

## **CABINET ITEM COVERING SHEET PROFORMA**

**AGENDA ITEM**

**REPORT TO CABINET**

**6 AUGUST 2009**

**REPORT OF  
CORPORATE  
MANAGEMENT TEAM**

### **COUNCIL DECISION/**

**Leader of the Council - Councillor Lupton  
Corporate Management and Finance - Cabinet Member - Councillor Laing**

#### **NEW EXECUTIVE ARRANGEMENTS**

1. Summary

The report outlines the provisions regarding new executive arrangements contained within the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act"); the steps taken so far in developing the Council's response to the 2007 Act requirements and details the proposed approach to implementing those requirements.

2. Recommendations

It is recommended to Council that:-

- (i) the proposed next steps referred to at paragraphs 32 to 41 and the timetable/project plan at Appendix 2 of the report, together with the consultation outlined at Appendix 1, be agreed;
- (ii) the Chief Executive be authorised to finalise the details and arrangements outlined at Appendix 1 and, if required, to vary the timetable and project plan at Appendix 2, in consultation with Cabinet Members;
- (iii) a further report be submitted to Cabinet regarding the outcome of the consultation and the proposals for change to be the subject of a referendum, together with the arrangements for the referendum; and that
- (iv) the costs of the consultation process and referendum be met from corporate balances.

3. Reasons for the Recommendations

To agree the procedure for complying with the requirements of the 2007 Act and to ensure that there is appropriate consultation with local government electors and other interested parties.

#### 4. Members Interests

Members (including co-opted Members with voting rights) should consider whether they have a personal interest in the item as defined in the Council's code of conduct (**paragraph 8**) and, if so, declare the existence and nature of that interest in accordance with paragraph 9 of the code.

Where a Member regards him/herself as having a personal interest in the item, he/she must then consider whether that interest is one which a member of the public, with knowledge of the relevant facts, would reasonably regard as so significant that it is likely to prejudice the Member's judgement of the public interest (**paragraphs 10 and 11 of the code of conduct**).

A Member with a prejudicial interest in any matter must withdraw from the room where the meeting considering the business is being held -

- in a case where the Member is attending a meeting (including a meeting of a select committee) but only for the purpose of making representations, answering questions or giving evidence, provided the public are also allowed to attend the meeting for the same purpose whether under statutory right or otherwise, immediately after making representations, answering questions or giving evidence as the case may be;
- in any other case, whenever it becomes apparent that the business is being considered at the meeting;

and must not exercise executive functions in relation to the matter and not seek improperly to influence the decision about the matter (**paragraph 12 of the Code**).

**Further to the above, it should be noted that any Member attending a meeting of Cabinet, Select Committee etc; whether or not they are a Member of the Cabinet or Select Committee concerned, must declare any personal interest which they have in the business being considered at the meeting (unless the interest arises solely from the Member's membership of, or position of control or management on any other body to which the Member was appointed or nominated by the Council, or on any other body exercising functions of a public nature, when the interest only needs to be declared if and when the Member speaks on the matter), and if their interest is prejudicial, they must also leave the meeting room, subject to and in accordance with the provisions referred to above.**

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Corporate Management and Finance – Lead Cabinet Member – Councillor Laing**

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**SUMMARY**

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**RECOMMENDATIONS**

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## DETAIL

### The 2007 Act

1. Part 3 of the 2007 Act has revised the 2000 Local Government Act provisions and introduced new executive arrangements requirements.
2. Authorities, such as Stockton, which are presently operating an “old-style Leader and Cabinet executive” as provided for in the 2000 Act, must make a change in governance arrangements in accordance with the 2007 Act’s requirements.
3. This means that the Council must change its present arrangements, and look to introduce a different form of executive as provided for and permitted by the 2007 Act. In default the Leader and Cabinet executive (England) model would be imposed.
4. The 2007 Act now allows for only two specific executive models:-
  - Mayor and cabinet, or
  - Leader and cabinet

Although the Act has not repealed the 2000 Act provisions which allow for a form of executive which may be prescribed in regulations by the Secretary of State, such as a directly elected executive, as specified in the 2000 Act.

5. The Mayor and Cabinet model remains the same as that introduced by the 2000 Act. Authorities currently operating that model (eg Middlesbrough and Hartlepool) are unaffected by the new 2007 Act provisions and will not have to change their present arrangements.

