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Subject: Proposed revisions to the Council's governance arrangements

Classification: Unrestricted

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## **Background**

(1) Before the Local Government Act 2000, councils could either take all decisions at full council or could delegate decision-making to committees, sub committees, joint committees or officers.

(2) By the mid-1990s, the committee system was deemed to be inefficient, lacking in transparency, slow in decision-making, resource-intensive and overly focused on operational activities rather than policy strategy and results.

(3) The 2000 Act abolished the committee system and required all councils serving a population of 85,000 or more to adopt an executive model of governance with either an elected Mayor and Cabinet, a powerful council manager, or an indirectly elected Leader and Cabinet (the latter being the model adopted by most councils, including KCC in 2001).

(4) Since then, the power of the full council is limited to approving the annual budget, the council tax and the key strategies that form the Policy Framework, together with a number of other functions that are reserved to it or its committees by law (as listed in Appendix 2 Part 1 of the Constitution). Whilst a small number of cross-party committees are retained, particularly for quasi-judicial matters, all other decision-making responsibilities rest with the executive (the Leader). The Leader is given authority by the Council to allocate individual portfolio responsibilities to Cabinet Members, along with any executive powers in relation to these portfolios, although it would be open to the Council (instead of the Leader) to appoint those Cabinet Members.

(5) The Cabinet system has undoubtedly led to decisions being made more quickly and accountably, particularly given that individual Cabinet Members can make decisions. The executive/scrutiny split has also been effective in terms of calling decision-makers to account, whilst releasing backbench and opposition members from having to attend so many formal meetings and allowing them to concentrate more on their representative role in their communities.

(6) However, the speed of the decision-making process can sometimes lead to significant numbers of elected members feeling removed from the decision-making process. Some believe that too much power is concentrated in the hands of too few people and that, once made, executive decisions are rarely altered through the scrutiny process.

## **The Localism Bill**

(7) The Localism Bill proposes to amend the Local Government Act 2000 to permit either of the following models of governance to be adopted:

- (a) An executive system
- (b) A committee system
- (c) Other arrangements proposed by the council and approved by the Secretary of State. Such approval is only likely to be given if they are an 'improvement' on current arrangements and ensure that decisions are taken in an efficient, transparent and accountable way

(8) In terms of the committee system proposals, details in the Bill currently include:

- (a) Provision for the Secretary of State to specify which functions of a council can be delegated under a committee system
- (b) That any council adopting a committee system may appoint one or more overview and scrutiny committees (OSCs)
- (c) Lead local flood authorities must carry out scrutiny of flood risk and coastal erosion risk management functions
- (d) Health scrutiny powers/duties will continue, but these may be taken on by a relevant committee rather than a specific OSC
- (e) For those councils that have adopted one or more OSCs, one of those committees must be designated as the Crime and Disorder Committee
- (f) The Secretary of State may make provisions about the function, composition and procedure of OSCs and the appointment of joint committees and sub committees of OSCs.

(9) Under the Localism Bill, it is proposed that the process for changing governance arrangements would be as follows:

- (a) A resolution of the full council
- (b) Approval by the Secretary of State (if 'other arrangements' are proposed)
- (c) Changes to governance arrangements come into effect immediately after the next local election (May 2013)

(10) Councils would not be permitted to pass another resolution to change governance arrangements within five years, unless that resolution is approved by referendum. Proposals to change governance arrangements may be subject to a referendum in cases where:

- (a) The council's existing form of governance was approved by referendum and it wishes to change; or

- (b) The council resolves that a proposed change of governance be approved by referendum

Councils will not normally be permitted to hold another referendum on changes to governance within ten years. Given that a referendum (effectively an all-out election) would cost approximately £2m, it is not recommended.

### **Design considerations**

(11) Under the Localism Bill, therefore, the earliest the Council would be able to implement a new system of governance would be 2013. Before introducing any changes, however, it would be important to establish:

- (a) That improvements could be made on the current system in terms of transparency, accountability, reduced bureaucracy, speed/quality of decision making and the better involvement of all Members
- (b) What a new system of governance would be designed to achieve and what the benefits would be in terms of service delivery and efficiency
- (c) What would be the benefits (real or perceived) to the people of Kent
- (d) How a scrutiny function would be built into the system (if at all), including existing responsibilities (e.g. HOSC)
- (e) How issues around partnership working and an increased focus on commissioning (rather than delivery) and localism would be administered and achieved by the new system
- (f) What changes to the Constitution would be necessary and what implications these would have
- (g) How the new system would interface with the Corporate Management Team, the Officer Scheme of Delegation and how the delivery of Bold Steps for Kent would be assured

### **The Kent Hybrid model**

(12) The proposals contained in the Localism Bill present many opportunities around adopting a new form of governance and there is an opportunity to take the best of both the Cabinet and Committee systems and design a hybrid model. In addition, by examining and maximising existing legislative provisions, particularly around the overview and scrutiny function, such a hybrid alternative could be introduced immediately and without the need for an expensive referendum.

