same way as they advise council members.

Right to speak in overview and scrutiny committees and sub-committees

3.143 Parent governor representatives may participate in any discussion in a committee to which they have been appointed, whether or not they have voting rights on the topic under discussion.

Non-elected, non-voting members

3.144 The provision for elected parent governor representatives should not be seen as a substitute for existing arrangements for co-opting non-elected, non-voting members. The Secretary of State encourages the continuation of such arrangements, both for parents and other groups such as teachers or governors.

3.145 Should a co-opted non-voting parent wish to become a parent governor representative, that person must stand for office (provided he or she is eligible and there is a vacancy). The term of office would start afresh, with no account being taken of the term of office served as a
co-opted non-voting member.

Transitional arrangements

3.146 Until a local education authority has adopted executive arrangements, or alternative arrangements under Part II of the Local Government Act 2000, it must appoint parent governor representatives to any existing committees which deal wholly or partly with any education functions. This does not include any committee whose decisions are subject to scrutiny by another committee which itself deals wholly or partly with education functions.

3.147 Parent governor representatives on such committees will have the same voting and speaking rights as are detailed above (paragraphs 3.140 to 3.143).

3.148 When a local education authority adopts executive arrangements, the parent governor representatives elected under the Education (Parent Governor Representatives) Regulations 1999, now revoked, must be appointed to the equivalent overview and scrutiny committee or committees and, where relevant, sub-committees, for the rest of their term of office.

3.149 The Secretary of State intends that Regulations under section 32 of the Local Government Act 2000, which will provide for alternative arrangements, will include provisions for the appointment of church and parent governor representatives to overview and scrutiny committees and sub-committees under alternative arrangements which mirror those for such representatives under executive arrangements. If, therefore, following a referendum which rejects proposals for executive arrangements, a local education authority implements fallback proposals which are alternative arrangements, they will have to include church and parent governor representatives on overview and scrutiny committees and sub-committees whose functions relate wholly or partly to education.

Membership of other committees

School Organisation Committees

3.150 Parent governor representatives do not have an automatic right to sit on School Organisation Committees, but they may become members if they satisfy the requirements for membership.

Appeal Panels (For Example, on Admissions, Exclusions)

3.151 Parent governor representatives should not sit on these panels, as the role of a panellist is not that of a representative. It is also considered that conflicts of interest may arise.

[1] The definition of "maintained school" in section 20(7) of the School Standards and Framework Act 1998 means a community, foundation or voluntary school or a community or
foundation special school.

[2] The definition of "parent" covers carers, but excludes institutions. Where a person other than the natural parent of the child is the carer, the definition still includes the natural parents (section 576(1) of the Education Act 1996, as amended).

[3] The definition of "school maintained by a local education authority" in section 142(1) of the School Standards and Framework Act 1998 means a community, foundation or voluntary school, a community, foundation or special school, a maintained nursery school or a pupil referral unit.

## Annex A: Timetable for election and appointment of parent governor representatives

<table>
<thead>
<tr>
<th>ACTION</th>
<th>STATUTORY TIMESCALE</th>
<th>TIMELINE</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Decide:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• committee places;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• type of representation;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• election method</td>
<td></td>
<td></td>
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<tr>
<td>• election date</td>
<td></td>
<td></td>
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<tr>
<td>• term of office</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• support/training delivery</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Appoint:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• returning officer</td>
<td></td>
<td></td>
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<tr>
<td>• those who will run the election</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Publish:</td>
<td></td>
<td></td>
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<tr>
<td>• announce vacancy;</td>
<td></td>
<td></td>
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<tr>
<td>• explain eligibility and election procedures;</td>
<td></td>
<td></td>
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<tr>
<td>• Invite nominations by deadline</td>
<td></td>
<td></td>
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<tr>
<td>• Check nominations</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Issue ballot papers</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• returning officer monitors campaign</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Hold poll, if not solely by post</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Count ballots</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Announce result</td>
<td>within one week of the election; within three months of the announcement of the vacancy</td>
<td></td>
</tr>
<tr>
<td>• Term of office of previous incumbent expires</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Task</td>
<td>Description</td>
<td>Week</td>
</tr>
<tr>
<td>----------------------------------------------------------------------</td>
<td>-------------------------------------------------------------------------------------------------------</td>
<td>-------</td>
</tr>
<tr>
<td>Appoint representatives</td>
<td>no more than one month after the announcement of the result</td>
<td>12</td>
</tr>
<tr>
<td>Begin support of the representatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Explain committee rules/local government legislation</td>
<td></td>
<td>12</td>
</tr>
</tbody>
</table>
Annex B: Example of a description of the role of a parent governor representative (regulation 4(3)(b)(vi))

The role of a parent governor representative:

- act as an apolitical voice for parents in the area; representing to the local education authority the main education issues which concern parents of pupils maintained by the authority
- liaise with the other parent governor representatives on their own local education authority
- attend and contribute to the committees to which they have been appointed
- establish good relations with other members and officers
- feed back the local education authority's discussions of and decisions on education to the parents
- abide by the local education authority's rules on committee procedure (Standing Orders)
- act with due propriety according to standards laid down for conduct in local government
Chapter 4: The executive

This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities." This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.


The executive

4.1 Section 11 of the Act requires that a local authority’s executive must take one of the following forms:

- an elected mayor with a cabinet of councillors appointed by the elected mayor mayor and cabinet (section 11(2));
- an executive leader elected by the council with a cabinet appointed either by the council or the executive leader and cabinet (section 11(3));
- an elected mayor with an officer appointed by the council (known as the council manager) mayor and council manager (section 11(4)); and
- any form prescribed in regulations made by the Secretary of State (section 11(5) section 11(6) provides that such forms may include forms of executive which have other directly elected members).
4.2 Section 12 of the Act provides that when deciding whether to make new forms available the Secretary of State must consider:

- any proposals put forward by local authorities;
- the extent to which the new form of executive would ensure that decisions of the local authority were taken in an efficient, transparent and accountable way;
- the extent to which the new form of executive differs from the forms of executive already available; and
- the number and description of local authorities for which he considers that the new form of executive would be an appropriate form of executive to consider.

4.3 Section 12 also requires that a local authority must consider that the following conditions are satisfied in relation to any proposal for a new form of executive submitted under section 12:

- that the operation by the local authority of executive arrangements involving the proposed new form of executive would be an improvement on the arrangements they have in place at that time for the discharge of their functions;
- that the operation by the local authority of executive arrangements involving the proposed new form of executive would be likely to ensure that decisions of the local authority were taken in an efficient, transparent and accountable way; and
- that the operation by the local authority of executive arrangements involving the proposed new form of executive would be an appropriate form of executive for all local authorities, or for a particular description of local authorities, to consider.

4.4 Such a proposal must:

- describe the form of executive to which it relates;
- describe the provisions which the local authority consider should be made under section 17 in relation to the form of executive proposed; and
- explain why the local authority consider that the conditions mentioned in paragraph 4.3 above are satisfied in respect of the form of executive proposed.

4.5 As local authorities implement executive arrangements and develop their constitutions to meet the needs of their local communities, the experience they gain of working under the new arrangements might suggest that new forms of executive should be added to those already available. Therefore the main intention for the power in section 11(5) and the process established by section 12 is to enable this experience to be used in the development of new forms of executive if the existing forms prove not to be sufficient.
4.6 There is already very considerable scope within the three broad frameworks for local authorities to tailor their executive arrangements to suit the needs of their communities. It is intended that any new forms made available should be significantly different from existing forms of executive and should also be applicable to all or a description of local authorities. Therefore the Secretary of State would be unlikely to make available a form of executive which was very similar to an existing form or one which was only applicable to a single local authority.

4.7 This chapter begins by dealing with a number of features common to all or some of the three forms of executive and then goes on to deal with other issues specific to each of the three forms.

Common features

Members of the executive

4.8 Previous chapters have described the role of councillors outside the executive and the roles which are common to all members of the local authority. This section describes the roles specific to members of the executive.

4.9 By virtue of the provisions in Schedule 3 to the Act, an elected mayor is also a member of the local authority (as well as of the executive) and is treated as a councillor for the purposes of any legislation specified in regulations under section 39(5).

4.10 The executive and its members will have wide ranging leadership roles. They will need to:

- lead the community planning process and the search for best value, with input and advice from overview and scrutiny committees, area committees and any other persons as appropriate;
- lead the preparation of the local authority's policies and budget;
- take in-year decisions on resources and priorities, together with other stakeholders and partners in the local community, to deliver and implement the budget and policies decided by the full council; and
- be the focus for forming partnerships with other local public, private, voluntary and community sector organisations to address local needs.

4.11 These leadership roles will be particularly important in the context of local strategic partnerships. Guidance issued by the Secretary of State in March 2001 encourages local authorities to convene local strategic partnerships. These partnerships should then be responsible for the development and delivery of community strategies. Local strategic partnerships should be built on existing partnership activity and play a key role in addressing the challenges of neighbourhood renewal.

4.12 The executive will also need to respond to any recommendations and reports from overview and scrutiny committees. Where these differ from the executive's policy, the
executive will need to justify the differences and its actions or change its policy, where necessary seeking approval from the full council. The aim should be to seek how best to respond to the needs and aspirations of local communities, seeking to resolve conflicts through clear leadership.

4.13 Where portfolios are allocated to individual executive members, consideration will need to be given to the specific briefs and responsibilities involved. Broadly thematic portfolios will help to ensure executive capacity for tackling cross-cutting issues.

4.14 Figure 4.1 provides an illustration of portfolios drawn up in this way.

4.15 Just as much as councillors outside the executive, members of the executive will need access to effective training and development to ensure that they can carry out their new roles effectively. This will be particularly important where functions and decision making are delegated to individual members of the executive; for example chapter 7 describes the responsibilities of executive members in recording decisions. Members of the executive may also need access to training and development opportunities to help them develop new relationships with officers and with other councillors who are not members of the executive.

4.15A Article 46 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 provides that where a councillor who is a member of a mayor and cabinet executive or leader and cabinet executive ceases to be a councillor she or he shall at the same time cease to be a member of the executive.

4.15B Article 7 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 provides that if a member of the executive (other than the council manager) fails for six months to attend any meeting of the executive, or any committee of the executive or, acting alone, to discharge any functions which are the responsibility of the executive then unless the failure was due to some reason approved by the local authority, she or he shall cease to be a member of the local authority.

**Figure 4.1**

**Examples of executive portfolios**

One unitary council identified the following portfolios in its experimental arrangements:

- quality of life;
- social and community development;
- children/youth advocate;
- regeneration and sustainability;
- quality performance/best value;
- life long learning;
- healthy [name of local authority area].
A metropolitan district council has adopted a similar approach but with the leader and deputy leader without portfolio, and with other executive members responsible for:

- community and neighbourhoods;
- life long learning and leisure;
- development and sustainability; and
- community planning and regeneration.

Substitution/ co-option

4.16 The Secretary of State believes that allowing formal substitution of executive members would reduce transparency and blur accountability. An executive is not, therefore, able to have formal substitute or deputy members who are not themselves members of the executive. For the same reason, the executive has no powers to co-opt other councilors or anyone else onto the executive. If a member of the executive who has a function delegated to her or him is absent (for example on sick leave) or unable to act (for example if they have an interest) the function will, therefore, have to be otherwise discharged in accordance with the delegations possible under sections 14 to 16 of the Act.

4.17 The executive may invite anybody it considers appropriate to attend its meetings and to speak on behalf of an absent member of the executive. However, that person would not be able to take formal decisions. Such a role might help provide an effective link between the executive and other councilors and could be an effective developmental role for some councilors. If such roles are adopted the Secretary of State advises that it would be inappropriate for such members also to be members of overview and scrutiny committees dealing with matters on which that person has assisted the executive.

4.18 The executive and its members can and should consult with whoever they think appropriate. Indeed, the executive will need to take an inclusive approach to its work, particularly policy development, by consulting with other councilors, overview and scrutiny committees and the wider local community.

4.19 In a constitution which involves the mayor and council manager form of executive the elected mayor may also appoint formal committees of councilors to advise the executive (see paragraph 3(14) of Schedule 1 to the Act).

Delegation outside the executive

4.20 Under executive arrangements which involve any of the three forms of the executive functions can be delegated to officers.

4.21 The Secretary of State believes that the extent of delegation to officers should in general increase as a result of new arrangements. Such delegations are encouraged as a way of ensuring more efficient decision making and of preventing the executive from becoming overwhelmed by a large volume of very detailed managerial, operational and professional matters. The executive, committees of the executive and members of the
executive should therefore consider carefully what functions they delegate to officers to ensure that they have sufficient time to focus on broad strategic issues.

4.22 The executive, committees of the executive and members of the executive may also make arrangements for functions to be discharged by area committees or another local authority or to be discharged jointly with one or more other local authorities (see chapter 6).

4.23 Such delegations should be clearly set out within the context of a systematic scheme of delegations and clear limits to those delegations in terms of functions and budgets.

4.24 Where functions which are the responsibility of the executive are delegated to officers or other structures outside the executive, the executive should nevertheless remain accountable to the council, through overview and scrutiny committees, for the discharge of those functions. That is to say, the executive should be held to account for both its decision to delegate a function and the way that the function is being carried out.

**Elected mayors**

4.25 Under section 39(5) of the Act an elected mayor is to be treated in the same way as a councillor or member of the local authority for the purposes of legislation specified in regulations. In addition, Schedule 3 to the Act modifies the Local Government Act 1972 to provide that the elected mayor is a member of the local authority and the council in effect this means that references in legislation to a member of a local authority include an elected mayor. The Secretary of State intends that a combination of the provisions in the Act, reg section 39(5) and orders under section 47 will provide in particular that an elected mayor:

- is subject to the same rules as councillors for qualification for, and disqualification from, being elected as, or being, an elected mayor (provided by articles 4 and 5 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001);
- is subject to the same ethical framework and code of conduct as all other councillors;
- is able to attend, speak at and vote at meetings of the council and its committees (except overview and scrutiny committees and the Standards Committee) and is allowed to be a member of any ordinary committee of the local authority;
- is taken into account in calculations of seat allocations on politically balanced committees of the local authority; and
- comes under the local authority’s allowances scheme; and
- is subject to the same provisions for filling vacancies as other councillors.

4.26 Schedule 3 to the Act also modifies section 83 of the Local Government Act 1972 to require that an elected mayor must make a declaration of office and that an elected mayor may take a declaration of office from any other member of the local authority for which she or he is elected mayor.

4.27 The main differences between councillors and an elected mayor are in terms of election of the elected mayor. By virtue of section 39(6) of the Act the elected mayor has a normal term of office of 4 years. The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001 set out transitional arrangements for the first term of office of the elected mayor and the timing and phasing of mayoral elections within the normal electoral cycle of different descriptions of local authorities (see chapter 14).

4.28 The elected mayor is, in particular, different because she or he will have a direct mandate from the local electorate which will often be different from that of any of the groups in the local authority. Therefore, it is likely that there will be times when the elected mayor and the council come into conflict and cannot agree on an issue. This is thrown into particularly sharp relief in the budget and policy setting processes described in chapter 2 of this guidance where proposed mechanisms for dealing with such disputes are also described.

4.29 As a member of the executive the elected mayor can also be required, when asked, to attend and answer questions at meetings of the local authority's overview and scrutiny committees where she or he will have to account for her or his actions, the Actions of the executive and those acting on its behalf.

4.30 In local authorities where there is an elected mayor, the titles of Mayor and Deputy Mayor can only be used by the elected mayor and her or his chosen deputy mayor. Schedule 3 to the Act provides that where a district with borough status or a London borough council has an elected mayor, the style of mayor will fall to that person and not to the chairman of the local authority. Similar provision is made in respect of the style of deputy mayor. In local authorities which do not have an elected mayor, there will be no effect on existing titles.

4.31 In a very few cases the title of Mayor or Lord Mayor is derived in some other way; for example through ancient local custom and practice or Royal Charters. In these circumstances, this title would continue whichever form of executive is chosen. It is for local choice, within the terms of any charter, to decide who holds this ancient title.

4.32 However, if it is decided that the elected mayor is not to hold the charter title then local authorities should ensure that the two mayoral titles are distinguished from each other in some way.

4.33 An elected mayor is not permitted to be the chairman of the local authority. It is a matter for local choice whether the elected mayor or the chairman of the local authority discharge the ceremonial duties previously performed by the chairman of the local authority.

4.34 However, in a constitution which involves the mayor and cabinet form of executive in particular, it is unlikely that the elected mayor will have enough time to discharge many ceremonial duties and therefore the Secretary of State considers it would be appropriate for these duties to remain with the chairman of the local authority.
Absence of the mayor

4.35 By virtue of paragraphs 1 and 3 of Schedule 1 to the Act the elected mayor is required to appoint another councillor as her or his deputy mayor. In a constitution which includes the mayor and cabinet form of executive the deputy mayor must be a councillor who is a member of the executive (see paragraph 1(3) of Schedule 1). In a constitution which involves a mayor and council manager form of executive the deputy mayor must be a councillor who is not a member of an overview and scrutiny committee and is not the chairman or deputy chairman of the local authority (see paragraphs 3(3) and (4) of Schedule 1).

4.36 By virtue of paragraphs 1(4) and 1(5) or 3(5) and 3(6) of Schedule 1 (as the case may be) the deputy mayor holds office until she or he resigns as deputy mayor, ceases to become a member of the local authority, at the end of the term of office of the mayor, or if the mayor chooses to remove her or him from office.

4.37 Paragraphs 1(7) and 3(8) of Schedule 1 (as the case may be) provide that the deputy mayor must act in the place of the elected mayor when she or he is unable to discharge her or his duties for any reason, for example if the elected mayor:

- vacates her or his office (e.g. through death, resignation, disqualification etc.);
- is suspended from office for a time;
- is absent (e.g. on holiday) for a period of time; or
- is incapacitated through illness; etc.

4.38 Paragraph 1(8) of Schedule 1 provides that under executive arrangements which involve a mayor and cabinet form of executive, if the deputy mayor and elected mayor are unable to discharge their duties, then the executive must act (collectively) in the elected mayor’s place or arrange for a member of the executive to act in her or his place. Paragraph 3(9) of Schedule 1 provides that under executive arrangements which involve a mayor and council manager form of executive, if the deputy mayor and elected mayor are unable to discharge their duties then the council manager must act in the elected mayor’s place.

4.39 Under executive arrangements which involve a mayor and cabinet form of executive article 47 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 provides that where no member of the executive is able to act then the local authority shall appoint an interim mayor and cabinet to act in the place of members of the executive until such time as either a member of the executive becomes able to act or a new elected mayor takes up office.

4.40 Under executive arrangements which involve a mayor and council manager form of executive local authorities should ensure that appropriate procedures are in place so that if the office of council manager is vacant the local authority can appoint another council manager as soon as possible after the vacancy arises. This might involve a short term appointment of another officer as council manager until the local authority has recruited and appointed a longer term replacement.

4.41 Regulations 7 to 9 of the Local Authorities (Elected Mayors) (Elections, Terms of Office
and Casual Vacancies) (England) Regulations 2001 provide that, subject to the exception described below, if a casual vacancy arises in the office of elected mayor a by-election must take place. As with by-elections for councillors (see section 89 of the Local Government Act 1972), the by-election must take place within 35 days unless the date on which the elected mayor would otherwise have retired falls within six months of the date of the vacancy in which case a new elected mayor would be elected at the next normal election. The exception arises where the vacancy occurs within six months before the day on which the mayor would have retired and the local authority are then to adopt different executive arrangements (whether or not they involve an elected mayor) or alternative arrangements. In such a case the vacancy must not be filled[2].

Individual decisions

4.42 Under executive arrangements, individual members of the executive will, for the first time, be allowed formally to take decisions. Executives should consider carefully issues of legal responsibility and ensure that individuals are clear what exactly they can and cannot do.

4.43 The relevant provisions of the Local Government Act 1972 (in particular section 135) in respect of contract standing orders remain in force. In addition, article 8 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 requires that local authorities which are operating executive arrangements must incorporate certain provisions into their standing orders made under section 135. Those provisions must include provision for securing that any contract, made in the course of the discharge of functions which are the responsibility of the executive, and which is of, or above, a value or of a description specified in standing orders must be in writing. The function of specifying such a value or description must be discharged by the full council. The provision included in standing orders must also secure that such a contract is either made under seal with the seal attested by at least one officer who is not the council manager, or is signed by at least two officers. This does not prevent other officers (including the council manager) or members of the local authority from also attesting the seal or signing the contract nor does it prevent an individual member of the executive from leading the negotiation prior to awarding a contract or from deciding (after receiving advice from officers) to whom the contract should be awarded.

4.44 The Secretary of State recommends that all executives should put in place mechanisms or protocols which ensure that (as with the council, its committees and sub committees and the executive and its committees) an individual executive member seeks advice from relevant officers before taking a decision within her or his delegated authority. Where appropriate, this should include taking legal advice, financial advice and professional officer advice (particularly about contractual matters) as well as consulting the monitoring officer where there is doubt about vires.

4.45 Decisions taken by individual members of the executive will give rise to legal and financial obligations in the same way as decisions taken collectively. Therefore members of the executive should always be aware of legal and financial liabilities (consulting the monitoring officer and chief finance officer as appropriate) which will arise from their decisions. To ensure effective leadership for the local authority and the communities it serves, the Secretary of State advises that local authorities should
consider adopting arrangements to ensure co-ordination of, and share responsibility for, executive decisions including those made by individuals.

4.46 Where an individual member takes decisions she or he will, as with all executive decisions, be subject to rigorous public scrutiny through overview and scrutiny committees. Overview and scrutiny committees will be able to require her or him to attend before them to answer questions about the decisions she or he has taken. In doing so she or he can ask the officers who advised her or him on a particular series of decisions to attend to assist her or him but it is the member who took the decisions whom the overview and scrutiny committee are holding to account, not the officer.

Ethics and probity

4.47 For purposes of the ethical framework under Part III of the Act, a directly elected mayor and other members of the executive are to be treated in a similar way to other councillors in a local authority in that they will be subject to the code of conduct and investigation by the Standards Board should any allegations of breaches of the code be received.

4.48 The elected mayor and other members of the executive will therefore be required to register and, where decisions are taken collectively in a meeting, declare their interests and seek dispensations as appropriate. However, a member of the executive taking decisions individually would be unlikely to be granted a dispensation to make a decision on which she or he had a direct interest, and appropriate substitution arrangements would need to be in place for such occasions. Such arrangements might include the decision being taken by another member of the executive, the executive as a whole, a committee of the executive, or an officer.

Officer support

4.49 Officers will continue to work for and serve the local authority as a whole. Nevertheless, as the majority of functions will be the responsibility of the executive, it is likely that in practice many officers will be working to the executive for most of their time. The executive will have to respect the political neutrality of the officers. Further guidance on officer support for all the local authority's functions can be found in chapter 8.

Political assistants

4.50 Paragraph 6 of Schedule 1 to the Act enables the Secretary of State to make provision in regulations to permit the appointment of an assistant for an elected mayor. The Secretary of State intends to make regulations which provide for the mayor to make such an appointment. Such an assistant would not have a right to attend executive meetings but may do so if invited. This person would be in addition to the political assistants who may be appointed under section 9 of the Local Government and Housing Act 1989.

Mayor and cabinet

4.51 The first of the three forms of executive arrangements set out on the face of the Act is the mayor and cabinet form (see in particular sections 11(2) and 14 of, and paragraph 1 of
Schedule 1 to, the Act). In order to adopt arrangements of this type, a local authority must first hold a referendum which approves their proposals (see section 26 of the Act and Part V of this guidance).

Size and membership of the executive

4.52 Under executive arrangements which involve a mayor and cabinet form of executive, the elected mayor must appoint between 2 and 9 members of the local authority to be members of the executive. The elected mayor, therefore, decides the size of the cabinet. Neither the chairman nor the vice-chairman of the local authority can be a member of the executive and executive members cannot be members of an overview and scrutiny committee.

4.52A Article 46 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 provides that where a councillor is appointed by the elected mayor as a member of a mayor and cabinet executive she or he shall, unless she or he resigns as a member of the executive or ceases to be a councillor, hold office until the end of the term of the elected mayor except that she or he may be removed from office by the elected mayor if the elected mayor thinks fit.

4.53 In deciding the size and membership of the executive, the elected mayor should have regard to any relevant responses to the consultation undertaken by the local authority before drawing up the proposals which were the subject of the referendum. After initial appointments, the elected mayor should also take account of practical experience gained from operating an executive in making subsequent appointments. If any change to the size of the executive considered by the mayor is substantive, she or he should consider whether further consultation is necessary on that issue.

Delegations of functions

4.54 The elected mayor will determine the scheme of delegations for functions which are the responsibility of the executive in accordance with section 14 of the Act and regulations under sections 18 to 20 of the Act. Under section 14 the elected mayor may arrange for such functions to be discharged by:

- an individual member of the executive (so-called portfolio holders);
- the executive (collectively);
- a committee of the executive (the membership of which can only include members of the executive); or
- an officer of the local authority.

4.55 The elected mayor can also arrange for functions which are the responsibility of the executive to be discharged by area committees (where a local authority has devolved structures in place) or another local authority or jointly with one or more other local authorities. Where arrangements have been made in accordance with section 14 for the executive, a committee of the executive or any other member of the executive to discharge such functions that person may also, unless the elected mayor directs otherwise, arrange for functions to be
discharged in these ways.

4.56 In the same way that the full council can place limitations on delegations to committees, sub-committees and officers under section 101 of the Local Government Act 1972, the elected mayor will also be able to place limitations on delegations under section 14 of the 2000 Act. For example, she or he may direct that a person to whom a function is delegated may not delegate that function onwards (e.g. to an officer). Where a function has been delegated by any person or body responsible for it (including the elected mayor) that person continues to be able to exercise that power.

**Figure 4.2 Mayor and Cabinet**

4.57 Section 37 of the Act and the Local Government Act 2000 (Constitutions) (England) Direction 2000 require that the scheme of delegations for functions which are the responsibility of the executive must be made publicly available.

**Relationship between the executive and the council**

4.58 The elected mayor and cabinet will be responsible for most of the functions of the local authority. In addition, although the full council will be responsible for approval and adoption of the policy framework and the budget, the elected mayor and cabinet have overall responsibility for the development of the draft budget and draft plans and strategies for submission to the full council for approval.

4.59 It will be for the elected mayor to choose how to involve other members of the local authority, including overview and scrutiny committees, and the wider community in preparing drafts of the budget and the plans and strategies which make up the policy framework.

4.60 The elected mayor and cabinet will need to adopt an inclusive approach to this policy development in order to take account of the needs and aspirations of local communities, in the light of the elected mayors mandate. The executive should be outward looking and an elected mayor is particularly well placed to give effective community leadership. The elected mayor and executive need to develop a clear strategy to involve the wider community in policy development and review. In doing so they must have regard to the guidance in chapters 2 and 7.

**Figure 4.3 Leader and Cabinet**
Leader and cabinet

4.61 The second of the three forms of executive arrangements set out on the face of the Act is the leader and cabinet form (see in particular sections 11(3) and 15 of, and paragraph 2 of Schedule 1 to, the Act). Under executive arrangements involving this form of executive, the executive leader is elected (and removed) by the full council.

Alternative forms of leadership

4.62 It is for each local authority to set out in its executive arrangements how the arrangements for the appointment of the cabinet should work. Broadly there are two alternatives:

- where the cabinet is appointed by the executive leader and the executive leader determines the scheme of delegations; and
- where the cabinet is appointed by the full council and the council determines the scheme of delegations.
4.63 In both cases the executive must consist of not fewer than three and not more than ten councillors (including the executive leader). It is also possible for the local authority to determine the number of councillors to be appointed to the executive but for the appointments to be made by the executive leader or vice versa. Article 46 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 provides that where the local authority determines the number of councillors to be appointed to the executive and the appointments are to be made by the executive leader then she or he must appoint that number of councillors to the executive and must appoint councillors to fill vacancies which occur when any councillor ceases to be a member of the executive before the end of the term of office of the executive leader.

4.64 These two arrangements are not mutually exclusive because section 15 of the Act provides that the executive leader determines the delegations for functions which have not been allocated by the council. Figure 4.4 provides some examples of such hybrid arrangements. Under section 15 functions which are the responsibility of the executive may be discharged by:

- an individual member of the executive (so-called portfolio holders);
- the executive (collectively);
- a committee of the executive (the membership of which can only include members of the executive); or
- an officer of the local authority.

### Figure 4.4

**Examples of hybrid arrangements**

- The council decides the size and membership of the cabinet and the executive leader decides how to delegate functions which are the responsibility of the executive.
- The executive leader decides the size and membership of the cabinet and the council decides how to delegate functions which are the responsibility of the executive.
- The council decides the size and membership of the cabinet and some of the delegations within the executive for functions which are the responsibility of the executive and the executive leader determines the delegations for the remaining functions.
- The executive leader decides the size and membership of the cabinet. The council decides some of the delegations within the executive for functions which are the responsibility of the executive and the executive leader determines the delegations for the remaining functions.

4.65 Whatever the arrangements, section 37 of the Act and the Local Government Act 2000 (Constitutions) (England) Direction 2000 require that the scheme of delegations for functions
which are the responsibility of the executive must be made publicly available. This includes
where functions are delegated to individual portfolio holders.

4.66 Under paragraph 2(2) of Schedule 1 to the Act the local authority may make provision in
its executive arrangements with respect to the election and term of office of the executive
leader and the appointment and term of office of cabinet members where those members are
appointed by the local authority under section 11(3)(b)(ii). Local authorities have no power to
make provision in their executive arrangements about the appointment and term of office of
members of the cabinet who are appointed by the executive leader under section 11(3)(b)(i).

4.66A Article 46 of the Local Authorities (Executive and Alternative Arrangements)
(Modification of Enactments and Other Provisions) (England) Order 2001 provides that where
a councillor is appointed by the executive leader as a member of a leader and cabinet
executive and the term of office of the executive leader is provided for in the executive
arrangements then she or he shall, unless she or he resigns as a member of the executive or
ceases to be a councillor, hold office until the end of the term of the executive leader except
that she or he may be removed from office by the executive leader if the executive leader
thinks fit. Where the term of office of the executive leader is not provided for in the executive
arrangements a councillor appointed by the executive leader as a member of a leader and
cabinet executive will hold office until either she or he resigns, ceases to be a councillor or is
removed from office by the executive leader.

4.67 Local authorities should set out clearly in their executive arrangements the
procedures for electing the leader and appointing members of the cabinet (where they
appoint them) as well as terms of offices (if any) of the elected leader and members of
the cabinet (where they are appointed by the local authority).

4.68 The local authority should consider how to frame such provisions so as to provide
that generally the elected leader and members of the cabinet would not be removed
from office as part of normal procedures for resolving conflicts between the council and
the executive. The local authority’s executive arrangements may therefore include
arrangements for appointing the executive leader and/or other executive members for a
fixed term, subject to exceptional circumstances such as change of control of the local
authority (particularly in hung or balanced local authorities). The local authority will
have to ensure that those arrangements include provision for filling vacancies in the
offices of executive members (including the executive leader).

4.69 In certain circumstances, particularly in local authorities where there is no overall
control or with a majority of independent members, it may be appropriate to devise
arrangements for rotating the leadership on a regular basis. Such arrangements must,
however, provide for the full council to elect the executive leader at the appropriate
times and therefore local authorities will need to take into account the effect such
arrangements could have on the frequency of council meetings. Such arrangements
should not in any way compromise efficiency, transparency and accountability in
decision making.

Absence of the executive leader

4.70 There is no requirement to appoint a deputy executive leader. Local authorities will
therefore need to ensure that appropriate arrangements are in place to cover the absence of the executive leader.

Delegations of functions determined by the leader

4.71 Where the executive leader has been given a free hand to decide on the size and membership of the cabinet, in a similar way to an elected mayor she or he should take into account the relevant outcomes (if any) of the consultation undertaken on the proposals for the executive arrangements. After initial appointments, the leader in this form of arrangements should also take account of practical experience gained from operating an executive in making subsequent appointments. If any change to the size of the executive considered by the leader is substantive, she or he should consider whether further consultation is necessary on that issue.

4.72 Where the executive leader has also been given powers to decide some or all delegations within and from the executive in accordance with section 15(3) again in doing so she or he should have regard to the relevant outcomes of such consultation.

4.73 By virtue of section 15(8) of the Act the executive leader may direct that any person or body to whom she or he has delegated a function may not delegate that function onwards (e.g. to an area committee or to an officer) or that they may not do so in specified circumstances (e.g. where expenditure above a certain amount is involved).

Delegation of functions determined by the council

4.74 Where the full council decides some or all delegations for functions which are the responsibility of the executive in accordance with section 15(2) they should ensure that the scheme of delegations for those functions is sufficiently flexible to ensure the executive can discharge functions efficiently and effectively without frequent recourse to the local authority to make amendments to the executive arrangements which will require a decision by the full council.

Delegations to other council structures

4.75 The executive, committees of the executive or individual members of the executive to whom functions are allocated by the executive arrangements or delegated by the executive leader may also make arrangements for functions which are the responsibility of the executive to be discharged by area committees (where a local authority has devolved structures in place) or another local authority or jointly with one or more other local authorities. Where the person making such arrangements is responsible for the functions in question by virtue of delegation from the executive leader then the executive leader may direct that she or he may not enter into such arrangements.

Leader and "council manager"

4.76 During consultation on the draft Local Government (Organisation and Standards) Bill, the Government was asked to consider whether an executive consisting of an executive leader appointed by the local authority working together with a council manager should be made
available.

4.77 The Secretary of State believes that a person who is charged with providing the political steer to the council manager is in a position of great influence if not direct power. Therefore, the Secretary of State believes that a single councillor in such a position should be directly elected across the local authority with her or his own mandate to enhance the accountability of that office and, consequently, of the council manager.

4.78 However, if a local authority and local people are attracted to a council manager form of executive but without an elected mayor, then the local authority could, in consultation with local people, decide to have arrangements with a small cabinet of, say, three councillors (including the executive leader) with very extensive delegation to the chief executive, who would in effect be a council manager. In such a case, the chief executive should have responsibility for appointing and dismissing chief officers and all other officers.

4.79 Within the policy framework and budget agreed by the full council, the chief executive would then take the majority of decisions (or delegate them to other officers) and be responsible for preparing drafts of the budget and policy framework. She or he should do so under the political guidance of a small group of councillors. She or he and the councillors advising her or him would be held to account by overview and scrutiny committees.

**Mayor and council manager**

4.80 The third of the three forms of executive arrangements set out on the face of the Act is the mayor and council manager form (see in particular sections 11(4) and 16 of, and paragraph 3 of Schedule 1 to, the Act). The executive consists of the elected mayor and the council manager only. The council manager cannot be the monitoring officer or the chief finance (section 151) officer of the local authority. In order to adopt executive arrangements of this type, a local authority must first hold a referendum which approves their proposals (see section 26 of the Act and Part V of this guidance).

4.81 The Secretary of State recommends that the council manager should also not normally be the proper officer for the purposes of verifying petitions (see chapter 12 of this guidance) or publishing records of decisions (see chapter 7 of this guidance) nor should she or he be the electoral registration officer or returning officer for the local authority.

