

# CONSTITUTION COMMITTEE AGENDA



**24 August 2012**

**at 9.30 am**

**in Committee Room B, Civic Centre, Hartlepool**

**MEMBERS: CONSTITUTION COMMITTEE:**

The Mayor, Stuart Drummond

Councillors C Akers-Belcher, S Akers-Belcher, Cook, Cranney, James, G Lilley, Simmons and Wells.

- 1. APOLOGIES FOR ABSENCE**
- 2. TO RECEIVE ANY DECLARATIONS OF INTEREST BY MEMBERS**
- 3. MINUTES**
  - 3.1 Minutes of the meeting held on 12 July 2012
- 4. ITEMS REQUIRING DECISION**
  - 4.1 Licensing Committee – *Chief Solicitor*
  - 4.2 Council Procedure Rules – Rule 17 Voting – *Chief Solicitor*
  - 4.3 Consultation on Code of Independence for Local Government – *Chief Solicitor*
  - 4.4 Job Evaluation Appeals – *Acting Chief Executive*
- 5. ANY OTHER ITEMS WHICH THE CHAIRMAN CONSIDERS ARE URGENT**

# CONSTITUTION COMMITTEE

## MINUTES AND DECISION RECORD

12 July 2012

The meeting commenced at 10.30 am in the Civic Centre, Hartlepool

**Present:**

Councillor: Stephen Akers-Belcher (In the Chair)

Councillors: Christopher Akers-Belcher, Rob Cook, Geoff Lilley and Chris Simmons

In accordance with Council Procedure Rule 4.2 (ii), Councillor Carl Richardson was in attendance as substitute for Councillor Kevin Cranney and Councillor Angie Wilcox was in attendance as substitute for Councillor Marjorie James.

Also present:

Councillor: Keith Fisher

Officers: Peter Devlin, Chief Solicitor  
Amanda Whitaker, Democratic Services Team Leader  
Angela Armstrong, Principal Democratic Services Officer

### 6. Adjournment of Meeting

The meeting was adjourned until the conclusion of the Joint General Purposes/Constitution Committee which commenced at 9.30 am.

Upon reconvening on 12 July 2012 at 11.30am the following were present:

**Present:**

Councillor: Stephen Akers-Belcher (In the Chair)

Councillors: Christopher Akers-Belcher, Rob Cook, Geoff Lilley and Chris Simmons

In accordance with Council Procedure Rule 4.2 (ii), Councillor Carl Richardson was in attendance as substitute for Councillor Kevin Cranney and Councillor Angie Wilcox was in attendance as substitute for Councillor Marjorie James.

Also present:

Councillor: Keith Fisher

Officers: Peter Devlin, Chief Solicitor  
Amanda Whitaker, Democratic Services Team Leader  
Angela Armstrong, Principal Democratic Services Officer

## **7. Apologies for Absence**

Apologies for absence were received from The Mayor, Stuart Drummond, Councillors Kevin Cranney, Marjorie James and Ray Wells.

## **8. Declarations of interest by Members**

None.

## **9. Confirmation of the minutes of the meeting held on 14 June 2012**

Confirmed.

## **10. Standards Framework – Localism Act 2011** *(Chief Solicitor and Monitoring Officer)*

The Chief Solicitor presented a report which provided the background and requirements of the Localism Act 2011 in relation to promotion and maintenance of high standards of conduct by Elected and Co-opted Members. The Act now required the Monitoring Officer to establish and maintain a Register of Interests of Members based upon “discloseable pecuniary interests”. As such a draft Code of Conduct was attached at Appendix 1. It was noted that whilst the “new arrangements” became operative with effect from 1 July 2012, the Department for Communities and Local Government recognised that there will be some delay in formal adoption. It was therefore suggested that the Code of Conduct would become effective 28 days after formal adoption by Council.

In addition, Members were asked to consider the composition of the Standards Committee as the requirement for at least 25% of the membership to be “independent” of the local authority had been removed. It was noted however, that should the Council wish to appoint any independent persons to the Committee, it would be in a strictly advisory capacity with no voting entitlement.

In response to Members concerns, the Chief Solicitor indicated that the majority of issues that may be reported to a Standards Committee could be resolved via investigation and local resolution or through the operation of a Hearing Sub-Committee of the Standards Committee. It was suggested

that once the revised Standards Committee and Code of Conduct were approved by Council, a review should be undertaken in six months' time to monitor their operation.

The Chief Solicitor confirmed that the disclosure of pecuniary interests would cover Elected Members, their spouses/partners but not other members of the family.

A Member questioned the situation where an Elected Member disclosed a pecuniary interest which required them to leave the meeting during the discussions but a member of the public with the same interests could remain. The Chief Solicitor indicated that would be the case as the Elected Member would be bound by the provisions of the Code but that clarification through advice could be given in each particular case.

In relation to Standards Committee, it was suggested that the membership comprise 4 Elected Members plus 3 independent persons (non-voting) and that the quorum be 3 Elected Members plus 1 independent member (non-voting). It was noted that the current Chair of the Standards Committee Mr Barry Gray no longer wished to be considered for inclusion on the membership of the Committee. The Constitution Committee wished to pass on their appreciation for Mr Gray's contribution to the Standards Committee in previous years.

Members' attention was drawn to Article 9 of the Council's Constitution which referred to Standards Committee and its terms of reference. The report detailed the suggested terms of reference for the Standards Committee having regard for the role and functions of the Committee. It was noted that point (vi) should be removed as this responsibility was now with the Head of Paid Service.

A discussion ensued on the membership of the Hearing Sub-Committee of Standards Committee and it was suggested Sub-Committee should comprise 4 Elected Members and 1 independent person (non-voting).

The Chief Solicitor highlighted that Parish Council representation was still required on a Standards Committee where necessary and it was suggested that a Parish Council representative be appointed on a rota basis from all relevant Parish Councils.

### **Decision**

That the following be reported to Standards Committee on 18 July 2012 and subsequently Council on 2 August 2012 for approval:

(1) That the Code of Conduct attached at Appendix 1 be recommended to Standards Committee for submission to Council for adoption.

(2) The Standards Committee membership comprise:

4 Elected Members (based on broad proportionality requirements)  
3 Independent Persons (non-voting)

Quorum = 3 Elected Members plus 1 Independent Person (non-voting)

(3) That a Hearing Sub-Committee be established to consider the outcome of investigations undertaken by the Monitoring Officer where required comprising the following membership:

3 Elected Members (based on broad proportionality requirements)  
1 Independent Person (non-voting)

(4) That the Terms of Reference of the Standards Committee under Article 9 of the Council's Constitution be approved for submission to Council subject to the removal of point (vi) as this responsibility had been transferred to the Head of Paid Service.

(5) That the operation of the Standards Committee and Code of Conduct be subject to a review in six months' time.

## 11. Civic Honours Committee (*Chief Solicitor*)

At the meeting of the Constitution Committee on 29 March 2012, it was agreed that the Civic Honours Committee should comprise six Members including The Mayor, Chair of Council and the Chair of Scrutiny Co-ordinating Committee. It was previously agreed that The Mayor and Chair of Council were outside the requirements of political proportionality. The proportionality requirements of this Committee were detailed in the report and included the Chair of Scrutiny Co-ordinating Committee.

During the discussions that followed Members considered that the self selecting position on the Committee for the Chair of Scrutiny Co-ordinating Committee should also be outside the requirements of political proportionality. To enable a full representation of Members' views, it was agreed to increase the Civic Honours Committee membership to seven Members as follows:

Chair of Council (Chair)	) outside the
The Mayor	) requirements of
Chair of Scrutiny Co-ordinating Committee	) political proportionality

4 Other Members based on proportionality requirements.

Members were keen to see the recent Council recommendation in relation to the bestowing of the honour of Alderman to ex Councillor Arthur Preece be progressed as soon as practical. The importance of discussing how the

recipient wished the medal to be presented, whether with a pin or a ribbon was reiterated.

### **Decision**

(1) That a report be submitted to Council recommending that the Civic Honours Committee membership comprise as follows:

Chair of Council (Chair)	) outside the
The Mayor	) requirements of
Chair of Scrutiny Co-ordinating Committee	) political proportionality

4 Other Members based on proportionality requirements.

(2) That the Constitution Committee's concerns on the progress of the Alderman ceremony for ex Councillor Arthur Preece be forwarded to the appropriate officers.

## **12. Any Other Business which the Chairman Considers Urgent**

The Chairman ruled that the following items of business should be considered by the Committee as a matter of urgency in accordance with the provisions of Section 100(B) (4)(b) of the Local Government Act 1972 in order that the matters could be dealt with without delay.

## **13. Any Other Business – Job Evaluation Appeals**

Members referred to concerns raised previously by Members in General Purposes Committee on 25 June 2012 (reconvened on 2 July 2012) in relation to the lack of opportunity for the involvement of Elected Members in job evaluation appeals submitted by employees of the local authority. The Chief Solicitor indicated this issue would be reported to the Corporate Management Team and back to the next meeting of Constitution Committee.

The Chair commented that he wished this process to be fast tracked and expected a report to be submitted to the next meeting of the Constitution Committee.

### **Decision**

That the views of Corporate Management Team be sought and reported back to the next Constitution Committee.