### The Elected Mayor and Cabinet Executive Model

6. As indicated this remains the same as the Model introduced by the 2000 Act. It is defined as an executive consisting of:-
  - (a) an elected mayor of the authority; and
  - (b) two or more councillors of the authority appointed to the executive by the elected mayor.
7. Other key features of the Model include the following:-
  - the term of office of an elected mayor is four years and the executive arrangements cannot include provision for the Council to remove the elected mayor
  - the mayor is elected on the ordinary day of elections (eg 5 May 2011 is the next relevant election date for Stockton’s purposes)
  - the elected mayor makes the arrangements for the discharge of the authority’s executive functions (ie who is to discharge those functions - the elected mayor, the executive, another member of the executive, a committee of the executive, or an officer of the authority)

- the elected mayor must be able to determine the number of councillors who may be appointed to the executive (subject to the statutory minimum (2) and maximum (9) unless the Secretary of State increases the maximum permitted)
- the elected mayor has to appoint one of the members of the executive to be his deputy. The deputy mayor, unless he resigns or ceases to be a member of the authority, will hold office until the end of the term of office of the elected mayor (although the deputy mayor may be removed by the elected mayor at any time, but if so, another person must be appointed in his place)

### The Leader and Cabinet Executive (England) Model

8. This model is defined in the 2007 Act as an executive consisting of:-
  - (a) a councillor of the authority elected as leader of the executive by the authority; and
  - (b) two or more councillors of the authority appointed to the executive by the executive leader
  
9. Other key features of the model include the following: -
  - the executive leader makes the arrangements for the discharge (e.g. by officers) of the functions which (under regulations) are the responsibility of the executive.
  - The leader is elected at a post election annual meeting
  - the leader's term of office is for four years, but the executive arrangements may include provision for the Council to remove the leader by resolution before then.
  - the executive leader must have the power to be able to determine the number of councillors which may be appointed to the executive (although this must be at least two, but cannot exceed 9 unless the Secretary of State increases the maximum in regulations)
  - a deputy executive leader must be appointed by the executive leader, and the deputy will hold office until the end of the term of office of the executive leader (although the deputy may be removed by the executive leader at any time but, if so, there would have to be a replacement).

### Transitional Provisions

10. The 2007 Act enables the Council to continue to operate its present "old style Leader and Cabinet" executive arrangements until the end of the transitional period. This period is from the end of December 2007 (when the new provisions came into force) and ends on 8 May 2011.
  
11. The Council must have drawn up and have adopted a different form of executive arrangements by the end of this period (i.e.. three days after the 5 May, 2011 elections for Stockton under the 2007 Act).

## Changing Governance Arrangements

12. The 2007 Act sets out certain requirements which a Local Authority which wishes to change its governance arrangements must satisfy.

## Consultation

13. An authority must take reasonable steps to consult Local Government electors and other interested parties before it draws up and finalises its proposals for change (i.e. which model it proposes to introduce).
14. There is currently no prescription or guidance about the form any consultation should take, nor in Stockton's case as to how long the consultation should take.
15. It could, therefore, be consultation regarding both specific models of executive arrangements and asking which model electors and interested parties would prefer to see put into place, without expressing the authority's preference.
16. Alternatively, it could be consultation which provides information about both models, but which also specifies the authority's preferred model, and asks electors and interested parties, for their views in that respect.
17. The proposals for change can (but are not required to) provide for the proposed change to be subject to approval in a referendum. A referendum is, therefore, optional. When consulting local government electors and interested parties, they could be asked to indicate if they would wish a referendum to be held, subject to the outcome of the consultation, on the authority's preferred executive arrangements model.

## Referendum

18. Where the proposals for change include provisions for a referendum, a referendum must be held before the proposals are implemented and the result of the referendum must be to approve those proposals. The referendum question would have to be specific to the particular executive model an authority was proposing to introduce (e.g. are you in favour of the proposal for the council to be run in a new way which includes a mayor who will be elected by the borough's voters). The format and content of the relevant question is set out in the Local Authorities (Conduct of Referendums) (England) Regulations ("the 2007 Regulations").
19. A referendum would be similar to a local government election in terms of administration and related costs (eg as regards postal ballot arrangements; polling stations; Presiding Officers and Poll Clerks and the issuing of poll cards etc).
20. If the result of the referendum is to approve the proposals the authority would then, within a period of 28 days beginning with the day the referendum was held, have to pass a resolution at a special council meeting agreeing to implement the new executive arrangements.
21. If the result of the referendum is not to approve the proposals, the authority would have to publicise that fact and indicate that it would be continuing to operate its existing (current) arrangements.
22. The authority would then have to undertake further consultation with local government electors and interested parties (albeit this would in effect be in the form

of the provision of information about the other executive model available, rather than a request for views) and formulate different proposals based on the second executive model, advertising that they are available for inspection, with a view to passing a resolution at a special council meeting, and implementing those proposals as indicated in paragraphs 24 and 25 of the report.

#### Change where no referendum is held

23. Where a proposed change in governance arrangements (whether this is the elected mayor model or leader and cabinet) is not subject to a referendum, following consultation with local government electors and interested parties and the finalisation of the proposals for change, full Council is required to pass a resolution at a special meeting within the permitted resolution period, so that the proposed change in governance arrangements can be agreed/implemented. The proposals have to be advertised and made available for public inspection.
24. In Stockton's case, the resolution has to be passed after 30 September, 2010 and by no later than 31 December, 2010.
25. Subject to this, the different form of executive model (including where a referendum is held) must be in operation by 8 May 2011.