4.82 The council manager is appointed by, and therefore responsible to, the local authority as a whole. The council manager can, therefore, if the local authority no longer has confidence in her or him, be dismissed by the full council, subject only to the council managers contract of employment, any provisions in the executive arrangements and due process under employment law. The Secretary of State intends that the statutory protections in the Local Authorities (Standing Orders) Regulations 1993 will not apply to a head of paid service (see paragraph 4.92 below) who is also the council manager.
4.83 The principle behind this form of executive is to achieve a clear separation between policy development (by the elected mayor and council) and implementation of policy (by the council manager having regard to any political steer from the elected mayor).

4.84 The key feature of these arrangements is that the full council appoints the council manager and she or he is responsible for appointing all staff. The Secretary of State intends to make regulations which require local authorities operating executive arrangements which involve this form of executive to incorporate provisions in their standing orders requiring delegation of all staff appointments to the council manager or her or his nominee.

4.85 The elected mayor’s role is to give broad political guidance to the council manager, in line with her or his manifesto commitments and the policy framework agreed by the full council. However, all of the day-to-day decisions for delivering and implementing that framework will be the responsibility of the council manager.

4.86 The elected mayor must appoint another councillor to be her or his deputy, although the deputy cannot be a member of the executive. The deputy mayor cannot be the chairman or vice-chairman of the local authority and cannot be a member of any overview and scrutiny committee.

**Figure 4.5 MAYOR AND COUNCIL MANAGER**

4.87 Given that the deputy mayor may have to take on the elected mayor’s role at short notice the executive should ensure that she or he is kept fully informed and given access to relevant papers.

4.88 Paragraphs 3(14) and 3(15) of Schedule 1 to the Act enable the elected mayor to appoint one or more committees of councillors to advise the executive on the exercise of functions which are the responsibility of the executive.

**Delegation of functions**

4.89 Section 16 of the Act and the Local Authority (Arrangements for the Discharge of Functions) (England) Regulations 2000 provide that the council manager can either: discharge functions which are the responsibility of the executive herself or himself; delegate functions to the executive (i.e. the elected mayor and council manager acting collectively) or to another officer; or make arrangements for functions which are the responsibility of the executive to be discharged by area committees (where a local authority has devolved structures in place) or another local authority or jointly with one or more other local authorities. Section 16 of the Act also requires that the council manager must have regard to any advice from the elected mayor when deciding whether and how to exercise or delegate functions which are the responsibility of the executive.

4.90 The council manager should generally not delegate to the executive, except that she or he should delegate decisions on the broad shape and content of draft plans or strategies before their submission to the full council for consideration (see chapter 2). If, when drawing up proposed plans and strategies for the full council to consider, the elected mayor and the council manager cannot agree then they should each put their views separately to the full council.
4.90A Section 37 of the Act and the Local Government Act 2000 (Constitutions) (England) Direction 2000 require that the scheme of delegations for functions which are the responsibility of the executive, including those functions delegated to officers, must be made publicly available.

**Overview and scrutiny**

4.91 Paragraphs 3(10) and 3(11) of Schedule 1 to the Act provide that the council manager may, if she or he so wishes, attend and speak but not vote at any meetings of a local authority, its committees and sub-committees except overview and scrutiny committees. The council manager will be able to attend overview and scrutiny committee meetings, insofar as they are held in public, but will not be allowed to speak unless invited to do so by the committee. In addition, of course, an overview and scrutiny committee can require the council manager to attend and answer questions, both as an officer of the local authority and a member of the executive.

4.92 In normal circumstances the council manager should also be the head of paid service and chief executive. The Secretary of State recognises that there is the potential for this to create conflict because as the council manager she or he will be a member of the executive and as chief executive she or he will ultimately be responsible for resourcing support for overview and scrutiny committees.

4.93 The council manager should therefore ensure that overview and scrutiny committees are properly supported and that she or he is not directly involved in the day-to-day management and operation of support for overview and scrutiny committees. In practice this will often mean that a different chief officer will be responsible for day-to-day management of support for overview and scrutiny with a number of other officers reporting to her or him rather than directly to the council manager.


Chapter 5: Responsibility for functions

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". It replaces the existing chapter 5 issued on 26 October 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

the content and operation of a new constitution including executive arrangements or alternative arrangements; and

the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (c.22) (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in maroon text with a 'tick' in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in this chapter are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities' experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

This replacement chapter is issued on: 21 June 2001.

Previous versions of this chapter were issued on: 26 October 2000.

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

Introduction

5.1 Section 13 of the Act makes provision for the purposes of determining which functions of a local authority are the responsibility of the executive under executive arrangements. Section 13(2) requires that all functions of a local authority (including those conferred by the Act and by future legislation) must be the responsibility of the executive unless they are specified in regulations under section 13(3) or there is express provisions to the contrary in any other legislation.

5.2 Functions conferred by legislation (rather than by delegation from the local authority) on
statutory committees of a local authority (such as the standards committee, overview and scrutiny committees and, where appropriate, the sea fisheries advisory committee) or on named officers of a local authority (such as the monitoring officer, chief finance (section 151) officer, the electoral registration officer, returning officer or the proper officer) are not affected by section 13 they cannot be the responsibility of the executive and continue to be subject to the same legislative framework as they were before the passing of the Act.

5.3 Under section 13(3) the Secretary of State may make regulations providing that any function of a local authority:

- is not the responsibility of the executive (section 13(3)(a));
- may be the responsibility of the executive (section 13(3)(b)); or
- is or is not the responsibility of the executive to a specified extent (section 13(3)(c)).

5.4 Where regulations specify a function under section 13(3)(b) (referred to in this guidance as local choice functions) the local authority’s executive arrangements must include provision that the function either:

- is not the responsibility of the executive;
- is the responsibility of the executive; or
- is or is not the responsibility of the executive to a specified extent.

5.5 By virtue of section 13(5), where regulations or the executive arrangements specify that a function is or is not the responsibility of the executive to a specified extent the executive arrangements may designate that any action in connection with the discharge of that function is or is not the responsibility of the executive.

5.6 Section 13(6) enables the Secretary of State to specify cases or circumstances in which any function which would otherwise be the responsibility of the executive to any extent is not to be the responsibility of the executive to that or any other extent. Section 13(12) enables the Secretary of State to disapply section 101 of the Local Government Act 1972 in respect of any function which is not the responsibility of the executive (i.e. to require that the function must be discharged by the full council).

5.7 In addition section 48(4) provides that responsibility for doing anything which is calculated to facilitate, or is conducive or incidental to, the discharge of a function rests with the person or body which is responsible for the discharge of that function.

5.8 The Secretary of State has adopted the following approach to the division of functions between the executive and the council:

- determination of the local authority’s policy framework and budget (see chapter 2 of this guidance) and other constitutional and quasi-legislative functions are to be the responsibility of the full council;
• functions which involve either determining an application from a person for a licence, approval, consent, permission or registration or direct regulation of a person (except in cases where there is only limited discretion in the discharge of the function) together with any related enforcement actions (including prosecution) are not to be the responsibility of the executive; and
• all other functions are to be the responsibility of the executive.

5.9 Therefore, the executive is responsible both for proposing new policy and the budget to the full council (see chapter 2) and for implementing and delivering the agreed policy framework and budget. The Local Authorities (Functions and Responsibilities) (England) Regulations 2000 give effect to this approach.

**Functions which are not the responsibility of the executive**

5.10 The Regulations provide that the functions listed in Schedule 1 to the Regulations are not to be the responsibility of the executive. These functions will continue to be subject to the same legislative framework as they were before the passing of the Act including delegations under section 101 of the Local Government Act 1972. Such delegations will vary from local authority to local authority depending on local circumstances.

5.11 However, the Secretary of State advises that where such decisions are currently delegated to committees or to officers then those delegations should continue.

5.12 Where a local authority delegates its functions to committees or sub-committees the Secretary of State considers that the number of committees and sub-committees appointed under section 101 of the 1972 Act should be kept to a minimum. To ensure that functions are discharged in line with the principles of efficiency, transparency and accountability the membership of such committees should be kept under review. The Secretary of State considers that the number of members of such committees should be kept to a minimum and should be proportionate to the size of the local authority.

**Full council functions**

5.13 The full councils role in policy formation and setting the budget is described in detail in chapter 2 of this guidance and provided for in regulations 4 and 5 of, and Schedules 3 and 4 to, the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. The Regulations also provide that certain other functions such as functions in respect of the conduct of elections and quasi-legislative functions such as making byelaws and decisions relating to rights of way are not to be the responsibility of the executive.

5.14 **The Secretary of State recommends that these functions should, generally, be the responsibility of the full council.**

5.15 In addition, the Regulations require that functions which, by virtue of any enactment, are required to be discharged by the full council must continue to be discharged by the full council.
Development control

5.16 The Development Plan will form part of the local authority’s policy framework described in chapter 2 of this guidance. The executive will be responsible for formulating the Development Plan in accordance with the Town and Country Planning (Development Plan) Regulations 1999. The different types and forms of Development Plan are set out in Planning Policy Guidance Note 12 Development Plans, together with guidance on their preparation. Chapter 2 provides further guidance on the process of preparing and adopting the Development Plan.

5.17 By virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000, development control decisions will not be the responsibility of the executive. Therefore implementation of the Development Plan through development control will continue to be exercised under delegations from the local authority in accordance with section 101 of the 1972 Act although some residual planning functions such as preparation of supplementary planning guidance, designation of conservation areas, areas of archaeological interest and nature reserves, removal of permitted development rights through Article 4 Directions and making compulsory purchase orders will be the responsibility of the executive.

5.18 The Secretary of State considers that full exchange of information between the executive and any committee which takes development control decisions is essential. The executive will need to ensure that there is effective two-way communication between them and any such committee and should consult any such committee on successive drafts of the Development Plan while policy is being formulated. In addition, local authorities should consider including a member of the executive, if possible with responsibility for the Development Plan, on one or more committees which take development control decisions although she or he should not normally be the chair.

5.19 In addition, the powers to require information as to interests into land in section 330 of the Town and Country Planning Act 1990 and section 16 of the Local Government (Miscellaneous Provisions) Act 1976 are specified in Schedule 2 to the Regulations as a local choice function.

5.20 Using the powers in section 13(4) and 13(5) of the Act a local authority’s executive arrangements should provide that these functions to require information as to interests into land are not to be the responsibility of the executive except to the extent that it is necessary to exercise these powers in respect of actions which are preliminary to the exercise of powers to make compulsory purchase orders.

Licensing, registration and health and safety at work functions

5.21 The Regulations provide that all licensing and registration functions are not to be the responsibility of the executive. Regulation 2 makes a general provision that the functions of imposing conditions, limitation or terms, making charges (where permitted) and any enforcement action (including prosecution) taken in respect of functions specified in Schedule 1 to the Regulations are also not to be the responsibility of the executive.

5.22 In addition, all health and safety at work functions, where the local authority is regulating other businesses, must also not be the responsibility of the executive. This includes some licensing functions such as the powers to licence storage of petroleum and to licence and close premises for the keeping and selling of explosives. Responsibility for health and safety for the
local authority as an employer must be the responsibility of the executive.

5.23 In many local authorities most of the licensing, registration and health and safety functions will be delegated to professional officers. Therefore, subject to the volume of licensing and registration work a local authority has, a single licensing and health and safety committee should be appropriate (unless such decisions are delegated to area committees).

**Local choice functions**

5.24 Regulation 3 of, and Schedule 2 to, the *Local Authorities (Functions and Responsibilities) (England) Regulations 2000* enable local authorities to decide, in drawing up proposals for the operation of executive arrangements, whether certain functions are to be the responsibility of the executive (i.e. these functions are specified under section 13(3)(b) of the Act).

5.25 These functions broadly fall into two categories:

- locally derived functions: i.e. conferred by local Acts (other than any specified elsewhere in Schedule 1 to the Regulations); and
- functions which, depending on the circumstances, may be appropriate for either the executive, the full council or a committee of the local authority (or officer).

5.26 In addition, to enable overview and scrutiny committees to discharge the function of conducting best value reviews under section 5 of the *Local Government Act 1999* this function is also specified in Schedule 2 to the Regulations.

5.27 In determining the extent to which these functions are to be the responsibility of the executive local authorities should follow the approach adopted in paragraph 5.8 above.

5.28 If a local authority's executive arrangements provide that these functions are the responsibility of the executive then they will be subject to the same legislation as all other such functions (see chapter 4). If the executive arrangements provide that these functions are not the responsibility of the executive then they will be subject to the same legislative framework as they were before the passing of the Act.

5.29 In addition, under the powers in sections 13(4) and 13(5) of the Act a local authority can provide in its executive arrangements that these functions are shared between the executive and the council (or its committees) i.e. that some specified actions in connection with the discharge of these functions are to be the responsibility of the executive and others are not. Further guidance on these functions is provided below where appropriate.

**Local act functions**

5.30 Some local Acts confer functions on specific local authorities or groups of local authorities and, in some cases, specify ways in which those functions are to be discharged. These functions are by definition specific to that local authority or group of local authorities. Therefore, the Secretary of State believes it is appropriate that the relevant local authorities should decide
whether or not these locally derived functions are the responsibility of the executive.

5.31 If the local Act in question specifies that the function must be discharged by the full council then that function must continue to be discharged by the full council. The Regulations also require that, for local Act functions which are not to be the responsibility of the executive, any consequent enforcement function etc. must also not be the responsibility of the executive.

5.32 The functions of any local authority in its capacity as a harbour authority are, for the most part, specified in local Acts. Schedule 2 to the Regulations provides that the remaining harbour functions specified in public and general Acts are also local choice functions.

5.33 Local authorities should follow the approach set out in paragraph 5.8 above when deciding whether or not a local Act function or a harbour function specified in public and general Acts should be the responsibility of the executive. In particular if the function in question is a licensing, consent, permission or registration function (including development control functions) then it should not be the responsibility of the executive.

**Functions which may be appropriate for either the executive, the full council or a committee**

5.34 The Regulations provide that certain functions in respect of control of pollution (air, water and land), statutory nuisances and other environmental protection functions may be the responsibility of the executive.

5.35 These functions involve a combination of delivery and implementation of the local authority’s policy, direct regulation of persons (with substantial discretion as to the regulatory action) and policy and strategy development. Therefore following the approach in paragraph 5.8 above a local authority’s executive arrangements should provide that these functions are to some extent the responsibility of the executive and otherwise not the responsibility of the executive. In particular such a function or action should not be the responsibility of the executive where it involves:

- determining an application from a person for a licence, approval, consent, permission or registration;
- direct regulation of a person (with substantial discretion as to the regulatory action); or
- enforcement of any such licence approval, consent, permission or direct regulation.

5.36 Where a function or action involves preparation of a strategic policy of the local authority, the local authority’s executive arrangements should provide that the executive will prepare the draft plan or strategy (in consultation with overview and scrutiny committees and others) for submission to the full council to consider and approve. Otherwise a local authority’s executive arrangements should provide that these functions are to be the responsibility of the executive.

5.37 There should be full exchange of information between the executive and the council or committee which is responsible for these functions or actions and the Secretary of State recommends that local authorities should consider including an appropriate member of the
executive on such a committee. In addition where these functions are currently delegated to officers they should continue to be so delegated whether or not they are the responsibility of the executive.

5.38 The functions of determining any appeal against a decision made by or on behalf of the local authority and of making arrangements for the determination of certain appeals (relating to school exclusions and admissions and appointments to Council Tax Benefit and Housing Benefit Review Boards) are also specified in Schedule 2 to the Regulations as local choice functions.

5.39 Where the functions of making arrangements for the determination of certain appeals (relating to school exclusions and admissions and appointments to Council Tax Benefit and Housing Benefit Review Boards) are not to be the responsibility of the executive the local authority’s executive arrangements should provide that they will be discharged by the full council.

5.40 From 2 October 2000, all local authorities are subject to the Human Rights Act 1998 which incorporates the European Convention on Human Rights into UK law. Local authorities are public authorities for the purposes of section 6 of that Act and are therefore subject to that Act.

5.41 In determining any arrangements for determination of appeals, as distinct from making the determination itself, local authorities must ensure that they are consistent with Article 6 of the European Convention on Human Rights which, in particular states that:

...everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law.

5.42 To ensure consistency with Article 6 the Secretary of State advises that local authorities make arrangements for the determination of appeals which ensure that no-one who was involved in making the decision in question is involved in the determination of the appeal. Appeals against decisions of the executive, where there will be a measure of collective responsibility, should not be heard by a panel which includes any member of the executive. Local authorities should consider the possibility of establishing an appeals panel from which a small appeals committee for any particular case can be drawn, no member of which was involved in the original decision.

5.43 In addition, Schedule 2 to the Regulations provides that appointments to outside bodies are local choice functions. Whoever makes such an appointment, the member appointed could be either a member of the executive or another councillor.

5.44 The Secretary of State advises that a local authority’s executive arrangements should provide that the executive will make appointments to outside bodies in connection with functions which are the responsibility of the executive (e.g. housing, education, social services, regeneration, etc.) and all other appointments should be made by the full council, a committee or officer of the local authority.

5.45 The powers to place staff at the disposal of other local authorities (using section 113 of
the Local Government Act 1972 or any other similar provision) are local choice functions.

5.46 Using the powers in section 13(4) and 13(5) of the Act a local authority’s executive arrangements should provide that the functions to place staff at the disposal of other local authorities, for example to facilitate the exercise of joint arrangements, are to be the responsibility of the executive except to the extent that the staff are being placed at the disposal of the other authority in relation to the discharge of functions which are not the responsibility of the executive of the authority placing the staff.

**Best value reviews**

5.47 Chapter 3 of this guidance discusses in some detail the potential role of overview and scrutiny committees in conducting best value reviews. To ensure that a local authority has the flexibility to involve overview and scrutiny committees in these reviews the Regulations enable local authorities to choose whether the function of conducting a best value review is the responsibility of the executive or not.

**Functions which are the responsibility of the executive**

5.48 The effect of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 is that the vast majority of local authority functions must be the responsibility of the executive, including most of the major services. Chapters 4 and 6 of this guidance describe how such functions can be delegated both within and outside the executive.

5.49 As chapter 4 explains, the executive is able to delegate functions to officers. A number of the functions which are to be executive functions have, prior to the passing of the Act, often been discharged by officers, either because they are operational or management decisions or because professionally trained officers are necessary to discharge the functions. The Secretary of State considers that the operation of executive arrangements should, in many local authorities, lead to greater delegation to officers. In particular, the executive should continue to delegate operational and management decisions to officers as well as decisions in respect of functions which require professional officer training and skills.

**Housing land transfers**

5.50 All housing functions are, under the Act and the Regulations, the responsibility of the executive. However, in the case of the transfers of housing land the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 require that applications to the Secretary of State to join the annual disposals programmes and applications to the Secretary of State to transfer housing land must be authorised by the full council before being sent to the Secretary of State.

**Social services**

5.51 Section 102 of the Act provides that sections 2 to 5 of the Local Authority Social Services Act 1970 do not apply to any local authority which is operating executive arrangements. This means that those local authorities will no longer be required to have a social services
committee to discharge social services functions, all of which will be the responsibility of the executive. Section 102 also repeals for all local authorities the requirement to have the Secretary of States approval for the Social Services Director to be able to discharge functions other than social services functions. These changes to the statutory regime for the discharge of social services functions follow the commitments in chapter 7 of the Modernising Social Services White Paper.

5.52 There should be clear accountability for quality of social services to members via the director of social services. Modernising Social Services states the Governments intention to retain the legal requirement for a director of social services, who must be accountable to the chief executive and have direct access to councillors and an elected mayor on social services matters. The new quality framework for social services makes the director responsible for the quality of services provided to fulfil the local authority's social services functions. The director of social services has a wider role and will need to work effectively within the local authority to implement council-wide policies, joined-up services (for example, joint initiatives with the Health Authority) and on cross-cutting issues to deliver best value.

5.53 The director of social services needs to have authority and credibility within a local authority and its partners, and, where activities and functions are dispersed, clear and demonstrably effective lines of accountability must be in place. The Department of Health intends to issue guidance on the role of the director of social services, and is seeking views on the possible status of that guidance and what it should cover.

5.54 Social services directors manage within and across many organisational boundaries. Some services are within their line management; some may be outside their line management and managed either by another council department or jointly with a particular agency. Other services are commissioned from wholly external providers. Clear accountability arrangements must be made:

- to the elected mayor and councillors directors must have a sufficient level of seniority to ensure direct access to the chief executive and to the elected mayor, executive leader or any member or members of the executive with responsibility for social services. Directors must be in a position to provide advice and information directly to councillors on the overview and scrutiny committee(s) whose responsibilities include social services;
- within officers line management arrangements so that accountability is ensured whether staff are directly managed by the director of social services or by other senior staff;
- for quality and professional development so that social services staff are supported to deliver social work or social care wherever they are based; and
- where external agencies are providing services contracts must make sure that quality and standards are written in for all services delivered, and that accountability is clearly defined, and adherence to these terms is closely monitored.

5.55 Chapter 4 sets out how the executive can organise itself and delegate within the executive. Chapter 3 describes how the executive will be held to account for its actions through effective overview and scrutiny. With the changes to management structures for social services and the transfer of the regulatory functions to the Commission for Care Standards and Ofsted
(under the Care Standards Act 2000), a local authority's constitution and the scheme of delegation will need to ensure that it is wholly clear who is responsible for social services functions and how they will be held to account, including through overview and scrutiny committees.

Social services regulatory functions

5.56 Social services authorities are responsible for the regulation of independent residential care homes, childrens homes (other than voluntary childrens homes - which are regulated by the Secretary of State and small childrens homes which cater for fewer than 4 children), and childminding and day care provision.

5.57 The Registered Homes Act 1984 and Children Act 1989 require local authorities to register and inspect residential care homes and childrens homes respectively. They are also required to inspect (but not to register) community homes. The Children Act requires local authorities to keep a register of all childminders or those who provide day care for under 8s in their area and provides for a power of inspection.

5.58 Local authorities also have the power to inspect the welfare arrangements in independent boarding schools. Local authorities have the power to take enforcement action in respect of services registered with them.

5.59 Under the Care Standards Act 2000 local authority responsibilities for regulation of social services will transfer to the National Commission for Care Standards in 2002 and regulation of early years provision will transfer to Ofsted although not necessarily on the same timescale.

5.60 Exceptionally, in the transitional period between a local authority implementing executive arrangements and implementation of the Care Standards Act 2000 all these functions will be the responsibility of the executive to ensure that there is clear accountability for them to members. However, in accordance with Local Authority Circular (90)13 and Local Authority Circular (95)12 the executive should ensure that contracting and inspection are two separate processes and should operate at arms length from each other.

Adoption panels

5.61 Under the Adoption Agencies Regulations 1983 local authorities with social services responsibilities are required to establish at least one adoption panel. The panel must consider the case of every child, prospective adopter and proposed placement referred to it by the local authority and make recommendations on:

- whether adoption is in the best interests of a child;
- whether a prospective adopter is suitable to be an adoptive parent; and
- whether a prospective adopter would be a suitable adoptive parent for a particular child.

5.62 The Adoption Agencies Regulations 1983 (as amended by the Article 39 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001) require that where a local authority is operating executive
arrangements its adoption panel must include at least one member of the executive or of an overview and scrutiny committee whose remit includes overview and scrutiny of social services functions.

5.63 The local authority should ensure that the elected member (or members) appointed to the panel has an understanding of adoption. Any member of the executive appointed to the panel should have a role in the executive that includes an interest in social services functions.

[1] Harbours functions in public and general Acts were inserted into Schedule 2 by the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001.

[2] The power to place staff at the disposal of other authorities was specified as a local choice function by the Local Authorities (Functions and Responsibilities) (England) (Amendment) Regulations 2001.

Chapter 6: Other council structures

This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities." This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.


Introduction

6.1 Under the committee system local authorities are able to make use of wider, sometimes more flexible arrangements for decision making than simply delegation from the full council to committees and officers. These include:

- area committees;
- joint arrangements with one or more other local authorities; and
- making arrangements for the discharge of their functions by another local authority.

6.2 Under executive arrangements these flexibilities remain. For functions which are not the responsibility of the executive the same legislative framework continues to apply and all these arrangements continue to be available for those functions.
6.3 Chapter 4 describes the possible delegations within the executive and to officers. The Act also allows the executive to make use of the same types of structures for functions which are the responsibility of the executive:

- regulations under section 18 allow the executive to make arrangements for the discharge of functions for which it is responsible by area committees;
- regulations under section 19 allow the executive to make arrangements for the discharge of functions for which it is responsible by another local authority or the executive of that other local authority; and
- regulations under section 20 allow the executive to make arrangements for the discharge of functions for which it is responsible jointly with one or more other local authorities or the executive(s) of one or more other local authorities.

6.4 Those regulations are the *Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000*. Regulations 3, 4 and 5 of the Regulations provide powers for certain persons within the executive to enter into these types of arrangements. Who has that power depends on the form of executive which the local authority is operating and the scheme of delegations within the executive.

6.5 When deciding whether and how to make such arrangements the principal aim should be to ensure improved service delivery in the context of best value and more efficient, transparent and accountable decision making. The outcome of best value reviews will need to be a particularly important consideration in this respect.

6.6 As with delegations from the executive to officers accountability for the discharge of functions for which the executive is responsible should remain with the executive even if the executive chooses to delegate functions in these ways. A local authority's executive arrangements will need to ensure that overview and scrutiny committees are able to hold the executive to account both for the decision to delegate or contract out a particular function and for the outcome of so delegating, i.e. the Actual discharge of the function.

6.7 In addition, by virtue of Schedule 4 to the *Local Authorities (Functions and Responsibilities) (England) Regulations 2000*, functions which are the responsibility of the executive and which are to be discharged by an area committee or under joint arrangements must be exercised in accordance with the policy framework set by the full council (see chapter 2).

6.8 The Secretary of State intends that regulations under section 22 of *the Act* will require the scheme of delegations under any of the arrangements permitted by the *Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000* to be published.

6.9 In all cases the *Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000* provide that the person who has made the arrangements continues to have power to discharge the functions which are the subject of the arrangements.

6.10 This is not intended as a power for that person regularly to over-ride the decisions made under the arrangements but merely to ensure that there is sufficient flexibility so that if that person needs to exercise the powers (for example in consequence of the exercise of another
power) then they have the ability to do so. Once arrangements have been made in accordance with the Regulations the person within the executive who made the arrangements should not generally over-ride decisions made under those arrangements.

**Area Committees**

6.11 The Secretary of State recognises that area committees or forums can have an important role to play in bringing decision making closer to people and in helping give the people a say in the way in which a local authority works. Indeed the Secretary of State sees real value in area consultative forums helping a local authority consult people for example on the proposals for executive arrangements under the Act. Accordingly the Secretary of State encourages local authorities to consider the use of such decentralised arrangements for consultation, decision making or both.

6.12 Area committees or forums can take many forms and undertake a variety of roles. For example, they can be made up of councillors, representatives from other public, private and voluntary sector bodies in the area and members of the public or they can be made up of councillors only. Area committees or forums can be purely advisory and consultative bodies or they can have delegated functions and budgets. For the purpose of this guidance, unless the context requires otherwise, "area committees" means decision making bodies discharging a function or functions whilst "area forums" means (non-statutory) advisory and consultative bodies.

6.13 Figure 6.1 provides some examples of good practice in the use of decentralised arrangements for decision making and consultation.

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<th>Figure 6.1</th>
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<td><strong>Examples of good practice in the use of decentralised arrangements decision making and for consultation with local communities</strong></td>
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Several local authorities have area committees with a range of delegated decision-making powers.

Matters for delegation include local planning decisions and small environmental and road improvement schemes. Some local authorities also delegate discretionary budgets, and/or allow areas to bid to a central pot of money.

There is no uniform pattern but some general trends emerge. The scale of the budgets and the decisions that are delegated tends to vary according to the size of the local authority and the number and size of areas structures within are local authority.

The best area forums are vigorous and well supported. One small district regularly reports 70 to 100 people at its area forums, which cover comparatively small areas. That local authority publicises the issues to be debated well in advance, to allow local parish councils (and others) time to consider issues and make informed representations. The debates are timed to allow the area forums to feed into the local authority’s overall timetable for preparation of major policy and statutory plans.
which is led by the executive, and to feed into best value reviews.

One county council used its area forums to promote community planning. It invited representations on local priorities from individuals and local organisations in a variety of ways, including attendance at forum meetings. Interestingly, it invited local organisations expressing strong views to indicate what methods they had themselves used to gauge public opinion; that local authority made it clear that they would give greater weight to opinions from organisations that could demonstrate public support.

6.14 For functions which are not the responsibility of the executive the legislative regime in place prior to the passing of the 2000 Act, in particular regulations 4, 5 and 16A of the Local Government (Committees and Political Groups) Regulations 1990 (the 1990 Regulations), remains in place. The executive is also able to make arrangements for the discharge of functions by area committees where the local authority has appointed such committees. As with area committees under regulation 16A of the 1990 Regulations, such area committees:

- need not be politically balanced where they meet the requirements of regulation 16A of the 1990 Regulations;
- can only include members of the local authority who are members for electoral divisions or wards wholly or partly contained within the area for which the committee has functions;
- must not have functions in respect of an area of the local authority which is larger than two-fifths of the local authority in terms of either area or population;
- can include voting members who are not members of the local authority in respect of functions of the local authority which are described in regulations 4 and 5 of the 1990 Regulations; and
- area committees within the meaning of section 18 of the Act are subject to Part VA (access to information) of the Local Government Act 1972.

6.15 In deciding to delegate decision making to area committees, the executive will need to be clear that doing so will not adversely affect the quality of local services or the efficiency, transparency and accountability of decision making and that it will deliver best value. The executive should remain, and be seen to remain, accountable for those functions as the clear, accountable, corporate leadership of the local authority.

6.16 In addition, in a local authority where all or part of the local authority's area is parished and area committees are proposed, the local authority and the executive should give careful consideration to the respective roles of parish and town councils and area committees. Parish and town councils should always be consulted before a local authority establishes area committees or forums. The objective should be to establish a partnership approach to strengthen local focus and action to help give local communities a real input into decisions which affect them.

6.17 If an executive decides to delegate functions to area committees it should do so only as part of a comprehensive scheme of delegations which sets out clearly:

- which functions have been delegated to which area committees and the budgets
associated with those functions; and

- the terms of the arrangements for those delegations.

6.18 The limitations on delegations could take many forms depending on how the executive chooses to set them out. Some examples are;

- a maximum budget in respect of functions which the executive has delegated to area committees (either as a percentage of the executive's budget or in cash terms);
- budget allocations to individual functions which the executive has delegated to area committees (either as a percentage of the executive's budget or in cash terms);
- limits on expenditure and budget allocations to reflect policy objectives set out in the local authority's Community Strategy and other relevant strategic plans;
- limits within which an area committee can vire funds between allocations in respect of functions which the executive has delegated to it (either as a percentage of the executive's budget or in cash terms);
- restrictions on the "size" of certain decisions in terms of maximum expenditure (either as a percentage of the executive's budget or in cash terms); and
- protocols relating to the effect of the decisions of one area committee affecting another area. For example, standing orders should provide that an area committee may not make a decision which has an adverse effect on a part of the area of the local authority for which that committee does not have functions.

6.19 The Secretary of State also intends to amend section 102 of the Local Government Act 1972 and regulation 16A of the 1990 Regulations to provide that a local authority may appoint committees (which may be area committees) to advise the executive or any person within the executive on any matter relating to the discharge of functions which are the responsibility of the executive. Such committees will, as with current advisory committees, be able to include, with voting rights, any members who are not members of the local authority.

6.20 Where decision making is delegated to area committees, a local authority should adopt conventions and protocols which prevent an area committee from making a decision which significantly affects a part of the local authority's area (in respect of which that committee does not have functions) or all of the local authority's area.

6.21 The Secretary of State also has a reserve power in section 18(2) of the Act to place limitations or restrictions on delegations to area committees of functions which are the responsibility of the executive.

6.22 The Secretary of State currently has no intention to use this power but would consider doing so if, after a period of operation of executive arrangements, it appears to him that some local authority executives are delegating functions for which they are responsible to area committees inappropriately with adverse effects on the quality of local services or the efficiency, transparency and accountability of decision making.
Overview and scrutiny

6.23 It is almost inevitable that, where the executive has delegated some functions to area committees, some members of those committees will also be members of overview and scrutiny committees. Where an overview and scrutiny committee is scrutinising or reviewing matters which relate to functions which are the responsibility of the executive which have been delegated to area committees, such cross-membership will create conflicts of interest. It is a fundamental principle of accountability that a councillor cannot scrutinise her or his own decisions.

6.24 The Secretary of State therefore intends that the code of conduct for members to be issued under Part III of the Act will provide that a member of an overview and scrutiny committee or sub-committee will not normally be able to be involved in scrutiny of any decision made by a committee or sub-committee (including an area committee) or joint committee of which she or he is a member.

6.25 When the ethical framework under Part III of the Act enters into force the local standards committee, in exceptional circumstances, will be able to grant a dispensation for a member of an overview and scrutiny committee who has such an interest to speak and exceptionally to vote at a meeting where such an issue is being discussed.

6.26 For the transitional period between a local authority implementing a new constitution and adopting their code of conduct article 45 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 makes provisions to similar effect with the powers to grant dispensations being exercisable by the Secretary of State rather than the standards committee.

Area committees and functions which are not the possibility of the executive

6.27 Area committees which discharge functions delegated to them by the executive can also discharge functions which are not the responsibility of the executive, such as licensing and development control.

6.28 Where such a committee combines these roles the Secretary of State recommends that the executive and the local authority should ensure that accountability for the different types of function remains clear it needs to be clear who is responsible for which functions and therefore who must be held to account. To help councillors and in particular the public in this regard, local authorities should ensure that agendas for area committee meetings clearly differentiate between executive and non-executive business.

6.29 Area committees will continue to be appointed by the local authority under section 102 of the Local Government Act 1972, whether or not they have functions delegated to them by the executive. Members of the executive may be members of area committees just as they can be members of any ordinary committee.

6.30 The Secretary of State recommends that a local authority's constitution should set out clear procedures for effective communication and exchange of information between the executive and area committees.
6.31 Figure 6.2 provides some example of how such effective communication can be facilitated.

**Figure 6.2**

**Examples of effective communication between area committees and the executive**

One large district council has area forums covering both rural and urban areas. It is concerned that communication between area forums and the executive may become either too loose or too bureaucratic. That local authority is minded to use three-monthly meetings with area forums and the executive in place of formal paper reports. It intends to experiment with:

- pre-meetings of the Chairs of the area forums covering urban areas and (separately) the forums covering rural areas so that common issues can be identified, followed by separate meetings with the executive;
- pre-meetings of all area Chairs, followed by a meeting with the executive; and
- individual meetings between Chairs and the executive.

Any member of any area forum (in this case any member of the local authority) is also welcome to attend the meetings as are external representatives such as parish and county councillors. The local authority has decided to experiment with each approach for three months (one cycle of meetings) and then review their success.

Another district council has an executive which includes at least one representative from each of its four area committees. A record of all decisions made by the area committees is available to all members of the executive.

A district council which operates arrangements which include area committees with delegated powers and budgets ensures that area committees circulate their agendas to their constituent parish councils, many of whom attend meetings of the area committees to make representations. Strategic policies such as a district-wide transport strategy are routinely considered by area committees to provide a local focus for policy making.

6.32 Delegation of any functions to area committees may be appropriate only in some local authorities and some local circumstances although area committees and forums can have a number of other important roles. Local authorities should consider what would be appropriate in their circumstances, for example area committees or forums could:

- advise the executive or overview and scrutiny committees on matters of interest in their
area;

- be a key part of a local authority’s consultation process on proposed service changes, quality standards, new facilities and best value reviews;
- assist all councillors in listening to and representing their community;
- help build partnerships between the local authority, other local public, private and voluntary sector organisations and the public; and
- help develop area community strategies as part of the wider community planning process.

