



# REPORT TO EXECUTIVE

## PORTFOLIO AREA: PROMOTING CARLISLE

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Date of Meeting:

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Public

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Key Decision: No

Recorded in Forward Plan:

No

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Inside Policy Framework

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**Title: LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN  
HEALTH ACT 2007**

**Report of: DIRECTOR OF LEGAL AND DEMOCRATIC SERVICES**

**Report reference: LDS.01/08**

### Summary:

The report outlines for Members information the main provisions of the Local Government and Public Involvement in Health Act 2007 which has now been enacted and which gives statutory force to the proposals set out in the White Paper "Strong and Prosperous Communities".

### Recommendations:

It is recommended that Members note the main provisions of the legislation outlined in Appendix 1 and that further reports will be submitted to the relevant bodies within the Council's governance arrangements when relevant parts of the legislation are brought into force and require a decision by the authority.

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**Note: in compliance with section 100d of the Local Government (Access to Information) Act 1985 the report has been prepared in part from the following papers: None**

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

- 1.1 The Local Government and Public Involvement in Health Act 2007 has now been enacted and is on the statute book. Although the legislation is now in force, many of its provisions are to be brought in progressively by statutory order and, in the case of some of the provisions, supported by detailed regulations and guidance which are still awaited. This gradual rolling out of the provisions of the Act will take place over the next year or so and it is intended to report further to Members where decisions might require to be made by the Council, as each particular part of the legislation is triggered.
- 1.2 Members will be aware from earlier presentations on the White Paper “Strong and Prosperous Communities” and the Bill which preceded the Act, that some of the most important provisions of the legislation as far as the City Council are concerned were those relating to proposals for the reorganisation of Local Government. Whilst these were of particular concern to the authority, Members will see from the summary of the relevant parts of the Act set out in Appendix 1 that there are other significant aspects of the legislation which will affect the authority and which Members need to be aware of. As each of these provisions become law, further reports will be required to the Executive and other responsible bodies within the Council’s governance arrangements to enable appropriate decisions to be made by the Council in response to the legislative changes and the obligations which they impose.
- 1.3 The purpose of this report is simply to give Members an outline of what the Act contains but in some cases it will be necessary to await the relevant regulations and ministerial guidance which is to be put in place before reporting further to the Executive.

## **2. CONSULTATION**

It is intended to submit this report to the Overview and Scrutiny Management Committee as well, so that they are aware of the provisions in the Act likely to affect their areas of responsibility with regard to, for example, the “Community Call for Action” included in the legislation. Further detailed reports will also be presented to the Standards Committee in respect of substantial changes to their responsibilities arising from those parts of the Act dealing with the new ethical standards regime and the processing of complaints regarding breach of the Code of Conduct.

## **3. RECOMMENDATIONS**

It is recommended that Members note the main provisions of the legislation outlined in Appendix 1 and that further reports will be submitted to the relevant bodies within the Council’s governance arrangements when the respective parts of the legislation are brought into force and require a decision by the authority.

#### **4. REASONS FOR RECOMMENDATIONS**

The report is presented to make Members aware of the provisions of the Act and to advise them that further reports will be presented once the relevant regulations and guidance are in place.

#### **5. IMPLICATIONS**

- Staffing/Resources – It is not anticipated that there will be a need for additional staff to accommodate the requirements in the Act. However, it is likely that there will be additional demands on existing Member and Officer time in areas such as accommodating the changes in the ethical standards regime, whereby responsibility for carrying out most local investigations will fall on the Standards Committee and its servicing officers rather than the Standards Board for England. The role of the Ward Member should also be enhanced by the “Community call for Action” procedures and may result in an additional workload on Members.
- Financial – It is not anticipated that there will be any direct financial cost to the authority but there may be financial issues arising if, for example, the Council were to resolve to change the electoral pattern and move to four yearly elections after suitable consultation, as this is now provided for in the legislation.
- Legal – The legal comments are incorporated in this report.
- Corporate – There may be corporate implications across the authority in terms of any changes to its governance arrangements which may arise as a result of provisions in the legislation.
- Risk Management – The risk to the authority will be that it does not implement any changes it is required to do in accordance with the legislative timetable under the Act, but this should be avoided by officers closely monitoring the legislation as each part is triggered to ensure the Council responds to its obligations in good time.
- Equality and Disability – None are expected to arise directly from the legislation but any action which the Council is required to take in response to the legislation will be in accordance with the authority’s equalities framework.
- Environmental – None are expected to arise directly out of the legislation, although there may be environmental implications if, for example, the authority was to participate in the formation of a joint waste authority, but these would be considered in detail as and when any such proposal is put forward.