The meeting concluded at 12.18 pm

CHAIR

# CONSTITUTION COMMITTEE



**Report of:** Chief Solicitor

**Subject:** LICENSING COMMITTEE

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## 1. PURPOSE OF REPORT

- 1.1 Following a meeting of the Constitution Committee on 14th June, 2012, it was requested the submission of a report covering the status and establishment of a Licensing Committee to discharge those functions under the Licensing Act, 2003. Further, whether the use of “substitutes” could be allowed from outside the Licensing Committee and that discussion takes place with the Chair and Vice-Chair of Licensing Committee and the Chair of the Constitution Committee. This report therefore reflects upon the statutory requirements applying to the operation of a Licensing Committee and incorporates the views of the Chair and Vice-Chair of the Licensing Committee.

## 2. LICENSING ACT, 2003

- 2.1 The Licensing Act, 2003 created a completely new system of governing the sale and supply of alcohol, as well as all forms of public entertainment (including cinemas and theatres) and late night refreshment. The overall “rationale” behind this legislation was to provide greater freedom and flexibility for the leisure industry, and also to allow for greater freedom of choice for the public. A “premises licence” would therefore be required for any place offering public entertainment (including cinemas and theatres), refreshments at night and/or the sale and supply of alcohol and a “personal licence” issued to individuals allowing them to sell and supply alcohol for consumption on or off the premises. Such licences would be issued through local authorities, as a departure from the system then operating wherein a Magistrates Court would have dealt with such applications.
- 2.2 The Act therefore defines under Section 3 a “licensing Authority” as including “the council of a district in England”. A licensing authority must carry out its functions with a view to promoting the licensing objectives. These “licensing objectives” are –

- (a) the prevention of crime and disorder;
- (b) public safety;
- (c) prevention of public nuisance; and
- (d) the protection of children from harm.

In addition to carrying out these licensing functions a licensing authority must also have regard to –

- (a) its licensing statement (as adopted by the authority), and
- (b) any guidance issued by the Secretary of State under Section 182.

For the purpose of the discharge of these functions under Section 6, “each licensing authority must establish a Licensing Committee consisting of at least 10, but not more than 15 Members of the authority”. A Licensing Committee is therefore a “statutory” Committee which must discharge the licensing functions as described, however there are some exceptions, namely;

- Any function related to setting the licensing policy, which must following consultation be approved and formally adopted by the authority and reviewed in every three year period thereafter.
- Any matter, which includes but is not entirely a licensing function, which may be referred to another Committee for determination but only if the Committee considers a report of the Licensing Committee.

- 2.3 The legislation also provides that a Licensing Committee may establish one or more Sub-Committees ‘*consisting of three Members of the Committee*’. Members will note the specific language used within the legislation here, that the Sub-Committee and its membership be derived from the “parent” Committee. It is also indicated that regulations may make provision about the proceedings of a Licensing Committee and their Sub-Committees, public access to meetings and publicity surrounding those meetings. Accordingly a Licensing Committee may arrange for discharge of any functions exercisable by it through either a Sub-Committee or subject to statutory requirements, to an Officer of the licensing authority (Section 10 refers). The Licensing Act 2003 (Hearings) Regulations 2005 make provision as to the determination of certain matters within a hearing and the applicable procedures to be adopted. Essentially, the Regulations provide for the timing of hearings, the notification requirements and the information to accompany that notification. In addition, provision is made for the attendance of parties at a hearing, the representations to be made and the seeking of permission for any other person to attend to assist the authority.

### 3. USE OF SUBSTITUTES

- 3.1 Although there is no strict statutory provision to provide for the use of substitutes, many Councils have adopted within their Standing Orders/Procedural Rules some accommodation for the use of substitutions in order to safeguard against meetings becoming inquorate and therefore prohibiting the transaction of business. In the Council’s own Procedure



Rules at para 4 “Appointment of Substitute Members of Committees/Sub-Committees” it is stated;

#### **4.1 Allocation**

*As well as allocating seats on Committees/Sub-Committees the Council at the Annual Meeting will allocate seats in the same manner for substitute Members.*

#### **4.2 Designation of Substitutes**

*A substitute may be designated for each Member appointed to a Committee or Sub-Committee*

- (i) by the Council, if so requested by the Member, or*
- (ii) by the Member, by notification to the Chief Executive (such designation of a substitute would take effect immediately after notification to the Chief Executive for the specific meeting or until such later time as shall be specified by the Member), and in respect of a Member appointed to more than one Committee or Sub-Committee, a different substitute may be designated for each appointment.*

*A Member may, by written notification to the Chief Executive, terminate the appointment of a substitute with immediate effect.*

#### **4.3 Powers and Duties**

*Substitute Members will have all the powers and duties of any ordinary Member of the Committee but will not be able to exercise any special powers or duties exercisable by the person for whom they are substituting.*

#### **4.4 Substitution**

*At the commencement of a meeting of which a substitute is to attend as substitute s/he shall identify the Member for whom s/he substitutes who shall be excluded from participating in that meeting and for whom there shall be no further substitution at that meeting.*

A Licensing Committee is properly recorded within the Council's Constitution as being a “regulatory Committee”, but is also a statutory based Committee which the Council is required to operate in conjunction with the Licensing Act, 2003. A local authority has power under Section 101 of the Local Government Act, 1972, to arrange for the discharge of its functions through a Committee, a Sub-Committee or an Officer of the authority or by any other local authority. This will cover those non-statutory Committees upon which the participation of substitute Members, would be permissible. However, the Licensing Act, 2003, draws a specific distinction in its composition through its statutory nature. Indeed, a Sub-Committee must originate from the “parent” Committee, which clearly operates in a ‘quasi judicial’ setting. I cannot therefore advise the use of

substitute Members where the Licensing Committee discharges those functions under Part 2 of the Licensing Act, 2003. Where the Committee or a Sub-Committee is discharging those matters under the Licensing Act, 2003, then substitute Members outside of the Committee, should not be allowed to participate.

At a meeting on 13 July 2012, the views of the Chair and Vice Chair of the Licensing Committee were sought on this issue. Both were accepting of the position outlined within this report and felt a possible departure from the political balance requirements should be canvassed at future 'Round Table' discussions. This may allow for a more broader representation upon the Licensing Committee and in consequence, upon its Sub Committees.

#### **4. RECOMMENDATION**

1. To note the contents of this report.

# CONSTITUTION COMMITTEE

24<sup>th</sup> August 2012



**Report of:** Chief Solicitor

**Subject:** COUNCIL PROCEDURE RULES – RULE 17  
VOTING

## 1. PURPOSE OF REPORT

- 1.1 Following a referral from Council on 24th February, 2011, concerning “*options of having a recorded vote for all decisions taken at Council*”, the Constitution Committee met and discussed this referral on 25th March, 2011. Subsequently a report was presented to Council which recommended amendments to the Council's Constitution in relation to Rule 17 of the Council's Procedure Rules, which proposed amendments stood adjourned under Procedure Rule 24.2 until the next following ordinary meeting.
- 1.2 Whilst it is noted the clear intention of Council for the use of the record vote system it might assist if some clarity was also provided on voting, for example, on appointments upon which Council may want the latitude of having a recorded vote, but equally through a show of hands or even by way of affirmation where there is no dissent from Council. This report therefore provides an opportunity for discussion by the Committee upon this particular Procedure Rule.

## 2. BACKGROUND

- 2.1 For the Borough Council and other ‘principal authorities’, the actual method of voting is not prescribed by statute although in the case of Parish and Community Councils it prescribes formal voting as being by way of “show of hands” unless their Standing Orders/Procedure Rules provide otherwise. There has always been a convention that where appropriate, a certain proportion of Council could demand the taking of a recorded vote and this was accommodated within the Modular Constitution, as widely adopted by authorities following the introduction of the relevant provision of the Local Government Act, 2000. The Council in their Procedure Rules have similarly adopted the principle of a majority vote (Procedure Rule 17.1 refers) and where there is an equality of votes then the Chair of Council shall have a

second or casting vote. In addition, (Procedure Rule 17.2 refers) “there will be no restriction on how the Chair chooses to exercise a casting vote”.

- 2.2 Although, Council resolved to proceed by way of a recorded vote on “all decisions taken at Council”, the Committee may wish to consider the extent of this provision, particularly upon voting on appointments and those matters which may be seen as more peripheral or procedural in nature, where a show of hands or affirmation through an absence of dissent, may be an appropriate alternative. The standard clause relating to a decision by way of a ‘show of hands’ is shown below;

### **Show of hands**

*‘[Unless 17.4 applies], the Chair will take a vote by a show of hands, or if there is no dissent, by the affirmation of the meeting’.*

- 2.3 The existing Procedure Rule 17.3 relates to the holding of a ballot and some authorities have dispensed with this requirement or made it subject to a qualification where a certain number or percentage of Council should request such a procedure to be used. Rule 17.4 covers the “recorded vote” situation and currently states;

### **17.4 Recorded Vote**

*‘Unless 17.3 applies, the Chair shall ensure that recorded votes are taken. The names of the Members of the Council voting for and against the motion or amendment, or abstaining from voting will be taken down in writing and entered into the minutes’.*

In order to draw some distinction between the use of the recorded vote mechanism and drawing a distinction with ‘voting on appointments’, it is suggested that the following wording may assist;

### **[ALTERNATIVE] 17.4 Recorded Vote**

‘Unless Rule 17.X applies (Voting on Appointments) a recorded vote shall take place by a roll call of the Members present at the meeting. The Proper Officer of the Council shall take the vote by calling the names of Members and recording whether they voted for or against the motion or amendment thereto, or did not vote. The minutes will show whether a Member voted for or against the motion or any amendment or abstained from voting.