6.33 Any, all or none of these may be appropriate to executive arrangements in a particular local authority and/or local circumstances. In addition, a local authority could choose to combine any of these with area committees discharging functions.

6.34 As chapter 3 of this guidance makes clear, overview and scrutiny committees must reflect the political balance of the local authority. Therefore, area committees cannot, under normal circumstances, formally discharge overview and scrutiny functions. However, that does not mean that area committees should have no role in reviewing and scrutinising the performance of the executive. Where a local authority has area committees, overview and scrutiny committees should, in reviewing and scrutinising policy and decisions of the executive, seek views from area committees to assess the impact of the executives decisions on different areas in the local authority.

6.35 In particular, area committees should be able to input into the development of the local authority's policy framework as a mechanism for enhancing the representational role for councillors and ensuring that the local authority's policies take account of the needs and aspirations of local communities and do not discriminate unfairly between different areas of the local authority.

Partnerships between local authorities

6.36 The Secretary of State considers that partnership working between local public, private and voluntary sector bodies is essential for the effective delivery of services and for effective communication between such bodies, for example as part of the community planning process. A local authority should have effective arrangements for partnership working with other local authorities, including arrangements for joint consultation with local communities (particularly in two or three tier areas).

Joint arrangements

6.37 Under section 101(5) of the Local Government Act 1972 two or more local authorities may enter into arrangements to discharge functions jointly. Those arrangements could include establishing a joint committee either to advise the local authorities on matters of joint interest or to discharge functions. That legislation continues to apply to joint arrangements in respect of functions which are not the responsibility of the executive in all the local authorities concerned and to joint arrangements established to advise the participating authorities.

6.38 Under the Local Authorities (Arrangements for the Discharge of Functions) (England)
it is also possible for the executive, in respect of functions for which it is responsible, to enter into joint arrangements with one or more other local authorities (including parish and town councils) or with the executive(s) of one or more other local authorities.

6.39 Joint arrangements need not necessarily involve a joint committee. This is particularly the case where individual members of the executive (including a council manager) are responsible for the functions in question.

6.40 Where such arrangements involve a joint committee to discharge functions which are the responsibility of the person entering into the arrangements by virtue of regulations 3, 4 or 5 (as the case may be) of the [Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000](https://www.gov.uk/government/publications/local-authorities-arrangements-for-the-discharge-of-functions-england) that person is responsible for appointing the members to represent that local authority on the joint committee and the political balance requirements do not apply to such appointments.

6.41 Except in the circumstances mentioned below, the person within the executive responsible for such appointments may only appoint members of the executive to any such joint committee. In the mayor and council manager form of executive the elected mayor and the council manager or another officer may represent that local authority. Where the council manager, or another officer in his or her place, is a member of a Joint Committee then she or he may vote at its meetings, where that Joint Committee has been appointed for the purposes of discharging functions which are the responsibility of the executive of the local authority. In the following circumstances the executive may appoint councillors who are not members of the executive to represent the local authority on such a joint committee:

- where the joint committee has functions only in respect of a part of the area of one of the local authorities which is smaller than two-fifths of that local authority (either by area or population). In this case the executive may appoint to the joint committee any councillor who is a member for an electoral division or ward which is wholly or partly contained within the area in respect of which the joint committee has functions and the political balance requirements do not apply to such appointments; and
- in addition to the above, where the joint committee is between a county council and a single district council and has functions only in respect of the area of the district. In this case the executive of the county council may appoint to the joint committee any councillor who is a member for an electoral division which is wholly or partly contained within the area of the district and the political balance requirements do not apply to such appointments.

6.42 Where the executive has delegated functions to a joint committee and those functions are not the responsibility of the executive in another participating local authority (or if those functions are not functions of that local authority), that other local authority may appoint councillors from outside the executive to be members of the joint committee and the political balance requirements apply to such appointments.

6.43 Where a joint committee has functions in respect of part of the area of one of the participating local authorities and the representatives of that local authority on that committee are appointed by the local authority (i.e. because the function(s) in question are not the
responsibility of the executive of that local authority or are not functions of that local authority) then those representatives must be members for electoral divisions or wards which are wholly or partly within the part of the local authority for which the joint committee has functions and the political balance requirements do not apply to those appointments.

6.44 The Secretary of State intends that similar rules to those for area committees (see paragraphs 6.23 to 6.25) will apply to any member of such a joint committee who is also a member of an overview and scrutiny committee which is scrutinising decisions of that joint committee. Unless the context requires otherwise, the guidance in paragraphs 6.23 to 6.25 of this chapter applies to such cross-membership.

6.45 In addition, as was the case prior to the passing of the Act:

- the number of members of a joint committee from each of the participating local authorities is a matter for negotiation between those local authorities; and
- joint committees may delegate to sub-committees of themselves or officers.

6.46 In deciding to enter into joint arrangements, the executive should be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that it will deliver best value. The executive should remain, and be seen to remain, accountable for those functions as the clear, accountable, corporate leadership of the local authority.

6.47 The Secretary of State also recommends that a local authority's constitution should set out clear procedures for effective communication and exchange of information between the executive and joint committees.

**Delegation to another local authority**

6.48 Local authorities continue to be able to make arrangements for another local authority to discharge functions which are not the responsibility of the executive under section 101 of the Local Government Act 1972.

6.49 The executive can also, with the agreement of the other local authority in question, make arrangements for functions for which it is responsible to be discharged by another local authority (including parish and town councils) or the executive of another local authority. The following paragraphs describe the various possible scenarios for such arrangements between two local authorities:

- if the function in question is the responsibility of the executive in both local authorities then the function must be the responsibility of the executive in the local authority to which it is delegated. The decision whether or not to agree to enter into the arrangements is, however, for the local authority and not the executive to which the function is delegated;
- if the function in question is the responsibility of the executive in the local authority delegating it but not in the other and that other local authority is operating executive arrangements, then whether or not it is the executive of the second local authority which is
responsible for the functions is for the local authorities in question to choose;

- if the function is the responsibility of the executive in the local authority from whom it is to be delegated and the function in question is not a function of the local authority to whom it is to be delegated then, if the local authority to which the function is to be delegated is operating executive arrangements, the function must be the responsibility of the executive in that local authority. The decision whether or not to agree to enter into the arrangements is, however, for the local authority and not the executive to which the function is delegated;

- if the function is not the responsibility of the executive in the local authority delegating it (whether or not that local authority is operating executive arrangements) but is the responsibility of the executive in the local authority to which it is to be delegated then the function must be the responsibility of the executive in the local authority to which it is delegated. The decision whether or not to agree to enter into the arrangements is, however, for the local authority and not the executive to which the function is delegated;

- if the function is not the responsibility of the executive in either local authority then the function cannot be the responsibility of the executive in the local authority to which it is to be delegated.

6.50 In deciding to delegate a function to another local authority, the executive should be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of that function. The executive should remain, and be seen to remain, accountable for that function as the clear, accountable, corporate leadership of the local authority.

**Contracting out**

6.51 Local authorities also have powers to contract out certain functions and services. Article 29 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 modifies section 70 of the Deregulation and Contracting Out Act 1994 to ensure that it remains possible to contract out functions and services which could previously have been contracted out under that section and which under executive arrangements are the responsibility of the executive. For functions which are the responsibility of the executive paragraphs (12) and (13) of regulation 4 of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000\(^1\) provide that it is for the executive to decide whether to contract out a function or service and to whom to award the contract.

6.52 In deciding to contract out a function for which it is responsible, the executive should be satisfied that it will not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that it will deliver best value. The executive should remain, and be seen to remain, accountable for that function as the clear, accountable,
corporate leadership of the local authority.
Chapter 7: Accountable decision making

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". It replaces the existing chapter 7 issued on 19 December 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the process of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (c.22) (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in maroon text with a 'tick' in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities’ experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

This replacement chapter is issued on: 26 February 2001

Previous versions of this chapter were issued on: 26 October 2000 and 19 December 2000

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

General background

7.1 The principal aims of executive arrangements are to make decision making more efficient, transparent and accountable so that local authorities can be more open and responsive to the needs and aspirations of the communities they serve. Central to executive arrangements there will need to be effective access for the public to decision making and decision makers. The key characteristics of effective access which local authorities should follow are:

- it is publicly known who is responsible for decisions;
it is publicly known what decisions they are planning to take;
people know how they can make an input to those decisions and at what point in the process they can best influence them;
people have access to information about decisions;
people know what decisions have been taken and the reasons for them; and
significant decisions should not be a surprise to those whom they affect.

7.2 Key decisions which have significant effects within the community or on interests outside the local authority will need to be identified and properly consulted on. Such key decisions may be delegated to various bodies within the local authority, including officers but, no matter who is taking the decision, the same principles should apply.

7.3 All decisions of a local authority (whether they are the responsibility of the executive or not), will need to be made in accordance with the following principles:

- proportionality (i.e. the action should be proportionate to the desired outcome);
- decisions should be taken on the basis of due consultation and professional advice from officers;
- respect for human rights;
- a presumption in favour of openness; and
- clarity of aims and desired outcomes.

7.4 Figure 7.1 provides an overview of how this is to be achieved.
Decisions of the full council

7.5 The policy framework and budget will be set by the full council, meeting in public (see chapter 2). The executive will make recommendations to the full council at that public meeting and it will, of course, also be open to members of overview and scrutiny committees and other members of the local authority to make recommendations at that meeting. Part VA of the Local Government Act 1972, as modified by the Local Government Act 2000, will continue to apply to

* elected mayor, another member of the executive, the executive collectively, or a committee of the executive as the case may be.
meetings of the authority.

7.6 Development and agreement of this policy framework should be an inclusive process involving the public and other local stakeholders as well as all councillors.

**Advance notification of decisions of the executive**

7.7 The executive is responsible for delivering the local authority's policy framework either through taking decisions individually or collectively in respect of functions which are the responsibility of the executive or through delegation of decisions to officers, particularly for day-to-day operational and management decisions, and to area committees etc.

7.8 The Local Government Act 2000 (Constitutions) (England) Direction 2000 requires a local authority to include as part of its constitution the scheme of delegations (within and outside the executive) for functions which are the responsibility of the executive. This scheme of delegations will have to include a description of those functions exercisable by the executive collectively or a committee of the executive, making clear the membership of each body. It will also have to include a description of those functions exercisable by individual executive members, stating which individual is responsible for what and those functions which have been delegated to an officer stating the title of the officer. This would not include any powers exercisable by an officer for less than six months. In addition, there will need to be a description of those functions which have been delegated to area committees (if any) or are the subject of joint arrangements with, or have been delegated to another local authority, again making clear the details of the body who is exercising that function.

7.9 The constitution will be a publicly-available document but local authorities should ensure in addition that the scheme of executive delegations is separately available in summary form to the public on request. This should be sufficiently clear to allow the public to know broadly who is responsible for which decisions within the executive and how they can be contacted.

7.10 With a move to a new constitution, there should be greater dialogue between all councillors, the public and other stakeholders than has often been the case in the past. Wide participation is essential to an effective local authority. Local authorities will need to ensure that people know what decisions are planned and how they can influence those decisions. In addition, the executive will need to ensure that any decisions it takes are consistent with the agreed policy framework and take into account the needs and aspirations of the local community.

7.11 To underpin these principles of greater accountability and transparency, regulation 13 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 requires the executive to set out its programme of work in the coming four months, as far as it is known, in a forward plan. Regulation 12 requires an annual statement to be published by the proper officer of the local authority giving notice of when forward plans will be published for the coming year, explaining what a forward plan is and how it can be obtained from the local authority.

7.12 The Regulations require the forward plan to be made publicly available and in particular a local authority executive should ensure that it is made available to the relevant overview and
scrutiny committee at least two weeks in advance of the commencement of the period covered.

7.13 The forward plan, which will need to be updated each month on a rolling basis, will, in accordance with regulation 14 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 have to set out:

- a short description of matters under consideration and when key decisions are expected to be taken;
- who is responsible for taking the decisions and how they can be contacted;
- what relevant reports and background papers are available; and
- how and when the decision maker intends to involve local stakeholders in the decision making process.

7.14 The timing of the publication of the plan should have regard to the cycle of meetings of overview and scrutiny committees and electoral cycles (the forward plan should not bind an incoming new administration although it would be useful to make clear what issues will be in the "in-tray" of any incoming executive). The forward plan cannot be an exhaustive list of all decisions but it should give an indication of those decisions which it is known the executive will need to consider in the coming period, as well as relevant decisions which will be delegated by the executive to officers or to devolved structures.

7.15 Regulation 8 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 sets out the definition of decisions which must be included in the forward plan (i.e. key decisions). The definition is a two-stage test.

7.16 Any decision in relation to an executive function which results in the local authority incurring expenditure which is, or the making of savings which are, significant having regard to the local authority’s budget for the service or function to which the decision relates, is a key decision.

7.17 It will be for the potential decision-maker to decide, in any one case, whether a decision to be taken is likely to involve significant expenditure. In order to assist potential decision-makers within a local authority reach consistent and demonstrative objective judgements and to ensure the public are clear about what is regarded as significant locally, the local authority should agree as a full council limits above which items are significant. The agreed limits should be published. A local authority is able to set different thresholds for different services or functions, bearing in mind the overall budget for those services and functions and the likely impact on communities of each service or function. A decision involving expenditure or saving above the limit for the service or function concerned would be a key decision.

7.18 In setting such thresholds, a local authority will need to bear in mind the underlying principles of accountable decision-making that there should be a presumption towards openness so that local people have knowledge sufficiently in advance of all those decisions which will be of genuine concern to local communities. In particular, local authorities will need to ensure that there is a consistency of openness between neighbouring local authorities at the same tier. Thus, whilst there may be a higher threshold set for certain matters in a large metropolitan local authority than in a small shire district operating executive arrangements,
there should not be a wide discrepancy of approach, for example, between similar districts within a county or between neighbouring metropolitan boroughs.

7.19 The Secretary of State intends to issue further guidance which will specify indicative thresholds for service or function budgets and that any executive decision which is likely to give rise to expenditure or savings above such thresholds should be treated as a key decision. The Secretary of State will be consulting shortly on what these thresholds should be and how this guidance might best be framed to ensure that, taking into account the need to ensure consistency between councils of the same type and size, thresholds can be set which will suit local circumstances and arrangements.

7.20 The second test for a key decision focuses on those decisions which are not likely to involve significant expenditure or savings but which nevertheless are likely to be significant in terms of their effects on communities. The Regulations require that a decision which is likely to have a significant impact on two or more wards or electoral divisions is a key decision. Nevertheless, local authorities should, unless it is impracticable to do so, specify that they will treat as if they were key any decisions which are likely to have a significant impact on communities in one ward or electoral division. For example, a council should regard as key a decision to close a school or carry out roadworks (such as introducing or altering traffic calming measures) in a neighbourhood, notwithstanding the thresholds of financial significance and that there may be an impact in only one ward. Where a decision is only likely to have a significant impact on a very small number of people in one ward or electoral division the decision maker should ensure that those people are nevertheless informed of the forthcoming decision in sufficient time for them to exercise their rights to see the relevant papers and make an input into the decision making process.

7.21 In considering whether a decision is likely to be significant, a decision-maker will need to consider the strategic nature of the decision and whether the outcome will have an impact, for better or worse, on the amenity of the community or quality of service provided by the authority to a significant number of people living or working in the locality affected. Regard should again be given to the underlying principles of accountable decision-making in paragraph 7.3 of this guidance to ensure that there is a presumption towards openness. While in broad terms, a key decision for the purposes of this test should be regarded as something which under traditional arrangements would have been referred to a committee or sub-committee of the council for decision, rather than being delegated to officers, the Secretary of State recognises that there are large variations in the levels of delegation in decision-making by authorities at present. Local authorities should seek, through consultation with other local authorities of the same type and size, to ensure there are not large variations in the level of openness between authorities in the future, and that any convergence in the practice of authorities is in the direction of greater openness.

7.22 The Secretary of State is of the view that any decision made by an executive in the course of developing proposals to the full council to amend the policy framework would be a key decision within the definition in regulation 8. Nevertheless, if a decision maker is of the view that any such decision does not fall within the regulation 8 definition then that decision should be treated as a key decision. Similarly, where the executive has been granted power by the full council to amend any aspect of the policy framework then the Secretary of State is clear that any decision to do so would also be a key decision within the definition in regulation 8, but that if a decision maker is of the view that any such decision does not fall within the
regulation 8 definition then that decision should be treated as a key decision.

7.23 The Secretary of State recognises that not all key decisions will need to be, or indeed will be capable of being, identified four months in advance of the decision being taken. Some decisions (such as the adoption of certain plans or strategies in the policy framework) will be able to be identified that far in advance and therefore will be on the forward plan for some time whereas others will not be known until, say, a few weeks before the decision is due to be taken. The forward plan will inevitably include more decisions which will be taken within, say, one month than it will decisions to be taken in, say, three or four months and can therefore be viewed as a planning tool for managing the work programme of the executive.

7.24 Local authorities should make widespread use of electronic media in disseminating a forward plan. Where a local authority has a website, the forward plan should be accessible on that website, together with relevant papers. Local authorities should also consider the opportunities to ensure that communities have advance notification of decisions which, whilst they may not be of significance across the local authority as a whole, will be of particular relevance to a particular locality within that local authority. The use of electronic media should assist in that respect. In particular, local authorities should consider ways of allowing local people to comment electronically on issues raised by the forward plan although they will also need to ensure that local people without access to the Internet are equally able to comment effectively to the local authority.

7.25 Where key decisions need to be taken and timing means it is unfeasible to include them on the forward plan, regulation 15 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 allows that, in such cases, the person or body to whom, the decision has been delegated will be able to make the decision even though it was not notified on the forward plan. However, at least three clear days notice of the decision will need to be given to the relevant overview and scrutiny committee(s) and the public before it is formally taken.

7.26 The Secretary of State also intends to consult on whether three days is sufficient or whether that period should be extended to, say, five days. The Secretary of State also intends to consult on whether existing definitions of exempt and confidential information should be modified. Any such changes which arise as a result of that consultation would apply to both executive and non-executive decision-making.

7.27 In very rare circumstances it may be necessary for a decision to be taken with less than three clear days' notice. In such cases, regulation 16 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 states that the decision maker will need to obtain agreement from the chair of a relevant overview and scrutiny committee (and in her or his absence the chairman of the local authority or in her or his absence the vice-chairman of the local authority) that the decision could reasonably be regarded as urgent in the circumstances. If the relevant person does not agree that the decision may reasonably be regarded as urgent in the circumstances then the decision cannot be taken without three days' notice for publication of the relevant papers. Under regulation 20, the executive leader, elected mayor (in mayor and cabinet constitutions) or council manager (in mayor and council manager constitutions) will need to report quarterly to full council on how often the urgency procedure has been used together with the reasons for the decision and why
the matter was urgent.

7.28 Under regulation 19 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 if a particular decision was not included on the forward plan or was not dealt with in accordance with the provisions of regulations 15 or 16 (i.e. has not been regarded as a key decision) but an overview and scrutiny committee comes to the view that it should have been, that overview and scrutiny committee will be able to require the executive to make a report to the local authority on the decision and the reason why it was not regarded as a key decision.

7.29 Figure 7.2 provides an analysis by one local authority of what would have been included in a forward plan had such procedures been in operation previously.

![Figure 7.2: Analysis of Key Decisions](image)

**Analysis of Key Decisions**

One metropolitan council has carried out a retrospective analysis of its cabinet agendas to identify the proportion of key decisions that were anticipated and which could therefore have been notified in advance in a forward plan. Over a four month period, a total of 361 items were considered for decision of which 107 (30.5%) were considered to be key decisions.

Of the key decisions, 66% were considered to have been predictable, on the basis of known issues arising, for a period of at least four months, with 12% and 9% respectively being predictable for two months and one month. Only 11 key decisions (10%) were felt to relate to unforeseen issues, or issues which would only have reached the cabinet agenda within one month of needing to make a decision.

**Availability of executive documents**

7.30 Within the executive, unlike a traditional committee, decisions may often be made by individuals. Reports from officers and other papers will often, therefore, be prepared for individual members of the executive as well as for the executive as a whole or its committees.

7.31 Regulation 14 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 requires any documents relating to a key decision which are available at the time of the publication of a forward plan to be made publicly available at that time. Regulation 9 requires that, where a report relating to a key decision has been given to an individual decision maker, the person who has prepared the report must ensure that it is put in the public domain at the same time and in particular also ensure it is available to any relevant overview and scrutiny committee. Similarly where a key decision is to be taken collectively, any report must be made publicly available in the same way once it is available to that decision making body, in accordance with regulation 11. The Regulations further make it clear that there must be a minimum of three days between any such report being publicly available and a decision being taken, except where the urgency procedure in regulation 16 is followed. The usual rules on exempt and confidential information will continue to apply to such reports and, in addition, advice prepared for a decision maker by a political adviser or political assistant need not be made publicly available.

7.32 The regulations necessarily make clear that a report does not include a draft report. The Secretary of State is clear that any attempt by a decision maker to adopt an approach whereby
she or he sought to take a decision largely on the basis of a draft report would be wholly contrary to the principles of accountable decision making described in paragraph 7.3 of this guidance. Local authorities should therefore ensure that decisions are taken on the basis of completed reports which under the regulations must be made available to the public at least three clear days before the decision is taken. Furthermore, local authorities will need to ensure that circumstances do not arise where a decision is claimed to be necessary under the special urgency provision in regulation 16 only by reason of a failure to finalise reports in time to allow the normal procedures to be followed.

7.33 Where there is extensive delegation to individual members of the executive, the local authority and the executive should ensure that issues which cut across the portfolio of more than one member are tackled jointly by those members or collectively by the executive or a committee of the executive. In such cases the executive scheme of delegation should ensure the involvement of these and, if appropriate, other members of the executive in the decision making process.

Meetings of the executive and its committees

7.34 Regulation 7 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 provides that where the leader, mayor (in a mayor and cabinet constitution) or council manager (in mayor and council manager constitution) believes that a decision is likely to be made collectively at a meeting which will be a key decision that meeting must be held in public, subject to the local authority’s usual rules on exempt and confidential information. If the leader, mayor or council manager are not members of the decision-making body, then it will be the person likely to preside at the meeting of that body who will need to reach a view as to whether or not a key decision is likely to be decided collectively at the meeting.

7.35 In addition, regulation 7 says that where the leader, mayor, council manager or, alternatively, the person likely to preside believes that a meeting of a decision-making body, with officers present, is likely to consider a key decision which the forward plan indicates will be taken collectively by that decision-making body within the coming 28 days that meeting will have to be in public, whether or not the decision is expected to be made collectively at that meeting. Where a decision is not on the forward plan but has been the subject of a regulation 15 notice, the same provision applies. For the purposes of regulation 7, a council manager, political advisers and a political assistant to the mayor are excluded from the definition of officers.

7.36 A meeting under regulations 7(1)(b) and 7(1)(c) does not include a meeting which is convened by members of the executive for the sole purpose for being briefed on a particular issue by an officer. Thus, for example, where one or more members of the executive meet with an officer merely to seek clarification of a particular matter, that meeting need not be in public. It does, however apply to all formal meetings of an executive decision-making body. Regulation 7(1)(a) makes clear that any key decision to be taken by the executive or a committee of the executive must (subject to the usual rules on exempt and confidential information) be taken in a public meeting.

7.37 The Secretary of State recognises that the executive will need time and space to “think
the unthinkable" out of the public glare. This provision is therefore not intended to extend to early collective discussions where the executive may decide to narrow the options under consideration and it also allows the executive to have a political debate without officers present provided that a key decision is not decided at that meeting.

7.38 The underlying approach is that a meeting of the executive or its committees should be public if at that meeting key decisions are taken collectively, or where there is a substantive discussion of such a decision, expected to be taken collectively at a subsequent meeting. The timescale of 28 days in regulation 7(1)(b) is a proxy to allow the executive space for early political discussions. However, in considering whether or not to hold a meeting in public above and beyond the statutory requirements, a local authority executive should have regard to the underlying principles of efficiency, transparency and accountability and to the approach for decision-making described above.

7.39 Local authorities should not undermine the intention for open meetings, for example through inappropriate delegation to individual members or officers. Decisions should not be formally delegated to individual members of the executive or to officers where the decisions are for all practical purposes taken by a meeting of the executive or a committee of the executive. The Secretary of State considers that were this kind of delegation to occur, it would be inappropriate.

7.40 Where an executive or a committee of the executive meets in public either because the regulations require them to do so or because they have chosen to do so they will be subject to similar requirements as committees of the local authority as set out in Part VA of the Local Government Act 1972 including the requirements for advance publication of the agenda and papers. These provisions are set out in regulations 10 and 11 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000.

**Recording and publishing executive decisions**

7.41 All decisions taken by members of the executive (individually or collectively) and key decisions taken by officers will have to be recorded and published as soon as reasonably practicable after the decision is taken. The decision record will have to include the reasons for the decision and any relevant interests which any of the members involved have, together with any dispensations they have been granted. These provisions are set out in regulations 3, 4 and 5 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000.

7.42 In line with current legislation, there will be no particular requirements to publish any officer decisions which are not key decisions. All decisions of the local authority will be subject to the general requirements (for disclosure of information of any kind) proposed under the Freedom of Information Act 2000.

7.43 Local authorities should ensure that (as with the council, its committees and sub-committees) all decisions made by members of the executive (either collectively or individually) are based on sound professional advice from officers, including advice from the monitoring officer and chief finance officer where appropriate.
7.44 Where decisions are made by individual members of the executive regulation 4 of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 places a duty on that individual either to make a record of the decision or to request an officer to make a record of the decision and, under regulation 5, for the officer to make that record publicly available.

7.45 Failure to ensure a record is made of a decision will be a breach of these regulations and it is intended that such a breach will therefore be a breach of the relevant code of conduct and can be dealt with by the Standards Board.

7.46 A person who has custody of a document to which the public is entitled by virtue of the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 and intentionally obstructs the public from obtaining a document or refuses to provide a copy will have committed an offence as set out in regulation 23. These offences mirror the offences in Part VA of the Local Government Act 1972 which relate to failure to allow proper public access to documents which relate to meetings of a local authority and its committees.

7.47 Where decisions are taken by individuals, local authorities should ensure that their executive arrangements include provision which makes clear when such a decision is taken to be effective to provide certainty (particularly for overview and scrutiny committees and call in procedures). The arrangements should also ensure that decisions, particularly those affecting third parties, are not acted upon before they have been properly recorded and the operation of the call-in procedures fully completed.

Decisions of committees and other council bodies

Committees and sub-committees of the local authority

7.48 Meetings of committees and sub-committees (including area committees) of local authorities and meetings of overview and scrutiny committees and their sub-committees will continue to be subject to the requirements of Part VA of the Local Government Act 1972, as amended by the Local Government Act 2000.

Joint committees

7.49 Where a joint committee has been established to discharge functions which are the responsibility of the executive and all the members of that committee are members of the executive then the committee would have to meet in public in the same circumstances as a meeting of an executive or its committees, subject to the usual rules on exempt and confidential information. Provisions in relation to documents of the executive and its committees set out in the Local Authorities (Executive Arrangements) (Access to Information) (England) Regulations 2000 apply equally to joint committees.

7.50 Where a joint committee includes members from any of the local authorities involved who are not members of an executive then Part VA of the Local Government Act 1972 will apply to
all meetings of that joint committee.

Chapter 8: Officers roles under executive arrangements

This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities." This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government 2000 Act and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.


Officers roles under executive arrangements

8.1 A local authority operating executive arrangements should have a professional chief executive (who should be the statutory head of paid service) responsible for securing and managing the professional body of staff needed to deliver modern, effective, well focussed services. In the case of executive arrangements involving a mayor and council manager form of executive, the council manager should be the chief executive and head of paid service but cannot, by virtue of paragraph 13 of Schedule 1 to the Act, be the monitoring officer or chief finance (section 151) officer.

8.2 Officers should be responsible for day-to-day managerial and operational decisions within the local authority and should provide support to both the executive and all councillors in their several roles.
8.3 This chapter describes some of the key aspects of the roles of officers and the relationships between officers and members under executive arrangements.

**Appointment and dismissal**

8.4 Contracts for all officers continue to be with the local authority. The Secretary of State intends that all officers will, under Part III of the Act, be subject to the same ethical framework and code of conduct with the exception of the council manager who may be subject to a specific council managers code of conduct. Under executive arrangements which involve any of the forms of executive, appointment of staff cannot be the responsibility of the executive by virtue of Schedule 1 to the Local Authorities (Functions and Responsibilities) (England) Regulations 2000.

8.5 Under executive arrangements which involve the mayor and council manager form of executive section 11(10) of the Act provides that the council manager must be appointed (and dismissed) by the full council.

8.6 The Secretary of State intends that regulations under section 8 of the Local Government and Housing Act 1989 will require local authorities to incorporate provisions in their standing orders that appointment, dismissal and disciplinary action for all staff below deputy chief officer level (as defined by section 2(8) of the 1989 Act) is the responsibility of the head of paid service or her or his nominee. This will not preclude the possibility that officers contracts could include a right of appeal to members against dismissal or disciplinary proceedings where this forms part of the disciplinary, capability and related procedures of the local authority.

8.7 The Secretary of State also intends to make regulations under section 8 of the Local Government and Housing Act 1989 about the appointment of chief officers under executive arrangements which involve either the mayor and cabinet or leader and cabinet form of executive. In such cases, where the appointment of the head of paid service, a chief officer or a deputy chief officer is made by the local authority or a committee or sub-committee of the local authority, the Regulations are intended to provide that that appointment cannot be made until:

- the local authority, committee or sub-committee has considered any objections to the intended appointment from any member of the executive; and
- the local authority, committee or sub-committee have either satisfied themselves that the objection is not well-founded or taken action in respect of the objection.

8.8 In addition the Secretary of State intends that those Regulations will require a member of the executive to be included on any committee or sub-committee making such an appointment.

8.9 Accordingly:

- where the full council makes the appointment, they should only do so where no well-founded objection from any member of the executive has been received; and
where a committee or sub-committee makes the appointment that committee or sub-committee should include at least one member of the executive and the committee or sub-committee should make the appointment only where no well-founded objection has been received from any member(s) of the executive who is(are) also a member of that committee or sub-committee.

8.10 The Secretary of State also intends that the same regulations will require that:

- under executive arrangements which involve either the mayor and cabinet or leader and cabinet form of executive the head of paid service must be appointed (and dismissed) by the full council; and
- under executive arrangements which involve the mayor and council manager form of executive the council manager or her or his nominee must be responsible for the appointment and dismissal of all other staff.

8.11 Under the leader and council manager type arrangements described in chapter 4 the chief executive (and therefore head of paid service) or her or his nominee should be responsible for appointment and dismissal of all staff.

8.12 In recognition of their enhanced roles under executive arrangements and the ethical framework under Part III of the Act the Secretary of State intends to amend the Local Government (Standing Orders) Regulations 1993 (SI 1993/202) to provide that the statutory protections in those Regulations will also apply to the monitoring officer and the chief finance officer. This will mean that the head of paid service (except where that person is also the council manager), monitoring officer and chief finance officer may not be suspended for more than two months for the purposes of investigating misconduct unless it is in accordance with a recommendation in a report made by an independent person whose appointment has been agreed between the officer in question and the local authority.

8.13 However the Secretary of State also intends to amend those regulations so that statutory provisions will not apply to a head of paid service who is also the council manager in a mayor and council manager form of executive.

The chief executive

8.14 The core roles of the chief executive (who should be the statutory head of paid service) should be:

- overall corporate management and operational responsibility (including overall management responsibility for all staff);
- the provision of professional advice to all parties in the decision making process (the executive, overview and scrutiny, full council and other committees);
- together with the monitoring officer, responsibility for a system of record keeping for all the
local authority's decisions (executive or otherwise); and

- representing the local authority on partnership and external bodies (as required by statute or the local authority).

8.15 These roles are underpinned by the fundamental principles of political neutrality and service to the whole council.

8.16 Schedule 5 to the Act modifies the Local Government and Housing Act 1989 so that the head of paid service cannot also be the monitoring officer of the local authority under section 5 of the Local Government and Housing Act 1989.

The monitoring officer and chief finance officer

8.17 In addition to their traditional role of advising all members and officers about vires, maladministration, financial impropriety and probity, under executive arrangements the monitoring officer and the chief finance officer will also have a role in advising where particular decisions were, or are likely to be, contrary to the policy framework or contrary to or not wholly in accordance with the budget (policy framework and budget issues see chapter 2).

8.18 In order to undertake these roles, the local authority will need to ensure that the monitoring officer and chief finance officer have access as necessary to meetings and papers and that members consult with her or him regularly.

Monitoring officer

8.19 Section 5 of the Local Government and Housing Act 1989 places responsibility on the monitoring officer for overseeing vires issues, in particular, reporting to the local authority if she or he thinks any proposal, decision or omission would give rise to (broadly) unlawfulness or if any decision has given rise to maladministration. The monitoring officer therefore performs a key function in ensuring lawfulness and fairness in the operation of the local authority's decision making process, including investigation and reporting on issues that embrace all aspects of the local authority's functions.

8.20 With the introduction of the ethical framework under Part III of the Act there will be significant changes to the role of the monitoring officer. The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through provision of support to the local authority's Standards Committee. The monitoring officer cannot, therefore, be the head of paid service (and therefore chief executive) or the council manager.

8.21 Local authorities will need to recognise under executive arrangements the importance of the monitoring officers key roles of providing advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members of the local authority. The monitoring officer should also be the proper officer for the purposes of ensuring that executive decisions, together with the reasons for those decisions and relevant
officer reports and background papers, are made publicly available (see chapter 7).

8.22 Article 23 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 modifies section 5 of the Local Government and Housing Act 1989 and inserts a new section 5A into that Act to provide that a monitoring officers report about unlawfulness or maladministration is considered by the executive where it relates to actions taken by the executive and that all members of the local authority (and, where there is one, the council manager) must receive a copy of such a report. In the same way as section 5 as originally enacted, all action in respect of such a report must be suspended until the executive has considered the report. After considering it the executive must provide a report to the local authority and the monitoring officer explaining what if any action is to be taken in consequence of the report and the reasons for that action or for not taking action.

8.23 Where such a monitoring officers report is made the relevant overview and scrutiny committee or committees should consider whether it would be appropriate to hold a short enquiry into the matter which is the subject of that report prior to the executives consideration of it.

Chief Finance Officer8.24 Local authorities will need to recognise under executive arrangements the importance of the chief finance officers key roles of providing advice on vires issues, maladministration, financial impropriety, probity and policy framework and budget issues to all members of the local authority. The chief finance officer will also have an important role in the management of the local authority, in particular by:

- contributing to corporate management, in particular through the provision of professional financial advice;
- maintaining financial administration and stewardship;
- supporting and advising members and officers in their respective roles; and
- providing financial information to the media, members of the public and the community.

8.24A Articles 20 and 21 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 modify sections 114 and 116 of the Local Government Finance Act 1988 and insert new sections 114A and 115B into that Act to provide that a chief finance officers report about unlawful expenditure is considered by the executive where it relates to actions taken by the executive and that all members of the local authority (and, where there is one, the council manager) must receive a copy of such a report. In the same way as section 115 as originally enacted, all action in respect of such a report must be suspended until the executive have considered the report. After considering it the executive must provide a report to the local authority, the chief finance officer and the local authority’s auditor explaining what if any action is to be taken in consequence of the report and the reasons for that action or for not taking action.