- Crime and Disorder – The legislation does provide for a new power enabling Members to refer local crime and disorder matters to the Council’s “Crime and Disorder Committee” for consideration. Further guidance is awaited on how these procedures are intended to work and whether, for example, it is necessary to set up a freestanding Crime and Disorder Committee or whether the role could be subsumed in a current Overview and Scrutiny Committee.
- Impact on Customers – There may be an impact on customers if the Council, for example, resolves to change its governance or electoral arrangements but any specific proposals to do this will be consulted upon at the relevant time.

- L DS.01.08 Local Government & Public Involvement in Health Act 2007

## **APPENDIX 1**

### **1. PART 1 – STRUCTURAL AND BOUNDARY CHANGES**

- 1.1 These provisions deal with structural and boundary changes arising from the change from two tier to single tier local government following the invitation to submit proposals for change. The provisions give the Secretary of State the necessary powers to make all the relevant orders in respect of the transfer of staff and assets etc to make the transition from two tier to unitary government.

### **2. PART 2 – ELECTORAL ARRANGEMENTS**

- 2.1 The provisions allow for District Councils to change their electoral arrangements either by moving to whole Council elections (where they currently operate elections by thirds) or to move to partial Council elections (where they currently operate whole Council elections).

- 2.2 The Act sets out the procedure for (in Carlisle's case) moving to full Council elections if it so determined. In brief, the Council must pass a resolution to move to full Council elections during a specified period which, in the Council's case, would be anytime prior to the 31 December 2010 or, failing that, during any period between the 1 October and 31 December in 2014 or any fourth year thereafter. If the Council passed a resolution before the 31 December 2010 during the first 'window' opportunity, then it would be able to move to all out elections from May 2011, which is the earliest date that the change could be made under the timetable set out in the Act. The resolution to change must be passed by a majority of at least 2/3rds of Members voting at a specially convened meeting of which notice of the object has been given. In addition, the Council must first take reasonable steps to consult on any proposed changes, but it is for the authority to decide which persons it is appropriate to consult and the final decision as to whether to change the electoral cycle will now rest with the Council and will no longer need the consent of the Secretary of State.

After passing any resolution to move to whole Council elections, the Council must publicise the fact that it has become subject to the new scheme and produce an explanatory document, as well as notifying the Electoral Commission of the resolution.

2.3 Provision is also made for those Councils holding whole Council elections to request the Electoral Commission to ask the Boundary Commission to arrange for an electoral review of their area with the aim of introducing single member electoral areas. There is also provision enabling the Council to change the name of an electoral division or ward, as the case may be, by passing a resolution at a special meeting held for that purpose, provided that the resolution has been passed by a majority of least 2/3rds of the Members voting. Prior to passing such a resolution, the Council must take such steps as it considers appropriate to consult with interested parties on any such changes.

2.4 There are further provisions under this part enabling the Secretary of State to combine local elections with European and Parliamentary elections in future years when those elections fall in the same year. Although a similar power has been exercised in the past, it has required specific regulations to enable it to be done on a case by case basis. Before using these powers, the Secretary of State must consult with persons or bodies he/she considers appropriate.

### **3. PART 3 – EXECUTIVE ARRANGEMENTS**

3.1 Earlier legislation (the Local Government Act 2000) provided for authorities to put in place Executive arrangements involving the creation and operation of one of three different forms of Executive i.e. a Leader and Cabinet, an elected Mayor and Cabinet or an elected Mayor and Council Manager.

