



**PORTFOLIO AREA: ALL PORTFOLIO AREAS**

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**Date of Meeting:** 3 March 2003

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**Public**

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**Key Decision:** Yes

**Recorded in Forward Plan:** Yes

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**Inside/Outside Policy Framework**

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**Title:** PROPOSED JOINT ARRANGEMENTS WITH EDEN DISTRICT COUNCIL

**Report of:** Head of Legal and Democratic Services and Head of Policy and Strategy

**Report reference:** LDS.06/03 &

**Summary:**

The report sets out the scope for joint working arrangements with Eden and the considerations which the Executive should address in deciding how to pursue the matter further.

**Recommendations:**

That the report be noted and the Executive give further guidance on how they would wish Officers to proceed so that further detailed work might be undertaken.

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## **1. BACKGROUND INFORMATION AND OPTIONS**

### **Introduction**

- 1.1 This report sets out the statutory basis for Local Authorities to enter into joint arrangements with each other; the types of arrangements which are available and some practical considerations which Authorities would need to address in setting up such arrangements. It should be noted that different provisions apply depending on whether the Authority is operating under Executive arrangements or not.
- 1.2 Formalising joint arrangements with Eden District Council provides opportunities for the consideration of matters of mutual concern. As the report sets out there are a variety of arrangements available to local authorities to formalise relationships. The type and format of the arrangement will be dependent on the issues to be considered and the desired outcomes. It may therefore be helpful to remind Members of recent matters that could have been progressed through a formal arrangement
- 1.3 Over recent years there have been a number of initiatives undertaken by both Carlisle and Eden including the East Cumbria Countryside Project (with Cumbria County Council), joint Community Safety arrangements, the "Green Box" recycling scheme and more recently the development of decriminalised parking. Discussions have also taken place in the past with Eden on issues where, it has been considered beneficial to undertake joint lobbying, such as foot and mouth, the formation of the local Strategic Partnership and the development of the M6 Corridor initiative.
- 1.4 Having a formal arrangement could provide an efficient mechanism for the consideration of such matters of mutual concern in the future which, dependent on the model chosen, could then be referred back to the appropriate committee of each authority for further consideration and consultation.

### **Options**

- 1.5 Guidance issued by the Secretary of State in respect of the new Constitutional arrangements makes reference to the value of partnership working between Local Authorities. The Secretary of State considers that partnership working between local public, private and voluntary sector bodies is essential for the effective delivery of services and suggests that Local Authorities should have effective arrangements for partnership working with other Local Authorities, including arrangements for joint consultation with local communities, particularly in two or three tier areas. The ability of the Council and the Executive to enter into joint arrangements is referred to in Article 11 of the Council's Constitution.
- 1.6 Under Section 101(5) of the Local Government Act 1972 two or more Local Authorities may enter into arrangements to discharge functions jointly. Those arrangements could include establishing a Joint Committee, either to advise the Authorities on matters of joint interest or to actually be responsible for discharging functions and taking decisions with regard to those functions. The above legislation continues to apply to joint arrangements in respect of functions which are not the responsibility of the Executive in the Local Authorities concerned and to joint arrangements established to advise the participating Authorities.

- 1.7 Where Executive arrangements are in place in respect of one or both of the Authorities (and this is the position in Carlisle's case where a cabinet structure has been adopted) and therefore the majority of the functions of the Authority are vested in the Executive itself, it is also possible for the Executive in respect of the functions for which it is responsible to enter into joint arrangements with other Local Authorities or with the Executives of those Authorities. The capacity for joint arrangements therefore exists in both Executive and non-Executive style authorities as long as the relevant statutory provisions are complied with.
- 1.8 Joint arrangements need not necessarily involve a Joint Committee, particularly where individual Members of the Executive may be responsible for the functions in question. It is a matter for the Authorities concerned to work out their own individual format for joint working. However, Members will be aware that the guiding principle of the new constitutional arrangements is that, where an Executive exists, it should always remain responsible for the functions which it has a duty to carry out, regardless of what arrangements it may choose to put in place to deliver those functions. The DTLR guidance is clear in that it states that, in deciding whether to enter into joint arrangements, the Executive should be clear that doing so does not adversely affect efficiency, transparency and accountability in respect of the discharge of those functions and that it will deliver best value for the Authority. The Executive should remain, and be seen to remain, accountable for those functions as the clear, accountable, corporate leadership of the Authority. In Carlisle's case, therefore, its Executive would need to ensure that this advice was properly considered before any decision as to joint working was made and properly reflected in any arrangements which might be put into place.

