

## CABINET ITEM COVERING SHEET PROFORMA

**AGENDA ITEM**

**REPORT TO CABINET**

**6<sup>th</sup> SEPTEMBER 2012**

**REPORT OF CORPORATE  
MANAGEMENT TEAM**

### **CABINET DECISION**

**Leader of the Council – Bob Cook**

#### **INDEPENDENCE FROM THE CENTRE – A NEW CONSTITUTIONAL SETTLEMENT FOR LOCAL GOVERNMENT**

1. Summary

This report provides a background to the launch by the Parliamentary Political and Constitutional Reform Committee and the Local Government Association, of a public discussion, looking into the merits of constitutional reform to make the role of Whitehall and Councils clearer to local residents. The proposals suggest providing decentralisation of power from Whitehall to Local Councils and codifying this arrangement in statute.

2. Recommendations

Cabinet are recommended to:-

1. Note the report and content
2. Support the proposals to actively engage in the discussions going forward.

3. Reasons for the Recommendations/Decision(s)

To enable this authority to participate in discussions at a local, regional and national level to inform and influence this national debate.

4. Members' Interests

Members (including co-opted Members) should consider whether they have a personal interest in any item, as defined in **paragraphs 9 and 11** of the Council's code of conduct and, if so, declare the existence and nature of that interest in accordance with and/or taking account of **paragraphs 12 - 17** of the code.

Where a Member regards him/herself as having a personal interest, as described in **paragraph 16** of the code, in any business of the Council he/she must then, **in accordance with paragraph 18** of the code, 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 and the business:-

- affects the members financial position or the financial position of a person or body described in **paragraph 17** of the code, or
- relates to the determining of any approval, consent, licence, permission or registration in relation to the member or any person or body described in **paragraph 17** of the code.

A Member with a personal interest, as described in **paragraph 18** of the code, may attend the meeting but must not take part in the consideration and voting upon the relevant item of business. However, a member with such an interest may make representations, answer questions or give evidence relating to that business before the business is considered or voted on, provided the public are also allowed to attend the meeting for the same purpose whether under a statutory right or otherwise (**paragraph 19** of the code).

Members may participate in any discussion and vote on a matter in which they have an interest, as described in **paragraph 18** of the code, where that interest relates to functions of the Council detailed in **paragraph 20** of the code.

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**SUMMARY**

This report provides a background to the launch by the Parliamentary Political and Constitutional Reform Committee and the Local Government Association, of a public discussion, looking into the merits of constitutional reform to make the role of Whitehall and Councils clearer to local residents. The proposals suggest providing decentralisation of power from Whitehall to Local Councils and codifying this arrangement in statute.

**RECOMMENDATIONS**

Cabinet are recommended to:

- 1 Note the report and content.
- 2 Support the proposals to actively engage in the discussions going forward.

**BACKGROUND**

1. The recently enacted Localism Act gives effect to the government's ambitions to decentralise power away from Whitehall down to local councils, communities and individuals, to allow them to act on local priorities. The Act covers a range of key policy areas including the provision for a General Power of Competence.
2. This is something that the LGA has long campaigned for on behalf of Local Government. This act along with initiatives such as Community Budgets, City Deals and the devolution of power to Northern Ireland, Scotland and Wales etc signals some cross party intent to give councils the freedom to be creative and entrepreneurial, acting on behalf of their communities and in their own financial interest.

3. Notwithstanding these shifts, it remains a fact that Local Government in this country has no standing or protection embedded in a codified constitution or document. Legally the system of local government in England could be abolished completely at any time by government, putting through a Local Government Abolition Bill. This highlights a constitutional weakness of local government within our system of governance.
4. The Political and Constitutional Reform committee along with the Local Government Association have recently been inquiring into the relationship between local and central government. This has been widely supported and evidence shows that concerns have been raised that centralisation has eroded local government autonomy, leaving people with less say over how their communities are run. Most western democracies enshrine and entrench the rights of local government in their constitutions but the UK's unwritten constitution provides no such protection for councils and councillors.