8.24B Where such a chief finance officers report is made the relevant overview and scrutiny committee or committees should consider whether it would be appropriate to hold a short enquiry into the matter which is the subject of that report prior to the executives consideration
Arrangement of officer support

8.25 It is a matter for local choice how local authorities choose to organise officer support for the different roles within the local authority.

8.26 Local authorities should do so in accordance with the following broad key principles:

- all officers are employed by, and accountable to, the local authority as a whole;
- support from officers is needed for all the local authority’s functions and the roles of the full council, overview and scrutiny, committees, the executive, individual members representing their communities, etc;
- overview and scrutiny in particular will need to be properly resourced and effectively supported by officers;
- day-to-day managerial and operational decisions should remain the responsibility of the chief executive and other officers;
- local authorities should seek to avoid potential conflicts of interest for officers arising from the separation of the executive and overview and scrutiny role; and
- all officers will need access to training and development to help them support the various member roles effectively and to understand the new structures.

8.27 In organising support for the executive, local authorities will need to take into account the potential for tension between chief officers and cabinet members with portfolios. It may be helpful to arrange the officer and member responsibilities so that they are not exactly coincident.

8.28 Changing the local authority’s member structures should, in many local authorities, provide an opportunity to restructure the officer corps to support members more effectively and, more importantly, to deliver more efficient and effective services.

8.29 Local authorities should develop appropriate conventions setting out the roles, responsibilities and rights of officers and members and establishing the key principles governing officer/member relationships.

8.30 Overview and scrutiny committees need properly resourced and effective support. Where the same officers are supporting both the executive and overview and scrutiny committees there is the potential for conflict overview and scrutiny committees will be questioning the executives decisions which will have been based on officer advice. This might discourage officers from pointing an overview and scrutiny committee to fruitful lines of enquiry. Local authorities will need to draw up procedures for resolving such conflicts of interest.

8.31 The Secretary of State does not believe that a formal separation of officer support between the executive and overview and scrutiny is necessary. The Secretary of State recognises that, particularly in smaller local authorities, it may not be possible to separate support in this way. Local authorities should, however, consider whether some separation of
officer support is appropriate when considering how to support overview and scrutiny committees effectively.

8.32 Where a local authority does decide to separate officer support it should ensure that there is appropriate exchange of staff between those supporting overview and scrutiny and others and that all staff have rewarding career development opportunities.

8.33 Similar conflict may occur for officers supporting both the full council and the executive, particularly in the budget and policy setting process. It is a matter for each local authority how to organise support for the full council in its roles and, in some cases, it might be appropriate for there to be dedicated support for the full council.

8.34 Most councillors will be spending more time consulting with, and representing the views of, their communities. These roles will also need officer support. Local authorities will need to consider how to resource such support to ensure all councillors can effectively represent their communities.

8.35 Figure 8.1 describes some examples of effective officer support for various members roles from local authorities which have been experimenting with executive style arrangements prior to the Act.

<table>
<thead>
<tr>
<th>Figure 8.1</th>
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<tr>
<td><strong>Examples of effective officer support for various members roles from local authorities which have been experimenting with executive style arrangements</strong></td>
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Several local authorities are making changes to their officer support for members new roles. Here are just some examples:

**Support for the executive**

The chief executive attends every meeting of the cabinet and arranges chief officer attendance as necessary for items on the agenda. Officers are in general welcome to attend any meeting in order to have an understanding of real political priorities and the debate around them.

**Support for overview and scrutiny**

Many local authorities appoint a chief officer or very senior manager to support overview and scrutiny. For example:

- some local authorities have identifiable teams supporting overview and scrutiny forums. Roles vary from traditional secretariat functions to strong advice and leadership in selecting fruitful issues for review and scrutiny and in establishing soundly based review processes;
- one local authority has used an independent facilitator to assist overview and scrutiny committees; and
- one large metropolitan authority has a combined officer team supporting
both
best value and overview and scrutiny.

Support for local roles

This is more familiar ground for many local authorities. Many have teams to support members representational duties. Roles vary from basic administrative support to personal assistants for small groups of members; some local authorities make available help on policy and community development to priority areas.

Additional support during the transition to new political systems

Many local authorities acknowledge that change will not just happen; the process of change must be managed, just as with any other major organisational change. For example:

- recognising that change can be challenging, some local authorities have set up mentoring relationships, either with other local authorities as a whole or between individual members and chief officers/senior managers within the local authority;
- many local authorities are establishing joint member/officer training and development activities, especially for members of the executive and chairs of overview and scrutiny committees; and
- some local authorities acknowledge that the cumulative effect of community planning, best value, new constitutions, and the trend toward evidence-based, multi-agency strategy development places new demands on them to produce and manage effective strategies and policies. Several are re-structuring to strengthen policy development, to improve the linkages between issues and the capacity to examine cross-cutting issues, and to raise the rigour and imaginativeness of their policy processes.
Chapter 9: Alternative Arrangements

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". It replaces the existing chapter 9 issued on 26 October 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (c.22) (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. Paragraphs 9.131 to 9.193 of this chapter provide supplementary guidance on parent governor representatives. The statutory guidance is presented in maroon text with a ‘tick’ in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities' experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.


Previous versions of this chapter were issued on: 26 October 2000.

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

Enquiries about the supplementary guidance on parent governor representatives should be addressed to:

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Introduction

9.1 This chapter describes the framework for alternative arrangements as set out in the Local Authorities (Alternative Arrangements) (England) Regulations 2001. It also provides guidance on the operation of those alternative arrangements.

9.2 The Regulations provide an additional ‘fourth’ option for district councils in two tier areas with a population below 85,000 (as estimated by the Registrar General on 30 June 1999 - small shire districts). By virtue of section 27(2) and regulations under sections 34 and 35 it will also be open to any local authority (which is not already operating executive arrangements) holding a referendum to adopt these alternative arrangements as their fall-back proposals to be implemented in the event that the referendum rejects the proposals for executive arrangements which are the subject of the referendum.

9.3 Section 31 of the Act provides that small shire districts must either draw up proposals for executive arrangements under section 25 of the Act or alternative arrangements of a type permitted under section 32.

9.4 Section 31(1)(b) of the Act enables the Secretary of State to specify by regulations any other description of local authority to which this fourth option could be available. The Secretary of State currently has no plans to make alternative arrangements available to councils in England other than the small shire districts specified on the face of the Act. However, if representations are made to the Secretary of State to make regulations specifying other descriptions of local authorities then the Secretary of State will consider them carefully and take a view on how to proceed.

9.5 Section 31(5) requires that in deciding whether to draw up proposals for executive or alternative arrangements small shire districts must consult local electors and other interested persons in their area. Section 31(6) requires that in drawing up proposals for alternative arrangements under section 31 small shire districts must consider the extent to which the proposals if implemented are 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. Section 31(7) provides a power for the Secretary of State to specify in regulations matters with which a local authority must comply when drawing up proposals under section 31. These procedural requirements are discussed in more detail in chapter 11.

9.6 Section 32 of the Act enables the Secretary of State, by regulations, to specify alternative arrangements which:

- do not involve the creation and operation of an executive;
- must include arrangements for the appointments of committees or sub-committees to review or scrutinise decisions or other action taken in the discharge of the local authority’s functions (i.e. overview and scrutiny committees); and
- must be of a type which the Secretary of State considers are likely to ensure that decisions are taken in an efficient, transparent and accountable way.
9.7 The Secretary of State considers that in the context of local governance arrangements the terms efficient, transparent and accountable should be taken to mean the following:

- **efficient**: the local authority's arrangements for making decisions include the capability for decisions to be made quickly in response to changing circumstances and the developing needs and aspirations of local communities;
- **transparent**: anyone who has dealings with the local authority can easily determine who is responsible for decisions in respect of the matters with which they are dealing with the local authority and that they can also easily determine how best to make representations to that
- **accountable**: the local authority's governance arrangements enable people to find out about decisions which have been taken and include the capability for review and scrutiny of any decision made in respect of any of the local authority's functions by members of the local authority who were not directly involved in making the decision in question.

9.8 The Regulations and this guidance provide that alternative arrangements take the following broad form:

- the full council of the local authority sets the policy framework and approves the budget, proposals for which would in general be presented to it from one or more committee(s) of the local authority;
- no more than five committee(s) (excluding regulatory committees, area committees and joint committees) of the local authority with delegated functions from the full council to implement the policy framework and to put proposals to the full council for future policies and budgets;
- one or more overview and scrutiny committee(s) to hold the policy committees to account in public, assist them in policy development and review and examine matters of wider local interest, involving local stakeholders in their deliberations; and
- a Standards Committee (and any sub-committees for parish councils) appointed in accordance with Part III of the Act.

9.9 In this chapter "policy committee" means any committee appointed under section 102(1)(a) which is not a regulatory committee or an area committee within the meaning of regulation 16A of the Local Government (Committees and Political Groups) Regulations 1990. In this chapter "regulatory committee" means any committee established exclusively to discharge any of the functions mentioned under headings A (development control), B (licensing and registration), C (health and safety at work), H (pensions) and I (miscellaneous) of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000. Therefore policy committees include neither committees appointed to discharge 'quasi-judicial' functions such as planning and licensing nor joint-committees on which the local authority is represented.
9.10 Membership of committees is for the full council to decide. The Secretary of State intends that the code of conduct for members to be issued under Part III of the Act will provide that a member of an overview and scrutiny committee or sub-committee will not normally be able to be involved in scrutiny of any decision made by a committee or sub-committee (including area committees) or joint committee of which she or he is a member. In the transitional period between a local authority implementing a new constitution and adopting their code of conduct, the Secretary of State intends to make provision to similar effect in an order under section 47 of the Act.

9.11 In order to give clear leadership for the community, local authorities operating alternative arrangements should consider appointing a leader who would be able to attend, speak and vote at any meetings of policy committees. If such a leader were appointed, she or he should not be a member of any overview and scrutiny committee or sub-committee.

Policy and decision making

9.12 The regulations prescribe only the broad framework for alternative arrangements. Within that framework local authorities will have many options as to the precise arrangements they adopt. The Regulations provide that the local authority will continue to be able to make arrangements for the discharge of its functions under sections 101 and 102 of the Local Government Act 1972 in accordance with any other legislation which governs the discharge of those functions.

9.13 The political balance requirements in and under section 15 to 17 of, and Schedule 1 to, the Local Government and Housing Act 1989 and the access to information requirements in Part VA of the Local Government Act 1972 continue to apply to arrangements made under section 101 of the 1972 Act.

9.14 The Regulations specify a maximum number of members (who are also members of the local authority) of policy committees and sub-committees appointed by a policy committee. The maximum number of members is 15 for such a committee and 10 for such a sub-committee. This does not apply to regulatory committees, area committees, joint committees, overview and scrutiny committees or standards committees. It continues to be possible to have members of policy committees and sub-committees who are not members of the local authority in line with the provisions of current legislation, in particular the Local Government (Committees and Political Groups) Regulations 1990.

9.15 The Secretary of State recommends that in many local authorities, and particularly in small shire district councils, the number of members of committees or sub-committees should be substantially fewer than the prescribed maximum.

9.16 The Secretary of State also considers that the number of committees and sub-committees of a local authority established to discharge functions under section 101 of the 1972 Act should be kept to a minimum. The Secretary of State recommends that in small shire districts there should not be more than five policy committees and that the use of subcommittees should be limited to decision making in respect of time-limited projects. This guidance will be kept under review and the Secretary of State will
consider imposing a statutory limit on the number of policy committees if the experience of operating alternative arrangements show this to be necessary.

Policy making under alternative arrangements

9.17 The Regulations provide that the full council under alternative arrangements will have a similar policy making role to the full council under executive arrangements. The full council's role in the budget setting process will continue to be as set out in the provisions of the Local Government Finance Act 1992.

9.18 Regulation 3 of and Schedule 1 to the Regulations provide that the full council is responsible for approving or adopting the following plans and strategies:

- Annual Library Plan;
- Best Value Performance Plan;
- Children's Services Plan;
- Community Care Plan;
- Community Strategy;
- Crime and Disorder Reduction Strategy;
- plans and alterations which together comprise the Development Plan;
- Early Years Development Plan;
- Education Development Plan;
- Local Transport Plan; and
- Youth Justice Plan.

9.19 Legislation, including the Regulations, require the following functions and the specified actions in connection with the discharge of functions to be exercised by the full council:

- the adoption or approval of specified plans and strategies of the local authority;
- the adoption or approval of the budget and any plan or strategy for the control of the local authority's borrowing or capital expenditure (the capital plan);
- determining the scheme and amounts of members' allowances; and
- authorising applications to the Secretary of State for transfer of housing land.

9.20 The Secretary of State recommends that prior to approval or adoption of a plan or strategy the full council should receive proposals from any policy committees which have delegated authority to take decisions in the relevant policy areas. The full council may also receive policy proposals from regulatory committees, area committees, joint committees or overview and scrutiny committees.

9.21 In addition, the Secretary of State recommends that local authorities should consider including the following other plans and strategies for approval or adoption by
the full council:

- Food Law Enforcement Service Plan;
- the strategy and plan which comprise the Housing Investment Programme;
- Local Agenda 21 Strategy;
- Adult Learning Plan;
- Quality Protects Management Action Plan; and
- the local authority's Corporate Plan or its equivalent (if the local authority has one).

9.22 Throughout this guidance the plans and strategies which are subject to full council approval or adoption (whether by virtue of regulation 3 of, and Schedule 1 to, the Regulations or because the local authority has not delegated the approval or adoption of the plan under section 101 of the Local Government Act 1972) are referred to collectively as the policy framework.

9.23 Where a local authority does not choose for any such plan or strategy to be subject to full council approval the Secretary of State recommends that the plan or strategy in question should be subject to approval by elected members within the local authority.

9.24 Local authorities should specify in their proposals for alternative arrangements and in their constitution which plans and strategies are to be adopted or approved by the full council.

9.25 For plans and strategies which must be sent to the Secretary of State or a Minister of the Crown for approval, the Regulations provide that the full council must approve the draft to be sent to the Minister for approval.

9.26 The Regulations provide that the full council can, at the same time as adopting a particular plan or strategy delegate to any policy committee, regulatory committee, area committee or joint committee freedom to make "in year" modifications to the plan or strategy without having to seek full council approval for those modifications. It will be for the full council to decide which elements of the plan or strategy in question a particular committee will have freedom to modify.

9.27 The Secretary of State also recommends that if a committee makes any such modification then it should report it to the full council at the next available council meeting.

9.28 Increasingly, local authorities do not have sole responsibility for the preparation of many plans and strategies, even though they may have the lead role in co-ordinating them. A number of plans (such as the Community Strategy or Crime and Disorder Reduction Strategy) are now prepared under partnership arrangements and include action and targets to which other bodies will be contributing. In the case of the Early Years Development Plan, the Early Years Development Partnership is, and remains, responsible for the development of the plan prior to submission to the full council for approval (see section 119 of the School Standards and Framework Act 1998).

9.29 Such plans need to be negotiated and agreed by the relevant partners, and it would
be counter-productive if the full council were, at the final approval stage, to overturn elements of a plan or strategy that had already been agreed with other local partners. Therefore, the Secretary of State recommends that local authorities should ensure that there is effective and regular consultation and communication between the relevant policy committees, regulatory committees, area committees, joint committees, the relevant overview and scrutiny committees and other members of the local authority during the development of plans and strategies which need the agreement of partner organisations.

9.30 Local authorities should, therefore, adopt protocols to ensure that any councillor who is neither a member of the policy committee responsible for overseeing the plan in question nor the partnership responsible for developing the plan or strategy has opportunities to feed their views into the development of any such plan or strategy.

Role of the full council under alternative arrangements

9.31 All councillors acting together as the full council under alternative arrangements will have (amongst others) the following roles:

- adopting the new constitution and any subsequent changes to it;
- adopting the local authority’s code of conduct;
- agreeing the local authority’s policy framework and budget;
- making appointments to committees; and
- making or confirming appointment of the chief executive (see chapter 8).

9.32 Local authorities will need to give careful consideration to the role of the full council under a new constitution. In particular, the role of the council in determining the policy framework and budget is likely to require changes to how the council has traditionally conducted its business.

9.33 The council meeting will be the forum at which all members of the local authority discuss and decide the local authority’s policy framework and budget. Local authorities will need to consider how the role of the council meeting in policy determination can be enhanced, by considering:

- whether it might be appropriate for the council to meet more frequently at certain times of year and less often at others;
- how the structure and style of council meetings may need to change to allow for more debate on the policy framework, perhaps at more than one stage in the policy development process, including how committees should present proposals for the policy framework and budget;
- what arrangements will be necessary to enable open and informed debate on reports from overview and scrutiny committees; and
- how public participation in the council meeting can be encouraged.
9.34 Local authorities should consider how the examples of innovations in the conduct of council meetings in figure 2.1 in chapter 2 can be incorporated into meetings of the full council under alternative arrangements.

Roles of councillors

9.35 All councillors will have important roles under a new constitution and all will be subject to the same ethical framework and code of conduct. These roles include:

- representing the views of their constituents;
- acting together as the full council;
- membership of committees and sub-committees; and
- membership of overview and scrutiny committees.

9.36 All councillors represent their constituents and this should become an even more important role under a new constitution. Councillors should play an important role in consulting their communities on the development of policy, in particular in reviews of best value; development of the Best Value Performance Plan; the community planning process; and other local initiatives, for example on community safety and local cultural strategies.

9.37 Local authorities will need to ensure, particularly through overview and scrutiny, that appropriate procedures are in place to ensure that councillors can ‘feed-in’ the views of the communities they represent to policy development and decision making.

9.38 In putting in place the ethical framework under Part III of the Act, the Secretary of State is minded to revise the approach taken to the registration and declaration of members’ interests, to make it easier for members to play an active part in council discussions. In particular:

- the interests that are to be registered (and declared) will be spelt out within the new code of conduct;
- clear rules will be established about when members can, and cannot, take part in discussions;
- consideration will be given to allowing members to declare interests, but stay and participate in discussions in certain circumstances; and
- a local authority’s own Standards Committee will be able to grant dispensations, subject to clear guidelines set out in regulations.

9.39 Where the local authority has established area committees with delegated responsibilities, all councillors who represent an electoral division or ward wholly or partly within the area for
which the committee has functions will be able to be members of those bodies and take decisions in respect of that area. All councillors will be able to represent the local authority on partnerships and outside bodies if appointed to such posts by the local authority.

Training and development

9.40 All councillors will need to have access to training and development opportunities to ensure that they can carry out their new roles effectively. In particular, effective overview and scrutiny requires a change of culture in the way councillors question decisions and evaluate policy. Therefore local authorities should ensure that all councillors have access to adequate training and development opportunities in particular on overview and scrutiny. Standards Committees also have a specific role to play in advising, training or arranging to train members on matters relating to their local authority’s code of conduct.

Overview and scrutiny

9.41 The Regulations require alternative arrangements to include provisions for the appointment by the local authority of one or more committees of the local authority known as overview and scrutiny committees.

9.42 The Regulations provide for these overview and scrutiny committees to have similar powers to overview and scrutiny committees under executive arrangements in particular:

- that a local authority’s overview and scrutiny committee must have power (or its overview and scrutiny committees have power between them) to:

  i. review or scrutinise decisions made, or action taken, in respect of any of the functions of the local authority;

  ii. make reports or recommendations to the local authority or any committee or sub-committee of the local authority or any joint committee on which the local authority is represented or any sub-committee of such a joint committee in respect of any of the local authority’s functions; and

  iii. make reports or recommendations to the local authority or any committee or subcommittee of the local authority or any joint committee on which the local authority is represented or any sub-committee of such a joint committee in respect of matters which affect the local authority’s areas or its inhabitants;

- overview and scrutiny committees will be able to require any member or officer of the local authority to attend and answer questions. Such a person will be under a duty to comply
with this requirement except that she or he would not be obliged to answer any question
which she or he would be entitled to refuse to answer in a court of law;

- overview and scrutiny committees will be able to invite any other persons to attend its
meetings but without a power to require them to do so;
- overview and scrutiny committees will be able to recommend that a decision in respect of
any of the local authority’s functions made but not implemented be reconsidered by the
body which made the decision; and
- an overview and scrutiny committee will be able to delegate any of its functions to a sub-
committee of itself.

9.43 The Regulations also provide that:

- an overview and scrutiny committee may not discharge any functions other than the
functions conferred on it by the Regulations and the function of conducting best value
reviews under section 5 of the Local Government Act 1999;
- any member of an overview and scrutiny committee (or sub-committee) may ensure that
any matter relevant to the remit of the committee (or sub-committee) be placed on the
agenda and discussed at a meeting of the committee (or sub-committee);
- an overview and scrutiny committee (or sub-committee) may include anyone who is not a
member of the authority but, with the exception of church and parent governor
representatives on any overview and scrutiny committee of a Local Education Authority
which has education as all or part of its remit, such members will not be entitled to vote;
- where party groups have been declared in the local authority, overview and scrutiny
committees (and sub-committees) will have to reflect the political balance of the local
authority, in accordance with sections 15 to 17 of, and Schedule 1 to, the Local
Government and Housing Act 1989; and
- overview and scrutiny committees (and sub-committees) will have to meet in public in
accordance with the access to information provisions in sections 100A to 100K of, and
Schedule 12A to, the Local Government Act 1972, as amended by sections 97 and 98 of
the Local Government Act 2000, except where those provisions allow the public to be
excluded.

Overview and scrutiny arrangements

9.44 To achieve enhanced accountability and transparency of the decision making
process, effective overview and scrutiny is essential. Overview and scrutiny committees
are a key element of alternative arrangements. Their roles should, therefore, include
both:

- developing and reviewing policy; and
- holding decision makers to account.

9.45 Overview and scrutiny committees should not normally scrutinise individual
decisions made in respect of development control, licensing, registration, consents and
other permissions. In particular a local authority will need to ensure such scrutiny is not an alternative to normal appeals procedures. However, overview and scrutiny committees do have the power to make reports and recommendations on such functions and the Secretary of State recommends that this should normally be used as part of wider policy reviews.

9.46 These committees should be a key mechanism for enabling councillors to represent the views of their constituents and other organisations and hence to ensure that these views are taken into account in policy development.

9.47 These committees are the main way by which decision makers are held to account in public. They will have an important role in reviewing the local authority’s policies and other matters of more general local concern and making recommendations either to the full council or any relevant committees or joint committees on future policy options.

9.48 Subject to the requirements of the Regulations the arrangements for overview and scrutiny (including the membership and remits of the committees) are a matter for local choice. A local authority’s proposals for alternative arrangements must include a description of the arrangements for overview and scrutiny.

9.49 The Secretary of State advises, however, that all but the smallest local authorities should have more than one overview and scrutiny committee and that they should meet frequently (for example on a monthly or six-weekly cycle).

9.50 Overview and scrutiny committees should take a cross-cutting rather than narrow service-based view of the conduct of the local authority’s business and therefore the aim should be for local authorities to have, at any given point in time, a relatively small number of such committees.

9.51 Overview and scrutiny arrangements should be set out clearly in the alternative arrangements as part of the constitution to ensure it is clear which committees are responsible for overseeing which functions and policy areas: i.e. the remit and terms of reference of each committee. The workplan of each overview and scrutiny committee needs careful consideration and local authorities need to consider how these workplans are decided upon, bearing in mind the resources available, time constraints and the interests of the local community.

9.52 Overview and scrutiny committees should have considerable flexibility to determine most of their workplan, particularly in the light of changing circumstances. There should also be effective protocols to ensure that the concerns of all members of the committee (including members who are not members of the local authority) are taken into account when deciding the committee’s workplan. In doing so they should bear in mind that the Secretary of State intends that on a day-to-day basis any member of an overview and scrutiny committee has a right to ensure that any item relevant to the remit of that committee is placed on the agenda and discussed at a meeting of the committee.

9.53 In addition, policy committees will often wish to request a policy review study from an overview and scrutiny committee before formulating its policies for submission to
the full council for approval. Policy committees should always consult and involve the relevant overview and scrutiny committees in developing draft policies to propose to the full council.

9.54 Local authorities are, therefore, encouraged to consider and adopt mechanisms for co-ordinating the work of overview and scrutiny committees. Such mechanisms should be set out clearly in the local authority’s alternative arrangements in their constitution.

9.55 Figure 3.1 in chapter 3 provides some examples of co-ordinating mechanisms for overview and scrutiny.

9.56 Overview and scrutiny committees are encouraged to consider different approaches and formats for their meetings for their different roles: scrutinising decisions and decision making; reviewing policy; and investigating other matters of local concern. These different roles are discussed in more detail later in this chapter.

9.57 Figure 3.2 in chapter 3 provides some examples of good practice and innovation in overview and scrutiny.

**Membership of overview and scrutiny committees**

9.58 The Regulations do not prevent a member of a committee or sub-committee or joint committee or sub committee of a joint committee which, by virtue of section 101 of the Local Government Act 1972, has power to discharge functions of the local authority from being a member of an overview and scrutiny committee.

9.59 It is almost inevitable that members of policy committees, area committees or joint committees will also be members of overview and scrutiny committees that at one time or another have responsibility for scrutinising decisions of that committee. Where an overview and scrutiny committee is reviewing the discharge of functions by a committee or joint committee such cross membership will create conflicts of interest. It is a fundamental principle of accountability that a councillor cannot scrutinise her or his own decisions.

9.60 Therefore, the Secretary of State intends that the code of conduct for members to be issued under Part III of the Act will provide that a member of an overview and scrutiny committee or sub-committee will not normally be able to be involved in scrutiny of any decision made by a committee or sub-committee (including area committees) or joint committee of which she or he is a member. In the transitional period between a local authority implementing a new constitution and adopting their code of conduct, similar provisions apply by virtue of article 45 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001.

9.61 The Secretary of State attaches great importance to overview and scrutiny under alternative arrangements. As such, the Secretary of State believes that when local authorities are drawing up proposals for alternative arrangements they should ensure that at least a core group of 5 to 10 councillors have overview and scrutiny as their principal responsibility. The Secretary of State considers that in practice this will mean these members should not therefore be members of policy committees, except those
committees which have sole responsibility for quasi-judicial functions. The Secretary of State will keep the regulations under review and will consider introducing statutory provisions to achieve this if the experience of operating alternative arrangements shows this to be necessary.

9.62 In deciding the membership of overview and scrutiny committees, local authorities will need to take into account the particular skills and expertise required to ensure that thorough and informed reviews take place. They should consider whether to include those who are not members of the local authority to bring

9.63 Where there is a majority group, local authorities might consider it appropriate to have all or some of these committees chaired by members outside the majority group or by church or parent governor representatives. Overview and scrutiny should be constructive and not merely be there either always to oppose decision makers or to rubber-stamp their decisions.

9.64 The Regulations make provision for church and parent governor representation on overview and scrutiny committees of Local Education Authorities under alternative arrangements. Such provision mirrors that described in chapter 3 for church and parent governor representation on overview and scrutiny committees under executive arrangements.

9.65 In deciding the workplan of an overview and scrutiny committee the concerns of these representatives should be borne in mind.

9.66 Church and parent governor representatives will be eligible to chair such committees. In such a case should a non-education matter come before the committee, local authorities may wish to include provisions in the standing orders of the committee for a voting member to take over the chair of the committee for such non-education matters, to allow the chair a casting vote if necessary.

Consulting others

9.67 Overview and scrutiny committees should also seek advice from other committees of the local authority. Where a local authority has area committees or forums, the programme of work for overview and scrutiny committees should include a facility for those committees or forums to feed in their views and recommendations as part of any review which impacts on their area.

9.68 Moreover, the Secretary of State encourages overview and scrutiny committees to seek views from as many communities and interested parties as necessary to get a balanced picture of the effects of policy and decision making. In particular, an overview and scrutiny committee could conduct a review of how certain decisions have affected a particular community or area taking advice from area committees or forums and other community groups and representatives.

Declaration of interests
9.69 Where any member of an overview and scrutiny committee has an interest in a decision or policy under review, she or he must declare an interest and may be required to withdraw from the meeting at which that issue is under discussion unless given a dispensation. When the ethical framework under Part III of the Act enters into force, this will be covered in the code of conduct and it will be for the local Standards Committee, in exceptional circumstances, to grant a dispensation to speak and exceptionally to vote at a meeting discussing the issue. Interests will normally have been declared in advance in the register of interests.

9.70 It is intended that the code of conduct will make provision allowing greater freedom for members, including those on overview and scrutiny committees, to declare an interest and take a full part in meetings, or alternatively to receive a local dispensation to speak, even if they have a direct interest in the matter being discussed. Church and parent governor representatives will be able to speak and vote on education matters. Where they have a particular personal interest they should declare that interest but remain to speak and vote at the meeting.

**The party whip**

9.71 Overview and scrutiny committees are to hold decision makers to account. To do so effectively will require a change in the way members have traditionally questioned decisions. Although this is a matter for political parties to consider, both locally and nationally, the Government believes whipping is incompatible with overview and scrutiny and recommends that whipping should not take place.

**Officers and overview and scrutiny**

9.72 To be effective, overview and scrutiny committees must have effective and properly resourced support from officers. Members, including church and parent governor representatives, will need help in researching the policy area or decisions they are examining and in deciding which avenues of enquiry to pursue and which witnesses to call. Experience from local authorities operating interim overview and scrutiny arrangements before the passing of the Act shows that focussed overview and scrutiny enquiries with a well-defined set of aims, albeit often looking at cross-cutting issues, are generally more successful than wide ranging enquiries.

9.73 Local authorities should provide overview and scrutiny committees with a discrete budget to allow them, for example, to engage independent consultants to assist in their enquiries or to cover the expenses of witnesses they may wish to call.

9.74 Overview and scrutiny committees should seek the advice of the monitoring officer where they consider that there is doubt about the vires for a decision.

9.75 Where an overview and scrutiny committee exercises the powers in the Regulations to require officers to attend to answer questions or discuss issues they should also consider the seniority of officers it would be appropriate to require to appear before them. Local authorities may wish to adopt conventions that overview and
scrutiny committees would normally only require officers above a certain grade to attend to ensure that more junior officers are not put under undue pressure.

9.76 Overview and scrutiny committees should always bear in mind that when officers appear to answer questions that their evidence should, as far as possible, be confined to questions of fact and explanation relating to policies and decisions.

9.77 Officers may explain: what the policies are; the justification and objectives of those policies as the decision makers see them; the extent to which those objectives may have been met; and how administrative factors may have affected both the choice of policy measures and the manner of their implementation.

9.78 Officers may, and in many cases should, be asked to explain and justify advice they have given to members prior to decisions being taken and they should also be asked to explain and justify decisions they themselves have taken under delegated authority.

9.79 As far as possible, officers should avoid being drawn into discussion of the merits of alternative policies where this is politically contentious. Any comment by officers on the local authority’s policies and decision makers’ actions should always be consistent with the requirement for officers to be politically impartial.

Training and development

9.80 Local authorities should ensure that all those who undertake overview and scrutiny duties (councillors, officers, church and parent governor representatives and any co-opted members of overview and scrutiny committees) are given adequate training to adapt to their new roles. Members, officers and other stakeholders and experts should also receive training for appearances to answer questions and discuss issues with overview and scrutiny committees and in how to respond to the reports and recommendations from overview and scrutiny committees. Standards Committees also have a specific role to play in advising, training or arranging to train members on matters relating to their local authority’s code of conduct.

Policy development and review

9.81 A key element of the work of an overview and scrutiny committee is to be able to review and make recommendations to the local authority or its committees and sub-committees and assist in development of future policies and strategies. Again, how precisely such arrangements work will be a matter for local choice.

9.82 The Secretary of State encourages local authorities to make arrangements for policy reviews with cross-cutting themes rather than focusing on single functions. This will be particularly important in the community planning process.

9.83 Policy development and review will benefit from input from all key stakeholders including the local community and other local public, private and voluntary
organisations and such organisations and representatives should be involved in policy reviews by overview and scrutiny committees. In particular local authorities and their overview and scrutiny committees should pay particular attention to obtaining views from 'hard to reach' groups such as minority ethnic communities and people with disabilities.

9.84 When reviewing housing services, overview and scrutiny committees should seek the views of tenants for example by asking tenants (or their representatives) to attend to answer questions and discuss issues or through co-option of tenants representatives onto the relevant overview and scrutiny committee (without voting rights). A local authority’s Tenants Participation Compact will set out how the local authority (including overview and scrutiny committees) will involve tenants and their representatives in policy development and review.

9.85 Where an overview and scrutiny committee includes people who are not members of the local authority (without voting rights) the local authority should ensure that the committee's standing orders enable those representatives to have an opportunity to influence the committee's lines of enquiry and workplan for the review in question.

9.86 The policy development and review work of an overview and scrutiny committee will draw directly from the outputs of scrutinising decisions and proposed decisions. It should also involve the consideration of policy themes and matters of local concern which may have potential implications for the policies of the local authority. Alternative arrangements should also make provision for overview and scrutiny committees to be consulted by the policy committees, area committees or joint committees or the full council about issues falling within the remit of the overview and scrutiny committee. This might involve a policy committee requesting an overview and scrutiny committee to conduct an enquiry into a particular issue.

9.87 Local authorities should also consider whether policy development and review in relation to a particular function or policy area should be carried out by the same committee which scrutinises decisions in that policy area or whether separate committees are needed for policy development depending on local circumstances. The Secretary of State believes that this is a matter for local choice.

9.88 Local authorities will need to make proper arrangements for the findings of such policy reviews to be considered by the relevant committees or joint committees or the full council.

**Matters of wider local concern**

9.89 Part I of the Act provides powers for local authorities to promote the economic, social and environmental well-being of their community. It also confers a duty on local authorities to draw up a Community Strategy. The Government intends that this will enable local authorities to work more effectively with partner organisations for the benefit of the local community as a whole.

9.90 The Regulations provide a power for overview and scrutiny committees to make reports or recommendations to the local authority in relation to matters which are not the responsibility of
the local authority but which nevertheless affect the local authority’s area or its inhabitants. Any recommendations which overview and scrutiny committees make in such areas cannot be binding on outside bodies.

9.91 Local authorities should consider carefully whether and how such reviews take place. In particular, they should consider the roles of partnership organisations that deliver services and will wish to consider how they should be involved in such reviews. The local authority should take account of the outcomes of such reviews in developing new policy and local authorities should have local procedures and conventions for such reports to be debated and, if appropriate, acted upon.

9.92 The Secretary of State considers that overview and scrutiny committees should, from time to time, examine healthcare provision within their area, for example as part of a review of the Health Improvement Programme.

9.93 The NHS Plan published in July 2000 builds on emerging good practice of partnership working between local authorities and health bodies and signals the Government’s intention, when legislative time is available, to legislate to provide powers for overview and scrutiny committees to require chief executives of local NHS organisations to attend to answer questions; to refer major planned changes in local NHS services to the Secretary of State; and to refer contested major service reconfigurations to the new Independent Reconfiguration Panel.

**Best value reviews**

9.94 The Regulations do not permit overview and scrutiny committees to discharge any function of the local authority other than overview and scrutiny and conducting best value reviews. This is to ensure there is a clear separation between the discharge of functions and the review and oversight of functions.

9.95 Depending on local circumstances overview and scrutiny committees which have developed expertise in a particular service area will be well placed to be involved in best value reviews of those services in accordance with orders made under section 5 of the Local Government Act 1999. This applies only for the specific function of conducting a statutory review under section 5 of the Local Government Act 1999. Overview and scrutiny committees should have a role in best value reviews.

