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**LOCALISM ACT – GOVERNANCE ARRANGEMENTS**

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**Responsible Cabinet Member - Councillor Bill Dixon, Leader**

**Responsible Director – Paul Wildsmith, Director of Resources**

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**SUMMARY REPORT**

**Purpose of the Report**

1. To consider the Council's response to some elements of the Localism Act 2011 which relate to the Council's Constitutional arrangements.

**Summary**

2. The Localism Act received Royal Assent in November last year. A number of the provisions within the Act in relation to the Council's governance arrangements are now in force. This report explores whether to make changes to current governance arrangements in the light of the new law.
3. The Act allows Council's to implement the Committee system that was in place in Darlington until the implementation of the Local Government Act 2000 which brought in the concept of Executive Arrangements and the introduction of the Leader and Cabinet model in Darlington.
4. Before the Council could return to a committee system a number of steps would have to be taken. These include
  - (a) Setting up an Independent Remuneration Panel to look at Members Allowances again (this was done earlier this year) and setting a new scheme of allowances to reflect the new arrangements.
  - (b) Carrying out a consultation exercise in accordance with the legislation and taking into account that consultation before a resolution can be passed.
  - (c) Drawing up a new Constitution which sets out the format of the new arrangements and draws up appropriate delegations and other significant changes that would be required to change from Executive Arrangements to a Committee System.
  - (d) Consideration of whether to include within those arrangements a Scrutiny function, and ensuring that the arrangements allow the Council to carry out any statutory functions in relation to Scrutiny which currently exist.
  - (e) An analysis of the resource requirements of the proposed new arrangements and a review of the roles and responsibilities of the democratic services function to ensure

that it is able to continue to support the democratic process in the light of the proposed changes.

5. Any change to the arrangements must take place at an annual meeting and it would not be possible to carry out the steps outlined above before the annual meeting this year. The earliest that the system could be implemented is therefore 2013.
6. Once a decision has been made to move to a Committee system it would not be possible to move back to Executive arrangements within a five year period without a referendum.
7. The Council will be subject to a boundary review in 2013 which will consider the number of Councillors and the representation levels in each ward. Changes resulting from the review will be implemented by 2015.
8. Other provisions of the Localism Act 2011 which have been brought into force include the general power of competence and the abolition of the requirement to have a petition scheme. It is not recommended that any changes take place as a result of the general power of competence. It is recommended that a petition scheme be retained but that it is altered to make it less onerous and a more practical scheme. It is recommended that the e-petition facility is no longer offered in the same way.

### **Recommendation**

9. It is recommended that :-
  - (a) The option to move to a Committee system is brought to members attention for consideration.
  - (b) That the amended petition scheme attached at Appendix 1 be approved.

### **Reasons**

10. The recommendations are supported by the following reasons :-
  - (a) To enable the Council to make a decision with the benefit of the outcome of the boundary review.
  - (b) To enable the Council to carry out all necessary steps before making a decision to move to a Committee System.
  - (c) To introduce a simpler petition scheme in the light of the changed statutory position.

**Paul Wildsmith,  
Director of Resources**

### **Background Papers**

Localism Act 2011

C.Whitehead : Extension 2306

S17 Crime and Disorder	There are no implications for Crime and Disorder
Health and Well Being	There are no implications for Health and Wellbeing
Carbon Impact	There may be a Carbon Impact if it is necessary to print greater volumes of paper, this is not proposed within this report.
Diversity	There are no implications for diversity.
Wards Affected	All wards are affected equally.
Groups Affected	All groups are affected equally.
Budget and Policy Framework	This does not represent a change to the budget and policy framework.
Key Decision	This is a non-executive decision
Urgent Decision	This is a non-executive decision
One Darlington: Perfectly Placed	The report relates to changes to statutory provisions.
Efficiency	The report seeks to streamline the petition scheme and recommends that work is not commenced on a change to governance arrangements which will avoid additional work and resources implications.

## MAIN REPORT

### Information and Analysis

1. The Localism Act 2011 received Royal Assent on 15 November 2011 and gives Councils the flexibility to choose their own governance arrangements. These powers came into force on 15<sup>th</sup> January 2012 but cannot be brought into operation within a Council until the annual meeting.
2. Prior to 2000, decisions in all English local authorities were taken at Council Committee meetings. These committees were governed by the Local Government Act 1972 and they had delegated powers directly from Full Council or submitted their recommendations to Council for approval.
3. The Committees also had the power to arrange the discharge of their functions through sub-committees or officers. They were required to be politically proportionate, meaning that seats on committees had to be allocated to each political group in the same proportion to the number of seats held by each of those groups on the Council.
4. The implementation of the Local Government Act 2000 changed the way that local authorities made decisions. The reality of the Committee System was that due to the group system matters were largely already decided by members of the leading group. The central feature of the new system was a division between executive elected members, who would make decisions and non-executive elected members who would scrutinise those decisions. The aim of separating the roles of executive and non-executive Members was to improve transparency and accountability by identifying those members that were responsible for the decisions and placing a responsibility on other members to hold them to account. It was also intended to be more efficient by enabling the majority of decisions to be taken at a single meeting ie Cabinet.
5. The Government gave local authorities three main alternative decision-making models:-
  - (a) A directly-elected mayor and cabinet;
  - (b) a leader and cabinet; or
  - (c) a directly-elected mayor and council manager.