3.2 The Act introduces both a new style Leader and Cabinet Executive and also changes the rules for an authority moving from one type of Executive arrangement to another. In future, Councils will be obliged to operate one of the following models prescribed in the Act :-

- A Leader and Cabinet Executive or
- an elected Mayor and Cabinet Executive

The former Mayor and Council Manager option has therefore been removed.

The key features of each Executive model will be as follows :

- The Leader and Cabinet Executive will involve a Councillor elected as Leader for either a four year term (in the case of an authority operating whole Council elections) or until his/her term of office as a Councillor expires (where the authority operates elections by thirds). There will also be two or more Councillors of the authority appointed to the Executive by the Executive Leader.
- A Mayor and Cabinet Executive will comprise of a directly elected Mayor who appoints two or more Councillors to the Executive.

The maximum number of Members that an Executive may have remains at 10.

- 3.3 Under the new legislation, the Leader in a Leader and Cabinet Executive must make arrangements for the discharge of all executive functions. Effectively, this means that there will only be 'strong' leader models in future with the Leader nominating his/her Executive and delegating Executive powers appropriately. This does not represent any substantial change to Carlisle's governance arrangements where the authority operates a 'strong' leader model in any event.
- 3.4 Provisions as to the length of term of the Leader are included in the Act. Under the new arrangements, the term of office of the Leader in a Leader and Cabinet Executive varies depending on whether the authority holds whole Council elections or elections by thirds. With full Council elections, the Leader remains in office for a period of four years. With elections by thirds, (as in Carlisle's case) the Leader will hold office until the Annual Council

immediately following his/her normal retirement date. The Leader's term of office in the latter case will therefore vary, depending on the length of the remainder of the Leader's term of office as Councillor following his/her appointment. The legislation provides powers to the Secretary of State to make regulations with regard to the term of office of Executive Leaders and the filling of casual vacancies which are still awaited and which will clarify the procedures further. In addition, the legislation provides that the Leader can be removed by the authority in certain circumstances if its Executive arrangements so provide and recommendations are expected to clarify how this will work in practice.

- 3.5 Overall, the Act does not represent great changes for the Council's current executive arrangements because the authority already has in place a Leader and Cabinet model which is in substantially the same form as that prescribed by the Act. There will be changes required to the Constitution, though, to pick up matters relating to the Leader's term of office, removal of the Leader and the appointment of a deputy by the Leader, all of which are anticipated being the subject of further detailed regulations. Clarification is also awaited on the timetable for implementing changes and the dates when relevant parts of the Act will come into force, together with the consultation procedures to be undertaken by the authority prior to it formally determining its new arrangements under the Act.

#### **4. PART 4 – PARISHES**

- 4.1 There are numerous provisions relating to parishes. Parishes are given new powers to promote the economic, social or environmental wellbeing of their area subject to meeting conditions set out by the Secretary of State in regulations. The Act also introduces power for a principal Council (the City Council in our case) to undertake a "Community Governance Review" either of its own volition or following a petition from interested residents. The review would look at the governance arrangements in the area and whether, for example, changes should be made to current Parish arrangements or whether new Parishes should be formed. The Secretary of State is to produce guidance relating to the conduct of any Community Governance Review to which the authority must have regard when deciding how to exercise these powers.