The Council’s current procedure for voting on appointments is that under **Rule 17.5**;

- i) In a case where a single position is to be filled, the matter shall be determined according to the number of votes cast for each person nominated. If there are more than two people nominated for any position and the majority of votes cast is not in favour of one person, then the name of the person with the least number of votes will be

taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.

- ii) In a case where there is more than one identical position to be filled, if there are more nominations than the number of positions to be filled, the Council shall determine to apply either one of the following processes:-
  - (a) that each appointments be dealt with separately, in which case rule 17.6(i) shall apply,
  - or**
  - (b) that the appointment shall be dealt with together, in which case the matter shall be determined by ballot, each member being entitled to vote for the same number of nominees as there are appointments to be made. At the conclusion of the ballot, the nominees shall be ranked according to the total votes cast in their favour, there being appointed such number of the highest ranking nominees as equal the number of the appointments to be made.

This particular Procedure Rule is somewhat convoluted and is something of a departure from the model form of Standing Order relating to such a transaction of business by Council. There is also reference to Rule 17.6(i), even though there is no such provision in the Council's Constitution. There is also reference to the procedure by way of a ballot and Members are requested to refer to earlier commentary upon this particular provision. The model clause covering "voting on appointments" is set out below for the consideration of the Committee;

#### **[MODEL] Voting on Appointments**

*'Those entitled to vote shall each vote for only one person. If there is not a majority of those voting in favour of one person, the name of the person having the least number of votes shall be struck off the list and a fresh vote shall be taken, and so on until a majority of votes is given in favour of one person.'*

A variation to the model provision, is also provided below;

#### **[ALTERNATIVE] Voting on Appointments**

*'If there are more than two people nominated for any position to be filled and there is not a clear majority of votes in favour of one person, then the name of the person with the least number of votes will be taken off the list and a new vote taken. The process will continue until there is a majority of votes for one person.'*

### **3. SUMMARY**

- 3.1 Council have previously determined that they would wish to see recorded votes “for all decisions taken at Council”. This is commendable and is designed to ensure that there is clear transparency in the voting process and that Members are duly accountable for the decisions taken. That said, there are some matters which come before Council which may be more procedural in nature and upon which a recorded vote process may not add any benefit to the conduct of a Council meeting. It may therefore be opportune with particular reference to voting on appointments, unless a recorded vote was demanded, that a show of hands or even, in certain situations, an affirmation through the absence of dissent, which would expedite the conduct of the Council meeting. This report is intended to stimulate discussion for the Committee and the examples provided are not intended to be prescriptive but to assist in the overall consideration of this matter and any recommendations to be made to Council.

### **4. RECOMMENDATION**

1. For the Committee to note and consider the contents of this report.

# CONSTITUTION COMMITTEE

24<sup>th</sup> August 2012



**Report of:** Chief Solicitor

**Subject:** CONSULTATION ON CODE OF INDEPENDENCE  
FOR LOCAL GOVERNMENT

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## 1. PURPOSE OF REPORT

- 1.1 The Chairman of the House of Commons Political and Constitutional Reform Select Committee wrote to the Elected Mayor on 16th July, 2012, inviting consultation on a Code of Independence for Local Government. Such a code is intended to formally state through legislation “*the principles and mechanics of the relationship between central and local government*”.
- 1.2 This consultation invites the views of the Elected Mayor and Council upon any specific amendments to the draft Code, as appended herewith. Of note, this initiative has the support of the Local Government Association and comments are invited through [pcrc@parliament.uk](mailto:pcrc@parliament.uk) on or before Friday 5th October, 2012. The Constitution Committee are therefore invited to make such comments in relation to this consultation as they deem appropriate and to consider whether this matter should be formally discussed at Council in line with the model resolution as produced through the Local Government Association and as also set out within this report.

## 2. DRAFT CODE FOR CENTRAL AND LOCAL GOVERNMENT

- 2.1 In a joint initiative between the Political and Constitutional Reform Select Committee and the Local Government Association entitled “Independence from the centre: Does local government freedom lie in a formal acknowledgement of devolution?” there is an illustrative draft Code for central and local government. This Code is reproduced within this report at **Appendix 1**. Both the Local Government Association and Graham Allen MP the Chair of the Select Committee have initiated public discussion upon this item “*to make the roles of Whitehall and Councils clearer to local residents*”. The consultation exercise is based upon two key principles, namely;

- That local authorities must be created in law as independent and sovereign entities and their duties codified,

- That the political independence of Councils would mean nothing without financial independence from central government.

2.2 The draft Code therefore covers these points in the opening “preamble” to the Code and that local Councils should enjoy true independence, operating within the law, in order to “*secure and improve the wellbeing of their citizens and communities*”. The Code thereafter is arranged through various “Articles” as follows;

Article One – This recognises the fundamental rights and duties of local Councils and also a representation of a consensual agreement between central government and local authorities. Again, it is stressed that the operation of these principles should be given by law with proper accountability and transparency.

Article Two: Local Economy and Local Self-Government

Article Three: Scope of Local Government

Article Four: Inter-Governmental Activities

Article Five: Territorial Autonomy

Article Six: Council Governmental Systems

Article Seven: Local Government Financial Integrity

Article Eight: Councils’ Right and Duty to Co-operate and Associate

Article Nine: Local Referendum

Article Ten: Legal Protection of Local Government

2.3 Annexed to this illustrative Code is an “Explanatory Note” and this is also attached herewith as **Appendix 2**. This covers the rationale for codification of the relationship between central and local government, practicalities of codification including certain broad principles of governance and the applications of codification.

### 3. INDICATIVE DRAFT RESOLUTION

3.1 Accompanying the consultation document is an indicative draft resolution as prepared through the Local Government Association (although not endorsed by them) in order to assist discussion and debate upon this particular issue. This draft resolution is also attached herewith as **Appendix 3** and covers the recognition to “decentralised powers and increased local democratic accountability” whilst also acknowledging greater freedom and indeed flexibility from centralised control. The draft resolution also seeks an acknowledgment of this initiative through the Local Government Association



and the Political and Constitutional Reform Select Committee to stimulate Council debate and for appropriate recommendations to be made back to the Select Committee. There is also recognition that Councils may wish to involve their local MP in supporting this campaign and that support from local authorities could be a true representation of the engagement of political parties within local Councils through this constitutional initiative.

#### **4. RECOMMENDATION**

1. That the Committee do note and consider the draft Code of Independence for Local Government.
2. That the Committee makes such response to the Political and Constitutional Reform Select Committee as the Committee deems appropriate and/or makes reference of this matter to Council for a debate in line with the draft resolution as prepared through the Local Government Association.

#### **5. CONTACT OFFICER**

Peter Devlin  
Chief Solicitor  
01429 523003

## Political and Constitutional Reform Committee

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### Illustrative draft Code for central and local government<sup>1</sup>

#### Preamble

Through this code Parliament recognises free and independent local councils in England accountable to local citizens. These include unitary, county, district, metropolitan district, and London borough councils. They shall enjoy independence in both powers and finance and be entitled to do all that is required at local level, within the law, to secure and improve the well-being of their citizens and communities. Parliament makes plain that within their spheres of competence, local councils have co-equal—not subordinate—status to central government and that their rights and duties shall enjoy equal protection in law.

#### Article One:

1. The fundamental rights and duties of local councils herein are defined protected and entrenched. They may only be changed by the consent of Parliament as authorised firstly by an elected joint committee of both Houses, and then by the approval of both Houses of Parliament as prescribed in the amendment to the 1911 Parliament Act [enabling the second chamber to reject changes to the fundamental freedoms of local governance].
2. The code represents a consensual agreement between central government and local councils. Councils, local government representative bodies, all ministers, government departments, MPs, civil servants, courts of law and all public agencies interacting with local government are bound by the articles within this agreement and will act in accordance with these articles.
3. All of the provisions of the code are subject to the law. The individual rights of citizens are not affected by this code and citizens may seek judicial review against any injustice or infringement of rights as now. Councils and government can seek legal adjudication should it be felt that a council, councils or central government are not acting in accordance with the code.

#### Article Two: Local Autonomy and Local Self-Government

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<sup>1</sup> On 18 January 2011, the Committee agreed “that written evidence be sought from an academic witness, containing an illustrative draft code governing the relationship between central government and local authorities in England”. Professor Colin Copus of de Montfort University agreed to take on this work. On 23 March 2011, the Committee wrote to all those who had given oral evidence to the inquiry asking for their views on the draft code for relations between central and local government. Suggested revisions were received and at the request of the Committee incorporated by Professor Copus into the draft code.

1. Councils' accountability is to local citizens.
2. Councils shall operate within the rule of law and with regard and respect to human rights legislation.
3. Councils are autonomous, democratically elected bodies which independently decide upon, administer and regulate the public affairs of and deal with all matters of concern within their boundaries which are not dealt with or attended to by other governmental bodies.
4. Councils operate within a framework of an irrevocable general power of competence with a full legal personality. Powers rest with councils, acting in accordance with the national legal framework, to pass local legislation on matters affecting the affairs and interests of their area.

