

THE LEGAL FRAMEWORK

The local Government Act 2000

The Local Government Act 2000 ('the Act') radically changed the nature of government by introducing the system of a powerful Cabinet with a statutory remit that means it takes the majority of decisions. Further amendments by the Local Government and Public Involvement in Health Act 2007 extended these powers; it is now the Leader who appoints the Cabinet and decides who makes executive decisions.

The Act abolished the old committee system which formally brought elected members of both the ruling party (or coalition) and opposition parties together. These Committees would then bring reports to full Council Assembly for agreement.

The new Act introduced a Cabinet of up to ten members and also established arrangements for Overview and Scrutiny. Scrutiny committees involve backbench members from all parties and their role is to hold the Cabinet to account and contribute to policy making. (Southwark has a 'parent' overview and scrutiny committee and five sub committees covering set policy areas). Scrutiny reports to Cabinet which has to consider its recommendation, but does not have to adopt them.

This fundamentally changed the role of the Assembly from a body taking decisions on executive functions to one that sets an overall policy framework that the cabinet and wider executive works within. The Assembly decision making powers given to it under the Act are now, principally, to set the policy framework within which the Leader & Cabinet act and agree the budget. The Assembly also retains overall responsibility for non-executive matters (essentially regulatory activities covered by Committees such as the Planning Committee, Licensing Committee and Standards Committee), appoints members to committees, elects the Mayor, ratifies the appointment of the Leader and Cabinet, and agrees changes to the constitution.

The impact of change

The changes the Act introduced have led many local authorities to look again at full council (in Southwark full council is called 'Council Assembly'). These reports have not usually focused on public participation so much as considering the role of Council Assembly, particularly for backbench councillors who are not members of Cabinet. National research has indicated that many non – cabinet members feel disengaged from the full council. ('The Role of Members and of the Full Council' scrutiny report, Birmingham City Council 2005)

Opportunities for variation under the Act.

The Act does allow Cabinet to delegate additional roles and functions to other bodies, including Council Assembly. As noted below, in practice what can be delegated to the Assembly is limited by the legislation which prevents the Cabinet from delegating

executive functions to the Council Assembly. For Council Assembly this is restricted to such matters as plans and strategies which could be added to the policy framework and therefore become its responsibility. It is possible to recommend Council Assembly debate and make *recommendations* that would ultimately go to the Cabinet (or in some cases the Leader) for decision or it could recommend the assembly both debate and make *decisions* on a wider range of plans and strategies.

The Act also gave provision for decisions to be devolved down to a local level and Southwark introduced local based decision making bodies; which evolved into the Community Councils several years ago. It is possible for further executive functions to be delegated down to Community Councils, while taking into account the need for good governance.

The Commission has considered the Act, as well as local rules as laid out in Southwark's Constitution. The constitution can be changed by members and the Commission's terms of references allow it to make recommendations for change.

All recommendations need to consider the need for good governance including how to best strike a balance between the need for effective and timely decision making and the benefits of wider consultation by both more members and the wider public.

These are some of the principles that underpin Cabinet decision making:

- Efficiency – in that a small cabinet can act quickly;
- Transparency – the Cabinet arrangements enable the public to ascertain from the outset who is making decisions; and
- Accountability – the Cabinet can be judged by whether it has implemented the policies on which it was elected.

This is what Council Assembly has to do by law

- Appoint the Mayor
- Receive the Leader's report on the delegation of executive functions at the annual meeting
- Establish committees and appoint chairs and vice chairs, except chair of standards committee
- Agree the constitution
- Agree the budget and sets the council tax
- Agree the Policy Framework plans and strategies, most of these are statutory requirements (see below for details)
- Agree licensing and gambling statements of policy
- Confirm appointment of head of paid service i.e. chief executive
- Make, amend, revoke, re-enact or adopt by-laws or oppose making local legislation
- Adopt the local authority's code of conduct
- Agree members' allowances scheme

- Confer title of Honorary Alderman or Freedom of the Borough
- Agree any application to the Secretary of State in respect of any housing land transfer
- To consider petitions submitted under the Council's petition scheme
- Take decisions in respect of functions which are the responsibility of the cabinet which are not in accordance with the policy framework or budget agreed by council assembly
- Take decisions in respect of functions which are not the responsibility of the executive and which have not been delegated by council assembly to committees, community councils, sub-committees or officers

These are the policy framework documents it has to receive:

The 'policy framework' means the following plans and strategies

- Children and young persons plan
- Corporate plan
- Development plan documents (which form part of the development plan framework)
- Policy on community councils
- Sustainable community strategy
- Treasury management strategy (including prudential borrowing arrangements)
- Youth justice plan

Council Assembly is also responsible for agreeing the following policies:

- Licensing statement
- Gambling statement

This is what the council assembly does but could decide to change:

- Receive reports for decisions and information from Cabinet
- Provide an opportunity councilors to ask questions to Cabinet (members' questions)
 - holds cabinet to account
 - A significant opportunity for the Opposition to get information
 - Maximum of 30 minutes allowed
- Debate members' motions:
 - Motions can be made on any subject for which the council has powers or duties or that affects Southwark
 - Principal means for members to raise issues
 - Generally 45 minutes to 1 hour per meeting dedicated to debating motions

- While it would be in order for council assembly to discuss a motion, if agreed the issue must be referred to the cabinet if it relates to consideration of any of the following:
 - to change or develop a new or existing policy
 - to instruct officers to implement new procedures
 - To allocate resources.
 - Takes public questions
 - Anyone who lives or is a business ratepayer in the borough can ask a question
 - On average 1 question per meeting or less
 - Questions can be on any subject for which the council has powers or duties or that affects Southwark
 - Maximum of 15 minutes allowed
 - Questions often directed to Cabinet if there is not a council assembly meeting due
 - Local issues raised at community councils

This is what the Council Assembly cannot do

Council assembly cannot make decisions on executive functions (e.g. on housing, social services, regeneration, environment, education etc) – only the Cabinet or a member of the executive or community council exercising delegated authority from the cabinet or an officer can take these decisions. If Council Assembly agrees on something that is an “executive function” the decision has to be referred as a recommendation to Cabinet.

These are plans and strategies the cabinet has responsibility for and it could ask the Assembly to decide or debate

This list includes some of the plans and strategies that are currently the responsibility of the cabinet. These include:

- Asset management plan
- Employment strategy
- Enterprise strategy
- Food law enforcement plan
- Green travel plan
- Housing investment programme
- Housing renewal policy
- Housing strategy
- Local area agreement (LAA)
- Medium term resources strategy (including the housing revenue account)
- Renewal areas strategies
- Road safety plan
- Schemes for financing schools
- Special education needs action plan
- Statement of community involvement
- Supplementary planning documents
- Waste strategy

- Youth strategy.

Community Councils

The Act enabled functions to be discharged by an area committee. An area committee is defined as a 'committee or sub-committee of the authority'. Area committees have to meet certain conditions

In Southwark 'area committees' are known as community councils.

At present decisions on the following have been delegated in part to community councils;

- local planning applications,
- the cleaner, greener, safer capital programme,
- the community fund programme,
- traffic management,
- appointment of local education authority governors to local nursery and primary schools
- and community project banks.

Community councils therefore take decisions which affect a relatively small area and the Cabinet could delegate more executive functions to Community Councils.