#### Action taken to date

26. A Members' Seminar was held on 21 September 2007 which included details of the proposals for new executive arrangements which were emerging in the then Local Government Bill.
27. Subsequently, a report was presented to Cabinet on 14 February 2008 outlining the provisions in the recently enacted 2007 Act.
28. Cabinet/Council noted the report and agreed to a further Members' seminar to discuss the Council's approach to the new requirements.
29. The seminar was held on 16 May 2008. No consensus was reached regarding a preferred executive model.
30. It was indicated at the seminar that a report should be submitted to a future Members Advisory Panel (MAP) meeting, with thoughts on how to take the debate forward, given the absence of any overall consensus.
31. On 25 March 2009 MAP discussed whether electors and other interested parties should be consulted on both available executive models, with the possibility thereafter of a referendum on the preferred model. It was agreed that this possible way forward and a summary of the executive model options and the 2007 Act implementation requirements should be circulated to each political group for discussion. This has been done. Subject to this MAP indicated that a report should then be submitted to Cabinet/Council for decision.

#### Proposed Next Steps

32. Consultation will take place with local government electors and other interested parties. This will take the form outlined at **Appendix 1** to the report. It is suggested that Officers work up and finalise the specific details in consultation with Cabinet Members.

33. The outcome of the consultation will be evaluated and, subject to that outcome, a preferred or chosen executive model will be agreed and proposals for change, based on that model, will be drawn up.
34. When approved, the proposals for change, which will indicate that they are subject to approval in a referendum, will be submitted to the Secretary of State.
35. After the proposals have been submitted to the Secretary of State, a notice will be published, as soon as possible, in the local press. The notice will contain the details required by regulation 4 of the 2007 Regulations eg a description of the main features of the proposals and of the outline fall-back proposals (in this instance, this means the Council's existing executive arrangements); when and where the proposals can be inspected; that a referendum is to be held and the date when polling is to take place.
36. The notice should be published fewer than 56 days (excluding Saturdays, Sundays and Bank Holidays) before the referendum date, otherwise a second notice will be required to be published in the local press no earlier than 55 days and not later than 28 days before the date of the referendum
37. Publication of the notice of referendum must take place no later than the twenty fifth day before the date of the referendum.
38. Notice of the poll has to be given no later than the sixth day before the day of the referendum.
39. Polling takes place between 7.00 am and 10.00 pm on the day of the referendum.
40. It is proposed that the count takes place on the following day after 9.00 am.
41. The proceedings of the referendum are governed by the Local Government Referendum Rules contained in the 2007 Regulations (Schedule 3).

#### Timetable

42. A timetable/project plan for the implementation process is attached at **Appendix 2** to the report.

## **FINANCIAL AND LEGAL IMPLICATIONS**

### **Financial**

43. There will be costs associated with implementation eg consultation regarding proposals for change in governance and the referendum process. It is estimated that consultation with all local government electors is likely to cost approximately £26k. The costs of a referendum will equate to the costs of a local council election. The 2007 Borough elections cost approximately £220k. It is proposed that the costs of consultation and the referendum will be met from corporate balances.

### **Legal**



44. There is a statutory requirement to change the Authority's current governance arrangements in accordance with the provisions introduced by the 2007 Act. The procedure for change is also prescribed in the principal legislation and is likely to be, but has not yet been supplemented by secondary legislation.

### **RISK ASSESSMENT**

45. Introducing new executive arrangements has been assessed, at this stage, as medium risk (risk score 12).

### **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

46. Enhancing local democracy is a key objective of the Council Plan (55).

### **EQUALITIES IMPACT ASSESSMENT**

47. No assessment has been considered necessary at this stage.

### **CONSULTATION**

48. Previous seminars and reports (to Cabinet and MAP) have been accessible to all Members. Further consultation will be undertaken as the process of developing and implementing Stockton's approach to the new provisions

#### **Director of Law and Democracy**

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Background Papers:

Ward(s) and Ward Councillors:

Property Implications:

The appendices to the report

Not ward specific

None

**CHANGING GOVERNANCE ARRANGEMENTS**

**CONSULTATION**

Information regarding the two executive models will be provided:-

- at information points in key council buildings, such as reception areas and libraries;
- on the Council's website;
- to all local government electors; and
- in Keeping You in Touch.

Interested persons will be asked to indicate which of the executive models they would prefer to see included in a referendum.

Responses will be able to be provided in a variety of ways eg in writing, by email.

An appropriate press release will be issued.

The consultation/response period will be 4 weeks.