## DRAFT CODE SUMMARY

5. To support the debate and form a basis for consultation, the Political and Constitutional Reform Committee has asked an academic witness to draft up an illustrative draft code, governing the relationship between Central and Local Government in England. This draft code was based upon 9 principles, set out by the committee. Central and Local Government could benefit from a code that clearly sets out rights and responsibilities and codifies this in statute. This code is a starting point for discussion and to further explore a new vision for the future. A summary of the draft code is detailed below:
6. Through this code Parliament recognises free and independent local councils in England, accountable to local citizens. These included unitary, district, county, metropolitan district and London borough councils who will enjoy independence in both powers and finance and be entitled to do all that is required at a local level, within the law, to secure and improve the wellbeing of their citizens and communities. Local councils will have co-equal, not subordinate, status to central government and their rights and duties will enjoy equal protection in law.
7. The draft code contains ten articles each detailing different aspects, agreements and provides an understanding of the code. A summary of each article is provided below:-
  - **Article One - Defines the rights and duties of local government.** Sets out the protection by Law of the rights and duties of local councils, identifies who is bound by the article, details that the individual rights of citizens are not affected by the code. Councils and government can seek adjudication should either party not be acting in accordance with the code.
  - **Article Two - Details local autonomy and local self-government.** Accountability to the local citizen, the requirement to operate within the rule of law and with regard to human rights legislation, council's right to administer and regulate public affairs not dealt with by any other governmental body.

- **Article Three – Scope of Local Government.** Defines that powers and responsibilities of councils will be prescribed by statute; and states that councils will have full discretion to exercise their initiative and will be fully consulted on any decision making process by central government.
- **Article Four - Inter governmental activities;** central and local government jointly can create inspection regimes to set and maintain standards.
- **Article Five – Territorial Autonomy** - any boundary changes must be conducted with the involvement of the Local Government Boundary Commission for England and be the subject of a local referendum.
- **Article Six – Council Governmental systems.** Local citizens through their councils have the right to choose their political decision making systems. Changes must be subject to a binding local referendum. These must be reviewed every 8 years.
- **Article Seven – Local Government Financial Integrity** – Details the flexibility local councils will have to raise their own funds and the restrictions on central government to cap or limit in any way council's taxation powers. Local Authorities will, to the greatest possible extent, be financially independent of central government. Equalisation will be conducted on an annual basis by an independent equalisation board. Locally additional resources can be raised supported by a guaranteed annual share of the yield of income tax.
- **Article Eight - Councils right and duty to cooperate;** Councils will be able to cooperate with other local council, public and private sector bodies, charities or third sector organisations.
- **Article Nine – Local Referendum.** The administration of any local referendum will have to follow the standards set by the Electoral Commission.
- **Article Ten - Legal protection of Local Government ;** Councils have the right of recourse to judicial review to secure free exercise of their powers and any other principals of local self-government enshrined in law or contained within the code or evident in Human Rights Law.

## NEXT STEPS

8. The key to successfully implementing codification of inter governmental relationships is Central Governments willingness to permanently devolve political and governmental power to councils. Given this intention, any negative implications of codifications should be overcome through the creation of safeguards and by

negotiation and compromise. The forging of new relationships between central and local government must go hand in hand with forging new relationships between citizens, councils and councillors. The principal of codification and the draft code, provide the basis for forging these new sets of relationships and a framework within which they can be explored.

9. The opportunity to move this discussion forward has the support of the Local Government Association, politicians nationally and is supported by the Council of Europe charter on Local Self-Governance, which was first agreed in 1985 and signed up to unconditionally by the UK government.
10. The work of the Political and Constitutional Reform Committee and the Local Government Association provides a useful and timely opportunity to thoroughly examine the relationship between central and local government. It is recommended that this authority takes up the opportunity that this timely paper provides to influence locally, regionally and nationally our constitutional and governance arrangements going forward.

### **FINANCIAL IMPLICATIONS**

11. There are no direct financial implications as a result of this report. Should at some point in the future constitutional changes go ahead, and then financial implications would be explored once the detail is known and understood.

### **LEGAL IMPLICATIONS**

12. There are no direct legal implications as a result of this report. Should at some point in the future constitutional changes go ahead, and then legal implications would be explored once the detail is known and understood.

### **RISK ASSESSMENT**

13. There are no direct risks associated with the content of this report. Should at some point in the future constitutional changes go ahead, and then risks would need to be explored once the detail is known and understood.

### **SUSTAINABLE COMMUNITY STRATEGY IMPLICATIONS**

There are no immediate impacts on the Sustainable Community Strategy.

### **EQUALITIES IMPACT ASSESSMENT**

14. There is no requirement to conduct an Equality Impact Assessments (EIA) as a result of this report. Should any constitutional changes arise in the future, an Equality Impact Assessment would be undertaken.

## CONSULTATION INCLUDING WARD/

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### Education Related

No.

### Background Papers

1. A recent article from The Independent, co-authored by Graham Allen MP, that outlines some of the possibilities,  
<http://www.independent.co.uk/opinion/commentators/phillip-blond--graham-allen-we-need-a-magna-carta-for-true-local-government-6988803.html>
2. The draft code itself:  
<http://www.parliament.uk/documents/commons-committees/political-and-constitutional-reform/revisedcodeandnotesforWEBSITE2012amended22Feb.pdf>  
**Guidance)**