## **5. PART 5 – CO-OPERATION BETWEEN AUTHORITIES AND LOCAL PARTNERS**

- 5.1 These provisions bring in new requirements relating to Local Area Agreements. They require “responsible authorities” (the County Council in our case) to negotiate new LAA’s with their respective Government Offices. A key feature of the new LAA will be the reduction in the number of targets which they are required to meet and the selection of those targets from a national indicator set. Building on the priorities identified by Local Strategic Partnerships, it is intended that Counties and all authorities with unitary responsibilities will lead partners in identifying local improvement targets for improving the economic, social and environmental wellbeing of the area. “Partners” in this context includes districts, public sector providers, NHS providers and a number of other key public agencies. All partners will be under a statutory requirement to co-operate in determining targets which will then be agreed and submitted by the lead authority to Government Office in the form of a draft negotiated LAA. Once agreed and included in the LAA, partners must have regard to the targets in carrying out their respective functions.
- 5.2 Other provisions in this part relate to the operation of the Overview and Scrutiny functions of an authority. In brief, governance arrangements must include provision which enable any Member of an Overview and Scrutiny Committee to refer to the Committee any matter which is relevant to the functions of that Committee (in Carlisle’s case, this is already the position). Further, the governance arrangements must also enable any elected Member to refer to an Overview and Scrutiny Committee of which he/she is not a member by way of a “Community Call for Action” any local government matter which is relevant to the functions of that Committee. Guidance is to be published by the Secretary of State setting out how the procedure is to work and how such references should be made. There are also parallel provisions to be introduced to enable Members to refer local crime and disorder matters to their Council’s “Crime and Disorder Committee” for consideration. Further regulations and guidance are anticipated before any of these provisions come

into effect but, at this point in time, it is not clear whether a separate “Crime and Disorder Committee” must be established by authorities or whether its role can be subsumed into an existing Overview and Scrutiny Committee. Either way, the intention of these provisions is to enhance the role of the Ward Member in bringing local ward matters to the attention of the Council. This is supplemented by powers to enable the Secretary of State to make regulations enabling Overview and Scrutiny Committees to request prescribed information from “relevant partner authorities” to enable them to carry out their scrutiny functions. The Act also enables arrangements to be put in place enabling individual Members to exercise functions of the authority in relation to their own electoral ward and provides for Overview and Scrutiny Committees to require any such Members to appear before the Committee to answer questions in relation to the exercise of any functions which may have been delegated to them as individuals. Again, further regulations and guidance as to how these powers will operate are awaited but the intention is that they will enhance the position of the Ward Member in representing his/her local constituents.

## **6. PART 6 – BYELAWS**

- 6.1 The Act provides that Councils will be given new powers to create byelaws and enforce them through the issue of Fixed Penalty Notices. These powers will come into force by order, along with regulations as to their use but the intention is that, once authorities have consulted on and advertised the bye-laws, they can then be enacted without ministerial confirmation which is required at present. It is likely that statutory guidance will also be issued to accompany these regulations. Further reports on these provisions will have to await the issue of the draft regulations.

## **7. PART 7 – BEST VALUE**

- 7.1 The Act removes certain aspects of the Best Value regime in England, in particular the requirement on Best Value authorities to carry out Best Value Reviews. It places a new duty on English Best Value authorities where they consider it appropriate to involve and consult with representatives of local

people in the design and provision of local services and provides the Secretary of State with a new power to issue guidance to Best Value authorities on how this general duty should be fulfilled.

## **8. PART 8 – LOCAL SERVICES – INSPECTION AND AUDIT**

- 8.1 This part makes provision with regard to the constitution of the Audit Commission and for the merger of inspection functions of the Benefit Fraud Inspectorate with the Audit Commission, with the intention of avoiding duplication of effort and reducing the inspection burden on local authorities. It also amends the Commission's powers to produce and publish studies and reports and relaxes the restriction on disclosure of information obtained by the Auditor or the Audit Commission.

## **9. PART 9 – THE COMMISSION FOR LOCAL ADMINISTRATION IN ENGLAND (THE OMBUDSMAN)**

- 9.1 These provisions clarify and update the Ombudsman's jurisdiction to reflect modern means of local service delivery. They also modify the Ombudsman's investigatory powers to provide that he/she can investigate an alleged or apparent failure in a service which it is a local authority's function to provide, and any alleged or apparent failure to provide such a service, in addition to existing powers to investigate maladministration. It also removes the general restriction on the Ombudsman's power to investigate contractual and commercial transactions, replacing it with a number of narrower restrictions. It also provides for complaints to be submitted electronically.