#### **What Joint Arrangements are Intended?**

- 1.9 Perhaps the first matter to consider is the precise nature of the joint arrangements envisaged. There is a spectrum of arrangements available ranging from, at one end, the establishment of a Joint Committee to act in an advisory role and consider matters of joint interest between the two Authorities and then advise the Authorities on relevant matters, but with the substantive decisions and discharge of functions still being undertaken by each of the Authorities separately. Under this arrangement Carlisle's Executive would, in respect of the matters for which it is responsible, still make the substantive decisions and exercise the relevant functions and similarly with the relevant Committee at Eden, but with the benefit of the advice coming from the Joint Advisory body. At the other end of the spectrum, a substantive joint decision making body could be set up which assumed responsibility not for acting in a merely advisory or consultative capacity but which had delegated to it from both Authorities substantive functions and responsibilities and which took decisions in respect of those functions which would be binding on each Authority in the same way as if a decision had been taken by the Authority's own Executive or Committee.
- 1.10 There is obviously a substantial difference between the two ends of the spectrum to which Members need to give some careful thought, bearing in mind the DTLR advice about efficiency, transparency and accountability in respect of decision making. Depending on what is intended, the mechanism for setting up such a Committee may vary, particularly in Carlisle's case where Executive arrangements are currently being operated and which are governed by a different set of regulations from those which would bite on an Authority not operating Executive arrangements. The question of precisely what the joint arrangement is intended to do and which functions it is to cover therefore needs careful consideration and definition.

## The Mechanics of Setting Up Arrangements

- 1.11 Relatively complex regulations in the form of the Local Authorities (Arrangements for the Discharge of Functions) (England) Regulations 2000 (as amended) govern the detail of who has power to set up joint arrangements and how those arrangements should work, where at least one of the Authorities concerned operates an Executive structure. The position is relatively complex because who makes the arrangements and who is entitled to appoint to and be a member of the Joint Committee depends on whether the functions to be discharged are functions of the Council, functions of the Executive (if there is one) or a mixture of the two.
- 1.12 On the basis that Carlisle operate Executive arrangements and Eden currently do not, the following broad provisions would apply in respect of Carlisle's position :-
- If the functions to be carried out jointly are functions of Carlisle's Executive and also Eden's Executive, then Carlisle's Executive would make arrangements directly with Eden's Executive for the joint arrangements to be put in place. If the functions are not the function of Eden's Executive (and it is assumed they will not be so if Eden are not currently operating Executive arrangements), then Carlisle's Executive would have to make arrangements with Eden directly as a Local Authority.
  - Where the Joint Committee is discharging functions which are all Executive functions, then Carlisle's Executive would set up and appoint the Committee from its side and, as far as Carlisle is concerned, its Executive could only appoint Executive Members to that Joint Committee and the political balance rules would not apply.
  - Where the Joint Committee is discharging functions which are all the responsibility of both Authorities (and are not Executive functions in either Authority) then the Joint Committee will be set up and appointed by the Authorities themselves and not by the Executive. In Carlisle's case, this would only apply if the functions to be addressed were matters such as licensing and planning functions which are the responsibility of specific Committees and not Carlisle's Executive.
  - If the Joint Committee is to carry out functions which are a "mix" ie one or more (but not all) the functions to be carried out by the Joint Committee are Executive functions as far as Carlisle is concerned, then the Council itself would have to set the Joint Committee up but with the agreement of the Executive. This would, therefore, be the case if the Joint Committee was to carry out both Executive and non Executive functions as far as Carlisle was concerned. In items of membership, if the Joint Committee is carrying out a "mix" of functions as mentioned above ie Executive and non Executive functions then, if it includes only one Member that person may be, but need not be, a Member of the Executive. If the Joint Committee includes more than one Member then at least one Member must be an Executive Member.
  - The regulations make it clear that where joint arrangements are made at the same time in relation to more than one function and at least one of those functions is the responsibility of the Executive, then it is possible to have one single Joint Committee to discharge all the functions. This, therefore, would give capacity to create a joint arrangement to deal with a multitude of functions, subject to them being precisely defined.
- 1.13 As can be seen from the above, careful thought needs to be given as to precisely what functions are to be carried out by the Joint Committee and whether (in Carlisle's case) they are Executive or non Executive functions, because the answer has a bearing on how the Committee must be set up and who may be appointed to it from Carlisle's perspective.