9.96 Where it is decided that an overview and scrutiny committee is to undertake a best value review, local authorities should make arrangements for such reports to be considered by the policy committees, regulatory committees, area committees or joint committees or by the full council (or both) as appropriate.

**Holding decision makers to account**

9.97 A key function of overview and scrutiny committees is to hold decision makers to account.
This can have four principal elements:

- scrutinising decisions which the council or its committees or sub-committees are planning to take;
- scrutinising decisions before they are implemented (a so-called 'call-in' mechanism);
- scrutinising decisions after they have been implemented, whether shortly afterwards or as part of a wider review of policy, to measure their effect; and
- reviewing the performance of the local authority, its committees, sub-committees, any joint committees on which it is represented and senior officers.

9.98 While overview and scrutiny committees must between them have power to scrutinise all decisions of the local authority, it would clearly be detrimental to efficient decision making if every individual decision were as a matter of course called before such committees and therefore this should not happen.

9.99 In addition, local authorities should also consider setting limits in particular on how decisions made by officers can be scrutinised individually. Such scrutiny of officer decisions should occur only as part of a review of service plans or during the best value process.

**Scrutiny of proposed decisions**

9.100 Overview and scrutiny committees should regularly question members of policy committees, area committees, joint committees and officers on forthcoming important decisions and seek the views of local stakeholders and other interested parties on those decisions. Decision makers should take into account any views expressed by overview and scrutiny committees when determining the final decision.

**Call-in of decisions**

9.101 The Regulations provide that a local authority's alternative arrangements must ensure that overview and scrutiny committees have specific powers to recommend that a decision made but not yet implemented be reconsidered by the body which made the decision or to recommend that the full council consider whether that body should reconsider the decision.

9.102 Local authorities should make provision in their alternative arrangements and standing orders, for procedures by which members of the local authority can request that a meeting of an overview and scrutiny committee be held to consider whether or not to use these powers in respect of a decision made but not yet implemented (a so-called call-in procedure). Such provisions may include a standard period of delay before decisions are implemented. Those provisions should ensure that there is an appropriate balance between effectively holding decision makers to account, being able to question decisions before they are implemented and allowing effective and efficient decision making. The provisions should ensure that a decision maker could only be asked to
reconsider a decision once. Day-to-day management and operational decisions taken by officers should not be subject to any call-in procedure.

9.103 In addition, the local authority's call-in procedure should include provisions which prevent urgent decisions from being called-in or in any other way delayed.

9.104 Local authorities should also agree how called-in decisions are responded to. If an overview and scrutiny committee examines a decision and decides to recommend an alternative course of action, local authorities should set out how this should work. In particular local authorities should consider the following questions:

- how should the decision making body within the local authority respond?; and
- what should the timescale for such a response be?

9.105 Local authorities should ensure that any call-in procedure is not abused or used unduly to delay decisions or slow down the process of decision making. Local authorities will need to develop local conventions and protocols to prevent abuse of an overview and scrutiny committee’s power to recommend that a decision made, but not yet implemented, be reconsidered. Local authorities should keep the operation of any call-in arrangements under review to ensure that they are not abused with an associated negative effect on the efficiency of decision making.

9.105A A call-in mechanism provides a process by which a decision made but not yet implemented can be discussed at a meeting of an overview and scrutiny committee within a specified timescale during which implementation of the decision is suspended. A call-in mechanism cannot circumscribe the power in regulation 6(8) of the Local Authorities(Alternative Arrangements) (England) Regulations 2001 for an individual member of an overview and scrutiny committee to ensure that any matter relevant to the remit of the committee be placed on the agenda and discussed at a meeting of the committee. However, the exercise of the powers in regulation 6(8) does not have the effect of suspending implementation of the decision. Any call-in power for members to request a meeting and suspend implementation of a decision must, therefore, be in addition to the powers in regulation 6(8).

9.106 To avoid the possibility of very many emergency council meetings the Secretary of State recommends that overview and scrutiny committees should only use the power to refer matters to the full council if they consider that the decision is contrary to the policy framework or the budget set by the full council. Where an overview and scrutiny committee refers a decision to the full council there should be clear timescales set out in the local authority's constitution within which the debate should take place to avoid decisions being unnecessarily delayed.

9.107 Figures 3.5 and 3.6 in chapter 3 provide an illustrative example of one possible procedure for call-in and some safeguards which could be incorporated into such procedures. A safeguard which could be adopted as part of a call-in procedure could be to include provision requiring a certain number of committee (or local authority) members to call-in a particular decision (although in the case of a church or parent governor representative they may be given
an individual power to call-in a decision).

Officer support

9.108 A local authority operating alternative arrangements should have a professional chief executive (who should be the statutory head of paid service) responsible for securing and managing the professional body of staff needed to deliver modern, effective, well focused services.

9.109 Officers should be responsible for day-to-day managerial and operational decisions within the local authority and will provide support to all councillors in their several roles.

9.110 This section of this chapter describes some of the key aspects of the roles of officers and the relationships between officers and members under alternative arrangements.

Appointment and dismissal

9.111 Contracts for all officers continue to be with the local authority. The Secretary of State intends that all officers will, under Part III of the Act, be subject to the same ethical framework and code of conduct.

9.112 The Secretary of State intends that regulations under section 8 of the Local Government and Housing Act 1989 will require local authorities to ensure that appointment, dismissal and disciplinary action for all staff below deputy chief officer level (as defined by section 2(8) of the 1989 Act) is the responsibility of the head of paid service or her or his nominee. This will not preclude the possibility that officers’ contracts could include a right of appeal to members against dismissal or disciplinary proceedings where this forms part of the disciplinary, capability and related procedures of the local authority.

9.113 As chapter 8 makes clear the Secretary of State also intends to amend the Local Government (Standing Orders) Regulations 1993 (SI 1993/202) to provide that the statutory protections in those Regulations will also apply to the monitoring officer and the chief finance (section 151) officer.

The Chief Executive

9.114 The core roles of the chief executive (who should be the statutory head of paid service) should be:

- overall corporate management and operational responsibility (including overall management responsibility for all staff);
- the provision of professional advice to all parties in the decision making process (full council, overview and scrutiny and other committees);
- together with the monitoring officer, responsibility for a system of record keeping for all the local authority’s decisions; and
- representing the local authority on partnership and external bodies (as required by statute or the local authority).

9.115 These roles are underpinned by the fundamental principles of political neutrality and service to the whole council.

9.116 Schedule 5 to the Act modifies the Local Government and Housing Act 1989 so that the head of paid service cannot also be the monitoring officer of the local authority under section 5 of the Local Government and Housing Act 1989.

**Monitoring Officer**

9.117 Section 5 of the Local Government and Housing Act 1989 places responsibility on the monitoring officer for overseeing vires issues, in particular, reporting to the local authority if she or he thinks any proposal, decision or omission would give rise to (broadly) unlawfulness or if any decision has given rise to maladministration. The monitoring officer therefore performs a key function in ensuring lawfulness and fairness in the operation of the local authority’s decision making process, including investigation and reporting on issues that embrace all aspects of the local authority’s functions.

9.118 With the introduction of the ethical framework under Part III of the Act there will be significant changes to the role of the monitoring officer. The monitoring officer will have a key role in promoting and maintaining high standards of conduct within a local authority, in particular through the provision of support to the local authority’s Standards Committee. The monitoring officer cannot, therefore, be the head of paid service (and therefore chief executive).

9.119 In order to undertake these roles, the local authority will need to ensure that the monitoring officer has access as necessary to meetings and papers and that members consult with her or him regularly.

**Chief Finance Officer**

9.120 Local authorities will need to recognise under alternative arrangements the importance of the chief finance officer’s key roles of providing advice on vires issues, maladministration, financial impropriety and probity issues to all members of the local authority. The chief finance officer will also have an important role in the management of the local authority, in particular by:

- contributing to corporate management, in particular through the provision of professional financial advice;
- maintaining financial administration and stewardship;
- supporting and advising members and officers in their respective roles; and
- providing financial information to the media, members of the public and the
9.121 In order to undertake these roles, the local authority will need to ensure that the chief finance officer has access as necessary to meetings and papers and that members consult with her or him regularly.

**Arrangement of officer support**

9.122 It is a matter for local choice how local authorities choose to organise officer support for the different roles within the local authority.

9.123 Local authorities should do so in accordance with the following broad key principles:

- all officers are employed by, and accountable to, the local authority as a whole;
- support from officers is needed for all the local authority’s functions and the roles of the full council, overview and scrutiny committees, policy committees, regulatory committees and individual councillors representing their communities, etc;
- overview and scrutiny in particular will need to be properly resourced and effectively supported by officers;
- day-to-day managerial and operational decisions should remain the responsibility of the chief executive and other officers;
- local authorities should seek to avoid potential conflicts of interest for officers arising from the separation of the overview and scrutiny role; and
- all officers will need access to training and development to help them support the various member roles effectively and to understand the new structures.

9.124 Changing the local authority’s member structures should, in many local authorities, provide an opportunity to restructure the officer corps to support members more effectively and, more importantly, to deliver more efficient and effective services.

9.125 Local authorities should develop appropriate conventions setting out the roles, responsibilities and rights of officers and members and establishing the key principles governing officer/member relationships.

9.126 Overview and scrutiny committees need properly resourced and effective support. Where the same officers are supporting both decision making bodies and overview and scrutiny committees there is the potential for conflict - overview and scrutiny committees will be questioning decision makers’ actions which will have been based on officer advice. This might discourage officers from pointing an overview and scrutiny committee to fruitful lines of enquiry. Local authorities will have to draw up procedures for resolving such conflicts of interest.

9.127 The Secretary of State does not believe that a formal separation of officer support is necessary. The Secretary of State recognises that, particularly in smaller local
authorities, it will not be possible to separate support in this way. Local authorities should, however, consider whether some separation of officer support is appropriate when considering how to support overview and scrutiny committees effectively.

9.128 Where a local authority does decide to separate officer support it should ensure that there is appropriate exchange of staff between those supporting overview and scrutiny and others and that all staff have rewarding career development opportunities.

9.129 Most councillors will be spending more time consulting with, and representing the views of, their communities. These roles will also need officer support. Local authorities will need to consider how to resource such support to ensure all councillors can effectively represent their communities.

9.130 Figure 8.1 in chapter 8 describes some examples of effective officer support for various members roles.
Supplementary guidance on parent governor representatives

9.131 The purpose of this supplementary guidance is to provide guidance on provision in respect of parent governor representatives in the Local Authorities (Alternative Arrangements) (England) Regulations 2001. The Regulations require local education authorities operating alternative arrangements to appoint parent governor representatives to overview and scrutiny committees and sub-committees dealing wholly or partly with education functions. They also cover the number of parent governor representatives to be elected, their speaking and voting rights and the procedure for their election.

9.132 This guidance replaces DfEE Circular 13/99: Parent governor representatives on local authority committees dealing with education.

Number of representatives on overview and scrutiny committees

9.133 Local education authorities operating executive arrangements must appoint at least two and not more than five parent governor representatives to each overview and scrutiny committee and sub-committee whose functions relate wholly or partly to any education functions. The purpose of this is to avoid a situation where individual representatives could feel isolated on a committee, but without swelling the number of members to the extent that the committee becomes unwieldy.

9.134 Where a local authority has more than one such committee or sub-committee, it may appoint the same representatives to all, different representatives to each, or adopt a mixture of these approaches.

9.135 Local authorities must comply with the political balance requirements in sections 15 to 17 of, and Schedule 1 to, the Local Government and Housing Act 1989 which provide in particular that:

- the majority of any committee or sub-committee where there are non-councillor members with voting rights should be preserved by appointing additional councillor members where necessary;
- subject to this, membership of all committees and sub-committees of a local authority should in total reflect the political balance of the local authority itself; and
- subject to these two requirements membership of any committees or sub-committees of a local authority should as closely as possible reflect the political balance of the local authority itself.

Elections

Eligibility to vote in elections

9.136 All parent governors at maintained
schools funded by a local education authority at the date of the election are eligible to vote in that local authority’s elections for parent governor representatives. Where a school is located in one local authority and funded by another, the parent governors are only eligible to vote in the elections of the local authority which funds the school of which they are governors.

9.137 In addition, if local education authorities decide to divide parent governor representatives into different categories, representing particular types of school or schools in a particular geographic area, such local authorities may also decide that only parent governors in the type of school or in schools in the geographic area selected will be eligible to vote. If they wish, these local authorities may decide not to split the electorate in this way, in the interest of administrative simplicity. They could, for example, hold one ballot under which the parent governors in each category receiving the most votes would be elected for those categories.

9.138 Local authorities should think carefully about the implications before deciding to divide parent governor representatives into different categories, as this could have the effect of limiting the pool of candidates for vacancies.

Eligibility to stand as a parent governor representative

9.139 To be eligible to stand, a parent governor must, at the date of the election, be a parent of a child at one of the local education authority’s schools or a parent of a child who is educated by the local education authority in some other way. The child does not have to be at the same school at which the candidate is a parent governor. Although not ideal, it does not matter if the person standing only has a very short time left to serve as a parent governor, or if all his or her children will have left school very soon after the election. The key point is that a candidate should be both a parent governor and a parent on the date of the election.

9.140 If a local education authority decides to divide parent governor representatives into different categories, representing particular types of school or schools in a particular geographic area, only eligible parent governors in the types of school or in schools in the geographic area selected will be eligible to stand for those particular vacancies.

9.141 It is open to any parent governor representative, on coming to the end of a term of office, to stand for re-election, provided the eligibility requirements are still met.

Persons not eligible to stand

9.142 Parent governors are not eligible to stand as parent governor representatives if they are:

- employees of the local authority;
- employees of schools maintained by the local education authority (including teachers, non-teaching and other staff); or
- councillors of any local authority.
9.143 A parent governor can only be a representative on an overview and scrutiny committee of one local education authority at a time.

Nomination procedures

9.144 Local education authorities must decide nomination procedures - for example, who can nominate a parent governor to stand, whether self-nomination is acceptable and whether proposers and seconders are required.

9.145 Local education authorities should set up a system for inviting and receiving nominations.

Duty to determine entitlement to vote or eligibility to stand

9.146 Local education authorities must determine any question that arises about a particular person's entitlement to vote or eligibility to stand. They will need to know who is eligible to vote (or will need to communicate with those who know) in order to announce an election. A local education authority is only required to determine eligibility to stand where questions arise about an individual case.

Terms of office

Deciding the standard term of office

9.147 Local education authorities must decide the term of office of parent governor representatives, within the range from a minimum of two to a maximum of four years, and when it should start. A local education authority must make this decision before it invites nominations to fill vacancies. The invitation itself must include the length of the term of office.

Deciding the term of office after an incomplete term

9.148 Where a parent governor representative does not complete the term of office, the local education authority may set the term of office of his/her successor as:

- the remainder of the original term;
- the normal full term; or
- the remainder of the original term added to the normal full term, provided this does not exceed four years.
9.149 For example, where a parent governor representative resigned as parent governor after six months of a two year term, the local education authority could set the successor’s term as:

- eighteen months (the remainder of the original term);
- two years (the normal term); or
- three and a half years (the remaining period and the normal term).

9.150 When the election is announced, the local education authority must explain the chosen option to those eligible to vote and stand.

**When a parent governor representative must stand down**

9.151 A parent governor representative must stand down from office if he or she:

- resigns as parent governor;
- is disqualified from being a parent governor;
- ceases to be a parent governor for any reason other than: coming to the end of the term of office; closure of the school at which the parent governorship is held; or a change in the constitution of the governing body of that school;
- is elected as a member of a local authority;
- is elected as a parent governor representative in another local authority where the term of office would overlap;
- fails to attend meetings of a committee or sub-committee of which he or she is a member for 6 months, without having apologies for absence accepted by that committee or sub-committee;
- becomes employed by the local authority; or
- becomes employed by a school maintained by the local education authority.

9.152 Local authorities should explain to parent governor representatives at the beginning of their term of office that they must inform the local authority of any circumstances which would disqualify them. Local authorities should make the same request of the schools at which the representatives are parent governors.

**The election process**

9.153 Local education authorities have wide discretion on the detailed arrangements for the elections. All local education authorities, however, must adopt the broad principles set out in the Regulations, explained below.
Responsibility for election arrangements

9.154 Local education authorities are responsible for making sure that all the arrangements for an election are made, whether it is contested or not. They can, however, choose to appoint another body, such as the local governor association, to conduct or oversee the election. The Secretary of State does not approve or issue a prescribed list of bodies which might conduct these ballots.

9.155 Local education authorities need not hold a ballot where an election is uncontested. If the election is contested, the ballot must be secret.

Timetable

9.156 Local authorities must follow statutory timescales when holding an election. A local authority must:

- announce or publish the result of the election within one week of the final date for casting votes and within three months of the announcement of the vacancy and invitation of nominations;
- appoint the parent governor representatives to the appropriate overview and scrutiny committees and sub-committees no more than one month after the announcement of the result;
- where the number of eligible candidates is the same as or less than the number of places available, appoint those candidates within four months of the invitation of nominations (that is, the three months within which representatives must in normal circumstances be elected plus the one month within which they must be appointed); and
- where there is a vacancy due to lack of an eligible candidate, re-announce the vacancy and make arrangements to hold another election (holding a ballot only if needed) within one year of the original vacancy having arisen, and at six-monthly intervals thereafter until the vacancy is filled.

9.157 An illustrative timetable, which includes these statutory timescales, is at Annex A.

Consultation on election procedures

9.158 There is no statutory requirement that local education authorities should consult on their election procedures. They should, however, consult at least a representative sample of parent governors if they propose to:

- introduce a variation on the one person one vote method (for example, allowing two votes to a parent governor of two schools);
- introduce a variation on the basic voting method of 'first past the post' (such as providing for a single transferable vote);
• introduce a voting mechanism to elect parent governor representatives for different types of school or schools in particular geographic areas;
• specify a term of office other than that originally agreed.

9.159 Local education authorities should also consult on any other matter relating to the election and terms of appointment of parent governor representatives on which there may be substantial differences of view locally.

Returning officer

9.160 The local authority must appoint one person as 'returning officer'. The 'returning officer' is not a Returning Officer in the statutory sense (as set out in the Representation of the People Acts). The role of this 'returning officer' is to ensure that the elections are fair and run in accordance with the procedures laid down in Regulations and by the authority. It is recommended that the 'returning officer' should monitor the elections, intervene where necessary, and make arrangements for the announcement or publication of the result; but should not otherwise have any responsibility in relation to the elections.

9.161 The 'returning officer' must ensure that the statutory requirements on announcing the election detailed below are complied with; investigate any complaints that they have not been complied with; and instruct the local education authority to issue a corrected announcement where appropriate.

9.162 The 'returning officer' may be an officer of the local authority, including the chief executive (head of paid service) or the director of education.

Publication of information about elections

9.163 Local authorities are required to take such steps as are reasonably practicable to inform those who can vote and stand for election that the elections are to take place. Local authorities can make their own judgements on what those steps might be. They would not be expected to compile an electoral roll.

9.164 Local authorities must inform those who are eligible about:

• the vacancy, including the term of office, and whether it is for a parent governor representative to represent a particular type of school or schools in a particular area;
• their entitlement to vote;
• the qualifications required of those who wish to stand for the office;
• a description of the role of a parent governor representative (see Annex B);
• the election; and
• the timetable and procedures for the election.
9.165 This will include providing details of the election procedures, including an explanation of how and when nominations should be made to the local authority; and a contact point for the returning officer.

9.166 Local education authorities may distribute election details to parent governors via their schools. If they choose to send the information direct to parent governors, they should compile an up-to-date list of parent governors.

9.167 Local authorities may decide the medium through which they make the election announcement.

[1] The definition of "maintained school" in section 20(7) of the School Standards and Framework Act 1998 means a community, foundation or voluntary school or a community or foundation special school.

[2] The definition of "parent" covers carers, but excludes institutions. Where a person other than the natural parent of the child is the carer, the definition still includes the natural parents (section 576(1) of the Education Act 1996, as amended).

[3] The definition of "school maintained by a local education authority" in section 142(1) of the School Standards and Framework Act 1998 means a community, foundation or voluntary school, a community, foundation or special school, a maintained nursery school or a pupil referral unit.
**Vacancies**

9.168 Local education authorities should fill vacancies as quickly as possible.

9.169 Vacancies must not be left open for longer than six months unless there are no candidates to fill them. In practice, this means that the announcement of an election, the balloting process and appointments must be completed within six months of the vacancy arising.

**Voting methods**

**Secret ballot**

9.170 All ballots must be secret. The method of voting is the local authority's choice, except that participants must have the opportunity of a postal vote. This is to ensure that, where other election processes are used (such as voting at a polling station, or by telephone or by other electronic means), some voters are not denied an opportunity to vote. A local authority may simply decide to hold a postal ballot.

**The ballot paper**

9.171 There are no specific requirements about what to include on the ballot paper. As a minimum, it should include the candidate's first name and surname and the name of the school at which the candidate is a parent governor. It can also include the names of the schools their children attend; and, if the election is for a representative of a particular type of school, or schools in a particular area, details of the type of school, or the area where the school in which the candidate is a parent governor is located. Alternatively, candidates can be advised to give these details in their election addresses.

9.172 The ballot paper must not include any reference to membership or other affiliation to any political party.

**Ballot method and postal voting**

9.173 If the ballot is by post only, local education authorities should state when ballot papers will be sent out and by what date they must be returned. They should allow a reasonable amount of time - a minimum of three weeks - for voters to consider election materials and return their voting forms.

9.174 If methods other than a postal ballot are used, the local education authority must include in the election material details of how to vote by post. It must also ensure that the timetable for
postal voting does not put those who choose this option at a disadvantage.

The election campaign

Election addresses

9.175 Candidates should be given an opportunity to explain to voters why they want to become parent governor representatives. This can be done in several ways. Perhaps the fairest and most obvious is for them to prepare a written election address, which would be included with the ballot paper. Local education authorities should ensure that all candidates have the same opportunity to put forward their election address.

9.176 Candidates should be responsible for preparing their own election addresses, and for meeting the costs of doing so; while local education authorities should be responsible for printing and distributing the election addresses to the electorate and for the related costs.

9.177 There are no statutory requirements about the conduct of candidates in the election campaign. Local education authorities are, however, strongly advised to ensure that campaigns to elect parent governor representatives are non-party political. Local education authorities should advise candidates that references during the election campaign to any candidate’s support for any political party are not appropriate and will be removed from any literature.

9.178 The 'returning officer' should take care to monitor election addresses and the campaigns.

Announcing or publishing the result

9.179 The results must be announced or published not more than one week after the election is held. How the result is made known is for the authority to decide. There is no requirement for every eligible voter to be notified individually.

Appointing the representatives to overview and scrutiny committees and sub-committees

9.180 A parent governor representative’s term of office must begin no more than a month after the election result is announced.

9.181 Local education authorities should provide induction and other appropriate support to the elected representative, including full details of committee meetings, as soon as possible after the result has been announced.

9.182 Parent governor representatives should be provided with a copy of the local
authority's constitution, which must include its standing orders, alternative arrangements and code of conduct for councillors.

Right to vote in overview and scrutiny committees and sub-committees to which appointed

9.183 In certain circumstances, members of overview and scrutiny committees will need to disclose their interest in a matter being discussed by that committee and, sometimes, withdraw from the meeting. The rules governing the participation and disclosure of interests will be set out in the members' code of conduct, which is being established under the Local Government Act 2000.

9.184 Under proposals recently published by the Government\(^4\), parent governor representatives on overview and scrutiny committees and sub-committees will be entitled to participate and, where necessary, vote on any question which relates to the local authority's education functions, unless they have a personal financial interest in the matter under discussion.

9.185 Local education authority officers should advise parent governor representatives on these and other matters in the same way as they advise council members.

Right to speak in overview and scrutiny committees and sub-committees

9.186 Parent governor representatives may participate in any discussion in a committee to which they have been appointed, whether or not they have voting rights on the topic under discussion.

Non-elected, non-voting members

9.187 The provision for elected parent governor representatives should not be seen as a substitute for existing arrangements for co-opting non-elected, non-voting members. The Secretary of State encourages the continuation of such arrangements, both for parents and other groups such as teachers or governors.

9.188 Should a co-opted non-voting parent wish to become a parent governor representative, that person must stand for office (provided he or she is eligible and there is a vacancy). The term of office would start afresh, with no account being taken of the term of office served as a co-opted non-voting member.

Transitional arrangements

9.189 Until a local education authority has adopted executive arrangements, or alternative arrangements under Part II of the \(\text{Local Government Act 2000}\), it must appoint parent governor representatives to any existing committees which deal wholly or partly with any education
functions. This does not include any committee whose decisions are subject to scrutiny by another committee which itself deals wholly or partly with education functions.

9.190 Parent governor representatives on such committees will have the same voting and speaking rights as are detailed above (paragraphs 3.140 to 3.143).

9.191 When a local education authority adopts alternative arrangements, the parent governor representatives elected under the Education (Parent Governor Representatives) Regulations 1999, now revoked, must be appointed to the equivalent overview and scrutiny committee or committees and, where relevant, sub-committees, for the rest of their term of office.

Membership of other committees

School organisation committees

9.192 Parent governor representatives do not have an automatic right to sit on School Organisation Committees, but they may become members if they satisfy the requirements for membership.

Appeal panels (for example, on admissions, exclusions)

9.193 Parent governor representatives should not sit on these panels, as the role of a panellist is not that of a representative. It is also considered that conflicts of interest may arise.

Annex A: Timetable for election and appointment of parent governor representatives

<table>
<thead>
<tr>
<th>Action</th>
<th>Statutory timescale</th>
<th>Timeline</th>
</tr>
</thead>
<tbody>
<tr>
<td>• decide: committee places; type of representation; election method</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• appointment of parent governor representatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• statutory timescale</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• announce vacancy; explain eligibility and election procedures;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• inviting nominations by deadline</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• check nominations</td>
<td>Weeks 5-6</td>
<td></td>
</tr>
<tr>
<td>• issue ballot papers</td>
<td>Week 6</td>
<td></td>
</tr>
<tr>
<td>• returning officer monitors campaign</td>
<td>Weeks 7-10</td>
<td></td>
</tr>
<tr>
<td>• hold poll, if not solely by post</td>
<td>Week 10</td>
<td></td>
</tr>
<tr>
<td>• count ballots</td>
<td>Week 10</td>
<td></td>
</tr>
<tr>
<td>• announce result</td>
<td>within one week of the election; within three months of the announcement of the vacancy</td>
<td>Week 10</td>
</tr>
<tr>
<td>• term of office of previous incumbent expires</td>
<td>Week 11</td>
<td></td>
</tr>
<tr>
<td>• appoint representatives</td>
<td>no more than one month after the announcement of the result</td>
<td>Week 12</td>
</tr>
<tr>
<td>• begin support of the representatives</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• explain committee rules/local government legislation</td>
<td></td>
<td></td>
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</tbody>
</table>
Annex B: Example of a description of the role of a parent governor representative (regulation 4(3)(b)(vi))

The role of a parent governor representative
The role of a parent governor representative is to:

• act as an apolitical voice for parents in the area; representing to the local education authority the main education issues which concern parents of pupils maintained by the authority
• liaise with the other parent governor representatives on their own local education authority
• attend and contribute to the committees to which they have been appointed
• establish good relations with other members and officers
• feed back the local education authority’s discussions of and decisions on education to the parents
• abide by the local education authority’s rules on committee procedure (Standing Orders)
• act with due propriety according to standards laid down for conduct in local government
Chapter 10: The Constitution

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". It replaces the existing chapter 10 issued on 26 October 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the process of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

This replacement chapter is issued on: 19 December 2000

Previous versions of this chapter were issued on: 26 October 2000

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

The constitution

10.1 Section 37(1) of the Act requires local authorities operating executive arrangements or alternative arrangements to prepare and keep up to date a document known as the "constitution". This document must include:

- such information as the Secretary of State may direct;
- a copy of the local authority’s standing orders;
- a copy of the local authority’s code of conduct for members (under section 51 of the Act); and
10.2 Section 37(2) requires that copies of the constitution must be available at the local authority's principal office for inspection at all reasonable hours. Section 37(3) requires that a local authority must supply a copy of its constitution to anyone who requests a copy and who pays such reasonable fee as determined by the local authority.

10.3 Local authorities should ensure that the constitution describes clearly and in a readily understandable form the way in which they conduct their business so that anyone who has dealings with the local authority on any matter can easily determine who is responsible for decisions in respect of those matters and so that they can also easily determine how best to make representations to the relevant person. The constitution should therefore, as far as possible, be written in plain language.

10.4 Local authorities should also ensure that copies of their constitution are widely and readily available, for example at their other main offices, on their website and in local libraries and it should be publicised from time to time through the local press. To ensure that members of minority ethnic communities and people with sensory disabilities are able to read the constitution local authorities should provide for it to be available in a range of formats (e.g. large print and Braille) and languages.

10.5 The Department of the Environment, Transport and the Regions, jointly with the LGA and IDeA, has published examples of new constitutions (in modular form) to accompany this guidance. These modular constitutions have been developed and drafted by a team of researchers and local government practitioners led by the Institute of Local Government Studies at the University of Birmingham and independently validated by professional local government lawyers.

10.6 The modular constitutions provide at least one example of all the provisions which local authorities should include in their constitution. Local authorities may either wish to use the modular constitutions directly with little or no amendment or they may wish to use them as the starting point for developing and drawing up their own constitution.

**Content of the constitution**

10.7 The Local Government Act 2000 (Constitutions) (England) Direction 2000 given under section 37(1)(a) of the Act sets out the broad themes to be included in a local authority's constitution. These are in addition to the requirements specified in that section. These themes follow the structure of the modular constitutions and are as follows:

- a summary and explanation of the purpose and content of the constitution;
- the roles of councillors and (where there is one) the elected mayor including:
i. election and terms of office of those people;

ii. the rights and duties of all councillors and the elected mayor (where there is one);

iii. the scheme of remuneration for members; and

iv. the code of conduct for members;

- the roles of the full council including:

  i. the functions and actions which are reserved to the full council; and

  ii. the different types of council meeting and the rules governing the proceedings of those meetings;

- the roles of the chairman of the council;
- the roles of overview and scrutiny committees including:

  i. the terms of reference and membership of all the local authority’s overview and scrutiny committees;

  ii. the general and specific roles of overview and scrutiny committees; and

  iii. rules governing the conduct and proceedings of overview and scrutiny committees;

- the roles of the executive and members of the executive including:

  i. the roles, functions, rights and duties of members of the executive;

  ii. the roles, functions, rights and duties of the elected mayor (where there is one) and deputy mayor (i.e. the elected mayor’s deputy);

  iii. the roles, functions, rights and duties of the council manager (where there is one);

  iv. the process for appointing and dismissing members of the executive;

  v. rules governing the proceedings of the executive; and

  vi. in the mayor and council manager form of executive the roles of committees
appointed by the elected mayor to advise the executive;

- the roles of ordinary committees and sub-committees of the local authority including:

  i. the membership, terms of reference and functions of the local authority's committees and sub-committees; and

  ii. rules governing the proceedings of the local authority's committees and sub-committees;

  iii. the roles of the Standards Committee and any parish council sub-committee of the Standards Committee including:

  iv. the membership of the Standards Committee (and any parish council sub-committee);

  v. the roles, functions, rights and duties of the Standards Committee (and any parish council sub-committee); and

  vi. rules governing the proceedings of the Standards Committee (and any parish council sub-committee);

- the roles of any area committees including:

  i. the membership, terms of reference and functions (if any) of area committees; and

  ii. rules governing the proceedings of area committees;

- the roles of any joint arrangements with or delegations to other local authorities including:

  i. the terms of reference and functions (if any) of joint arrangements with or delegations to other local authorities;

  ii. the membership of any joint committees and sub-committees; and

  iii. rules governing the proceedings of any joint committees and sub-committees;

- the roles of officers of the local authority including:
i. the management structure of the local authority;

ii. the functions of the head of paid service (chief executive), the monitoring officer and the chief finance officer;

iii. the code of conduct for officers;

iv. the arrangements for recruitment, appointment, dismissal and disciplinary action for officers;

v. details of delegations of functions to officers; and

vi. protocols for managing member/officer relations;

• principles for efficient, transparent and accountable decision making and access to information about decision making including procedure rules for decision making and access to information in respect of the full council (and its committees and sub-committees), the executive, overview and scrutiny committees and officers;

• rules and regulations governing finance, contractual and legal matters including:

  i. audit procedures;

  ii. financial rules;

  iii. contracts and procurement rules and procedures including authentication of documents; and

  iv. rules governing legal proceedings by and against the local authority;

• a description of the register of interests of members and co-opted members of the local authority, together with the procedures for publicising, maintaining and updating that register;

• rules and procedures for review and revision of the constitution; and

• provisions for suspension and interpretation of the constitutions and elements of it.

10.8 Those elements of the list above which relate only to an executive, an elected mayor (and her or his deputy) or a council manager will not apply to local authorities which adopt alternative arrangements.

10.9 The constitution should be drafted as a flexible document. For example, it should not be necessary to produce a revised constitution every time an ad-hoc committee or sub-committee is appointed to undertake a particular task. However, a constitution needs to be sufficiently detailed to allow anyone who has dealings with the local authority to use it, either by reference to it alone or by reference to it and other documents referred to in it (and for convenience available alongside it), to determine who is responsible for the matter with which they are
concerned. It should also include the statutory derivation of all the provisions of the constitution (i.e. which powers and duties they are made under) to allow interested parties to check the constitution against those requirements.
Chapter 11: Drawing up proposals

This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

Issue date: 26 October 2000.

Introduction

11.1 Section 25 of the Act places a duty on all principal local authorities (except district councils in two tier areas with a populations below 85,000 as estimated by the Registrar General on 30 June 1999 (small shire districts) see chapter 9) to draw up proposals for executive arrangements and to send a copy of those proposals to the Secretary of State. There is no requirement for the proposals to be approved by the Secretary of State.

11.2 Section 25(2) requires that before drawing up those proposals a local authority must take reasonable steps to consult local electors and other interested parties in the local authority’s area.

11.3 Section 31 of the Act provides that small shire districts must either draw up proposals for executive arrangements under section 25 or alternative arrangements of a type permitted under section 32.
11.4 Section 31(5) requires that in deciding whether to draw up proposals for executive or alternative arrangements those local authorities must consult local electors for, and other interested persons, in their area.

11.5 In consulting prior to drawing up proposals local authorities are required, through directions (see below), to provide an opportunity for the consultees to express a preference between the options for a new constitution available to the local authority.

11.6 Local authorities, other than small shire districts, will therefore need to invite their consultees to express a preference for one of the forms of executive available by virtue of section 11(2) to 11(5) of the Act. Small shire districts will need to put to their consultees not only these options but also the option of alternative arrangements (i.e. any type of alternative arrangements available in regulations made under section 32 or described in chapter 9 of this guidance as the Secretary of States intentions for such regulations) and invite them to express a preference from this expanded range of options.

11.7 By virtue of sections 34 and 35 of the Act and the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000:

- a valid petition signed by at least 5% of local electors can require a local authority to draw up proposals which include an elected mayor and hold a referendum on those proposals (see chapter 12); and
- the Secretary of State can, in circumstances set out in the Regulations, direct a local authority to draw up proposals for executive arrangements which involve any one of the forms of executive in or under section 11 of the Act and hold a referendum on those proposals (see chapter 13).