#### **Article Three: Scope of Local Government**

1. The powers and responsibilities of councils shall after due consultation be prescribed by statute subject to safeguards in Article 1.1.
2. Councils have full discretion to exercise their initiative with regard to any matter which is not excluded from their competence or assigned to any other authority or body.
3. Councils are to be consulted, early within the policy and decision-making processes, by the Government if it is proposing reform, which will affect any council and its communities.

#### **Article Four: Inter-Governmental Activities**

1. Central and local government acting jointly shall be allowed to create inspection regimes to set and maintain service standards.

#### **Article Five: Territorial Autonomy**

1. The boundaries of local authorities are an issue for councils and their citizens. Any proposal for boundary changes must be conducted with the involvement of the Local Government Boundary Commission for England and within the law and subject to a local referendum in the area concerned.

#### **Article Six: Council Governmental Systems**

1. Local citizens through their councils have autonomy to choose their internal political decision-making systems (including, whether to adopt a directly elected mayor and cabinet, cabinet and leader, committee system, or some other political decision-



- making arrangement). Changes to political decision-making systems must first be subject to a binding local referendum.
2. Councils must review their political decision-making system every eight years and produce a publicly available 'Political Governance' report setting out the effectiveness of the system and if appropriate considering alternative approaches.
  3. Councils or local citizens can adopt any electoral system for use in council elections, after consultation and a binding referendum.

#### **Article Seven: Local Government Financial Integrity**

1. Local councils shall to the greatest possible extent be financially independent of central government. Equalisation will be conducted by an independent Equalisation Board on an annual basis.
2. Local citizens through their councils may raise additional sources of income in their localities in any way they wish [subject to the rule of law and human rights legislation] if they gain the consent of their electorates through a binding referendum or local propositions.
3. Local government shall be given a guaranteed annual share of the yield of income tax. This share shall be increased as and when service provision responsibilities are transferred from central to local government so that councils are always able to benefit from the growth in buoyant tax resources available to the state as a whole.
4. The process of equalisation, ensuring fairness as between local councils, shall be undertaken by a body independent of central government.
5. Councils shall be able to raise any loans which their credit rating allows and will be exclusively responsible for repayment. For the purpose of borrowing for capital investment, councils shall have access to the national capital market at their own discretion. All councils shall operate an annual balanced budget so that all outgoings, including interest repayments on borrowings, shall not exceed income.
6. Central government will not cap, or in any way limit, councils' taxation powers. Central government must consult with councils on how it will distribute and allocate government funding when using local government as an agent to pursue its own policy objectives. Government funding to councils, in pursuit of central government policy objectives is to be based on a rolling three year budget cycle to coincide with the comprehensive spending review process. Once the three year medium term budget planning process has been agreed and announced no significant changes in funding levels will be made by central government.

7. The same financial transparency standards will apply to local and central government, alike.

#### **Article Eight: Councils' Right and Duty to Co-operate and Associate**

1. Councils as independent legal entities are entitled, in any undertaking, to co-operate in any way with other councils, public and private bodies, any voluntary, charity or third-sector organisation, or with any financial, commercial or private enterprise.
2. Where more than one Council is responsible for services in a geographic area, these Councils shall co-operate to maximise the well-being of those within that area.
3. Councils are able to belong to any association for the protection and promotion of their common interests and to belong to an international association of any sort. Councils are entitled to co-operate with councils in other countries for any matter.

#### **Article Nine: Local Referendum**

1. The administration of any local referendum process shall follow standards set by the Electoral Commission, and those responsible for the conduct of any such referendum shall be accountable to the Electoral Commission for their performance against those standards.

#### **Article Ten: Legal Protection of Local Government**

1. Councils have the right of recourse to a judicial remedy in order to secure free exercise of their powers and respect for the power of general competence and any other principles of local self-government or individual rights enshrined in law or contained within the code or evident in Human Rights legislation.



## Annex – Explanatory Note

**Prospects for Codifying the Relationship between Central and Local Government****Introduction**

The Committee set out nine principles to be expanded upon and to form the basis of a draft code governing the relationships between central and local government. The draft code could then be the basis for a wider consultation and discussion under the auspices of the Select Committee. The nine principles flow throughout the draft code and are developed in the clauses within each article. The Committee also asked for an assessment of the issues involved in implementing the principles through a code of central and local government relationships.

The first section of the paper sets out a rationale for the construction of a code of intergovernmental relationships and the rationale for each article contained within the draft code; the second section presents the draft code. The Third section assesses the feasibility and practicality of such a code. The paper concludes by drawing out the main issues that the Committee may want to consider in the development and decisions about the adoption of a code of intergovernmental relationships.

**Section One: Rationale for Codification**

The draft code is based on an assumption that it is required to re-establish and strengthen the position of local government within the constitution, to enable it to operate as a co-equal alongside central government and to provide a degree of protection for local government and its citizens from centralisation and over-regulation. If codification is to produce a balanced working relationship between central and local government it must explicitly recognise the value of local government and formally establish the degree of its political and governing autonomy. Without those underpinning assumptions a code is likely to see local government as little more than a means of providing or overseeing the provision of public services and consequently diminish its politically representative features.

*Article Rationale*

A **preamble** is required to set out a broad framework within which the articles sit and to set the context for operationalising the code in relation to principal authorities by stressing the underlying localist philosophy on which it is based.

**Article One** is required to emphasise the independence and autonomy of local government and to secure the code as an agreement between the entire centre and the localities. It is designed to ensure that all central government departments work with local government

through a shared set of practices. Constitutional protection for the code is required to prevent it being amended or abolished.

**Article Two** is required to achieve an agreed definition, between central and local government of the role, purpose, nature and constitutional status of local government and to emphasise that local government accountability is primarily to citizens. It asserts councils as governing and politically representative institutions with independent regulatory and legislative powers within their own boundaries.

**Article Three** establishes a consultative working relationship between central and local government based on a mutual acceptance of the broad remit of local government responsibilities.

**Article Four** is required to ensure a negotiated and mutually agreeable process of constructing a framework for ensuring service delivery quality.

**Article Five** establishes the territorial autonomy of local government and that council boundaries are to be agreed by councils and their citizens (through local referendum). Without territorial integrity and autonomy council boundaries can be re-organised for the benefit of central government and the national parties' ideological concerns.

**Article Six** is required to operationalise the freedom of councils and local citizens to decide the internal political decision-making arrangements of the council and the voting systems for local elections to suit local circumstances. The article recognises that central government is not required to decide how councils will be elected or how they will make decisions once they have been elected.

**Article Seven** recognises that local autonomy and independence is strongly related to financial freedoms, but also that financial responsibility and rectitude comes with a clear link of accountability to local citizens. Alignment is required between central and local government financial processes to add certainty and consistency to financial planning. The article recognises the importance of an independent equalisation process between councils and that local and central government should be co-equal partners in this process.

**Article Eight** is required to set out the broad parameters within which councils can co-operate with each other and with other bodies so that there is clarity and recognition of councils' rights to act in ways that they think beneficial to their areas.

**Article Nine** provides for local referendum to be the responsibility of the Electoral Commission. Such independence enhances the probity of and confidence in, the referendum process and that local referendum will be overseen by a body Independent of local and central government.



**Article Ten** by enabling local government to take legal action in any circumstances that might threaten the autonomy of a council serves to provide additional protection to local government independence from external control or interference.

The next section sets out a draft codification of relationships between central and local government.

## **Section Two: The Practicalities of Codification**

The section is set out in two parts to ease consideration of the issues involved. The first part examines the key issues (identified as italicised sub-section headings below) involved in codifying the relationship between central and local government and the implications arising. It does this by using the draft code developed from the nine principles the committee articulated which have been collapsed where they consider similar issues, such as finance. The first part of this section considers the following issues: securing agreement to the principle of codification; central and local government policy consultation; council boundaries; local electoral systems and internal council political decision-making systems; local government financial freedom; quality of services; and, local government independence and autonomy.

The second part of this section makes a brief assessment of each article of the draft code.

### ***1. Assessment of Broad Principles***

*Securing agreement* of central government to the very principle of a codification of the relationship with local government has two key dimensions:

1. Central government accepting a permanent change to the current constitutional settlement between the centre and the localities
2. Ensuring that agreement to a code and abiding to its conditions extends across government, that it is not restricted to the DCLG alone and that it is adhered to by ministers and civil servants

Given the last Labour Government's policies of devolution to Northern Ireland, Scotland and Wales and given the current government's localism agenda and the Localism Bill, particularly section one's 'general power of competence', common ground should exist across the parties, for establishing a framework for the independence and autonomy of local government. Past governments, however, including the last government, have implemented policies which expressed little patience for local government autonomy and have viewed councils as a mechanism for little more than implementing central government policy. Currently however, each of main political parties appears to support greater autonomy for local government, so the time is right to develop and consult on a draft code. The feasibility of a code stands or falls on two aspects: first, Parliament and government re-balancing the constitutional



relationship and doing so on a permanent basis; and, second, local government being willing to use new found freedoms.

A code itself does not alter the fundamentals of the constitution; making that code constitutionally secure does however, create a re-balance to a more localist orientation in the governing system.

Government would not be able to change the structure, nature, functions or purpose of local government, without the due process necessary to respect the independence of local government including undertaking negotiations. Any change negotiated would require (under Article 1.1) a legislative process different to that normally employed. While this may create frustration for government and slow down its own policy implementation, it would also mean less legislation, wider consent and more localised decision-making. Parliament has become accustomed, very quickly, to constitutional change brought on by devolution to Northern Ireland, Scotland and Wales and what that means for Parliamentary and governing processes. If viewed in the same devolutionary and evolutionary way a codification of central-local relationships would soon establish itself as the standard operating procedure.