- 1.14 It is assumed that, as Eden are not operating Executive arrangements at present, the Authority as a whole would have to agree to setting up any Joint Committee and the full Council would appoint their representative Members on the Committee and that the political balance rules would apply to those appointments, but Eden will need to verify the position themselves from their end.

### **Matters Needing Clarification**

- 1.15 Before any joint arrangements can be established and translated into a proper decision making process consistent with the legislative requirements then thought needs to be given to a number of issues. Some of these are:-

- What sort of constitutional arrangements do both Authorities currently have in place and how can a Joint Committee fit in with those arrangements?
- What precise functions are to be the subject of such joint arrangements and, more particularly, is it the intention that the Joint Committee will make actual decisions binding on both Authorities or will it (at least in the first instance) be advisory and consultative in nature only?
- In Carlisle's case, is the Joint Committee to deal with Executive functions or non Executive functions or a mixture of both?
- If the Joint Committee is to make actual decisions binding on both Authorities, is it intended that there will be delegation down to Officers and, if so, which Officers would be able to exercise such powers?
- What will be the precise terms of reference and powers of the joint body?
- If the body is to be responsible for functions and take Executive Decisions (and it would be doing so in Carlisle's case if it was to have responsibility in respect of Executive functions) what arrangements will there be for call in?
- How will Executive Decisions be treated in the Forward Plan (in Carlisle's case) if they are Key Decisions?
- Will the joint arrangements lead to efficiency, transparency and accountability in respect of the discharge of the functions and will they deliver Best Value as highlighted in the statutory Guidance?

- 1.16 It should be noted that, in Carlisle's case, if the Executive do decide to effectively pass on the capacity for the joint body to make Executive Decisions in respect of Carlisle's functions then the Executive will still remain responsible and accountable for them under the City's constitutional arrangements.

### **Constitution of the Joint Body**

- 1.17 It is not possible to draw up a detailed Constitution for the joint body without Members having first given careful consideration to some of the matters referred to above. However, the Constitution when drawn up should address the following matters:-

- Name of the Committee

- Terms of reference (i.e. precisely which powers is it to the exercise)
- Membership, number of Members to be appointed, their term of office and whether representation is on a politically balanced basis or (in Carlisle's case) comprised of Executive Members. This will, as mentioned above, be determined in Carlisle's case by the detailed application of the regulations relating to Executive arrangements which in turn will depend on precisely what functions the joint body is intended to undertake.
- Consultation provisions eg with Parish Councillors or other bodies or organisations having an interest in the matters falling within the jurisdiction of the joint body.
- Cessation of membership.
- Chairmanship and Voting
- Quorum provisions
- Provisions for call in (if Executive decisions are involved)
- Frequency of meetings
- Venue of meetings
- Allowances to Members
- Reference of Minutes
- Provisions for secretarial support

## **2. CONSULTATION**

2.1 Consultation to Date.

2.2 Consultation proposed.

## **3. STAFFING/RESOURCES COMMENTS**

If joint arrangements are set up then there will be resource implications in terms of Officer time in servicing the joint body but these cannot be calculated precisely at this early stage.

## **4. HEAD OF FINANCE'S COMMENTS**

## **5. LEGAL COMMENTS**

They are incorporated into this report.

## **6. CORPORATE COMMENTS**

The Head of Strategic and Performance Services has contributed to this report and provided a corporate perspective in respect of the Council's current policy context.

**7. RISK MANAGEMENT ASSESSMENT**

Care would need to be taken to ensure that any arrangements properly incorporated the relatively complex regulations applicable to such arrangements to ensure that any decisions made were lawful, and that any arrangements were efficient, transparent and accountable and delivered but value in accordance with the relevant guidance.

**8. EQUALITY ISSUES**

None anticipated.

**9. ENVIRONMENTAL IMPLICATIONS**

None anticipated.

**10. CRIME AND DISORDER IMPLICATIONS**

None anticipated.

**11. RECOMMENDATIONS**

That the report be noted and the Executive give further guidance on how they would wish Officers to proceed so that further detailed work might be undertaken.

**12. REASONS FOR RECOMMENDATIONS**

To enable further direction to be given to Officers in respect of pursuing the matter further.