**Consultation**

11.8 Consultation under section 25(2) of the Act, section 31(5) of the Act and regulation 3 of the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000 (see below) will need to be comprehensive and inclusive if a local authority’s new constitution is genuinely to provide clear, accountable leadership with which local people can identify and which is responsive to their needs and aspirations. In small shire districts these statutory consultations should, as far as possible, be combined into a single consultation exercise. The following guidance applies equally to consultation in those local authorities as it does to any other local authorities unless the context requires otherwise.

11.9 The purpose of consulting on all the options available in or under the Act to a particular local authority is to determine the options which local people and other key local stakeholders prefer. Local authorities should not consult only on the basis of their preferred option.

11.10 The Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 requires that when consulting under section 25(2) about proposals for executive arrangements local authorities must:

- represent each of the forms of executive (available at that time in or under section 11) in a
• provide an opportunity for consultees to express a preference for any of those forms of executive;
• provide an opportunity for all local electors for, and other interested parties in, the local authority's area to respond to the consultation;
• use both qualitative and quantitative methods of consultation; and
• not include in the consultation under section 25(2) any consultation on additional forms of executive to be proposed under section 12 or any consultation on any application for approval of outline fall-back proposals which the local authority intends to make under section 28 of the Act.

11.11 Section 31(5) of the Act requires all small shire districts to consult on whether to draw up proposals for executive arrangements (under section 25 of the Act) or alternative arrangements (under section 31(5) of the Act).

11.12 If, following such consultation, a small shire district decides to draw up proposals for executive arrangements it will then be under the duty to consult in section 25(2) of the Act and will have to comply with the provisions of the Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 described above.

11.13 If, following such consultation, a small shire district decides to draw up proposals for alternative arrangements it will be required by regulation 3 of the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000 (see below) to consult local electors and other interested parties for the purpose of drawing up those proposals. The Local Government Act 2000 (Proposals for Alternative Arrangements) (England) Direction 2000 also requires that in consulting as required by regulation 3 of the Local Authorities (Proposals for Alternative Arrangements)(England) Regulations 2000 a small shire district must:

• if more than one type of alternative arrangements is available:

  i. describe and represent each of the available types of alternative arrangements in a fair and balanced way;

  ii. provide an opportunity for consultees to express a preference for any of those types of alternative arrangements; and

  iii. use a combination of qualitative and quantitative methods of consultation; and

• whether or not more than one type of alternative arrangements is available:

  ii. provide an opportunity for all local government electors for, and other interested parties in,
their area to respond; and

ii. not include in that consultation any consultation which they have determined to conduct for the purpose of making representations to the Secretary of State to make a particular type of alternative arrangements available in regulations under section 32 of the Act.

11.14 Therefore the Secretary of State recommends that small shire districts should include in their consultation under section 31(5) of the Act:

- such consultation as is necessary under section 25(2) of the Act to determine which of the forms of executive arrangements is preferred by consultees; and
- such consultation as is necessary under regulation 3 of the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000 to determine which of the types of alternative arrangements is preferred by consultees.

11.15 To avoid duplicating consultation to determine the form of constitution preferred by consultees and to consult effectively under section 31(5) of the Act, small shire districts will need (as part of their consultation under section 31(5)) to describe and represent each of the available forms of executive arrangements and each of the available types of alternative arrangements in a fair and balanced way. They will also need to ensure that all local electors for, and other interested parties in, their area have an opportunity to respond and to express a preference for any of those options. The Secretary of State also recommends that a combination of qualitative and quantitative methods of consultation should be used for this consultation.

11.16 The Local Government Act 2000 (Proposals for Alternative Arrangements) (England) Direction 2000 also ensures that small shire districts may include the arrangements described in chapter 9 as the Secretary of State’s intentions for regulations under section 32 in their consultation.

11.17 Local authorities should take all possible precautions to ensure that their consultation exercise is not perceived by the public and other local stakeholders as an exercise seeking to confirm a preordained decision. In particular they should ensure that any consultation exercise is not designed to lead respondents to any particular conclusion. Local authorities may find it helpful to involve an independent organisation in the design of their consultation exercise and/or in the analysis of the results.

11.18 Consultation on a new constitution should be conducted as a dialogue between a local authority and the communities it serves. Within this process the local authority needs to determine which option (i.e. which form of executive arrangements or type of alternative arrangements) consultees prefer and should consult on other elements of the constitution; for example, arrangements for overview and scrutiny, the role of area committees, etc. This may suggest a multi-stage approach to the consultation exercise although that is a matter for each local authority to decide for itself.
11.19 Where a local authority draws up proposals which include an elected mayor section 27 of the Act requires that it must also consult in drawing up outline fall-back proposals.

11.20 This consultation on fall-back proposals should be to determine what its communities preferred fall-back option (see chapter 13) would be in the event that a referendum rejects proposals for an elected mayor and could be incorporated into the later stages of consultation conducted under section 25(2).

11.21 Local authorities should consult all those with an interest in how the area is governed and how the local authority takes decisions when drawing up their proposals. This should include: the public, tenants, other public bodies, the private sector and the community and voluntary sectors. Local authorities may also wish to consult national representatives of local government or their regional or local offices, such as the LGA, SOLACE, ACSsS and CIPFA as well as the local authority’s employees and their representatives.

11.22 Consultation should make use of a variety of methods to ensure that all those with an interest have an opportunity to respond and participate. Local authorities should employ proactive as well as responsive methods of consultation and should be able to demonstrate that they have received views from a variety of interested parties including excluded and minority language communities. Where they have them local authorities should also make use of decentralised structures such as area committees and forums to consult local people.

11.23 When consulting on and drawing up proposals for certain aspects of their constitution local authorities should ensure that they do so in accordance with the legislation. For example, in the mayor and cabinet form of executive the arrangements must include provision allowing the elected mayor to determine the size and membership; and in all forms of executive arrangements it is for the executive to decide whether to delegate decision making in respect of functions which are the responsibility of the executive to area committees. Therefore if a local authority chooses to consult on such issues it should make clear who will have the power to make such decisions under executive arrangements involving a particular form of executive.

11.24 The Department of the Environment, Transport and the Regions and the Local Government Association have jointly published alongside this guidance New Council Constitutions: Consultation Guidelines for English Local Authorities which has been developed by a team of independent researchers.

11.25 Local authorities are encouraged to consider those guidelines and the LGA publication Lets talk about it... principles for consultation on local governance carefully, as well as the following good practice guidance for consultation more generally:

- Modern Local Government: Guidance on Enhancing Public Participation
- Listen Up/Effective Community Consultation
- Democratic Practice: a guide
- Involving the Public; and
- Made to measure

11.26 Many local authorities will have undertaken varying degrees of consultation on executive
arrangements prior to the duties in sections 25(2) and 31(5) coming into force. While it is for each local authority, on the basis of its own legal advice, to decide whether further consultation is needed, the Secretary of State considers that these local authorities may need to undertake further consultation following commencement of sections 25(2) and 31(5) and the coming into force of this guidance and the relevant directions.

11.27 Where a local authority has consulted on executive arrangements prior to commencement of Part II of the Act and its subordinate legislation, then the scope and scale of consultation undertaken after commencement can and should take account of the outcomes of that previous consultation providing that the consultation was conducted in accordance with directions made under Part II of the Act and this guidance.

11.28 In some local authorities, where previous consultation has been conducted in accordance with the principles in this guidance, depending on their legal advice local authorities may decide that no further consultation is necessary or that it is only necessary to consult further to confirm or build upon the results of previous consultation.

11.29 Local authorities should satisfy themselves that their consultation is sufficient to discharge the duties in sections 25(2) and 31(5) of the Act and regulation 3 of the Local Authorities (Proposals for Alternative Arrangement) Regulation 2000, thereby minimising the scope for challenge locally.

Proposals for executive arrangements

11.30 Section 25(3) requires that in drawing up proposals for executive arrangements a local authority must decide:

- which form the executive is to take; and
- the extent to which local choice functions (i.e. functions specified in regulations under section 13(3)(b)) are to be the responsibility of the executive.

11.31 Section 25(4) requires that in drawing up the proposals the local authority must consider the extent to which the proposals are 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 (i.e. the duty of best value).

11.32 Section 25(6) requires that proposals for executive arrangements must include:

- such details of the executive arrangements as the Secretary of State may direct;
- a timetable with respect to the implementation of the proposals; and
- details of any transitional arrangements which are necessary for the implementation of the proposals.
11.33 The Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 requires the proposals to include:

- a statement of which form of executive is proposed;
- a description of the roles of the executive including which functions specified under section 13(3)(b) are to be the responsibility of the executive under the proposed executive arrangements;
- a description of the roles of the full council under executive arrangements including which plans and strategies are to be subject to approval or adoption by the full council;
- a description of the arrangements for overview and scrutiny; and
- a description of such features of the proposed executive arrangements as the local authority may determine.

11.34 Where the proposals include a leader and cabinet form of executive the proposals should make clear whether the full council or the executive leader will appoint the other members of the executive. The proposals should also make clear the extent to which the full council and the executive leader will be responsible for determining the scheme of delegations for functions which are the responsibility of the executive.

11.35 When developing proposals for executive arrangements local authorities should ensure that measures for probity and high ethical standards are incorporated in a rigorous and fair way in accordance with the provisions in and under Part III of the Act.

11.36 Section 25(7) requires that the copy of the proposals sent to the Secretary of State must include a statement which describes:

- the steps which the local authority took to consult the local government electors for, and other interested parties in, the local authority’s area; and
- the outcome of that consultation and the extent to which that outcome is reflected in the proposals.

11.37 Section 27(1) requires that if the proposals for executive arrangements involve a form of executive which includes an elected mayor, the local authority must hold a referendum on their proposals and draw up an outline of proposals (outline fall-back proposals) for the arrangements which they intend to implement in the event that the referendum rejects the main proposals (see chapter 13). The referendum may not be held until at least 2 months after sending the proposals to the Secretary of State.

11.38 Section 27 also provides that the result of the referendum is binding if it approves the proposals they must be implemented in accordance with the timetable in the proposals and if it rejects the proposals they must not be implemented and the local authority must draw up and implement the fall back proposals (see chapter 13). The referendum result is determined by a simple majority of the votes cast.

11.39 Section 26 requires that if the proposals for executive arrangements involve a leader and
cabinet form of executive then the local authority must implement those proposals in accordance with the timetable included in those proposals.

11.40 Under section 29 a resolution of the local authority is required to bring the executive arrangements into operation. A local authority may not cease to operate executive arrangements after such a resolution has been passed unless it is a small shire district and provision under section 33(5) allows that local authority to operate alternative arrangements in the place of executive arrangements (see chapter 15). In addition, any local authority will be able to operate different executive arrangements including changing to executive arrangements which involve a different form of executive (see chapter 15).

11.41 If the proposals do not involve an elected mayor then the resolution should be to operate the executive arrangements as soon as reasonably practicable after sending the proposals to the Secretary of State taking account of any transitional arrangements included in the proposals.

11.42 The Secretary of State intends that regulations under section 41 of the Act will provide that an elected mayor takes up office on the fourth day after she or he is elected.

11.43 Therefore, if the proposals involve a form of executive which includes an elected mayor the resolution should be to operate the executive arrangements from the fourth day after the election of the elected mayor (i.e. when the elected mayor takes up office).

11.44 Section 29 also requires that as soon as possible after such a resolution a local authority must make copies of the executive arrangements available for inspection by the public and publish a notice in at least one local newspaper:

- stating that the local authority has adopted executive arrangements and the date on which they will start operating;
- describing the main features of the executive arrangements; and

stating that copies of the executive arrangements are available for inspection by the public at the local authority’s principal office (giving the address) at all reasonable times and free of charge.

11.45 This is only a statutory minimum publicity requirement. In practice local authorities should achieve this through making their constitution (which will necessarily include the executive arrangements and the context in which they operate) widely available to the public. Local authorities should further publicise their executive arrangements, for example on the local authority’s website, in other local publications and perhaps also through interviews with the local media.

**Proposals for alternative arrangements**

11.46 Section 31(6) of the Act requires that in drawing up proposals for alternative arrangements under section 31 small shire districts must consider the extent to which the
proposals if implemented are 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 (i.e. the duty of best value).

11.47 Section 31(7) provides a power for the Secretary of State to specify in regulations matters with which a local authority must comply when drawing up proposals under section 31.

11.48 The Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000 require a local authority which draws up proposals under section 31 to:

- take reasonable steps to consult local electors and other interested parties in the local authority's area for the purpose of drawing up those proposals;
- decide which type of alternative arrangements is to be included in the proposals;
- comply with any directions given by the Secretary of State for the purposes of the Regulations;
- include in their proposals for alternative arrangements:
  
  i. such details of the alternative arrangements as the Secretary of State may direct;
  
  ii. a timetable with respect to the implementation of the proposals; and
  
  iii. details of any transitional arrangements which are necessary for the implementation of the proposals;

- send a copy of the proposals to the Secretary of State and to include with that copy of the proposals a statement which describes:

  i. the steps which the local authority took to consult (both under section 31(5) of the Act and the Regulations) the local government electors for, and other interested parties in, the local authority’s area;
  
  ii. the outcome of that consultation and the extent to which that outcome is reflected in the proposals;
  
  iii. the reasons why the local authority considers that the alternative arrangements included in the proposals will be more suitable to circumstances in that local authority and its area than any form of executive arrangements; and

  iv. the reasons why the local authority considers that the alternative arrangements included in the proposals would be likely, if implemented, to ensure that decisions are taken in an efficient, transparent and accountable way; and
implement the proposals in accordance with the timetable included in the proposals.

11.49 The Local Government Act 2000 (Proposals for Alternative Arrangements) (England) Direction 2000 requires the proposals for alternative arrangements drawn up under section 31 to include:

- a statement of which type of alternative arrangements is proposed;
- a description of the roles of the full council under alternative arrangements;
- a description of the arrangements for overview and scrutiny;
- a description of the number of committees and sub-committees the local authority intends to establish under section 101 and 102 of the Local Government Act 1972 for the discharge of its functions and of the functions which will be delegated to those committees and sub-committees; and
- a description of such features of the proposed alternative arrangements as the local authority may determine.

11.50 When developing proposals for alternative arrangements local authorities should ensure that measures for probity and high ethical standards are incorporated in a rigorous and fair way in accordance with the provisions in and under Part III of the Act.

11.51 Under section 33 a resolution of the local authority is required to bring the alternative arrangements into operation. A local authority may not cease to operate alternative arrangements after such a resolution has been passed unless it operates executive arrangements in their place (see chapter 15).

11.52 The resolution under section 33 should be to operate the alternative arrangements as soon as reasonably practicable after sending the proposals to the Secretary of State taking account of any transitional arrangements included in the proposals.

11.53 Section 33 also requires that as soon as possible after such a resolution it must make copies of the alternative arrangements available for inspection by the public and publish a notice in at least one local newspaper:

- stating that the local authority has adopted alternative arrangements and the date on which they will start operating;
- describing the main features of the alternative arrangements; and
- stating that copies of the alternative arrangements are available for inspection by the public at the local authority's principal office (giving the address) at all reasonable times and free of charge.

11.54 This is only a statutory minimum publicity requirement. In practice local authorities should achieve this through making their constitution (which will necessarily include the alternative arrangements and the context in which they operate) widely available to the public.
Local authorities should further publicise their alternative arrangements, for example on the local authority’s website, in other local publications and perhaps also through interviews with the local media.

**Implementation timetable**

11.55 Under normal circumstances all local authorities should be operating executive arrangements or alternative arrangements as soon as reasonably practicable after their annual council meeting in May/June 2002. The Local Government Public Service Agreement\(^8\) included a target to "ensure that by December 2002 each council has adopted and put into operation a new constitution which is transparent, accountable and efficient". This target recognises that every local authority, whatever its circumstances, should achieve full operation of executive arrangements or alternative arrangements by the end of 2002.

11.56 All local authorities should at least have sent proposals (drawn up under either section 25 or section 31) to the Secretary of State by the end of June 2001. If the Secretary of State considers that a significant number of local authorities will not meet this timetable then he will consider imposing a deadline for local authorities to comply with section 25 using the powers in section 25(8).

11.57 Section 25(8) enables the Secretary of State, by order, to specify a date by which every local authority, or every local authority falling within a description specified in the order, must comply with the requirements of section 25.

11.58 Where the local authority has drawn up proposals for executive arrangements which involve a leader and cabinet form of arrangements or (for small shire districts) alternative arrangements the proposals should, subject to paragraph 11.59 below, be implemented as soon as reasonably practicable after sending the proposals to the Secretary of State.

11.59 Local authorities should not formally begin to operate executive arrangements until the Secretary of State has made the necessary secondary legislation under Part II of the Act and that legislation is in force. In particular local authorities will not be able to operate executive or alternative arrangements until all the necessary modifications to primary legislation have been made in orders under Section 47 of the Act. The Secretary of State intends that the necessary legislation will be made in early 2001.

11.60 Under normal circumstances, the following timescales should be followed for implementation of executive arrangements which involve an elected mayor:

- referendum to be held between two and six months after sending the proposals to the Secretary of State;
- mayoral election to be held after a referendum which approves proposals for an elected mayor in either the first week in the next May or the third week in the next October whichever is the sooner after the end of the period of three months beginning with the date of the referendum; and
- executive arrangements which include an elected mayor to come into operation when the elected mayor comes into office on the fourth day after the mayoral election.
11.61 If the result of the referendum is to reject the proposals which are the subject of the referendum then the local authority should consult on, draw up and implement the detailed fall back proposals as soon as reasonably practicable after the date of the referendum.

11.62 Figure 11.1 illustrates the timetable for implementation of executive or alternative arrangements on the basis of this guidance.

11.63 Where a local authority has received either a valid petition or direction from the Secretary of State requiring them to hold a referendum this guidance on timetables will not apply and they must instead comply with the timetable requirements of the regulations on petitions and directions (see chapters 12 and 13).

Figure 11.1: Implementation timetable for a new constitution on the basis of this guidance

11.64 Chapter 4 explained that the principal purpose of section 11(5) is to allow new forms of executive to be developed in the light of local authorities experience of operating executive arrangements. However, it is possible that some local authorities, either individually or as a group, may wish to put forward proposals to the Secretary of State for a new form of executive
shortly after the Act comes into force.

11.65 However, this should not delay any local authority from consulting on and drawing up, their proposals under section 25 of the Act in accordance with the timetable set out above.

11.66 If a local authority or group of local authorities does decide to develop another form of executive to propose to the Secretary of State under section 12 of the Act, the Secretary of State expects that that local authority (or those local authorities) will consult local electors for and other interested parties in, the local authority's area on such proposals. However by virtue of the Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 and Local Government Act 2000 (Proposals for Alternative Arrangements) (England) Direction 2000 such consultation cannot be included in the statutory consultations.

2. Local Government Association March 2000
3. DETR, October 1998
4. Audit Commission 1999
8. Spending review 2000: Prudent for a purpose, building opportunity and security for all: TSO Cm 4807

Additional Guidance

Chapter 11 of the Local Government Act 2000: Guidance to English Local Authorities gives guidance to councils about the drawing up, submission to the Secretary of State, and implementation of their proposals for new constitutions. Councils are currently considering the submission of their proposals in line with paragraph 11.56 of the guidance, which states that local authorities should at least have sent proposals to the Secretary of State by the end of June 2001. I am now writing to you:

A. to inform you that in the light of the [Elections Act 2001], and the circumstances certain councils are facing as a result of the foot and mouth outbreak, the Secretary of State is amending the guidance in paragraph 11.56;

B. to draw your attention to certain requirements as to the material which should be included in a submission to the Secretary of State;

C. to provide further guidance to that in paragraphs 11.58 and 11.59 of the guidance about the implementation of executive arrangements which involve a leader and cabinet or (for small shire districts) alternative arrangements; and

D. to let you know of the consequential amendments it is intended to make to The Local Authorities (Conduct of Referendums) (England) Regulations 2001 (SI 2001/1298) arising from the Elections Act 2001.

A. The amendment of guidance in paragraph 11.56

Paragraph 11.56 of the guidance states that local authorities should at least have sent proposals to the Secretary of State by the end of June 2001. All the necessary statutory
instruments and directions are in force to enable councils to meet this guideline. However, [the Elections Act 2001] has received Royal Assent today which postpones local elections from 3 May to 7 June. It is recognised that councils where elections are taking place might want their new administrations to have the opportunity to consider the proposals in draft before they are finalised. It is also recognised that some councils’ planned conduct of business, including for example the carrying out of face to face surveys and public meetings as part of their consultation process, is being disrupted as a result the foot and mouth outbreak.

Accordingly, the Secretary of State is today issuing in substitution for paragraph 11.56 in the guidance issued on 26 October 2000 the following revised guidance:

"The Secretary of State expects that under normal circumstances local authorities should at least have sent proposals (drawn up under either section 25 or section 31) to him by the end of June 2001. Where local authorities are holding elections on 7 June 2001, or where due to local circumstances they have found it necessary to cancel planned council or committee meetings, delay consultation, or have had their usual conduct of business disrupted, the Secretary of State recognises that it may not prove possible for the end of June guideline to be met. In such cases, local authorities should ensure that they send proposals to the Secretary of State by 14 September 2001. If the Secretary of State considers that a significant number of local authorities will not meet this timetable then he will consider imposing a deadline for local authorities to comply with section 25 using the powers in section 25(8)."

B. Requirements which should be included in proposals

Consultation is central to the drawing up by councils of their proposals for a new constitution. Section 25(7) of the Local Government Act 2000 provides that proposals submitted by councils to the Secretary of State must contain a statement setting out the steps local authorities took to consult their electors and other interested parties, the outcome of that consultation and how that outcome is reflected in the proposals.

The Secretary of State attaches importance to these statements on consultation. They are an important part of councils’ submissions to which the Secretary of State will have regard in order to decide whether or not to exercise his powers under Part III of, and Schedule 2 to, the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000, to direct a council to hold a referendum on a proposed new constitution. Accordingly, the Secretary of State issues further guidance under the Local Government Act 2000:

"During the two months beginning with the date on which councils submit their proposals to the Secretary of State, he will consider them having regard to Part III of, and Schedule 2 to, the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000, which set out the circumstances in which he may direct a referendum.

Should it appear to the Secretary of State that, in respect of any council, he is unlikely to be able to make a decision within the two month period on whether or not to exercise these powers, he will inform the council of this before the end of the two month period.

Councils’ statements, as required by the Local Government Act 2000, must set out the steps which councils have taken to consult, the outcome of that consultation and the extent to which that outcome is reflected in the proposals. In particular, councils should ensure that the
statement clearly explains how consultation responses have been taken into consideration in deciding the form of executive or alternative arrangements set out in their proposal."

C. Further guidance to that in paragraphs 11.58 and 11.59 on implementation

Paragraph 11.58 provides that where a local authority has drawn up proposals for executive arrangements which involve a leader and cabinet or (for small shire districts) alternative arrangements the proposals should, subject to paragraph 11.59, be implemented as soon as reasonably practicable after sending proposals to the Secretary of State. Paragraph 11.59 advises councils not formally to begin to operate new executive arrangements until the Secretary of State has made all the necessary modifications to primary legislation by orders under section 47 of the 2000 Act. The Secretary of State today issues the following further guidance which should be read alongside paragraphs 11.58 and 11.59.

"A phased approach to bringing into force the legislation needed to implement new constitutions has been followed. The immediate next phase is to make modification orders under section 47 of the LGA 2000. The orders tidy up the statute book to make sure that there are no inconsistencies or conflicts in legislation as a result of the provisions in Part II of the LGA 2000. The modifications will principally include provisions modifying the Local Government Act 1972, the Local Government and Housing Act 1989 and the Deregulation and Contracting out Act 1994, and references to committees and sub-committees in many miscellaneous Acts and Statutory Instruments.

It is expected to make around four orders, and it is the Secretary of State's firm intention to do this as soon as is reasonably practicable. It is expected to make and lay these orders during May and June 2001. On this basis, where councils have submitted proposals for such a new constitution in advance of the June 2001 guideline for submission, it will be open to them to begin operating their new constitution from June 2001 where they consider this is practicable given their local circumstances. In deciding when it is reasonably practicable to begin operating such a new constitution, councils should also have regard to the need for the Secretary of State, having received their proposal, to decide on whether or not to exercise his powers under Part III of, and Schedule 2 to, the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000. Unless the Secretary of State informs a council to the contrary, he intends to reach such a decision within two months of the date of the proposals being submitted."

D. Consequential amendments to the Conduct of Referendums Regulations

To take account of the change in the date of local elections it is intended to make, by order under the Elections Act 2001, minor consequential amendments to the Local Authorities (Conduct of Referendums) (England) Regulations 2001 ("the conduct of referendums regulations"). The intended amendments will ensure that councils' plans for referendums under Part II of the Local Government Act 2000 to be held shortly after 7 June are not disrupted. No consequential amendments are needed to ensure that any councils planning a referendum on 7 June can still go ahead and combine the poll with the local elections.

The amendments we intend will, for elections held on 7 June 2001 only, provide as follows:

- to reduce the period after the 7 June elections in which any planned referendum
must be combined with the elections (see regulation 14(1) of the conduct of referendums regulations) from 28 days to 14 days;

that where a referendum is planned with the period of 14 days after 7 June the local authority make continue to hold the referendum on that if, before the 10 April (the date of Royal Assent for the Elections Act 2001) either:

- the council has already given notice of the date of the referendum under regulation 4 of the conduct of referendums regulations, or
- the council has already determined to hold the referendum by all postal ballot under regulation 10(1) of the conduct of referendums regulations.

It is expected that the order will be made in the next week or so and to be in force on 30 April.

**General**

It is intended to include the substitute and further guidance set out above in the next revision of Chapter 11 of the guidance. Meanwhile, Chapter 11 should be read in conjunction with the guidance in this letter. If you have any queries arising from this letter, please contact Julian Lomas on 020 7944 4191 or Geth Williams on 020 7944 4273.
Chapter 12: Petitions

This replacement chapter forms part of the Local Government Act 2000: Guidance to English Local Authorities. It replaces the existing chapter 12 issued on 26 October 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (c.22) (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in maroon text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in Chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

This replacement chapter is issued on: 23 March 2001.

Previous versions of this chapter were issued on: 26 October 2000.

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

Petitions

12.1 Section 34 of the Act enables the Secretary of State to make regulations for or in connection with requiring a local authority which receives a petition which complies with the requirements in the regulations to hold a referendum on whether the local authority should operate executive arrangements of any form for which a referendum is required. Those Regulations are the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000.
12.2 In summary the Regulations require that where a local authority receives a petition for a referendum for an elected mayor signed by at least 5% of the local electorate, the local authority must hold a referendum on proposals for a form of executive arrangements in section 11 of the Act which includes an elected mayor. If the petition specifies the form of executive then the proposals put to the electorate must be for that form of executive.

Verification

Verification number

12.3 From 1 January 2002 Regulation 4 of the regulations requires the proper officer of each local authority to publish within the period of 14 days beginning with the 15 February the number that is equal to 5% of the local government electors for the local authority's area as shown in the register or registers having effect at that time.

12.4 From 2001, the proper officer must use the 5% figure published by her or him in that year for the purpose of verifying any petition submitted in the year beginning with 1st April immediately after the 5% figure has been published. However, if the number published in the following year is lower then, for a petition submitted between the date of publication of that figure and the 1st April period to which it applies, the proper officer shall use the lower number for verification of that petition.

12.5 Other than in the case of a county council the proper officer should be the electoral registration officer for the local authority. In the case of a county council the proper officer should be the monitoring officer of the local authority.

12.6 Regulation 5 of the Regulations requires the local authority to publish, in at least one newspaper circulating in the whole of its area, a notice that the proper officer has published the 5% figure, what the figure is and the period for which it is valid for the purposes of verifying a petition.

12.7 This is a minimum statutory requirement. Local authorities should further publicise the figure. In this respect, the Secretary of State recommends that the local authority should make full use of its website and local publications.

Verifying a petition

12.8 All petitions must be submitted either in person or by pre-paid post to any office of the local authority. Regulation 11 of the Regulations requires the proper officer to satisfy her-or himself as to whether the petition is valid as soon as reasonably practicable and in any event within 1 month of the date of receipt of the petition (the petition date). For a petition submitted prior to the publication of the first verification number the petition date is the date on which the verification number is published.

12.9 Regulation 10 of the Regulations requires that signatures on a petition must be
accompanied by the signatory’s name and address and the date on which she or he signed the petition (there is no requirement for a signature to be accompanied by the signatory’s number on the electoral register).

12.10 Regulation 9 of the Regulations requires that a signature may be disregarded for the purpose of determining the number of signatures on the petition if:

- the signatory is not on the electoral register for the local authority in question on the petition date;
- the information described in paragraph 12.9 above is not given or is illegible. However, that in itself does not invalidate the petition providing it is clear to whom the petition is addressed and the constitutional change sought;
- it is a duplicate of another signature on the petition;
- the signature is dated more than 12 months before the petition date. Signatures dated within that 12 month period may not be disregarded even if they are dated prior to the passing of the Act or the coming into force of the Regulations providing all the other requirements are met.

12.11 Constitutional change means: the form of executive arrangements requested by the petition. By virtue of regulation 3 of the Regulations that request can be for a referendum on a specified form of executive which includes an elected mayor or simply a request for an elected mayor (whether or not the form of executive is specified). In either case a valid petition triggers a referendum. Where a local authority is operating executive arrangements which involve a form of executive arrangements involving an elected mayor, a petition will only trigger a referendum where it is for executive arrangements which involve a different form of executive and which involve an elected mayor.

12.12 Regulation 10 of the Regulations also requires the petition to contain or be accompanied by the name and full address of the person to whom correspondence relating to the petition is to be sent (the petition organiser). The petition organiser is the person with whom the local authority and the proper officer will correspond regarding the petition and its validity.

12.13 A petition is not to be invalidated only by reason of failure to include the name and full address of the petition organiser providing it is clear to whom the petition is addressed and the constitutional changes sought.

12.14 If a local authority receives a petition which is not valid, for example because it falls just short of the requisite number of signatures, the local authority should consider whether to
proceed with a referendum because, for example, it considers that the petition represents a significant expression of public support for an elected mayor. In doing so the local authority should make clear that it is holding the referendum voluntarily under sections 25 to 27 of the Act.

Amalgamation of petitions

12.16 Regulation 8 of the Regulations requires that if a local authority has received a petition which is valid in all respects except that it does not have enough signatures and a second or subsequent petition is received, the proper officer must, as soon as reasonably practicable after receipt of the second or subsequent petition, amalgamate those petitions and for all purposes treat them as a single petition with a petition date which is the day on which the last constituent petition was received.

12.17 However, the proper officer may not amalgamate the petitions if they do not propose the same constitutional change unless she or he has obtained a statement in writing signed by each of the petition organisers of the constituent petitions signifying their agreement to the amalgamation. The proper officer must inform each of the petition organisers of the constituent petitions of the consequences of amalgamating the petitions.

12.18 Petitions must be taken to be proposing the same constitutional change if they specify the same proposed form of executive or do not specify the precise form of executive proposed.

12.19 If petitions which propose different constitutional changes are amalgamated then the amalgamated petition shall be treated as if it is proposing a constitutional change involving an unspecified form of executive which involves an elected mayor.

12.20 If two or more petitions are received on the same day then the Regulations provide that:

- the petition with the greatest number of signatures shall be treated as the first petition received;
- a petition that proposes the same constitutional change as the first petition shall be treated as the second petition received. If there is no such petition then the petition with the second greatest number of signatures shall be treated as the second petition received; and
- any other petitions shall be treated in order following the same principles.

12.21 In addition, the proper officer may accept a petition which has been amalgamated by the petition organisers before submission to the local authority. In this case the petition organisers must nominate a single petition organiser for the amalgamated petition. If the constituent petitions do not propose the same constitutional change the amalgamated petition must be accompanied by a statement signed by the petition organiser for the amalgamated petition which states that the petition is presented with the agreement of the petition organiser of each of the constituent petitions. The proper officer may not accept such a petition if it is not accompanied by such a statement.
Publicity and notification

12.22 Regulation 11 of the Regulations requires that as soon as reasonably practicable after the petition date, the proper officer must inform the petition organiser that the petition has been received and of the petition date. Where petitions are amalgamated the proper officer must notify the petition organiser of each of the constituent petitions that they have been amalgamated and of the new petition date and must continue to correspond with all the petition organisers.

12.23 All petitions, whether or not they are valid, must, for six years from the petition date, be made available for public inspection free of charge and at all reasonable times.

12.24 If the proper officer is satisfied that the petition is valid she or he must, within one month of the petition date, notify the petition organiser(s) and the Secretary of State:

- that the petition is valid; and
- that a referendum will be held.

12.25 Within the same period the local authority must publish a notice in at least one newspaper circulating in its area a statement:

- that a valid petition has been received;
- the constitutional change sought by the petition;
- the petition date;
- that the petition is available for public inspection at the local authority’s principal office free of charge and at all reasonable times;
- the address of the local authority’s principal office; and
- that a referendum will be held.

12.26 If the proper officer is satisfied that the petition is invalid she or he must, within one month of the petition date, inform the Secretary of State and petition organiser:

- that she or he has determined the petition to be invalid; and
- why it is invalid.

12.27 Within the same period the local authority must publish a notice in at least one newspaper circulating in its area a statement:

- that a petition has been received which the local authority has determined to be invalid;
- why it is invalid;
- the constitutional change sought by the petition;
• the petition date;
• that the petition is available for public inspection at the local authority's principal office free of charge and at all reasonable times; and
• the address of the local authority's principal office.

12.28 Where a petition is invalid only because it does not include enough valid signatures, the proper officer must also inform the petition organiser and the Secretary of State that the valid petition may be amalgamated with any subsequent petitions that are submitted to the local authority. The newspaper notice must also include a statement to this effect.

12.29 That statement should also include the following information:

• the conditions in regulation 8 of the Local Authorities (Referendums) (Petitions and Directions) Regulations 2000 relating to amalgamation of petitions; and
• the requirement that signatures on a petition must be dated no earlier than 12 months before the petition date which for an amalgamated petition is the date on which the last constituent petition is amalgamated.

12.30 These are only statutory minimum publicity requirements. The local authority should further publicise the statement in the newspaper notice (whether for a valid or invalid petition). In this respect, the Secretary of State recommends that the local authority should make full use of its website and other local publications.

12.31 The Regulations provide that a petition is not valid if it is submitted during the moratorium period (the period 48 months after a referendum).

12.32 If a petition is received either after a previous valid petition or after the date of a referendum to be held under Part II of the Act has been announced then the proper officer must, within one month of the petition date, inform the petition organiser and the Secretary of State that:

• the petition has been received and of the petition date; and
• no action is being taken as a result of the petition and why (including the petition date of earlier petitions and, if applicable, why the petitions cannot be amalgamated).

12.33 In both cases the proper officer must also inform the petition organiser that she or he may, within two months of the notification, request the Secretary of State to direct the local authority to hold a referendum on the basis of her or his petition.

12.34 By virtue of regulation 18 of, and Schedule 2 to, the Regulations and regulation 25, if in the Secretary of States opinion a local authority has not complied with certain of the requirements of the Regulations, he may either direct the local authority to hold a referendum based on the petition, or undertake any actions the local authority is required or permitted to
undertake by the Regulations if the local authority has not done so itself.

12.35 Where a petition is received and it proposes the same constitutional change as a direction already given by the Secretary of State, but before the local authority has given notice of the date of the referendum, the local authority must take no further action in relation to the petition except to notify the Secretary of State and the petition organiser of the receipt of the petition and that no further action is to be taken. The local authority must continue to act under the direction.