### *The Localism Act 2011*

6. The Localism Act now specifies that in order to change from a cabinet system to a committee system, local authorities must:-
  - (a) Pass a resolution to change their governance arrangements;
  - (b) As soon as practicable after passing the resolution, make the provisions of the new arrangements available for inspection;
  - (c) Publish in one or more newspapers circulating in the area a notice which describes the features of the new system and timescales for implementation.

7. Having passed a resolution and complied with the publicity requirements above, authorities are required to cease operating their old form of governance arrangements and start operating their new arrangements. This must take place 'at the relevant change time' which, in the case of a move from a cabinet system to a committee system, is defined as:-
  - (a) The first annual meeting of the local authority to be held after the resolution to make the change in governance arrangements is passed; or
  - (b) A later annual meeting of the local authority specified in that resolution.
8. This means that the forms of governance available to Darlington now include a committee system and that this can be introduced at the Council's Annual Meeting in May 2013, or at a later Annual Meeting should the Council take a decision to revert to a Committee system.
9. The Act also specifies that if the Council passes a resolution under the Act to change governance arrangements, it may not pass another resolution to change from one form of governance to another (e.g. from a committee system back to a leader and cabinet system) for 5 years unless a referendum is held on the issue.

### ***Permitted forms of Governance under the Act***

10. The options available to councils in terms of decision making structures are:-
  - (a) Executive Arrangements (either Leader and Cabinet or Mayor and Cabinet);
  - (b) (b) A committee system;
  - (c) (d) Other arrangements approved by the Secretary of State.
11. The Secretary of State has power to approve alternative forms of governance arrangements on request from local authorities, provided that they demonstrate that the proposed arrangements would be an improvement on the current arrangements, that they would ensure efficient, transparent and accountable decision making and that they would be appropriate for all local authorities, or a particular type of local authority.

### ***Overview and Scrutiny***

12. Authorities operating Executive arrangements must continue to have at least one Scrutiny Committee. Authorities operating under a committee system may have one or more scrutiny committees.
13. There is a specific requirement to review and scrutinise flood risk management functions and to carry out scrutiny of health and crime and disorder (and additional duties that might be put in place in respect of such matters as Police and Crime Panels).
14. The Health and Social Care Bill establishes Health and Wellbeing Boards and will be extending scrutiny powers in respect of health matters (regulations are awaited which will underpin the legislation).
15. The Secretary of State has power to make regulations about the function, composition and procedure for overview and scrutiny committees in a committee system. The Centre for Public Scrutiny has indicated that the Government is intending to produce regulations and/or guidance in this area early in 2012. (check this)

### *Consultation*

16. Should the Council decide to adopt a Council/Committee system there would be a duty to consult local government electors in relation to a change in political management arrangements. The requirement is to publish details of the proposals following a Council resolution and to make the detailed proposals available for inspection. There is insufficient time to do this before the current Annual meeting.

### *Resource Implications*

17. It will also be necessary to draw up arrangements and draft a new constitution. Based upon previous arrangements, servicing a committee system would require an increase in democratic support because of the increase in the number of meetings that is likely. In addition, printing costs would also be likely to rise. This does all depend on the nature of the arrangements and the number of the committees within the proposed system. It is therefore difficult to be clear about resource implications unless the precise arrangements are drawn up.

### *Adopting a Committee system – Issues to consider*

18. The decision as to whether or not to return to a committee system is a decision for Full Council. In considering the arrangements further, there are a number of potential issues that Members should be aware of:-
  - (a) **Resources** – the on-going costs to support a committee system are estimated to be higher than those of supporting the current Cabinet/Leader model. There will also be a need for considerable Officer and Member time to be spent in preparing for and implementing a new system of governance.
  - (b) **Timing** – if the Council agreed to move to a committee system there would need to be sufficient time to design a new system. During the course of the next year a review will be conducted of the Council's ward boundaries and if examples in other authorities are applied in Darlington we may see significant change to arrangements in the lead up to the 2015 elections in any event. Any change in governance arrangements would be sensible to consider at that time.
  - (c) **Ability to change to other Governance Arrangements** – once a resolution is passed, the Council will not be able to revert from a committee system to a Cabinet/Leader model (or any other system approved by the Secretary of State) for a further five years unless a referendum is held.

### *Members' Allowances*

19. Operating under a committee system will mean that the Members' Allowances Independent Remuneration Panel will need to review the new arrangements and make proposals for changes to Members' Allowances. The role of chair of a committee is significantly different to that of a Cabinet Member. There are likely to be more decision making meetings taking place but possibly with fewer chairs as compared to the number of Cabinet Members. This

means the Members' Allowances Panel would be likely to propose changes to the current allowances scheme to align with roles and responsibilities under a committee system. Any change proposals would need to allow for the Independent Panel to carry out its investigations and present a report to Council to adopt the new scheme before the arrangements can be implemented.