A failing of the current concordat is that it has not been taken up across government departments and across ministers as the means by which intergovernmental relations are to be conducted. The concordat's focus on the service role of councils has served to sideline the political, democratic and representative contributions made by local government. Experience has shown that production of a code alone is insufficient to change working practices and that a change of attitudes across central government is required to successfully operationalise any code.

Independent central and local government would need to devise effective arrangements to work together in partnership. Developing a forum for *policy consultation* between local and central government means a shift from a top-down, control relationship to a negotiated, consensual style. Such a relationship between the centre and local government exists in other governmental systems, both unitary and federal (Goldsmith and Page, 2010). Central government already consults and negotiates with local government and creating a forum would sharpen the focus of existing processes and enable more detailed consideration of policy development concerning local government. A negotiating forum may however, slow down policy decisions, delay the implementation of government policy and frustrate government intentions across a range of policy areas. Genuine consultation and negotiation comes with the expectation of compromise and concession and that would be an expectation on all parties to the process. As a consequence delay may be off-set by better policy decisions and policy outcomes.

Control of *council boundaries* resting with councils and local citizens rather than with central government, exemplifies local autonomy and independence. Devolving to councils and citizens, working with the Local Government Boundary Commission for England, the power to set and change boundaries, to amalgamate (in whole or in part) or to disaggregate councils, is easily achievable. Moreover, it avoids the danger of council boundaries being manipulated for national party political reasons; or for reasons that suit the needs of the central government machine.

There are examples across the globe where decisions about council boundaries rest with citizens and councils and there are no practical difficulties in switching to a system of local boundary control, which would remove the need for the expensive bidding process that has been seen in some past reorganisations (Chisholm and Leach, 2008). A question arises as to whether council boundaries should be something that citizens alone should control, rather than giving councils a say in the matter as councils will tend to want to maintain or extend existing boundaries.

Central government will, of course, have a view on proposed boundary changes and on the overall coherence of the structure of local government and will be able to express that view during any consultation process.

*Local electoral systems and internal council political decision-making systems* need not be the same across the country. Indeed, since the Local Government Act 2000, some choice in internal political decision-making systems has existed. Moreover, the Localism Bill widens that choice by making the committee system open to all councils. The implications of councils being able to adopt different internal decision-making systems fall on the councils concerned; although, government inquiries have explored the way councils make decisions in an attempt to speed-up and add clarity and accountability to the process and this will still be a central government concern (HMSO, 1967, HMSO, 1986).

If council decision-making is perceived to be slow then there is an impact on central government as local people look to it for a solution to be developed and imposed. In this case government continues to be the arbiter of local matters at a detailed level. Encouraging independent councils to develop local political decision-making processes, with local people, rather than government legislating across the entire local government system could lead to more refined processes developing. By devolving responsibility to councils and local people to set council political decision-making arrangements, central government will be faced with a possible array of systems when it comes to negotiating with councils. But, local decision-making forms would be the choice of local people rather than designed for the convenience of Whitehall.



The consequences of local electors choosing different electoral systems would again fall mainly on the councils concerned. Those council areas choosing a more proportionate electoral system are likely to have a wider range of parties and non-partisan groups represented on the council and would be more likely to be governed by some form of coalition, than those choosing to employ the first-past-the-post system; those areas retaining the current voting system for local elections are more likely to have a clearer one party outcome and governance. Central government will, of course, have a view on the matter and will be able to express that view during any consultation process, while the choice of electoral system should rest with the locality rather than Whitehall.

Securing *Local government financial freedom* is necessary to operationalising any of the nine principles and the draft code in section two. Central government control of local finances, both the source of finance and the way in which it is used by councils, would need to be fundamentally changed to give councils greater financial freedom (Layfield, 1976, Foster, *et al*, 1980).

Securing local government financial freedom from the centre is made difficult by: the role that local government expenditure has in the macroeconomic and fiscal policy fields; the control governments, of all parties, have been able to exert over local finances for national economic and political reasons; and, the current government's deficit reduction policy. Again, these issues are not insurmountable but rely on the formation of a different mind-set in the relationship between the centre and the localities when it comes to financial matters, rather than relying on an evolution of policy to secure change (John, 1999).

The Layfield Commission (1976) and the Lyons Review (Lyons, 2007) examined local government finance set within the wider context of the purpose of local government and central-local government relationships. Lyons was restrained in the reforms suggested, but the practical implementation of alternatives such as local income tax is not the issue, here. It is in local financial matters that we often see the conflation of local and national government in the public mind. Overall council expenditure and council tax levels are national issues and debated in the national media and thus government is required to have a view on their reasonableness. But, government holding and expressing a view about council financial decisions need not mean having control of them to ensure accountability; adding clarity to the system would enhance local financial accountability.

The current system of financing local government would be greatly simplified and accountability sharpened as a result of local people having freedom to endorse, or not, council access to diverse and buoyant sources of finance and to set their own taxation levels. With complete financial freedom given to local people however, central government would no longer be able to safeguard communities from excessive increase in local taxation, high levels of local expenditure or other financial adventures by individual councils. But, if local electors



continue to grant a mandate for such financial policies by re-electing controlling groups who pursue them, the choice is either for local citizens to be the arbiters of local affairs or for central government by claiming a national mandate (Wolman and Goldsmith, 1992). There are no practicalities only political choices involved here.

Financial freedom for local government is not an all or nothing choice. Structures created for negotiation and agreement between the centre and the localities over the financing of local government, financial equalisation, and the level and nature of grant support, can replace a top-down approach without the centre relinquishing all control or involvement (Goldsmith and Page, 2010). Enhanced financial freedom would provide stimulus for re-energising local political parties, local civic society and civic debate around local choices and value for money. Yet, there is a need for central government to provide funding in emergencies such as natural disasters or, if for some reason, a local authority's finances broke down entirely.

The *quality of high-profile services* provided or overseen by local government are an issue of national debate. Major policy areas, such as education and housing, will always provoke central government interest and concern for involvement beyond inspection and freedom for local government needs to be seen and set in this context. A balance must be drawn between services which can be left to local decisions reflecting local sensitivities and circumstances so as to recognise local differences and diversity; and, those areas in which government will negotiate with councils about service standards, while avoiding any centralising tendencies which the provision of public services generate and which has been long noted ( Toulmin-Smith, 1851).

The solution to the nationalising pressures of national expectations of service standards is to be found in the construction of fora where central and local government can spread best practice and negotiate and agree service standards and inspection regimes in a broad sense. Negotiation and agreement avoids the need for heavy-handed inspection regimes – which have served to undermine local autonomy and the democratic mandate granted to a council (See, Leach 2010). Moreover, it avoids the need for central government to impose required service standards and thus treat local government as a means of implementing government policy.

*Local government independence and autonomy from central government* and changing the directional flow of accountability from the centre to local citizens are factors inherent in the nine principles and are reflected throughout the code in section two. If local government is to have autonomy from the centre it must have the freedom to be able to undertake any action. The feasibility of achieving local government autonomy rest on the same considerations as those required for securing agreement to codification in the first place: re-balancing the constitutional relationship between central and local government; and, acceptance across government of a new working relationship. To ensure the continual effectiveness of a code it

must be adhered to throughout the life of any government which is easier at the outset of a new government but becomes more difficult as time passes and governments become closer to the Whitehall machine.

The constitutional relationship required to secure local autonomy is something that has been achieved in federal and unitary states. Yet, there has been a recent trend across Europe for central government, in states which have constitutionally guaranteed local government freedom, to find ways of increasing control over local government (Goldsmith and Page, 2010). Again, the Localism Bill's 'general power of competence' nudges in the direction of autonomy – although the Bill does contain around 140 reserve powers for the Secretary of State, which indicates that local government autonomy will not be a direct outcome of the Bill, alone.

## **2. Brief Assessment of articles in the draft code**

*Article One:* There is no reason why this article could not be implemented. A difficulty might occur around the issue of local government representation on the hopefully rare occasions when the joint committee proposed in the article, is convened. While Parliament might not accept non-MPs being full members of a Parliamentary committee, the local government representatives could be non-voting members, or hold their membership *ex-officio*.

*Article Two:* For the purpose of drafting a code general competence and local government autonomy are not fully articulated and these concepts would have to be defined in any consultation on the code undertaken by the select committee to avoid confusion. Indeed, general competence and local government autonomy are usually limited in constitutional settlements and are not left unrestrained. It is also necessary to set out elsewhere the distribution of functions and responsibilities between the levels of government and how disagreements can be resolved. Would the Supreme Court, or some other body, for example, be the final arbiter in any dispute?

Care would be needed in defining 'local citizens', either employing the current formulation for compiling the electoral register; or, a more extensive view of 'local citizenship' based on proximity to, but not residency within, a council area.

*Article Three:* Sets some limits on the autonomy of local government to that contained in article two. The scope and extent of the powers within article three and the nature of local government and community power over economic development would need to be agreed and defined in other documentation. It would rest on the agreed distribution of functions and responsibilities between levels of government. A *de minimis* rule may need to apply when it comes to this article.



*Article Four:* There are no practical problems as to why this cannot be achieved and implemented, quickly. But, it is likely that central government would want to have primacy in the process – again, the question of allocation of functions and responsibilities between levels and agencies would be required.