## **10. PART 10 – ETHICAL STANDARDS**

- 10.1 The Act (subject to the relevant section being brought into force) now makes it clear that the Member Code of Conduct may apply to a Member when he/she is acting outside their official capacity, but only in circumstances where such conduct would constitute a criminal offence. This has already been built into the Code of Conduct recently adopted by the City Council and the consequences explained to Members during the presentations on the Code.

- 10.2 The Act brings in the revamped role of the Standards Board as a strategic regulator with the local Standards Committee taking responsibility for conduct issues in their area. The main change in the legislation is to pass responsibility to local authorities to act as the first “sieve” in considering conduct complaints and deciding whether they should be investigated further. Hitherto, this particular responsibility has rested with the Standards Board for England. It is anticipated that regulations will be in place for the 1 April 2008 transferring this responsibility to authorities. Once the regulations are in place, a report will need to be made to the Standards Committee on the detail of the provisions which will see complaints being considered locally by the Committee in the first instance rather than referral direct to the Standards Board for England who will then take on a more strategic role. The regulations may make it necessary to look at changing size and composition of the City Council’s Standards Committee depending on precisely what they require the Standards Committee to do. It is also likely that there will an increased call on both Member and office time in assuming responsibility for these additional duties but this cannot be quantified precisely at this stage.
- 10.3 In addition, provision is also made for decisions in respect of local authority posts subject to political restrictions to be taken by an authority’s Standards Committee rather than, as now, by an independent adjudicator. Again, further guidance is expected on this particular function.

## **11. PART 11 – JOINT WASTE AUTHORITIES**

- 11.1 These provisions enable two or more local authorities to submit a proposal to the Secretary of State for the creation of a Joint Waste Authority to discharge some, or all, of their waste functions (i.e. collection, disposal and/or street cleaning) through the joint authority. The decision to make a proposal to form a Joint Waste Authority is a voluntary one and the Secretary of State is expected to issue guidance on how these proposals should be pursued further.

## **12. PART 12 – ENTITIES CONTROLLED BY LOCAL AUTHORITIES**

12.1 Generally, these provisions enable the Secretary of State to introduce propriety controls to entities such as local authority companies and trusts through which authorities may choose to operate. This will include requiring relevant financial information to be included in the Local Authority Statement of Accounts in respect of these entities. Further regulations are awaited setting out how this power is to operate.

## **13. PART 13 – VALUATION TRIBUNAL FOR ENGLAND**

13.1 Valuation Tribunals are independent bodies set up to hear appeals in relation to business rating and Council Tax valuations and liability. The provisions in the Act make certain changes as to the operation of such tribunals and should not affect the Council's functions directly.

## **14. PART 14 – PATIENT AND PUBLIC INVOLVEMENT IN HEALTH AND SOCIAL CARE**

14.1 The Act creates a new framework for consultation with patients and the public and imposes a duty on Strategic Health Authorities to make arrangements to secure that Health Service users are involved in matters to be set out in the regulations. It also imposes duties on each Primary Care Trust and Strategic Health Authority to report on consultation arrangements and to set out the influence that the results of consultation have had on their commissioning decisions. It also places responsibilities on each Social Services Authority to ensure the involvement of local people in the commissioning, provision and scrutiny of Health and Social Services. Further regulations are awaited as to precisely how these new functions and duties are to operate.

## **15. PART 15 – POWERS OF NATIONAL ASSEMBLY FOR WALES**

15.1 This is relevant to Wales only.

## **16. PART 16 – MISCELLANEOUS**

- 16.1 This part makes provision for various miscellaneous issues, including allowing a local authority to make arrangements for individual Councillors to exercise functions of the authority in relation to their own electoral divisions or wards. Regulations will define what can be covered by excluding certain functions from the proposals and placing conditions on how any functions which are delegated must be exercised. The form of delegation will be decided upon by the Executive in relation to executive functions (that is the Leader under the new Executive arrangement model) and, in all other cases, it will be for the authority itself to decide. The regulations will also require records of any decisions of actions taken by Ward Members to be made available to the public and Overview and Scrutiny Committees will be able to require such Members to appear before the Committee to answer questions in relation to any functions which they exercise in their Wards.

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