### ***Summary***

20. The paper details the options available to the Council under the Localism Act to change its governance arrangements if the Council has the desire to change. Should the Council want to revert to a former 'committee style' system of governance it is suggested that there be a long lead in period prior to implementation to ensure that appropriate consultation and the drafting of new governance arrangements can be achieved in a realistic timescale, and the implications of any boundary review can be considered as part of the decision.

### **Localism Act – The General Power of Competence**

21. As you may have seen in media coverage a court ruling determined that it was unlawful for local authorities meetings to include prayers. As a result Eric Pickles made the announcement that he intended to introduce certain provisions on the Localism Act earlier than intended to enable local authorities to continue to hold prayers. On 18 February 2012, the Localism Act 2011 (Commencement No 3) Order 2012 (*SI 2012/411*) brought the general power of competence set out in the Localism Act 2011 into force for principal local authorities.

### **Localism Act – Petitions**

22. Following the implementation of the Local Economic Development and Construction Act 2009 requiring Councils to implement a petition scheme the Council agreed a scheme at its meeting in July 2010. The scheme set out the format of a petition, the way the Council will receive the petition, the format of debates and the number of signatures required to trigger different types of response.
23. The Act required local authorities:
  - (a) to devise, publicise and comply with a Petition Scheme for handling both paper and electronic petitions;
  - (b) to ensure that petitions are acknowledged in writing within a time specified in the Petition Scheme. The acknowledgement must say what the authority intends to do in response to the petition;
  - (c) to take one or more steps in response to petitions which meet the criteria, and are therefore "active" petitions;
  - (d) to provide an automatic right for the matter raised in a petition to be debated by the full council if more than a specified number of people have signed it;

- (e) to allow certain Senior Officers of a principal local authority to be called to account at a public meeting; and
  - (f) to permit the Petition Organiser the power to ask a Scrutiny Committee to review the principal local authority's response to their Petition, if the organiser is not satisfied with the steps taken by the authority under Section 14 of the Act.
24. The guidance also required that a Petition Scheme should:
- (a) Permit anyone who lives, works or studies in the local authority area, including under 18's, to sign or organise a petition and trigger a response;
  - (b) Provide a facility for making e-Petitions;
  - (c) Include a specified time period in which petitions must be acknowledged by the local authority;
  - (d) Incorporate a range of prescribed options in terms of a response.
  - (e) Petitions with a significant level of support trigger a debate of the Full Council. Councils are to determine this threshold locally, however it must be no higher than 5 per cent of the local population;
  - (f) Petitions with a requisite level of support, set by the local authority, require a senior local government officer to give evidence at a meeting of the authority's Scrutiny Committee.
25. Petition Organisers can prompt a review of the local authority's response if the response is felt to be inadequate.
26. The Localism Act repealed the legislation in relation to petition schemes and the requirement to have an e-petition facility. The repeal is in force. The option is therefore available to the Council to revoke the petition scheme or to introduce a revised less onerous scheme.
27. There are advantages in having a prescribed scheme as it sets out the way in which we would like to receive petitions and provides a very clear process by which petitions will be dealt with, however the legislation was very prescriptive in relation to the scheme and there were a number of elements which could usefully be removed from the scheme. These include:
28. The requirement to have an e-petition facility. The requirement when enacted came with a promise of government funding to purchase an IT package that would provide the facility. The funding was subsequently withdrawn with the result that the Council put in place a 'Heath Robinson' style facility to meet legislative requirements as it was by then known that the legislation was likely to be repealed. As a result the e-petition facility is onerous to administer and could usefully be abandoned in favour of a paper based petition or an e-petition administered by the petitioners rather than the Council. The number of petitions currently received by the Council does not warrant expenditure on a new IT package when compared with other competing priorities.

29. The Scheme provides that a petition with more than 1500 signatures will trigger a debate in full Council and that 750 signatures will trigger the requirement for a senior council officer to give evidence at a public meeting. In essence all petitioners really want is to have their petition considered by members. Having it at full Council can cause delay i.e. the decision they are unhappy about can have been taken at Cabinet long before the Council debate, and the forum is not conducive to public attendance and involvement. It may be preferable if the scheme is retained but amended to provide that 1500 signatures triggers a debate at Cabinet and there is no provision for officers to attend any public meetings. If this is the case the number could be reduced to 1000 for a Cabinet debate and that would be the only response to a petition in a member forum. Otherwise, as is currently the case for petitions receiving less than 750 signatures petitions would be dealt with by officers. The appeal procedure allows Scrutiny to review the Council's response to a petition.
30. It is therefore recommended that the Petition Scheme be retained as currently drafted but that the requirement for an e-petition be removed and the changes to the trigger and the forum for debate be incorporated.

### **Outcome of Consultation**

11. Consultation has taken place with the Leaders of all groups and the Members of Cabinet.