*Article Five:* There is no reason why this cannot be achieved. The question of the allocation of functions and responsibilities may be an issue in boundary setting, but, given that under article eight councils would be able to co-operate with each other in the provision of services, then boundaries are no longer linked to issues of service management and efficiency. The accountability of joint-provision would need to be ensured and mechanisms needed to enable voters to cast a judgment on jointly provided services.

*Article Six:* There are no difficulties in implementing article six. The article requires straightforward devolution of power over electoral systems and political decision-making arrangements to councils and citizens. Too frequent changes however, should be avoided and maybe there is a need to place a time limit on change – such as two electoral cycles – eight years.

*Article Seven:*

Clause 1: The concept of local government financial independence needs to be carefully defined and agreed, otherwise as a statement of principle it could become meaningless and easily ignored, unless otherwise set out in law.

Clause 2: The use of referendum provides for a specific democratic mandate for taxation and revenue raising policy. But, councils must be prepared to have their proposals overturned and thus have developed, through consultation, alternative plans.

Clause 3: Rests on the assumption that an agreement has been reached about the re-allocation of local services and the division of income tax. Such agreement is not impossible, but, would require detailed negotiations between central and local government and devolution of functions and power from the centre.

Clause 4: Rests on the assumption that existing rules will be agreed for equalisation and the mechanism for allocation will continue. It would also mean that central and local government was unable to unilaterally change the processes once they had been agreed and therefore they would both need government to accept this limitation.

Clause 5: The clause has implications for the PSBR and is something that the Treasury would need to be closely involved in and is likely to strongly oppose, given its on-going and long-standing reluctance to see any local government financial reform. It is possible that linking loans to council credit ratings would be limiting for councils if

resource bases were not equalised and thus poorer areas would suffer from their low credit rating, while more affluent areas may not need to borrow. On the other hand, prudent competent councils would be recognised by a revived local government bond market of the sort that has existed in the UK and that currently exists in the USA and elsewhere. The need to balance budgets would have to include the right to maintain reserves.

Clause Six: Easily implementable but rests on government's willingness to devolve final decision-making power on local taxation to local government. Financial and Partnership mechanisms imply a limitation to local autonomy by their very existence, so they would have to be voluntary and councils entering into partnerships do so without the expectation of government funding, so that those choosing not to operate in that way were not financially penalised.

Clause Seven: Difficulties may arise with this provision unless there are comparable disciplines on central government. Problems could arise from a general election and a change of government mid-Parliamentary or mid-budgetary cycle; or, if a severe financial crisis emerges; or, an event requiring immediate and large-scale financial commitment, such as an overseas military operation. These can be overcome by the agreement of a set of 'emergency provisions' that would allow central government to respond to mid-financial term emergencies.

*Article Eight:* The broad powers suggested here would have to be only for purposes which were legal and carried out within the legal framework setting out council powers.

*Article Nine:* Included to ensure probity in the referendum process and would require the allocation of the responsibilities and functions necessary to the Electoral Commission. Cost implications of the increased use of referendum would emerge, but linking them to the electoral cycle could reduce that cost.

*Article Ten:* The power for local government contained here would be under the rule of law which could result in legal challenge to abuses by central government action, policy and proposals and as with all issues covered by UK law could involve judicial review at Supreme Court or at the European level.

## **Conclusions**

There are no real technical or practical reasons why the nine principles articulated by the committee or the draft code that is set out in section two, cannot be operationalised. The feasibility of codifying the relationship between central government and English local government rests not so much on practical and technical concerns. Rather, the feasibility of codification rests on political and ideological grounds and on the willingness of the centre to



accommodate a new constitutional settlement for local government which acknowledges for it a political, representative and governing purpose. Moreover, codifying the relationship between central and local government would sit well with the government's localism and the Big Society agenda. It would underpin these policies by reducing centralisation and by providing the ground on which councils and communities could experiment with local initiatives that reflected local priorities.

The general implications of codification would be:

- Freeing local people to make many more decisions effecting their lives at a local level
- A shift to a more negotiated set of relationships between central and local government
- Enhancement of the constitutional status of local government
- A freeing of central government from the detailed control of local government
- Improvements to the clarity of the financial relationships between central and local government
- Other documents would be required to fully elaborate how the code would be operationalised, to set definitions and agree areas of responsibility
- Possible delays because of the time needed to build a consensus for central government in the development and implementation of policy and legislation as it impacts on local government
- Limitations on the central executive machine to use a Parliamentary majority in regard to local government policies, which would reflect similar limitations resulting from devolution to Northern Ireland, Scotland and Wales
- At a time of national financial constraint the costs associated with creating a new settlement between local and central government and of the consultation process may be seen to be prohibitive
- Considerable cultural change will be required to ensure that all central government ministries were aware of and adhered to the code in all activities and to recognise that a constitutional rebalancing had occurred as a result of the codification of the relationship between central and local government
- Mechanisms for dealing with disagreement between central and local government about the code and breaches of it would have to be decided upon by agreed structures



- As now, court action either involving the Supreme Court or at the European level would ensure the rule of law
- Greater freedoms for local people to make choices could result in wide diversity in the quality, type and nature of public services chosen
  - Involvement and education of public and media around the choices available would be essential
  - Strengthened localism could stimulate a revival of civic culture and activity and encourage local parties to forge greater links with local civil society
  - The conflation, in the minds of the public and the media, of local and national politics and government may lead to central government suffering at the polls for local government failings or *vice versa*. But, a clear understanding of the roles of councils and governments could lead to them being elected on their own record and merits
- Enhanced financial freedom for councils would impact on central government economic and fiscal policy
- Robust mechanisms would be required for financial equalisation and central financial assistance in the event of local emergencies
- If local electors are to judge local issues central Government would find it difficult, if not impossible, to intervene where individual councils acted in ways that generate public concern or outrage, or are unnecessarily bureaucratic and meddlesome. Court action, as we see currently with central government, may be the only redress for citizens and the cost may be prohibitive and it would be necessary to ensure this was not repeated by local government.

The key to successfully implementing codification of inter-governmental relationships is the centre's willingness to permanently devolve political and governmental power to councils. Given that intention, the negative implications of codification can be overcome through the creation of safeguards and by negotiation and compromise. The forging of a new relationship between central and local government must go hand-in-hand with forging a new relationship between citizens, councils and councillors. The principle of codification and the draft code

contained in this report, provide the basis for forging those new sets of relationships and a framework within which they can be explored.

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**This is an indicative draft resolution prepared as an aid to debate with the advice of [ but not endorsed] by the LGA**

1. This Council recognises the stated aim of Governments to decentralise powers and increase local democratic accountability.
2. Council also recognises there is an appetite for more opportunities for local decision-making and greater freedom from centralised control.
3. Council welcomes:
  - a) the joint campaign between the Local Government Association (LGA) and Political and Constitutional Reform Select Committee (PCRSC) to stimulate debate about the relationship between central and local government.
  - b) the opportunity, through the Select Committee's inquiry on the prospects for codifying the relationship between central and local government, to comment on these issues.
4. Council resolves to consider local experiences of the central-local relationship and make recommendations to Cabinet (or other such committee as appropriate) on an appropriate response to the Select Committee's inquiry.
5. Further, Council resolves to write to local Members of Parliament supporting the joint LGA and PCRSC campaign and outlining local ambitions for the central-local government relationship.
6. Finally, Council urges all political parties and central government to engage with the Select Committee and the LGA to consider whether an entrenched statutory codification of the independence of local government should be part of our constitutional settlement.



## **CODIFYING THE RELATIONSHIP BETWEEN CENTRAL AND LOCAL GOVERNMENT**

### **RESPONSE TO THE HOUSE OF COMMONS POLITICAL AND CONSTITUTIONAL REFORM COMMITTEE**



#### **Introduction**

1. The Association of North East Councils is the political voice for local government in the North East. It represents all 12 local authorities in the North East, throughout Northumberland, Tyne and Wear, Durham and the Tees Valley on issues of concern to them and the communities they serve. It is a cross-party organisation, with all of its members democratically elected and accountable politicians.
2. As the representative body for local government in the North East, the Association welcomes the opportunity to comment on this issue, which is of profound importance for local government and goes to the heart of its constitutional position.

#### **Principles**

3. The Association supports the principle of a Code that would establish the position of local government within the constitution and enable it to operate as a co-equal alongside central government. For too long, English local government has been in an inferior position, as regards dependence on central government, to its counterparts in other western democracies. This is now having real consequences for our ability to deliver the services that people and communities need and expect.
4. We consider that the right of local government to manage local affairs, within a framework of law and of accountability to local people, should be recognised in the same way as the right of central government to set national policy and manage national affairs is recognised.
5. Further, the weak constitutional position of English local government is thrown into stark relief by devolution to Scotland, Wales and Northern Ireland, and the prospect of independence – or further devolution – to Scotland. At a time when more powers are being devolved to territorial administrations, local authorities in the largest country in the United Kingdom remain subject to extensive legal, financial and regulatory constraints. This cannot be right or equitable.
6. The current economic position makes it all the more important to pursue this agenda. If, as seems likely, local authorities are going to be subject to a further round of cuts in the next spending review, it is imperative that they should be allowed to be innovative and creative in working out their own solutions to how

they are going to continue to meet demands for services in a changed financial climate.

