

Briefing Note – 22 January 2015

Elected Mayor and Executive – Powers and Responsibilities

Background information

1.0 Enabling Legislation

- 1.01. The enabling legislation relevant to the issue under consideration is Section 1(2) of the Local Government Act 2000 (LGA 2000), which permits the establishment of Council Executives, consisting of an elected mayor and a cabinet appointed by the elected mayor, consisting of not more than 10 members.
- 1.02. The elected Mayor in Bristol took office in November 2012.

2.0 Principles

- 2.01. A directly elected mayor and cabinet (the executive) does not have more powers than an authority operating the committee-led system of governance.
- 2.02. A local authority cannot act or make decisions that are beyond its powers, doing so would open itself to challenge for having acted “ultra vires”. It follows therefore that an Executive cannot exceed those powers either.
- 2.03. LGA 2000 also makes an overarching provision for the establishment of Overview and Scrutiny committees, which can hold the executive to account for any decision it makes- see OSR rules in the Council’s constitution as to how this operates.
- 2.04. The framework for operating a mayor / executive model is contained in the **Local Government (Standing Orders) (England) Regulations 2001**, which lays down the standing orders/constitution an authority is required to adopt in respect of the governance model it adopts and also establishes that in order to challenge a decision by the mayor /executive, the council will need a two-thirds majority vote in favour of the challenge.

3.0 Split of Responsibilities between Council and Executive

- 3.01. Section 13 of LGA 2000 allows for the Secretary of State to make regulations defining what responsibilities lie with the executive, those which can be a shared or joint responsibility between the executive and the Council and those which are not the responsibility of the executive. The duties, responsibilities and powers vested in a Local Authority’s council and/or executive cover a very wide and diverse range of responsibilities but primarily regulatory matters such as licensing and planning are non executive matters.
- 3.02. Where any function is the responsibility of the Executive then only the Executive can deal with it, it cannot be exercised by the Council (s.13(9) of the LGA 2000). This provision is described in Sections 13 (9) and 13 (10) of the LGA, as follows:
 - i). 13 (9) Any function which is the responsibility of an executive of a local authority under executive arrangements—
 - (a) is to be regarded as exercisable by the executive on behalf of the authority, and
 - (b) may be discharged only in accordance with any provisions made by or

under this Part which apply to the discharge of any such function by that form of executive.

- ii). 13 (10) Accordingly any function which is the responsibility of an executive of a local authority under executive arrangements—
- (a) may not be discharged by the authority,
 - (b) is not to be a function to which section 101(1) of the Local Government Act 1972 (LGA 1972) applies¹, and
 - (c) may be the subject of arrangements made under section 101(5)² of that Act only if permitted by any provision made under section 20.

3.04. The Secretary of State has made regulations and these are defined in the **Local Authorities (Functions and Responsibilities) (England) Regulations 2000**.³ (The Regulations)

3.05. A detailed description of each relevant function is given in the Schedules 1 to 4 to the Regulations, to which reference should be made on each occasion when considering the issue of any specific limitation or otherwise of the Executive's power and responsibilities.

3.06. The functions that are "Not the responsibility of the Authority's executive" are detailed in Schedule 1 to the Regulations. These functions are reserved for the full Council's decision making process.

3.07. The functions that are "Not to be the sole responsibility of the Authority's executive" are detailed in Schedule 3 to the Regulations. These are mainly strategic in nature, typical examples including the Community Strategy and the annual Library Plan, and allow a split of responsibility. For example, the executive may have the responsibility of preparing a draft strategy, whilst the Council has the responsibility of formally approving and adopting it.