12.36 Where a petition is received and it does not propose the same constitutional change as a direction issued by the Secretary of State, but before the local authority has given notice of the date of the referendum, the proper officer must determine whether the petition is valid under Part II of the Regulations.

12.37 If the proper officer is satisfied that the petition is valid the direction issued by the Secretary of State must be treated as revoked under regulation 19 and she or he must notify the Secretary of State and the petition organiser of the date of her or his determination and include that notification in the notification required to be given in respect of a valid petition. The local authority must then act in consequence of the petition as it would for any other petition.

12.38 If the proper officer is satisfied that the petition is invalid she or he must within one month inform the Secretary of State and the petition organiser:

- that she or he has determined the petition to be invalid; and
- why it is invalid.

12.39 Where a petition is invalid the referendum must be held in consequence of the direction within six months of the date of the determination of the invalidity of that petition.

**Restrictions on publicity**

12.40 Regulation 15 of the Regulations also prohibits a local authority from incurring any expenditure to:

- publish material which appears designed to influence people in deciding whether or not to sign a petition;
- assist anyone else in publishing such material; or
- influence or assist others to influence people in deciding whether or not to sign a petition.

12.41 This restriction does not prevent the local authority from publishing factual information which is presented fairly.

12.42 The Secretary of State intends these provisions only to prevent a local authority from
incurring expenditure which is clearly intended to influence local electors whether or not to sign a petition. It is not intended to prevent a local authority from publishing factual details of, and explaining its, existing arrangements or from consulting in accordance with the guidance in chapter 11.

12.43 The Department of Environment Circular no. 20/88 the Code of Recommended Practice on Local Authority Publicity (including any amendments made to it) will continue to apply to the publicity activities of the local authority, in respect of campaigning for elections.

12.44 The provisions of the Code in these respects should be taken to apply to petition publicity restrictions as it does to referendum and election campaign publicity (see chapters 13 and 14).

Proposals and the referendum

12.45 Regulation 17 of the Regulations requires that, following receipt of a valid petition, the local authority must draw up and consult on proposals to be the subject of the referendum and draw up and consult on outline fall-back proposals. The proposals to be the subject of the referendum must include:

- such details of the executive arrangements as the Secretary of State may direct;
- a timetable with respect to implementation of the proposals; and
- details of any transitional arrangements which are necessary for the implementation of the proposals.

12.46 The Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 requires the proposals to include:

- a statement of which form of executive is proposed;
- a description of the roles of the executive including which functions specified under section 13(3)(b) are to be the responsibility of the executive under the proposed executive arrangements;
- a description of the roles of the full council under executive arrangements including which plans and strategies are to be subject to approval or adoption by the full council;
- a description of the arrangements for overview and scrutiny; and
- a description of such features of the proposed executive arrangements as the local authority may determine.

12.47 The Local Government Act 2000 (Proposals for Executive Arrangements) (England) Direction 2000 also requires that when consulting about proposals for executive arrangements following a petition local authorities must:

- where the petition does not specify the form of executive on which a referendum is
requested, represent each of the available forms of executive which include an elected mayor in a fair and balanced way, use a combination of qualitative and quantitative methods of consultation and provide an opportunity for consultees to express a preference for any of those forms of executive;

- provide an opportunity for all local electors for, and other interested parties in, the local authority area to respond to the consultation; and

- not include in that consultation any consultation on additional forms of executive to be proposed under section 12 or any consultation on any application for approval of outline fall-back proposals which the local authority intends to make under section 28 of the Act.

12.48 Unless the context requires otherwise, the guidance to local authorities on consultation in chapter 11 applies to consultation on drawing up proposals following a valid petition as it does to drawing up proposals under section 25. Where the form of executive to be included in the proposals is determined by the petition, local authorities will need only to undertake a relatively light touch consultation on the key features of the executive arrangements, such as arrangements for overview and scrutiny.

12.49 Chapter 13 provides guidance on the content of and consultation for outline and detailed fall-back proposals which, unless the context requires otherwise, applies to outline and detailed fall-back proposals drawn up following receipt of a valid petition as it does to drawing up of such proposals under section 27.

12.50 The referendum must be held no more than six months after the petition date or two months after regulations under section 45 came into force (whichever is the later) and the proposals must be sent to the Secretary of State not less than two months before the referendum i.e. the local authority must send the proposals and outline fall back proposals within four months of receiving the petition (see chapter 13 for a detailed description of the circumstances when the referendum does not have to be held within six months of the petition date).

12.51 Local authorities in receipt of a valid petition may find it helpful, given these timetable requirements, to start with one of the modular constitutions referred to in chapter 10.

12.52 Where a local authority receives a valid petition during its consultation on a new constitution (see chapter 11) it should draw as far as possible on any results of that consultation when undertaking the consultation required by the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000.

12.53 Where a local authority receives a valid petition after it has already sent proposals to the Secretary of State (either under section 25 or the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000) it will remain under the duty (in section 26 or, as the case may be, the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000) to implement the proposals in accordance with the timetable included in the proposals.

12.54 Where a local authority receives a valid petition after it has already adopted either executive or alternative arrangements the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 require that the fall-back proposals to be adopted if the
referendum rejects the main proposals must be the arrangements it is operating at the time of the referendum.

12.55 Subsections (2) and (3) of section 45 of the Act and regulation 24 of the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 provide that the result of a referendum arising from a petition is binding if it approves the proposals they must be implemented in accordance with the timetable in the proposals and if it rejects the proposals they must not be implemented and the local authority must consult on, draw up and implement detailed fall-back proposals (see Chapter 13).
Chapter 13: Referendums

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". It replaces the existing chapter 13 issued on 26 October 2000 which is superseded by this replacement chapter. This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 (c.22) (the Act) and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in maroon text with a 'tick' in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.47 to 5.56 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities' experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

This replacement chapter is issued on: 6 April 2001.

Previous versions of this chapter were issued on: 26 October 2000.

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

Introduction

13.1 This chapter deals with referendums under Part II of the Local Government Act 2000 ('the Act'), and in particular the role of the local authority in that process. It includes guidance on drawing up fall-back proposals (to be implemented if the referendum rejects the main proposals that are the subject of the referendum), and on all aspects of referendums initiated by a direction from the Secretary of State. It deals, where appropriate, with referendums that arise from valid petitions more detailed guidance on which can be found in chapter 12 of this
13.2 The powers and duties for holding a referendum lie with local authorities, but the 'hands-on' responsibility for conducting the referendum itself lies with the 'counting officer' for the referendum (see below) who accordingly has specific personal powers and duties. The DETR intends shortly to publish on its website separate specialist and technical guidance for counting officers, including a text illustrating the effect of the modifications set out in the Schedules to the Local Authorities (Conduct of Referendums) (England) Regulations 2001.

13.3 In this chapter: "referendum" means a referendum held under section 27 of the Act, or by virtue of regulations or an order made under any provision of Part II of the Act; "the Referendum Regulations" means the Local Authorities (Conduct of Referendums) (England) Regulations 2001; "the Petitions and Directions Regulations" means the Local Authorities (Referendums) (Petitions and Directions) (England) Regulations 2000 (SI No. 2000/2852), as amended; "the Fall-back Proposals Direction" means the Local Government Act 2000 (Fall-back Proposals) (England) Direction 2001; and "the Referendum Rules" means the Local Elections (Principal Areas) Rules 1986 (SI No. 1986/2214), as modified for referendums under the Act by the Referendum Regulations.

13.4 The Political Parties, Elections and Referendums Act 2000 establishes the Electoral Commission, which is empowered to review and report on certain electoral and referendum matters. Once the arrangements for the Electoral Commission are fully in place - which will be on 1 July 2001 - the Secretary of State intends to seek its views on the Referendum Regulations and, in accordance with the commitments given to Parliament during the passage of the Local Government Bill (that gave rise to the Act), to consider any recommendations the Commission may make.

13.5 From 1 July 2001, before making any further regulations on referendums under the Act, the Secretary of State must consult the Electoral Commission. In commenting on the referendum question, the Electoral Commission may only comment on its intelligibility. In addition, the Secretary of State may only make provision in connection with limitation of expenditure that differs from the Electoral Commission's recommendations if he lays before Parliament a report explaining why.

When will a referendum be required?

13.6 A local authority must hold a referendum on proposals for executive arrangements where:

- following consultation, the authority draws up proposals that involve a form of executive for which a referendum is required (i.e. that includes an elected mayor);
- the authority receives a valid petition for a referendum on proposals that involve a form of executive that includes an elected mayor (see chapter 12); or
- the authority is required by a direction given by the Secretary of State to hold a referendum on proposals that involve any of the forms of executive provided for in or under the Act (see below).
13.7 As explained in chapter 15, referendums must also take place where:

- a local authority draws up proposals to change to different executive arrangements and either the existing or proposed executive arrangements (or both, for example proposals to move from mayor and cabinet arrangements to mayor and council manager arrangements, or vice versa) include a form of executive for which a referendum is required;
- a small shire district council draws up proposals to change from executive arrangements to alternative arrangements and the existing executive arrangements include a form of executive for which a referendum is required; or
- a local authority draws up proposals to change from alternative arrangements to executive arrangements and the proposed executive arrangements include a form of executive for which a referendum is required.

13.8 Section 45(1) of the Act provides that a local authority may not hold more than one referendum under Part II of the Act in any five year period.

Setting a date for the referendum

13.9 When choosing the date on which to hold a referendum, a local authority should consult the returning officer who normally organises local elections on its behalf, and take into account any advice received from her or him.

13.10 In all cases, section 27(6) of the Act and equivalent provisions in the Petitions and Directions Regulations and Regulations made under section 30 or 33 of the Act specify that a referendum may not be held before the end of the period of two months beginning with the date on which proposals are sent to the Secretary of State.

13.11 The Petitions and Directions Regulations provide that in normal circumstances a local authority must send proposals to the Secretary of State within four months of receiving a valid petition or a direction and the referendum must be held within six months of receiving such a petition or direction. Those Regulations make exceptions to these timescales where the six month period expires within a period of 28 days either before or after the date of an election specified in paragraph 13.17, as follows:

- if the six months from the date of the petition or direction expires in the 28 days before such an election, the referendum may be combined with that election (see paragraph 13.19); or
- if the six months expires in the 28 days after such an election (see paragraph 13.18), the referendum may be held within a period of seven days beginning with the twenty-ninth day after the election.

13.12 In the case of either of the exceptions set out in paragraph 13.11, the proposals must
still be sent to the Secretary of State at least two months before the date of the referendum.

**Maximising turnout**

13.13 Local authorities should take all reasonable steps to maximise turnout at local referendums. The research report *Turnout at Local Government Elections: Influences on levels of voter registration and electoral participation* provides useful information about local authority practices and initiatives, including a check-list of ideas for improving participation at local elections. As part of ongoing consultation with local communities, local authorities should ensure that, as far as possible, there are no barriers of conscience (for example religious festivals) to voting in referendums, in particular on the place, the day or in the period envisaged for the ballot.

13.14 The Referendum Regulations apply (with appropriate modifications) those provisions of the [Representation of the People Act 2000](https://www.legislation.gov.uk) and the Representation of the People (England and Wales) Regulations 2001 that enable postal votes on demand.

13.15 Under the [Representation of the People Act 2000](https://www.legislation.gov.uk), pilots of electoral innovations were conducted in a number of local elections in May 2000. Evaluations of these pilots suggest that ballots conducted wholly by post significantly improved levels of turnout. Regulation 10(1) of the Referendum Regulations therefore provides that a local authority may determine that its referendum will be conducted entirely by postal ballot (an 'all-postal' referendum). A local authority may not make such a determination if the referendum is already required to be combined with another poll (see paragraph 13.17), unless that poll is also for a referendum that is to be held by all-postal ballot.

13.16 Local authorities should, wherever possible, ensure that referendums are not held at times when participation in the electoral process is likely to be low (e.g. around public holidays). In particular, they will need to ensure that referendums are not to be held when sections of the electorate may be deterred from voting (e.g. during religious festivals). Local authorities should, as far as possible, time a referendum under the Act so that the poll would be combined with other polls.

**Combination of polls**

13.17 Regulation 14 of the Referendum Regulations provides that where a referendum is otherwise planned for a date within 28 days either side of another specified poll (or polls) - 'the restriction period' - the referendum must be combined with that other poll (or polls). To the extent that they are conducted in the area of the local authority in respect of which the referendum is to be held, the 'specified polls' are:

- an ordinary local election (not a by-election or parish election);
- a UK parliamentary General Election
- a UK parliamentary by-election;
- a European Parliamentary General Election;
- a European Parliamentary by-election;
• an ordinary election of the Greater London Authority;
• a by-election for the Mayor of London; or
• in a two-tier area, a referendum in the other tier of that area that has already been publicly announced (see paragraph 13.35).

13.18 Combination of polls is not required where:

• in relation to any of the second, third, fifth or seventh of the elections listed above, the date for the local authority’s referendum is publicly announced before the date of that election is announced, and the dates are not the same;
• in relation to any of the second, third, fifth or seventh of the elections listed above, the local authority have made a determination to hold an all-postal referendum (see above) before the date of that election is announced; or
• by virtue of regulation 14(5) of the Referendum Regulations and 16 or 21 of the Petitions and Directions Regulations, a local authority have received a valid petition or a direction for a referendum, and the six month deadline expires in the period of 28 days after the date of an election listed above (see paragraph 13.11).

13.19 A referendum poll may be combined with any of the polls listed in paragraph 13.17 where, by virtue of regulation 14 of the Referendum Regulations and 16 or 21 of the Petitions and Directions Regulations, a local authority have received a valid petition or a direction for a referendum, and the six month deadline expires in the period of 28 days before the date of that election (see paragraph 13.11).

13.20 A referendum poll may also be combined with a by-election to fill a vacancy in a principal local authority in the area, or a by-election to fill a Greater London Assembly constituency vacancy in the area, if:

• where the referendum is being held in compliance with a direction of the Secretary of State, she or he so determines; or
• in any other case, the local authority holding the referendum so determines.

13.21 Where a decision is taken to combine polls in any of the circumstances in paragraph 13.20, that decision must be communicated in writing by the decision-maker to all local authorities responsible for an election or referendum involved in the combination.

13.22 At least 14 days before giving public notice of a referendum (see paragraph 13.35), the proper officer of a county council or a district council in the area of a county council must give written notice of the intention to do so and the date for the referendum to the proper officers of all other principal local authorities in the area of the county council.

13.23 The purpose of this notice is to ensure that other relevant local authorities are made fully aware of all possible opportunities for combining polls. Accordingly, a proper officer in receipt
of such notice must, if her or his own local authority is considering holding a referendum, consider the potential for combining the referendums, and reply within seven days of receipt, indicating whether or not her or his local authority wish to combine polls with the local authority whose proper officer sent the notice.

The counting officer

13.24 Unless the referendum is combined with another poll, the person who will be responsible for exercising functions in relation to the conduct of a referendum for the local authority (referred to as the ‘counting officer’) must be the person who is the returning officer for elections in that local authority’s area.

13.25 By virtue of regulation 15(5) of the Referendum Regulations, where a referendum is to be combined with an election poll, certain functions in relation to the referendum shall instead be discharged by the returning officer for the election (or, as the case may be, local or constituency returning officer for a European Parliamentary election or Greater London Authority election respectively) in the relevant area.

13.26 By virtue of regulation 17(2) of the Referendum Regulations, where a referendum is combined with another referendum, responsibility for the discharge of certain functions in relation to both referendums shall be discharged by such one of the counting officers as may be agreed between them.

13.27 As is the case for returning officers at local elections, a local authority must re-imburse a counting officer for all reasonable expenses incurred by her or him in relation to the proper conduct of a referendum.

The referendum question

13.28 In the consultation paper *The Local Government Bill: The Conduct of Referendums and Elections for Directly Elected Mayors* the Secretary of State sought views on the wording of the proposition to be put in a referendum. In light of the responses to that consultation, regulation 3 of, and Part I of Schedule 1 to, the Referendum Regulations specify the precise form of question to be asked where a referendum under Part II of the Act is required in any of the circumstances described in paragraph 13.6.

13.29 For a referendum on proposals that involve a mayor and cabinet form of executive, the question must be:

"Are you in favour of the proposal for [insert name of local authority] to be run in a new way, which includes a mayor, who will be elected by the voters of that [insert "borough", "city", "county" or "district", as appropriate], to be in charge of the Council's services and to lead [insert name of local authority] and the community which it serves?"

13.30 For a referendum on proposals that involve a mayor and council manager form of
executive, the question must be:

"Are you in favour of the proposal for [insert name of local authority] to be run in a new way, which includes a mayor, who will be elected by the voters of that [insert "borough", "city", "county" or "district", as appropriate], to lead [insert name of local authority] and the community which it serves?"

13.31 For a referendum taking place in consequence of a direction from the Secretary of State on proposals that involve a leader and cabinet form of executive, the question must be:

"Are you in favour of the proposal for [insert name of local authority area] to be run in a new way, which includes a councillor, who will be elected by the councillors of [insert name of local authority], to lead the Council and the community which it serves?"

13.32 For a referendum required in any of the circumstances described in paragraph 13.7, these questions must also be used where a local authority that is not operating executive arrangements that involve an elected mayor proposes to adopt executive arrangements that involve an elected mayor, or where the Secretary of State has directed such a local authority to hold a referendum on proposals that involve any of the forms of executive currently referred to in section 11 of the Act.

13.33 Further questions will need to be prescribed for referendums taking place where a local authority that is operating executive arrangements involving an elected mayor proposes to change to either executive arrangements that do not involve an elected mayor, to alternative arrangements, or to executive arrangements that involve a different form of executive involving an elected mayor. However, as these circumstances cannot arise for at least another five years (see section 45(1) of the Act), the Secretary of State intends to consult the Electoral Commission before amending the Referendum Regulations to include such questions. In addition, should new forms of executive for which a referendum is required be prescribed by the Secretary of State under section 11(5) of the Act, the Secretary of State intends to consult the Electoral Commission and subsequently, in the light of the Commission's recommendations, to amend the Referendum Regulations.

13.34 A local authority must not edit or alter the wording of the relevant referendum question, as prescribed in Part I of Schedule 1 to the Referendum Regulations, in any way other than by the insertion of the appropriate information in the places indicated by square brackets.

1 DETR, April 2000

2 The evaluation reports sent to the Home Office by the local authorities that ran the pilots can be viewed at www.homeoffice.gov.uk/ccpd/cnu/evalcont.htm
Notification and publicity

Publicising the proposals and the referendum

13.35 Regulation 4(1) of the Referendum Regulations requires the proper officer of a local authority to publish the following information in at least one newspaper circulating in the local authority's area, as soon as reasonably practical after the local authority has sent its proposals to the Secretary of State:

- a statement that proposals have been sent to the Secretary of State;
- a description of the main features of the proposals and of the outline fall-back proposals;
- notice that a referendum will be held, the date on which it will be held, and the question to be asked in the referendum;
- where the authority have made a determination to hold an all-postal referendum (see paragraph 13.15), a statement that the votes in the referendum may be cast only by postal ballot, or, where no such determination has been made, that the referendum will be conducted in accordance with procedures similar to those used at local government elections;
- a statement of the referendum expenses limit that will apply in relation to the referendum (see paragraph 13.52), and of the number of local government electors by reference to which that limit has been calculated;
- a statement of the address and times at which a copy of the proposals, and of the local authority's outline fall-back proposals, may be inspected (see paragraph 13.39);
- a description of the procedures for obtaining a copy of the proposals and outline fall-back proposals; and
- where appropriate, a statement that the referendum poll will be taken with another poll or polls (including details of that other poll or polls).

13.36 If this notice is published 56 days or more before the date of the referendum, the proper officer must publish a further notice, containing the same information, updated as necessary. That further notice must be published in the same newspaper(s) as the original notice, between 55 and 28 days before the date of the referendum.

13.37 Local authorities should in practice combine the public notice detailed above with the notice of referendum required to be published by the counting officer under the Referendum Rules (which notice contains additional information about applying for postal and proxy votes).

13.38 Under rule 1 of the Referendum Rules, the counting officer's notice of the referendum must be published not later than the twenty-fifth day before the date of the referendum. For the purpose of publishing the counting officer's notice, the following days are disregarded:

- a Saturday or Sunday;
- Christmas Eve, Christmas Day, Maundy Thursday, Good Friday or a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in England; and
• any day appointed as a day of public thanksgiving or mourning.

13.39 A copy of both the proposals to be the subject of the referendum and the outline fall-back proposals must be available for inspection at the address and times specified in the notice at all reasonable hours and free of charge. Sufficient copies must be made available for those who wish to obtain them.

13.40 In publicising proposals, local authorities should ensure that the information is made widely available. In addition to the newspaper notice described in paragraph 13.35 and making the proposals available at its principal office, a local authority should consider carefully other methods by which they might inform the public about the proposals (for example leaflets, displays in shopping centres etc., roadshows, and information in electronic kiosks and on websites).

13.41 Regulation 4(7) of the Referendum Regulations permits the local authority to include in the notice any other factual information relating to the proposals, the outline fall-back proposals, or the referendum itself, so long as such information is presented fairly.

13.42 In order to be presented fairly, local authorities will need to ensure that information should:

• if it concerns the proposals sent to the Secretary of State, provide accurate factual information, presented in an even-handed manner, about the main characteristics of the proposals, the existing decision making system, and the outline fall-back proposals;
• not be capable of being perceived as seeking to influence support for, or opposition to, the referendum proposition; and
• not seek to associate support for, or opposition to, the proposals with any individual or group.

13.43 As always, local authorities must have regard to the guidance given in the Code of Recommended Practice on Local Authority Publicity (see paragraph 13.45) and must also take into account the specific restrictions on publicity activities which apply during the final 28 days before the date of the referendum (see paragraphs 13.48 and 13.49).

Restrictions on local authority publicity activity during the referendum period

13.44 The referendum period means the period:

• beginning on the later of;

  i. the date the Referendum Regulations come into force; or
ii. the date the local authority sends to the Secretary of State the proposals to be the subject of the referendum; and

- ending on the date of the referendum.

13.45 During the referendum period, Department of Environment Circular no. 20/88 - the "Code of Recommended Practice on Local Authority Publicity" - will continue to apply (including any amendments made to it) to the publicity activities of the local authority.

13.46 In particular, the Code states that:

"local authorities, like other public authorities, should not use public funds to mount publicity campaigns whose primary purpose is to persuade the public to hold a particular view on a question of policy".

13.47 In the referendum period, local authorities should take care not to issue or publish material which deals with controversial issues, or matters which might reasonably be thought to affect public opinion in relation to the referendum or the local authority itself. In particular, local authorities should ensure that any publicity about a referendum either prior to or during the referendum period is factually accurate and objective. Publicity should not be capable of being perceived as seeking to influence public support for, or opposition to, the referendum proposals. This does not affect the responsibility of a local authority to publish information raising awareness of the holding of the poll at the referendum and encouraging participation (see paragraph 13.48).

13.48 In the period of 28 days ending with the date of the referendum, regulation 5 of the Referendum Regulations places further restrictions on the ability of local authorities to produce material that relates to the referendum. In particular the Referendum Regulations do not permit any material that deals with any of the issues raised by the referendum - or that expresses support for, or opposition to, a particular answer to the referendum question - to be published by or on behalf of the local authority in the 28 day period, with the following exceptions:

- material made available to persons in response to specific requests for information, or to persons specifically seeking access to it. Such material may be provided only to the individual or organisation requesting it. Therefore, for example, local authorities could not respond to a request to provide material to all householders;
- information relating to the holding of the poll at the referendum and encouraging participation. A local authority may produce material informing people how, where and when they may vote in the referendum, and encouraging them to exercise their democratic rights. This information must not appear to be designed to persuade people to vote in any particular way; and
- the publication of press notices containing factual information, where the sole purpose of publication is to refute or correct any inaccuracy in material published by anyone other than the local authority.
13.49 During the final 28 days before the referendum, public debate on referendum issues should, as far as possible, be conducted by individuals and groups in the political arena, without any further input from the local authority.

13.50 The provisions in regulations and this guidance do not affect the ability of individual councillors, or groups of councillors, actively to campaign for any particular referendum outcome. The restrictions on publicity activity apply only to expenditure and material produced by the local authority, and not to the activities of councillors as individuals, or of party groups or campaigning organisations. Such activity is subject to separate regulation (see "Campaign activity and limits on campaign expenditure" below).

**Campaign activity and limits on campaign expenditure**

13.51 In the consultation paper *The Local Government Bill: The Conduct of Referendums and Elections for Directly Elected Mayors*, the Secretary of State sought views on the expenditure limits which would apply to campaign groups, individuals and political parties in relation to the referendum and during the referendum period.

13.52 In light of the responses to this consultation, regulation 6(1) of the Referendum Regulations specifies a referendum expenses limit that is the total of £2,000, plus 5p per elector on the relevant register of local government electors. That limit applies to any expenses incurred by or on behalf of an individual or body during the referendum period for the purpose of promoting or securing a particular result in the referendum. The definition of the 'relevant register' is in regulation 6(1) and due to the introduction of rolling registration depends on the date on which the proposals are sent to the Secretary of State.

13.53 Schedule 2 to the Referendum Regulations specifies that referendum expenses include the following, to the extent that they relate to the referendum:

- advertising of any nature (whatever the medium used);
- unsolicited material addressed to electors (whether addressed to them by name or intended for delivery to households within any particular area or areas);
- any material which deals with any of the issues raised by the referendum, or argues for or against a particular answer to the referendum question;
- market research or canvassing conducted for the purpose of ascertaining voting intentions;
- the provision of any services or facilities in connection with press conferences or other dealings with the media;
- transport (by any means) of persons to any place or places with a view to obtaining publicity in connection with a referendum campaign; or
- rallies and other events, including public meetings organised so as to obtain publicity in connection with a referendum campaign or for other purposes connected with a referendum campaign.
13.54 Notional referendum expenses also count against the expenses limit, unless the notional expenses amount to £200 or less in value. ‘Notional expenses’ means the provision for referendum purposes of property, services, or facilities, to any individual or body, either free of charge or at a discount of more than 10% of the commercial rate for such provision. Notional expenses are assessed as either the commercial rate for the provision, or, as the case may be, the difference between the expenses actually incurred and the commercial rate.

13.55 Where any referendum expenses are incurred in excess of the referendum expenses limit, a person who knew or reasonably ought to have known that that limit would be exceeded, or who, without reasonable excuse, authorises another person to exceed that limit, is guilty of a criminal offence. The penalties for such an offence are set out in regulation 6(6) of the Referendum Regulations.

The result of the referendum

13.56 Subsections (2) and (3) of section 45 and section 27 (and equivalent provision in the Petitions and Directions Regulations and Regulations made under section 30 or 33 of the Act) provide that the result of any referendum held by virtue of any provision in or under Part II of the Act is binding - if it approves the proposals they must be implemented and if it rejects the proposals they must not be implemented and the local authority must consult on, draw up and implement detailed fall-back proposals (see below).

Questioning a referendum result

The referendum petition

13.57 Regulation 19(1) of the Referendum Regulations provides that a referendum under Part II of the Local Government Act 2000 may be questioned by petition ("referendum petition"):

- on the ground that the result of the referendum was not in accordance with the votes cast;
- on the ground that the referendum was void due to corrupt or illegal practices (as defined in the Representation of the People Act 1983, as modified for referendums by the Referendum Regulations);
- on the ground that the referendum was void due to general corruption (as defined in section 164 of the Representation of the People Act 1983, as modified for referendums by the Referendum Regulations); or
- on the ground that a payment of money or other reward has been made or promised since the referendum in pursuance of a corrupt or illegal practice (as defined in the Representation of the People Act 1983, as modified for referendums by the Referendum Regulations).
13.58 The respondent to any referendum petition will be the counting officer responsible for the referendum.

13.59 A referendum petition based on any of the first three grounds listed above must be presented within 21 days after the date of the referendum.

13.60 A referendum petition on the fourth ground listed above may only be brought with leave of the High Court. Application for such leave must be made to the High Court within 28 days of the alleged payment or promise. Regulation 19(5) provides that at least seven days before such application for leave is made, notice of the application must be given to the respondent, the Director of Public Prosecutions, and the election petitions office of the High Court. Notice of the intended application must also be published in at least one newspaper circulating in the area for which the referendum was held, at least 7 days before the application is made.

Immediate consequences of referendum petition

13.61 Where a referendum petition is brought, and the proposals were approved by the referendum and were for executive arrangements which involve a leader and cabinet form of executive:

- if the local authority has not yet formally adopted the new executive arrangements by resolution under section 29 of the Act, it should not take any further action in consequence of the referendum pending the determination of the petition; or
- if the local authority has already formally adopted the new executive arrangements by resolution under section 29 of the Act, it should continue with those arrangements.

13.62 Where a referendum petition is brought, and the main proposals were approved by the referendum and were for a form of executive arrangements which include a directly elected mayor:

- if a mayor has not yet been elected in consequence of the referendum, the local authority should not take any further action in consequence of the referendum pending the determination of the petition; or
- if a mayor has been elected in consequence of the referendum, she or he continues in office.

13.63 Where a referendum petition is brought, and the main proposals were rejected by the referendum:

- if the local authority’s outline fall-back proposals are based on the executive or alternative arrangements it was operating at the date of the referendum, it shall continue to operate those arrangements; otherwise
- if the local authority has not yet formally adopted the detailed fall-back proposals by
The Referendum Regulations include some different provisions in respect of a referendum that is a further referendum described in paragraph 13.69 (including minor modifications to the question). The main difference is described in paragraph 13.71. In general, however, the rules governing such a referendum are the same as for any other referendum held under Part II of the Act.

13.71 If the majority of votes in such a further referendum are:

- 'yes' votes, the result of that referendum is to approve the continuation of the local authority's executive arrangements operating at that time; or
- 'no' votes, the result of the referendum is to reject the executive arrangements operating at that time. The local authority must consequently implement the proposals that were the
Outline fall-back proposals

13.72 Section 27 of the Act requires that if proposals for executive arrangements drawn up under section 25 include a form of executive for which a referendum is required then the local authority must draw up and send to the Secretary of State, at the same time as sending the proposals to be the subject of the referendum, an outline of the fall-back proposals (outline fall-back proposals) that it intends to implement if the result of the referendum is to reject the proposals drawn up under section 25.

13.73 Fall back proposals must be proposals for the operation of either:

- executive arrangements which involve a form of executive for which a referendum is not required; or
- alternative arrangements of a type permitted in regulations under section 32.

13.74 Local authorities must consult local government electors for, and other interested persons in, the local authority’s area for the purpose of drawing up outline fall back proposals. Section 27 of the Act requires the proposals to include:

- a timetable with respect to the implementation of the detailed fall-back proposals which are based on the outline fall-back proposals in the event that the referendum rejects proposals which are the subject of the referendum; and
- such other details of the executive or alternative arrangements as the Secretary of State may direct.

13.75 The Fall-back Proposals Direction requires that outline fall-back proposals under section 27 or under the Petitions and Directions Regulations must include (in addition to the timetable with respect to the implementation of detailed fall-back proposals which are based on the outline fall-back proposals in the event that the referendum rejects the main proposals):

- a statement of which form of executive or which type of alternative arrangements is proposed;
- a description of such other features of the proposed arrangements as the authority may determine.

13.76 In drawing up outline fall-back proposals a local authority must also comply with
directions given by the Secretary of State (see section 27(10)).

13.77 Regulations 17, 19 and 20 of the Petitions and Directions Regulations make similar provision for proposals drawn up following receipt of a valid petition or a direction from the Secretary of State. In addition those Regulations provide that where the local authority is already operating executive or alternative arrangements the outline fall-back proposals must be an outline of those existing arrangements and no consultation or timetable is required because the local authority must, in the event that the referendum rejects the main proposals, continue operating its existing arrangements. Under regulation 19(1) of those Regulations, a local authority does not have to consult on outline fall-back proposals where these are specified in a direction given by the Secretary of State.

13.78 When consulting on outline fall-back proposals under section 27 or under the Petitions and Directions Regulations following receipt of a direction or valid petition, local authorities will need to:

- represent each of the forms of executive for which a referendum is not required (specified at that time in or under section 11) and each of the types of alternative arrangements (available at that time in regulations under section 32) in a fair and balanced way;
- provide an opportunity for consultees to express a preference for any of those forms of arrangements; and
- provide an opportunity for all electors for, and other interested parties in, the local authority’s area to respond to the consultation.

13.79 The purpose of consultation on outline fall-back proposals should be to determine which form of arrangements local electors and other local stakeholders would prefer to be adopted as outline fall-back proposals. Consultation on other details of the fall-back proposals should be conducted if the referendum does not support the proposals which are the subject of the referendum and the local authority therefore has to consult on detailed fall-back proposals (see below). Such consultation on outline fall-back proposals could form part of the latter stages of the consultation exercise on the 'main' proposals described in chapter 11. Unless the context requires otherwise the guidance to local authorities in chapter 11 applies to consultation in drawing up outline fall-back proposals as it does to drawing up proposals under section 25 or 31.

13.80 The Fall-back Proposals Direction and the Petitions and Directions Regulations also require that outline fall-back proposals must include a statement which describes:

- the steps which the local authority took to consult the local government electors for, and other interested parties in, the authority’s area; and
- the outcome of that consultation and the extent to which that outcome is reflected in the proposals.

13.81 Section 28 of the Act enables local authorities to apply to the Secretary of State for approval of arrangements to include in their outline fall-back proposals which are for a form of
arrangements not provided for in or under the Act at that time. If the Secretary of State does not approve such an application the local authority must choose from forms of arrangements that are available at that time as outline fall-back proposals. The Petitions and Directions Regulations provide that the Secretary of State may direct a local authority to hold a referendum if he rejects an application under section 28 and he may specify the outline fall-back proposals in that direction.

13.82 Applications under section 28 of the Act must include, by virtue of the Fall-back Proposals Direction:

- a description of the form of executive or of the type of alternative arrangements proposed;
- a description of the roles of the full council under the proposed arrangements;
- a description of the proposed arrangements for overview and scrutiny;
- where the application is for a new form of executive, a description of the proposed roles of the executive;
- where the application is for a new type of alternative arrangements, a description of the proposed arrangements for the discharge of the local authority's functions;
- a description of how the local authority considers that proposed arrangements will enhance decision making and lead to greater efficiency, transparency and accountability;
- a description of why the local authority considers that the arrangements included in the proposals will be more suitable to circumstances in that local authority and its area than any form of arrangements available at that time in or under section 11 or under section 32;
- a statement which describes:
  
  i. the steps (if any) which the local authority took to consult the local government electors for, and other interested parties in, the local authority's area; and

  ii. the outcome of that consultation and the extent to which that outcome is reflected in the proposals; and

- a description of such other features of the proposed arrangements as the local authority may determine.

13.83 Section 28 of the Act provides that where the Secretary of State approves a local authority's proposals under section 28 the authority may use those proposals for the purposes of section 27 (i.e. as their outline fall-back proposals). The timetable for implementation of the detailed fall-back proposals should the referendum reject the proposals drawn up under section 25 shall be extended to the extent that there is any delay in making the necessary regulations under section 11 or section 32 as the case may be. Similar provision is made in regulation 24 of the Petitions and Directions Regulations.
Detailed fall-back proposals

13.84 Section 27(8) of the Act requires that if a referendum held under section 27 rejects the proposals which are the subject of the referendum then a local authority must draw up and send to the Secretary of State detailed fall-back proposals which are based on the outline fall-back proposals. Section 27(13) requires that the detailed fall-back proposals must be implemented in accordance with the timetable which was included in the outline fall-back proposals.