7. It should be emphasised that a clear position for local government would be beneficial both for central government, which would be free to concentrate on national issues and macroeconomic policy, and for MPs who would no longer find themselves held to account for local service issues. It would be a means of re-engaging the trust and interest of local citizens, and unlocking the creativity and enterprise of local councillors and officers.

### **Specific provisions**

8. Specifically, we consider that the Code should provide for the following:
  - financial independence for local government anchored in the full retention of, as far as possible, uncapped and locally determined council tax and business rates, subject to clear and transparent mechanisms for fairness and redistribution for all authorities;
  - entrenching local accountability by removing unnecessary central government supervisory powers, accepting that Government has a legitimate role in certain areas;
  - removing central government power to intervene in councils' boundaries, structures and governance models;
  - making it a default position that local government should have power to provide or commission any public service not explicitly assigned to another body;
  - entrenching local government's constitutional position so that it is not subject to re-regulation (whether this is done through the 1911 Parliament Act or some other mechanism); and
  - clarifying the right of councils to set up formal or informal joint arrangements, at regional or sub-regional level, to deliver or support their functions.

### **Conclusion**

9. The Association fully supports the Select Committee in the work it is doing on this issue and hopes that the above comments will assist the Committee.

# CONSTITUTION COMMITTEE

24 August 2012



**Report of:** Acting Chief Executive

**Subject:** JOB EVALUATION APPEALS

## 1. PURPOSE OF REPORT

- 1.1 To provide additional information in relation to Job Evaluation appeals

## 2. BACKGROUND

- 2.1 General Purposes Committee on 25 June 2012 and Constitution Committee on 12 July 2012 requested more information be provided to Constitution Committee on Job Evaluation Appeals.
- 2.2 The Single Status Agreement which incorporated a revised pay and grading structure was implemented with effect from 1 April 2007, although final Cabinet and Council agreement to this was not obtained until the spring/summer of 2008.
- 2.3 A key element of the new arrangements was that jobs were evaluated using the national job evaluation (JE) scheme resulting in a total JE points score. The pay band was determined by reference to the JE points score and the pay and grading structure as detailed in Table 1

**Table 1**

Hartlepool Borough Council Pay and Grading structure				
Pay Band	Job Evaluation Points		Spinal Column Points	
	JE Points Minimum	JE Points Maximum	SCP Minimum	SCP Maximum
Band 1	0	269	5	6
Band 2	270	279	7	8
Band 3	280	289	9	10
Band 4	290	299	11	12
Band 5	300	327	13	15

Band 6	328	355	16	18
Band 7	356	383	19	21
Band 8	384	411	22	24
Band 9	412	446	25	28
Band 10	447	481	29	32
Band 11	482	516	33	36
Band 12	517	551	37	40
Band 13	552	606	41	45
Band 14	607	661	46	50
Band 15	662	1000	51	55

2.4 The national Job Evaluation comprises 13 factors as follows

- Knowledge
- Mental Skills
- Interpersonal Skills
- Physical Skills
- Initiative and Independence
- Physical Demands
- Mental Demands
- Emotional Demands
- Responsibility for People
- Responsibility for Supervision
- Responsibility for Financial Resources
- Responsibility for Physical Resources
- Working Conditions

The factors have different weightings and each factor has a number of levels with each equating to a particular number of JE points (see Appendix A for more details)

- 2.5 The Council uses the Gauge computerised version of the national job evaluation scheme. A series of questions are asked in respect of each factor to determine the appropriate level and points score. National and local help text is provided to help interpret the questions asked. Employees are not asked all questions in each factor as Gauge is set up to determine the correct level in the shortest number of questions.
- 2.6 Job evaluations are undertaken by trained, experienced Job Analysts so that the scheme is applied consistently, thereby ensuring the robustness of the Council's pay and grading structure.
- 2.7 Employees have the right to appeal against the outcome of job evaluation in respect of their job. A significant number of appeals were submitted in relation to the implementation of job evaluation and the new pay and grading structure. Final outcomes in respect of almost all of the appeals submitted have been determined by the Appeals Panel and ratified by the relevant Executive member with responsibility for Workforce Services (for Council employees) and by schools (for school employees).



- 2.8 A report requesting ratification of a further batch of outcomes is due to be considered by the Finance and Corporate Services Portfolio Holder on 15 August 2012. Assuming this batch is ratified there will be no outstanding appeal arising from the implementation of job evaluation and the new pay and grading structure where the Appeals panel has not determined an outcome. A small number of appeals arising from restructures etc after the job evaluation and the new pay and grading structure are outstanding and are due to be addressed by the Appeals Panel early in 2013. The make up of the Appeals panel is different in respect of these appeals. See Section 2 below for more information on the Appeals Procedure.
- 2.9 Employees have a legal right to make an equal pay claim at Employment Tribunal.
- 2.10 Job evaluation is one of the cornerstones of the Council's equal pay strategy as pay bands are set objectively and work measured as being of equal value is paid within the same pay band. Any variation to this would seriously undermine the robustness of job evaluation and therefore the Council's ability to successfully defend an equal pay claim at Employment Tribunal.
- 2.11 Part 4 of the National Agreement includes the following guidance

*"The appeal will be heard by a joint panel at authority level. The panel will consist of representatives from the recognised trade unions and management and/or elected members. An independent person may be appointed to chair the panel.*

*The decision of the joint panel is final.*

*The local parties may agree to a further appeals mechanism to apply in exceptional cases where the panel fails to reach agreement. This may involve the provincial/associated council.*

*Equality training is essential for all union and employer representatives who are involved in job evaluation, particularly for those interviewing job holders and/or gathering information about job content, and for evaluation panel and appeal panel members. Specialist trainers will need to be knowledgeable about the scheme as well as equality and equal pay issues.*

*Appeals normally arise because employees believe that their jobs have changed and their pay no longer reflects the value of their present job. The job evaluation scheme provides an objective way to test that claim – changes can be identified and their value measured.*

*The appeal against evaluation might be considered by people who are usually not involved with the everyday operation of the scheme. It is important therefore that all those sitting on appeal panels are fully trained in equality awareness and the scheme to maintain its integrity.*

*Every effort should be made to ensure consistent membership and attendance on panels."*

### **3. AGREEING THE JOB EVALUATION APPEALS PROCEDURE**

- 3.1 As indicated above, the final Cabinet and Council decisions on the Single Status Agreement which incorporated a revised pay and grading structure were made in spring/summer 2008. However there were a number of decisions made at Cabinet in the months leading up to spring/summer 2008.
- 3.2 All provisional agreements reported to Cabinet and Council had been reached following extensive discussion within the Bridging the Gap which comprised
- Senior Council officials (Assistant Chief Executive, Chief Financial Officer, Chief Personnel Officer and other Finance and HR staff)
  - Regional Trade Union officers (GMB, UNISON and T&G section of UNITE)
  - Local Trade Union Officials (including HJTUC Secretary, UNISON Branch Secretaries and GMB Convenor)
  - ACAS

The involvement of ACAS, acting as 'Honest Broker' was key in facilitating common understanding and agreement on a wide range of issues where the initial views of the Council and trade union officials differed significantly.

- 3.3 On 17 March 2008, Cabinet considered progress on a number of outstanding issues, including job evaluation appeals. The trade unions comment that "It is essential that the employees have trust in the appeals process and the Trade Unions welcome the acceptance of a 'totally' Independent Chair for the appeals panels" was also reported.
- 3.4 On 27 May 2008 Cabinet were informed that the union ballot had been favourable and approved the draft Single Status Agreement. Cabinet were also informed that key elements of the Single Status Agreement, including the appeal arrangements, had been agreed in draft form.
- 3.5 On 27 June 2008 the Performance Management Portfolio Holder considered a report detailing the proposed appeals procedure for the JE appeals submitted between 1 April 2007 and 30 June 2008 which included the following

*"The Appeals Panel will comprise an independent Chair, Senior HR representative and Senior Trade Union representative who have been trained in the Job Evaluation Scheme"*

and

*"Decisions of the Appeals Panels will need to be ratified by the Performance Portfolio Holder or Governing Bodies before they are implemented"*

- 3.6 The minute of the above meeting is as follows

*“In May 2008 Cabinet agreed that the draft Single Status Agreement be submitted as approved. In December 2007 it had been agreed that the Performance Portfolio Holder would consider and approve all supporting annexes to the main body of the agreement. The Appeals Procedure is an annex to the report and has been agreed between officers and the local trade unions. Details were given within the report of the main features and associated timescales of the procedure. Particular attention was drawn to the need for an Independent Chair for the Appeals Panel. It would be necessary to advertise this position and given lack of clarity in some of the details it was suggested that the Portfolio Holder and Chief Personnel Officer be authorised to determine the appropriate employment status and remuneration arrangements when an appointment decision was about to be made. Failure to agree the procedure before 1st July 2008 would have a detrimental on the overall appeals timetables and could demoralise the workforce. The Chief Personnel Officer confirmed that the Single Status Agreement Appeals procedure had been agreed with the Unions.*

**Decision**

*The Portfolio Holder endorsed the Single Status Agreement Appeals Procedure, the proposed arrangements for changing timescales if necessary and the arrangements for appointing an Independent Chair for the Appeals Panel.”*

- 3.7 On 14 July 2009, the Finance and Portfolio Holder was advised that “Discussions are on-going with trade union representatives regarding the appointment of an Independent Chair for the Appeals Panel.”
- 3.8 It was agreed with the trade unions that the regional employers and trade union secretaries would be approached and asked to nominate potential candidates. The only acceptable candidate was Ian Jones, a NEREO associate. As a NEREO associate, the standard fee arrangements of £375 per day plus Vat and £200 per half day plus VAT and mileage at 40p per mile applied.
- 3.9 On 5 November 2009, the Finance and Performance Portfolio Holder was advised that an independent Chair for the Appeals Panel had been appointed and that training for the Appeals Panel, facilitated by Mick Brodie, Director of the North East Regional Employers' Organisation had been arranged for 2<sup>nd</sup> November 2009.
- 3.10 The trade unions raised some concerns about the procedure after the high priority red circle appeals were dealt with. A revised procedure was agreed by the Performance Portfolio Holder on 23 March 2011 although this did not alter the composition of the Appeals Panel. Appellants whose appeals were considered under the original appeal were given the right to provide additional information and have their appeal revisited once an outcome had been determined for all other appellants. In the event, employees asked that 18 appeals be revisited.