3.08. The four Schedules and their subject areas are:

i). Schedule 1: Functions not to be the responsibility of an authority's executive:

1. Functions relating to town and country planning and development control.
2. Licensing and registration functions (where these are not covered by any other paragraph of Schedule 1)
3. Power to register food business premises.
4. Functions relating to health and safety at work
5. Functions relating to elections
6. Functions relating to name and status of areas and individuals
7. Power to make, amend, revoke or re-enact bye-laws
8. Power to promote or oppose local or personal Bills.
9. Functions relating to pensions etc.
10. Miscellaneous functions

Includes a range of functions that do not fit within the previous categories, for example :

1 LGA 1972 Section 101(1) permits the authority to arrange the discharge of its functions through a committee, sub-committee, an officer or another authority.
2 LGA 1972 Section 101(5) provides details of how two authorities may share responsibility for a function, which arrangement ceases in the event that the function becomes the responsibility of an executive of one of the authorities, eg. When one of the authorities elects a mayor and cabinet executive.
3 Regulations can be viewed at : <http://www.legislation.gov.uk/uksi/2000/2853/contents/made>

creating, stopping up and diverting public footpaths, removal of nuisance deposited on on highways, reclassification of roads, approval of the authority's accounts, sea fisheries, tree and hedgerow preservation, making standing orders, including for contracts, appointing staff and making payments or providing other benefits in cases of maladministration.

ii). Schedule 2: Functions which may be (but need not be) the responsibility of an authority's executive- known as local choice functions

1. Any function under a local Act other than a function specified or referred to in regulation 2 or Schedule 1.
2. The determination of an appeal against any decision made by or on behalf of the authority.
3. The appointment of review boards under regulations of the Social Security Act 1998 and under the same Act, arrangements for appeals against exclusion of pupils, admission appeals, including by governing bodies.
4. Best value reviews, any function relating to contaminated land. the control of pollution or the management of air quality, service of an abatement notice in respect of a statutory nuisance, passing of a resolution in respect of the Noise and Statutory Nuisance Act 1993, inspections to detect any statutory nuisance and investigating complaints of statutory nuisance, obtaining of information as to interests in land, including particulars of any persons interested in land, agreements for execution of Highways works
5. The appointment of any individual to any office other than an office in which he is employed by the authority to any body or sub-committee of such a body other than the authority itself, a joint committee or sub-committee of two or more authorities.

iii). Schedule 3: Functions not to be the sole responsibility of an authority's executive

These make up the policy framework in the Council's constitution and currently comprise

- The corporate plan
- The cultural strategy
- Housing strategy
- Equalities policy
- Community cohesion strategy
- Single equality scheme

iv). Schedule 4: Circumstances in which functions are not to be the responsibility of an authority's executive

1. The adoption or approval of a plan or strategy (whether statutory or non-statutory), other than a plan or strategy referred to in regulation 4(1)(b) or in Schedule 3
2. The determination of any matter in the discharge of a function which—
 - (a) is the responsibility of the executive; and
 - (b) is concerned with the authority's budget, or their borrowing or capital expenditure.
3. The determination of any matter in the discharge of a function—
 - (a) which is the responsibility of the executive; and
 - (b) in relation to which a plan or strategy (whether statutory or non-statutory)

has been adopted or approved by the authority.

4.0 The Doncaster case : R (on the application of Buck) v Doncaster Metropolitan Borough Council

“Contrary to or not wholly in accordance with the authority's budget”

4.01. The argument against the mayor's decision not to expend the budget provision on library services, was that his decision was contrary to the council's requirements – to ensure libraries were kept open – for which they had made budget provision. The mayor had not agreed to the retention of the libraries in question but had proposed that some be closed to achieve budget savings. The mayor accepted some of the council's provisions, but not the provision of additional money to protect these libraries from closure. The mayor refused to spend the money allocated for this purpose and instead went ahead with the executive's original plan of closure.

4.02. The case emphasised the demarcation between the different roles of the full council and the executive. The judge decided that to allow the council to “micro-manage” the executive's activity in this way was not what the LGA 2000 and subsequent regulations was intended to achieve. The council's function was to set the budget, whilst the executive's role was to administer the budget, for which it needed latitude to decide if and how the individual elements were spent.

Contrary to a plan or strategy

4.03. Although great emphasis had been placed on the mayor's use of the phrase “financial strategy” in a budget amendment submitted to the full council which, it was argued, was adopted by the full council, and the mayor's subsequent refusal to act with regard to keeping the libraries open, was contrary to that “financial strategy”, the judge found that too much reliance had been placed on the word “strategy” and that in fact strategy implied a much wider and encompassing context than the small budget issue the library closures represented. The judge therefore rejected that the mayor had acted contrary to a plan or strategy.

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