13.85 The Petitions and Directions Regulations make similar provision for fall-back proposals drawn up following receipt of a valid petition or a direction from the Secretary of State except that where the local authority is already operating executive or alternative arrangements the local authority must, in the event that the referendum rejects the proposals which are the subject of the referendum, continue operating its existing arrangements.

13.86 Before drawing up the detailed fall-back proposals a local authority must consult local government electors for, and other interested persons in, the local authority’s area.

13.87 In drawing up the detailed fall-back proposals a local authority must:

- where the proposals are for executive arrangements, decide the extent to which local choice functions (i.e. functions specified in regulations under section 13(3)(b)) are to be the responsibility of the executive; and
- consider the extent to which the proposals are 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 (i.e. the duty of best value).

13.88 The detailed fall-back proposals must include:

- details of any transitional arrangements which are necessary for the implementation of the proposals; and
- such other details of the executive or alternative arrangements as the Secretary of State may direct.

13.89 The Fall-back Proposals Direction requires that a local authority must include in detailed fall-back proposals under section 27 or under the Petitions and Directions Regulations following receipt of a valid petition:

- a statement of which form of executive or type of alternative arrangements is proposed;
- a description of the roles of the full council;
- a description of the arrangements for overview and scrutiny;
- in the case of proposals for executive arrangements, a description of the roles of the
executive including which functions specified under section 13(3)(b) are to be the responsibility of the executive under the proposed executive arrangements;

- in the case of proposals for alternative arrangements, a description of the number of committees and sub-committees the local authority intends to establish under sections 101 and 102 of the Local Government Act 1972 for the discharge of its functions and of the functions which will be delegated to those committees and sub-committees; and
- a description of such other features of the proposed executive or alternative arrangements as the authority may determine.

13.90 In drawing up detailed fall-back proposals a local authority must also comply with directions given by the Secretary of State (see section 27(10)).

13.91 When consulting on detailed fall-back proposals under section 27 or under the Petitions and Directions Regulations following receipt of a valid petition local authorities will need to provide an opportunity for all local electors for, and other interested parties in, the local authority’s area to respond to the consultation.

13.92 The Fall-back Proposals Direction also requires that detailed fall-back proposals must include a statement which describes:

- the steps which the authority took to consult the local government electors for, and other interested parties in, the local authority’s area; and
- the outcome of that consultation and the extent to which that outcome is reflected in the proposals.

13.93 Unless the context requires otherwise the guidance to local authorities in chapter 11 applies to consultation on and drawing up of detailed fall-back proposals as it does to drawing up proposals under section 25 or 31. In addition, as the form of arrangements to be included in the detailed proposals is determined by the outline fall-back proposals local authorities will need only to undertake a relatively light touch consultation on the key features of the arrangements, such as the arrangements for overview and scrutiny.

13.94 Where the proposals include a leader and cabinet form of executive the proposals should make clear whether the full council or the executive leader will appoint the other members of the executive. The proposals should also make clear the extent to which the full council and the executive leader will be responsible for determining the scheme of delegations for functions which are the responsibility of the executive.
Referendums required by the Secretary of State

13.95 The Petitions and Directions Regulations enable the Secretary of State, in certain circumstances, to direct an individual local authority to hold a referendum on proposals for any of the forms of executive arrangements specified in or under section 11 of the Act.

13.96 Regulation 18 of, and Schedule 2 to, the Petitions and Directions Regulations specify the following circumstances in which the Secretary of State may make such a direction:

- where in the Secretary of State's opinion a local authority:
  
  i) has not drawn up proposals or outline fall-back proposals as required to do so either by section 25 or 27 of the Act or by the Petitions and Directions Regulations and appears unlikely to do so without a direction;

  ii) has drawn up proposals or outline fall-back proposals without having taken reasonable steps to consult with local government electors and other interested parties in their area as required to do so either by section 25, 27 or 31 of the Act, the Petitions and Directions Regulations, the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000, or by Regulations under section 30 or 33 of the Act;

  iii) has undertaken that consultation in a manner which is not fair or consistent with this guidance or has not had due regard to the responses to that consultation;

  iv) has drawn up proposals or outline fall-back proposals which do not comply with the requirements in either section 25 or 27 of the Act, the Petitions and Directions Regulations, the Local Authorities (Proposals for Alternative Arrangements) (England) Regulations 2000, or Regulations under section 30 or 33 of the Act;

  v) has drawn up proposals or outline fall back proposals which are unsatisfactory in any other respect;

  vi) has included in the proposals or outline fall-back proposals - drawn up under section 25, 27 or 31 of the Act, the Petitions and Directions Regulations, or Regulations under section 30 or 33 of the Act - a timetable for implementation any part of which is unreasonably long;

  vii) has not complied with the timetable for implementation included in its proposals;

  viii) has failed to comply with any directions given by the Secretary of State for the purposes of Part II of the Act;
• where an authority has had an application for outline fall-back proposals under section 28 of the Act rejected by the Secretary of State;
• where a petition organiser has requested the Secretary of State to direct that a referendum must take place (see chapter 12 of this guidance);
• where the local authority has requested the Secretary of State to so direct; or
• in the Secretary of State’s opinion a direction is necessary to further compliance with Part I of the Local Government Act 1999 (best value).

13.97 Regulation 18 also enables the Secretary of State to specify in the direction:

• the form of executive to be included in the proposals to be the subject of the referendum;
• some or all of the details of those proposals (whether or not in the form of proposals);
• the timetable for implementation of the proposals if they are supported in the referendum;
• principles or matters to which the local authority must have regard in drawing up the proposals;
• who should be consulted about the proposals, which matters they should be consulted on and in what manner they should be consulted;
• the outline fall-back proposals; and
• some or all of the details of the detailed fall-back proposals (whether or not in the form of proposals).

113.98 Regulation 18 requires that a local authority which receives a direction must draw up and send to the Secretary of State proposals which include the form of executive specified in the direction. Where the direction does not include the proposals the authority must also consult before drawing up the proposals.

113.99 By virtue of regulation 25, if a local authority fails to take any action which it may or must take in consequence of the Petitions and Directions Regulations the Secretary of State has the power to take that action himself.

13.100 Where the Secretary of State considers it necessary to intervene in the circumstances above, following receipt of a valid petition by the local authority, then he may only do so to give effect to the petition, e.g. if the petition proposes a mayor and cabinet form of executive he may only direct a referendum on that form of executive.

13.101 Regulation 19 requires that a local authority which receives a direction to hold a referendum must abandon any arrangements it is making for any other referendum to the extent that those arrangements are inconsistent with the direction. An exception to this requirement is where a direction is received by an authority after a petition, but that petition has not yet been verified. In this case, the local authority must verify the petition and, if it is valid, act on it rather than the direction.

13.102 If the direction has no more effect than to alter the timetable for implementation of the
proposals following a referendum, the date of the referendum should not be put back as a result of the direction.

13.103 Chapter 12 of this guidance describes the actions a local authority must take on receipt of a petition after a direction has been given but before the local authority has given notice of the date of the referendum.

Notification and publicity

13.104 Within 1 month of receiving the direction the local authority must publish in at least one newspaper in its area a notice which:

- sets out the terms of the direction;
- states that a direction has been received from the Secretary of State requiring a referendum;
- states the form of executive which will be the subject of the referendum;
- states that a referendum will be held;
- contains any other factual information relating to the direction so far as it is presented fairly (having regard to this guidance).

13.105 Any factual information to be included in the newspaper notice should meet the following criteria in order to be presented fairly for the purposes of these Regulations:

- if it concerns the proposals sent to the Secretary of State, it should provide accurate factual information, presented in an even-handed manner, about the main characteristics of the proposals, the existing decision making system, and the fall-back proposals;
- it should not be capable of being perceived as seeking to influence support for, or opposition to, the referendum proposals; and
- it should not seek to associate support for, or opposition to, the proposals with any individual or group.

13.106 The referendum must be held no more than 6 months after the date of the direction (apart from the exceptions set out in paragraph 13.11) and the proposals must be sent to the Secretary of State not less than 2 months before the referendum - i.e. in most cases the authority must send the proposals and outline fall-back proposals within 4 months of receiving the direction.

13.107 Subsections (2) and (3) of section 45 and regulations 23 and 24 of the Petitions and Directions Regulations provide that the result of a referendum arising from a direction is binding - if it approves the proposals they must be implemented in accordance with the timetable in the proposals and if it rejects the proposals they must not be implemented and the local authority must consult on, draw up and implement detailed fall-back proposals.
Chapter 14: Election of a mayor

This replacement chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a 'tick' in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.51 to 5.63 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities' experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

This replacement chapter is issued on: 31 January 2002

Previous versions of this chapter were issued on: 26 October 2000, with additional Guidance issued on 20 July 2001.

This document contains replacement pages for incorporation into New Council Constitutions: Guidance Pack Volume 1 and should be inserted instead of the existing chapter.

General background

14.1 An elected mayor is elected by the local government electors for the whole of a local authority's area. Section 39(6) of the Local Government Act 2000 provides that the normal term of office for an elected mayor is four years. The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001 provide for transitional arrangements to allow for a first term of office of between two and five and a half years to bring the mayoral election into step with the normal electoral cycle (see below).

14.2 By virtue of Section 2(2A) of the Local Government Act 1972 (as inserted by paragraph 1
of Schedule 3 to the Local Government Act 2000), an elected mayor is a member of a local authority which is operating executive arrangements which involve an elected mayor. The Secretary of State also intends to make regulations under section 39(5) of the Act to provide that an elected mayor is treated as a councillor for certain purposes. It is intended that the combined effect of the Act and Regulations under section 39(5) of the Act will be that an elected mayor will be subject to all the normal rules and regulations which apply to councillors generally - for example, allowances, conduct etc. In addition, articles 4 and 5 of the Local Authorities (Executive and Alternative Arrangements) (Modification of Enactments and Other Provisions) (England) Order 2001 modify sections 79 and 80 of the Local Government Act 1972 so that an elected mayor, and candidates for that office, are subject to the same rules as councillors for qualification for, and disqualification from, being elected as, or being, an elected mayor.

**Timing of elections**

14.3 The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001 provide that the normal day for election of the elected mayor will vary according to the class of local authority and the phasing of elections in the local authority in question as follows:

- local authorities which elect as a whole (counties, some unitaries and London boroughs) and all district councils in the area of a county council, whether they elect by thirds or as a whole, can choose which year of the electoral cycle should be the normal year for election of the elected mayor in their local authority;
- metropolitan districts and unitary local authorities which elect by thirds will be required to hold normal elections for an elected mayor in the ‘fallow’ year for election of councillors.

14.4 However, the Secretary of State considers that it would not normally be desirable for such elections to take place at the same time as the normal election of councillors for the other tier of local government. Therefore, elections for elected mayors in district councils constituted in an area for which there is a county council should not coincide with county council elections and vice versa.

14.5 Regulations 2 to 6 of the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001 and the guidance in paragraph 14.4 above are based on the principles that:

- where councillors are elected by thirds the mayoral election should be in the fallow year; and
- in two tier areas a mayoral election should not coincide with elections for councillors in another tier of principal local authority.

**Transitional arrangements**

14.6 The Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual
Vacancies) (England) Regulations 2001 provide, subject to a number of special provisions, that the first mayoral election must take place on the first Thursday in May or the third Thursday in October, whichever occurs first after the end of the period of three months beginning with the date of the referendum which approved the proposals for an elected mayor. Special provision is made for the timing of the first mayoral election:

- where the result of the referendum is challenged by a referendum petition (see chapter 13) - the first such election must take place on the first Thursday in May or the third Thursday in October whichever occurs first after the end of the period of three months beginning with the date of the election court’s determination or the refusal of the High Court to grant leave for the presentation of a referendum petition (see regulation 2(2));
- where regulations under section 44 of the Act (providing the election rules) are not in force at least 2 months before the date on which the mayoral election would otherwise have been held - in such a case the first mayoral election must take place on the first Thursday in May or the third Thursday in October whichever occurs first after the end of the period of three months beginning with the date on which the regulations under section 44 come into force (see regulation 2(3)). Regulations under section 44 of the Act came into force; and
- where the first mayoral election is taking place after a referendum which supports proposals to change between forms of executive arrangements which both involve an elected mayor (see regulation 4).

14.7 Accordingly, the first term of office for the elected mayor will not be allowed to be less than two years and could be as much as five years and six months depending on when in the electoral cycle the first election of the elected mayor is held.

14.8 Regulation 6 of the Local Authorities (Elected Mayors) (Elections, Terms of Office and Casual Vacancies) (England) Regulations 2001 provides that the elected mayor comes into office on the fourth day after she or he is elected and holds office until her or his successor comes into office on the fourth day after the next election. Special provision is made where a local authority is to adopt different executive arrangements or alternative arrangements at the end of the elected mayor’s term of office (see chapter 15).

Councillor elected as mayor

14.9 Section 40 of the Act provides that it is not possible for a councillor to be both a member for an electoral division or ward in a local authority and the elected mayor of that local authority.

14.10 There are three situations which have the potential for a person being the elected mayor and a councillor in the same local authority:

- where she or he is a candidate for mayoral and councillor elections in the same local authority taking place at the same time;
- where she or he is a candidate for election to the office of elected mayor whilst she or he
is a member for an electoral division or ward of that local authority; and
• where she or he is a candidate for election as a member for an electoral division or ward whilst she or he is the elected mayor for that local authority.

14.11 If a person is standing as a candidate for mayoral and councillor elections in the same authority taking place at the same time and is elected to both offices, section 40(1) of the Act provides that a casual vacancy arises in the office of councillor for the relevant electoral division or ward (which is declared vacant). The Secretary of State intends that the Local Government Act 1972 will be modified to provide that a by-election must be held to fill that casual vacancy in accordance with section 89 of the 1972 Act.

14.12 If a sitting councillor for an electoral division or ward in a local authority is elected as elected mayor of the local authority then section 40(2) of the Act provides that a casual vacancy arises in the office of councillor for the relevant electoral division or ward (which is declared vacant). The Secretary of State intends that the Local Government Act 1972 will be modified to provide that a by-election must be held to fill that casual vacancy in accordance with section 89 of the 1972 Act.

14.13 By virtue of section 40(3) of the Act an elected mayor may not normally be a candidate for an election for councillor for an electoral division or ward in the local authority of which she or he is the elected mayor. By virtue of section 40(4) of the Act the exception is where the mayoral and councillor elections in that local authority are taking place at the same time, in which case the elected mayor may stand for election to either or both offices and if she or he is elected to both offices section 40(1) provides that a casual vacancy arises in the office of councillor for the relevant electoral division or ward. The Secretary of State intends that the Local Government Act 1972 will be modified to provide that a by-election must be held as a result.

**Conduct of elections**

14.14 The Local Authorities (Mayoral Elections) (England and Wales) Regulations 2002 set out the rules for elections for an elected mayor. These replicate the normal rules for local government elections, except for the following aspects, which are considered in detail below:

- the voting system;
- nomination requirements for candidates;
- free delivery of a booklet of candidates’ election addresses; and
- expenses limits.

14.15 In accordance with section 44(3A) of the Act, the Secretary of State has consulted the Electoral Commission in making the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2002.
Voting system

14.16 Where there are more than two candidates, the voting system used for elected mayors is the Supplementary Vote system, as established by section 42 of, and Schedule 2 to, the Act. Under this system, voters cast first and second preference votes. After counting all of the first preference votes, if no candidate has secured a simple majority of the first preference votes cast, all but the top two candidates are eliminated. Any of the eliminated candidates' second preference votes cast for the remaining candidates are added to those totals, and the one with the most votes is elected as elected mayor. Where there are only two validly nominated candidates, the first-past-the-post system is used.

14.17 Schedule 1 to the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2002 (“the Mayoral Elections Rules”) provides the detailed procedural rules for conducting a ballot using the Supplementary Vote system, including the prescribed forms of the ballot paper and the rules for transfer of second preference votes (where appropriate) during the count.

Nomination requirements

14.18 In the consultation paper The Local Government Bill: The Conduct of Referendums and Elections for Directly Elected Mayors the Secretary of State sought views on this issue. Responses to that consultation indicated that requiring only 10 subscribers to a nomination form would not be sufficient to deter frivolous candidates. There were mixed views expressed on whether a deposit should be required of candidates in a mayoral election.

14.19 Accordingly, rules 7 and 10 of the Mayoral Elections Rules provide that a nomination paper must be signed by two local electors as proposer and seconder of the candidate, and by 28 other local electors supporting the nomination. Rule 9 requires each candidate to also submit a deposit of £500 to the returning officer by the last day for delivery of nomination papers. Rule 49 requires that deposit to be returned to the candidate if they receive more than 5% of the votes cast at the election, or if they do not receive sufficient votes, for the deposit to be forfeit to the local authority.

Election address booklet

14.20 Regulation 7 of, and Schedule 4 to, the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2002 make provision for candidates to be entitled to include a short election address in a single election address booklet to be issued by the returning officer to every local elector.

14.21 The returning officer may require candidates to provide a contribution towards the costs of printing the election address booklet. The amount of that contribution is determined by the returning officer, but must be the same for each candidate including their election address in the booklet. If the aggregate of the contributions totals more than the cost of printing the booklet, the returning officer must divide the excess into equal shares between the number of candidates who have provided a contribution and send one share to each of those candidates.
The net contribution made to the cost of printing the booklet by a candidate counts towards their election expenditure (see below).

14.22 Returning officers should ensure that the amount of contribution that they require from candidates wishing to include an election address in the booklet is set at a level no more than 50% of the expenses limit applicable to a candidate in that election. In order to allow prospective candidates time to prepare an election address for inclusion in the booklet and make budgetary provision for that, returning officers should advise interested persons as early as possible of the requirements for formatting and amount of contribution required towards printing costs.

14.23 The returning officer may deliver the booklet in the manner that he or she believes most appropriate. The cost of delivering the booklet is met by the local authority for which the election is being conducted, and such costs do not count towards a candidate's third party expenses limit.

Expenses limits

14.24 As required by section 44(3B) of the Act[^4], the provisions as to limitation of expenses contained in the Local Authorities (Mayoral Elections) (England and Wales) Regulations 2002 ("the 2002 Regulations") are made in accordance with express recommendations of the Electoral Commission.

14.25 In relation to a candidate's expenses limit, Schedule 2 to the 2002 Regulations applies with modifications section 76(2) of the Representation of the People Act 1983[^4]. By this modification, the expenses limit for a candidate in a mayoral election is the aggregate of £2,000, plus 5p for every entry on the register of local electors in force at the relevant time.

14.26 In relation to the expenses limit of a third party, Schedule 2 to the 2002 Regulations applies with modifications section 75(1ZA) of the Representation of the People Act 1983 . By this modification, the expenses limit for a third party in a mayoral election is identical to that for the election of a councillor (i.e. the aggregate of £50, plus 0.5p for every entry on the register of local electors in force at the relevant time).

14.27 As with normal local elections, a declaration of expenses must be submitted to the returning officer for the mayoral election following the conclusion of the election.

Electoral pilots

14.28 By virtue of regulation 3(2), the provisions of section 10 of the Representation of the People Act 2000, enabling local authorities to apply to run pilot schemes using innovatory methods at local elections are extended to include mayoral elections. A local authority that is due to hold a mayoral election may therefore apply to the Secretary of State to run a pilot scheme at that election, on the same basis as for a normal local election[^5].

14.29 Local authorities considering the running of pilot schemes for a mayoral election to be held on 2 May 2002 should make contact with the Department as early as possible,
in order to work up details of an application as far in advance as possible of the date of the election. This is particularly important, as the Secretary of State intends that the closing date for applications in relation to May 2002 mayoral election pilots should be 1 March 2002.

14.30 Equally, local authorities interested in running a pilot scheme for an October mayoral election (when a number of first mayoral elections could take place), should express their interest at the earliest opportunity to the DTLR contacts listed in the prospectus, who will then negotiate an appropriate date by which a formal application should be made.

**Publicity**

14.31 The "Code of Recommended Practice on Local Authority Publicity" (Department of Environment Circular no. 20/88, as revised for English local authorities by Department of the Environment, Transport and the Regions Circular no. 06/2001[6]) will continue to apply to the publicity activities of an English local authority during election periods. The Code was revised specifically to reflect changes in council constitutions, including the potential for mayoral referendums (and related petitions) and mayoral elections.

**Maximising turnout**

14.32 Local authorities should, within the rules laid down, take all reasonable steps to maximise turnout at mayoral elections. The research report *Turnout at Local Government Elections: Influences on levels of voter registration and electoral participation*[7] provides useful information about local authority practices and initiatives, including a check-list of ideas for improving participation at local elections. As part of ongoing consultation with local communities, local authorities should ensure that there are no barriers of conscience to voting in the manner or the place envisaged for the ballot.

14.33 Additionally, regulation 5 of the 2002 Regulations provides that where a mayoral election is to be held on the day any of the following polls are also taking place wholly or partly in the area of the local authority concerned, the polls may be taken together:

- a General election or Parliamentary by-election;
- a European Parliamentary election;
- any ordinary local election or by-election (whether or not the election is for the return of councillors in the local authority to which the mayoral election applies);
- a Greater London Authority election;
- a referendum held according to regulations made under section 45 of the Act (which referendum relates to a different local authority for the area); or
- another mayoral election (which relates to a different local authority for the area).

**Filling Casual Vacancies**

14.34 Regulations 7 to 9 of the Local Authorities (Elected Mayors) (Elections, Terms of Office

14.35 Regulation 7 requires that, unless the vacancy in the office of elected mayor arises less than six months before the date on which the elected mayor would otherwise have retired, a by-election shall be held to fill the vacancy:

- within 35 days of the High Court or the local authority declaring the vacancy (where the vacancy is so declared); or
- in any other case, within 35 days after notice of the vacancy has been given in writing to the proper officer of the local authority by two local government electors for the area.

14.36 Regulation 7 also requires that where the vacancy in the office of elected mayor arises less than six months before the date on which the elected mayor would otherwise have retired then, unless the authority are then to adopt different executive arrangements or alternative arrangements (see chapter 15), the vacancy must be filled at the next normal mayoral election (which will take place four days before the day on which the elected mayor would otherwise have retired).

14.37 Regulation 8 makes provision mirroring section 87 of the Local Government Act 1972 as to the date on which a vacancy in the office of elected mayor is to be taken to have occurred and the giving of public notice of vacancies. Regulation 9 provides that a person elected to fill a casual vacancy in the office of elected mayor shall hold office until the date on which the person in whose place she or he is elected would have retired.

1. Inserted by paragraph 18 of Schedule 21 to the Political Parties, Elections and Referendums Act 2000
2. DETR, May 2000
3. Inserted by paragraph 18 of Schedule 21 to the Political Parties, Elections and Referendums Act 2000.
4. Inserted by section 131(3) of the Political Parties, Elections and Referendums Act 2000
5. See, for example, the DTLR prospectus for Electoral Pilots - Local Elections 2002, on the DTLR website at www.elections.dtlr.gov.uk/modemoc/index.htm.
6. DETR, 2 April 2000
7. DETR, April 2000, ISBN 1 85112 382 2
8. For these purposes the 35 days must be calculated excluding Saturday, Sunday, Christmas Eve, Christmas Day, Maundy Thursday, Good Friday or any bank holiday or day appointed as a day of public thanksgiving or mourning.
Chapter 15: Changing the arrangements

This chapter forms part of the "Local Government Act 2000: Guidance to English Local Authorities". This guidance is issued to English county councils, English district councils and London borough councils, and deals with:

- the content and operation of a new constitution including executive arrangements or alternative arrangements; and
- the processes of changing to or revising a new constitution including executive arrangements or alternative arrangements.

The guidance includes a combination of description of the main statutory provisions of the Local Government Act 2000 and subordinate legislation (both that which is in force and that which the Secretary of State intends to make); statutory guidance to which local authorities must have regard; and illustrative and good practice examples. The statutory guidance is presented in bold text with a tick in the left hand margin to distinguish it from the descriptive text, and the examples are enclosed in boxes to separate them from the main body of the text.

The statutory guidance underpins the provisions of Part II of the Act and is issued under section 38 of the Act. Paragraphs 5.47 to 5.56 in chapter 5 are also issued for the purposes of section 7 of the Local Authorities Social Services Act 1970 (c.42).

The Secretary of State will keep the content of the guidance under review in the light of local authorities experience of operating executive and alternative arrangements. The guidance will be updated as necessary to reflect this and subsequent legislative changes.

Issue date: 26 October 2000.

Changing the arrangements

15.1 Section 29(3) of the Act provides that local authorities may not cease to operate executive arrangements unless (for local authorities to which section 31 applies district councils in two tier areas with a population below 85,000 (small shire districts)) regulations under section 33(5) allow them to operate alternative arrangements in their place.

15.2 Section 33(4) provides that local authorities may not cease to operate alternative arrangements unless they operate executive arrangements in their place.

15.3 Section 30 enables the Secretary of State to make regulations which provide for local authorities operating executive arrangements to be able to amend those arrangements in any respect or to operate a different form of executive arrangements in their place.

15.4 Section 33(5) enables the Secretary of State to make regulations which provide for small shire districts operating executive arrangements to operate alternative arrangements in their
15.5 Section 33(7) enables the Secretary of State to make regulations which provide for local authorities operating alternative arrangements to be able to amend those arrangements in any respect.

15.6 Section 33(9) enables the Secretary of State to make regulations which provide for local authorities operating alternative arrangements to operate executive arrangements in their place.

**Amending executive arrangements**

15.7 The Secretary of State intends that regulations under section 30 will enable a local authority to amend its executive arrangements in any respect subject to the following requirements:

- if the executive arrangements include an elected mayor and the proposed changes involve change other than in respect of the arrangements for overview and scrutiny then the proposed changes to the executive arrangements may not be implemented without the written consent of the elected mayor;
- the local authority must consider the extent to which the proposals if implemented are 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 (i.e. the duty of best value);
- the local authority must comply with any directions given by the Secretary of State for the purposes of the regulations;
- a resolution of the full council will be required to implement the proposed changes; and
- copies of the revised arrangements must be made available to the public.

15.8 Local authorities should consult local electors for, and other interested parties in, their area when changing their executive arrangements in any respect which was the subject of consultation when the first proposals were drawn up for those arrangements. Such consultation should be proportionate in scale, scope and extent to the scale of the proposed change to the executive arrangements.

15.9 Changing the executive arrangements should not be used as a method of resolving disagreements between the executive and other councillors (particularly where there is an elected mayor).

**Changing the form of the executive**

15.10 The Secretary of State intends that regulations under section 30 will enable a local authority to change the form of executive included in its executive arrangements subject to the
following requirements:

- a local authority must take reasonable steps to consult local electors and other interested parties when drawing up proposals to change the form of executive in its executive arrangements;
- the local authority must consider the extent to which the proposals if implemented are 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 (i.e. the duty of best value);
- the local authority must comply with any directions given by the Secretary of State for the purposes of the regulations;
- a copy of the proposed new arrangements must be sent to the Secretary of State together with a statement which describes:

  i. the steps which the local authority took to consult the local government electors for, and other interested parties in, the local authority’s area; and
  
  ii. the outcome of that consultation and the extent to which that outcome is reflected in the proposals;

- if the proposed changes to the executive arrangements involve changing to or from a form of executive for which a referendum is required the local authority must first get approval from local electors through a binding referendum;
- if the proposed change is from a form of executive which includes an elected mayor and the change in form of executive is supported in the referendum the change may not be implemented until the end of the current term of office of the incumbent elected mayor; and
- a resolution of the full council will be required to implement the proposed changes.

15.11 Where the executive arrangements involve an elected mayor the consent of the elected mayor will not be required for a local authority to change the form of executive but the consent of local electors is required, through a referendum. Section 45(1) provides that a local authority may not hold more than one referendum under the Act within a period of five years.

15.12 The Secretary of State also intends that when consulting on proposals to change the form of executive a local authority must:

- represent each of the forms of executive (available at that time in or under section 11) in a fair and balanced way;
- provide an opportunity for consultees to express a preference for any of those forms of arrangements;
- provide an opportunity for all local electors for, and other interested parties in, the local authority’s area to respond to the consultation;
use both qualitative and quantitative methods of consultation; and
not include in that consultation any consultation on additional forms of executive to be proposed under section 12 or any consultation on any application for approval of outline fall-back proposals which the local authority intends to make under section 28 of the Act.

15.13 Changing the form of executive should not be used as a method of resolving disagreements between the executive and other councillors (particularly where there is an elected mayor).

15.14 If the form of executive is changed, the Secretary of State intends that the regulations will require local authorities, as soon as reasonably practicable after resolving to implement the new arrangements, to make copies of the arrangements available to the public and publish a notice in at least one local newspaper:

- stating that the local authority has adopted new executive arrangements and when they come into force;
- describing the main features of the executive arrangements; and
- stating that copies of the arrangements are available for inspection by the public.

15.15 This will only be a minimum statutory requirement. In practice local authorities should achieve this through making their constitutions widely available to the public. Local authorities should further publicise their executive arrangements, for example on the local authority's website, in other local publications and perhaps also in interviews with the local media.

Changing from executive to alternative arrangements

15.16 The Secretary of State intends that regulations under section 33(5) will enable small shire districts to change from executive arrangements to alternative arrangements subject to the following requirements:

- a local authority must take reasonable steps to consult local electors and other interested parties when drawing up proposals to change from executive arrangements to alternative arrangements;
- the local authority must consider the extent to which the proposals if implemented are 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 (i.e. the duty of best value);
- the local authority must comply with any directions given by the Secretary of State for the purposes of the regulations;
- a copy of the proposed new arrangements must be sent to the Secretary of State together with a statement which describes:
i. the steps which the local authority took to consult the local government electors for, and other interested parties in, the local authority's area;

; ii. the outcome of that consultation and the extent to which that outcome is reflected in the proposals;

iii. the reasons why the local authority considers that the alternative arrangements included in the proposals will be more suitable to circumstances in that local authority and its area than any form of executive arrangements; and

iv. the reasons why the local authority considers that the alternative arrangements included in the proposals would be likely, if implemented, to ensure that decisions are taken in an efficient, transparent and accountable way;

• if the proposed changes involve changing from executive arrangements which involve a form of executive for which a referendum is required the local authority must first get approval from local electors through a binding referendum;
• if the proposed change is from executive arrangements which involve a form of executive which includes an elected mayor and the change is supported in the referendum the change may not be implemented until the end of the current term of office of the incumbent elected mayor; and
• a resolution of the full council will be required to implement the proposed changes.

15.17 The Secretary of State also intends that when consulting on a proposed change from executive arrangements to alternative arrangements small shire districts must:

• represent each of the forms of executive (available at that time in or under section 11) and each of the types of alternative arrangements (available at that time in regulations under section 32) in a fair and balanced way;
• provide an opportunity for consultees to express a preference for any of those forms of arrangements;
• provide an opportunity for all local electors for, and other interested parties in, the local authority's area to respond to the consultation;
• use both qualitative and quantitative methods of consultation; and
• not include in that consultation any consultation on additional forms of executive to be proposed under section 12 or any consultation on any application for approval of outline fall-back proposals which the local authority intends to make under section 28 of the Act.

15.18 The consent of the elected mayor will not be required for a local authority to change from executive arrangements which involve an elected mayor to alternative arrangements but the consent of local electors is required, through a referendum. Section 45(1) provides that a local authority may not hold more than one referendum under the Act within a period of five years.
15.19 Changing from executive arrangements to alternative arrangements should not be used as a method of resolving disagreements between the executive and other councillors (particularly where there is an elected mayor).

15.20 If a local authority changes from executive arrangements to alternative arrangements the Secretary of State intends that the regulations will require local authorities, as soon as reasonably practicable after resolving to implement the new arrangements, to make copies of the arrangements available to the public and publish a notice in at least one local newspaper:

- stating that the local authority has adopted alternative arrangements to operate in place of its existing executive arrangements and when they come into force;
- describing the main features of the alternative arrangements; and
- stating that copies of the arrangements are available for inspection by the public.

15.21 This will only be a minimum statutory requirement. In practice local authorities should achieve this through making their constitutions widely available to the public. Local authorities should further publicise their alternative arrangements, for example on the local authority's website, in other local publications and perhaps also in interviews with the local media.

**Amending alternative arrangements**

15.22 The Secretary of State intends that regulations under section 33(7) will enable a local authority to amend its alternative arrangements in any respect subject to the following requirements:

- the local authority must consider the extent to which the proposals if implemented are 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 (i.e. the duty of best value);
- the local authority must comply with any directions given by the Secretary of State for the purposes of the regulations;
- a resolution of the full council will be required to implement the proposed changes; and
- copies of the revised arrangements must be made available to the public.

15.23 Local authorities should consult local electors for, and other interested parties in, their area when changing their alternative arrangements in any respect which was the subject of consultation when the first proposals were drawn up for those arrangements. Such consultation should be proportionate in scale, scope and extent to the scale of the proposed change to the alternative arrangements.

**Changing from alternative to executive arrangements**
15.24 The Secretary of State intends that regulations under section 33(9) will enable a local authority to change from alternative arrangements to executive arrangements subject to the following requirements:

- a local authority must take reasonable steps to consult local electors and other interested parties when drawing up proposals to change from alternative arrangements to executive arrangements;
- the local authority must consider the extent to which the proposals if implemented are 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 (i.e. the duty of best value);
- the local authority must comply with any directions given by the Secretary of State for the purposes of the regulations;
- a copy of the proposed new arrangements must be sent to the Secretary of State together with a statement which describes:

  i. the steps which the local authority took to consult the local government electors for, and other interested parties in, the local authority's area; and

  ii. the outcome of that consultation and the extent to which that outcome is reflected in the proposals;

- if the proposed changes involve changing to executive arrangements which involve a form of executive for which a referendum is required the local authority must first get approval from local electors through a binding referendum; and
- a resolution of the full council will be required to implement the proposed changes.

15.25 The Secretary of State also intends that when consulting on a proposed change from alternative arrangements to executive arrangements a local authority to which section 31 applies must:

- represent each of the forms of executive (available at that time in or under section 11) and each of the types of alternative arrangements (available at that time in regulations under section 32) in a fair and balanced way;
- provide an opportunity for consultees to express a preference for any of those forms of arrangements;
- provide an opportunity for all local electors for, and other interested parties in, the local authority's area to respond to the consultation;
- use both qualitative and quantitative methods of consultation; and
- not include in that consultation any consultation on additional forms of executive to be proposed under section 12 or any consultation on any applications for approval of outline fall-back proposals which the local authority intends to make under section 28 of the Act.
15.26 Section 45(1) provides that a local authority may not hold more than one referendum under the Act within a period of five years.

15.27 If a local authority changes from alternative arrangements to executive arrangements the regulations will require that the local authority will, as soon as reasonably practicable after resolving to implement the new arrangements, be required to make copies of the arrangements available to the public and publish a notice in at least one local newspaper:

- stating that the local authority has adopted executive arrangements to operate in place of its existing alternative arrangements and when they come into force;
- describing the main features of the executive arrangements; and
- stating that copies of the arrangements are available for inspection by the public.

15.28 This will only be a minimum statutory requirement. In practice local authorities should achieve this through making their constitution widely available to the public. Local authorities should further publicise their executive arrangements, for example on the local authority’s website, in other local publications and perhaps also in interviews with the local media.