- 3.11 It has been agreed with the trade unions, and incorporated into the Single Status Agreement, that the composition of the Appeals Panel for all JE appeals from 1 July 2008 onwards will be 2 management representatives and 2 trade union officials who have been trained in the use of the scheme and in the avoidance of bias. Where, exceptionally, the Appeals Panel has a "Failure to Agree", the Regional Joint Secretaries will be requested to assist. If no agreement can subsequently be reached, the original match and pay band will apply.

#### 4 MEETINGS OF THE APPEALS PANEL

- 4.1 The Appeals Panel has met on a number of occasions and their outcomes in respect of the original appeal ratified by the relevant Executive Member responsible for Workforce Services as detailed in Table 2.

**Table 2**

	Pay band increased on Appeal and Outcome Ratified (no. of appellants)	Pay band stayed the same on Appeal and Outcome Ratified (no. of appellants)	Pay band decreased on Appeal and Outcome Ratified (no. of appellants)
Chief Executive's	8 (12)	21 (36)	1 (1)
Child and Adults	12 (25)	36 (88)	6 (7)
Regeneration and Neighbourhoods	22 (29)	58 (73)	7 (11)
Schools	2 (4)	8 (8)	0 (0)
<b>Total</b>	<b>44 (70)</b>	<b>123 (205)</b>	<b>14 (19)</b>

- 4.2 An initial Appeal Panel outcome for one non school appeal has not yet been ratified by the relevant Portfolio Holder.
- 4.3 The outcomes of 2 revisited appeals have previously been ratified by the Performance Portfolio Holder as detailed in Table 3.

**Table 3**

	Pay band increased when appeal revisited and Outcome Ratified (no. of appellants)	Pay band stayed the same when appeal revisited and Outcome Ratified (no. of appellants)	Pay band decreased when appeal revisited and Outcome Ratified (no. of appellants)
Chief Executive's	0 (0)	0 (0)	0 (0)
Child and Adults	1 (1)	0 (0)	0 (0)
Regeneration and Neighbourhoods	1 (1)	0 (0)	0 (0)
Schools	0 (0)	0 (0)	0 (0)
<b>Total</b>	<b>2 (2)</b>	<b>0 (0)</b>	<b>0 (0)</b>

- 4.4 A report is due to be submitted to the Finance and Corporate Services Portfolio Holder on 15 August 2012 seeking ratification of the Appeal Panel revisited appeal outcomes, as detailed in Table 4

**Table 4**

	<b>Pay band increased when appeal revisited (no. of appellants)</b>	<b>Pay band stayed the same when appeal revisited (no. of appellants)</b>	<b>Pay band decreased when appeal revisited (no. of appellants)</b>
Chief Executive's	1 (1)	0 (0)	0 (0)
Child and Adults	1 (1)	3 (14)	0 (0)
Regeneration and Neighbourhoods	2 (3)	3 (3)	0 (0)
Schools	0 (0)	0 (0)	0 (0)
Total	4 (5)	6 (17)	0 (0)

In addition the pay band has increased in respect of 1 appeal (and 4 appellants) in respect of a temporary acting up arrangement.

- 4.5 It is envisaged that the Appeals Panel will determine an outcome for the outstanding 5 appeals to be revisited in late September/early October 2012
- 4.6 The independent chair has been present at each meeting of the Appeals Panel. The management representatives on the Appeals Panel have been Joanne Machers, Wally Stagg and Lucy Armstrong. The trade union officials on the Appeals Panel have been Edwin Jeffries, Margaret Waterfield and Steve Williams.

## **5 MEMBER INVOLVEMENT IN JOB EVALUATION APPEALS IN OTHER COUNCILS REGIONALLY**

- 5.1 The member involvement in job evaluation appeals in other councils regionally is detailed in Table 5 below

**Table 5**

<b>Authority</b>	<b>Member Involvement</b>
Gateshead	No member involvement
Middlesborough	No member involvement
Newcastle	No member involvement
Northumberland CC	No member involvement
North Tyneside	No member involvement
Redcar & Cleveland	No member involvement
South Tyneside	No member involvement
Stockton	No member involvement

## 6 TRADE UNION VIEWS

The trade unions have commented as follows

“The Trade Unions are confident that the current agreed process will resolve the majority of Job Evaluation Appeals in accordance with the agreed Job Evaluation Scheme. It was the stated intention of HJTUC throughout the negotiations to maintain the independent element of the JE Appeals process and in the event of a ‘failure to agree’ this was achieved through the inclusion of referral to the Regional Jt Secretaries in accordance with National Guidance and as included in Parts 3 SSA (current process) and Part 2 SSA (future process). HJTUC are therefore satisfied to maintain the current processes as stated within Part 2 & 3 of the agreed SSA.”

## 7 CHIEF SOLICITORS ADVICE

- 7.1 The operation of the ‘Appeals Panel’ has been in accordance with the National Agreement, as comprehensively covered within this report. That ‘Agreement’ provided in essence for a ‘joint panel’ comprising ‘management representatives’ from the Council and those individuals from a recognised Trade Union(s), duly appointed by the Trade Union. The Panel (following representations) was to be chaired by an ‘Independent Person’. Of particular note, all representatives needed to be trained sufficiently, to discharge their respective roles. Although, the National Agreement, did provide for a choice between ‘*management and/or elected Members*’ to comprise representation on the panel, given the practicalities of operating the panels, the elected Member involvement relates to the relevant Executive Member having oversight, but not a participatory role, in the workings of the panel. Whether the decision should have incorporated elected representatives or those from the Council’s management, is academic.
- 7.2 Any appeal mechanism, needs to comply with ‘natural justice’ principles. In addition, the report indicates that the workings of the panel should necessarily be robust, but above all, the panel needs to be consistent in its approach. Certain general principles should also apply;
- appeals should be dealt with promptly,
  - applicable periods for the submission of the parties cases etc., leading to the actual formal appeal hearing should be applied fairly and proportionally
  - the appeal should be heard by individuals who are free from bias, prejudice, pre-determination
  - the procedures of the panel should be applied evenly, fairly and consistently.
- 7.3 On the basis, that appeals have been conducted in compliance with the above factors in mind, it would clearly be a departure with attendant risks, to operate a different form of appeal process. Although, it was envisaged that a ‘further appeal’ could happen, this was only through an ‘exceptional’ circumstance, and not the norm. There would be an inherent danger, aggravated by the

number of appeals considered under the 'existing' system, to alter this process at this time, when there are appeal (albeit a limited number, could be one or more) still to be determined. To do otherwise, would undermine the process, as there would be a sense that the earlier appeals were inconstant in their application to a 're-modelled' appeals process that was subsequently introduced and somehow 'unfair'. Minor or inconsequential changes could be permissible, but it is unlikely that a change in the composition of the panel would be considered so. There may well be a need to look again at how an organisation should operate its employment practices and procedures, but the same, should be based on a clear rationale for doing so, at a suitable juncture and following appropriate consultation.

## **8 RECOMMENDATIONS**

- 8.1 That members note the report

## **9. APPENDICES AVAILABLE ON REQUEST, IN THE MEMBERS LIBRARY AND ON-LINE**

Appendix A – Job Evaluation Points and Weighting Matrix

## **10. BACKGROUND PAPERS**

None

## **11. CONTACT OFFICER**

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JOB EVALUATION SCHEME SCORING and WEIGHTING MATRIX													
Factors and Points per Level													
Level	Knowledge and Skills				Effort Demands				Responsibilities				Env. Demands
	Knowl edge	Mental	Comm.	Physical	Init & Indep	Physical	Mental	Emotional	People	Super Vision	Fin. Res.	Phys. Res.	Work Conds.
1	20	13	13	13	13	10	10	10	13	13	13	13	10
2	40	26	26	26	26	20	20	20	26	26	26	26	20
3	60	39	39	39	39	30	30	30	39	39	39	39	30
4	80	52	52	52	52	40	40	40	52	52	52	52	40
5	100	65	65	65	65	50	50	50	65	65	65	65	50
6	121	78	78	-	78	-	-	-	78	78	78	78	-
7	142	-	-	-	91	-	-	-	-	-	-	-	-
8	163	-	-	-	104	-	-	-	-	-	-	-	-
Factor%	16.3	7.8	7.8	6.5	10.4	5.0	5.0	5.0	7.8	7.8	7.8	7.8	5.0
Heading%		38.4			10.4		15.0			31.2			5.0