### **Proposals in more detail**

(13) **The creation of Cabinet Committees, possibly linked to portfolios or aligned with existing POSCs:**

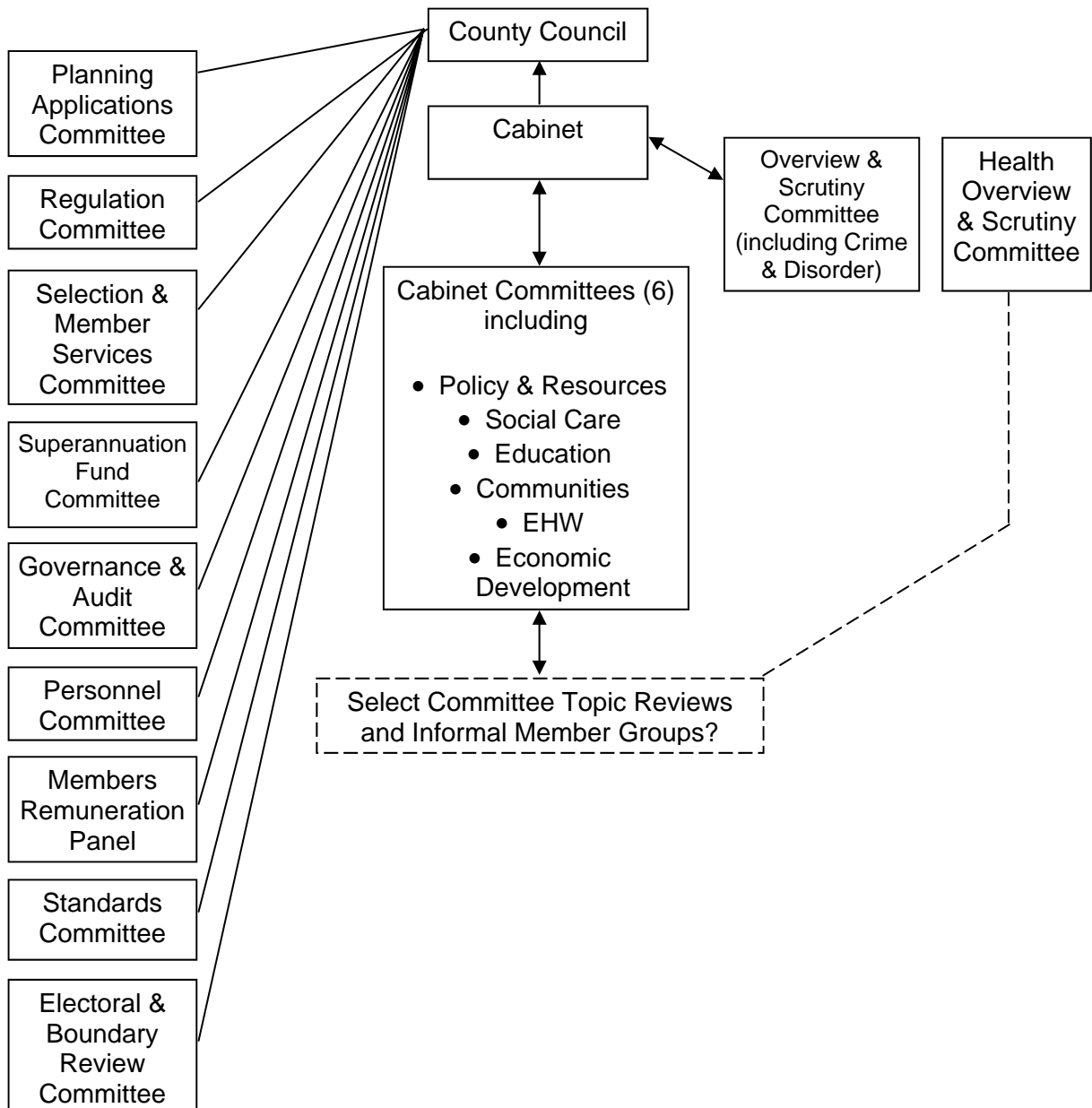
- (a) Possibly chaired by the Cabinet Member (but see questions below) with cross-party membership, designed to ensure a wider Member involvement in shaping policy and forthcoming executive decisions
- (b) Proportionality rules need not apply, thus allowing both Opposition Groups the opportunity of a seat on all of the committees
- (c) Formal decisions would continue (as now) to be made by the Cabinet Member (or Cabinet) following the relevant Cabinet Committee meeting, but no formal decisions (other than urgent decisions) would be made on a matter that had not been considered through one of these committees
- (d) Care would be required to ensure that the papers submitted to the Cabinet Committees were sufficiently detailed so that the committee was fully aware of the impending decision, i.e. not a loose and inexact report with unclear conclusions so that the committee might not be aware of what is really being proposed
- (e) Cabinet Committees would also have a performance management and policy development role (similar to old-style committees)
- (f) Terms of Reference and Procedure Rules would need to be developed for the Cabinet Committees
- (g) It would have the effect of reducing the number of formal committees by one-third, from 29 to 19 (see diagrams below):

Existing Mode of Operations	County Council	
Health Overview & Scrutiny Committee	Cabinet	Cabinet Scrutiny

Policy Overview & Scrutiny Committees		
<u>Not</u> including the Informal Member Group (IMGs) for each POSC	Scrutiny Board	Adult Social Care & Public Health POSC
Corporate POSC	Customer & Communities POSC (Crime & Disorder Cttee)	Education, Learning & Skills POSC
Environment, Highways & Waste POSC	Regeneration & Economic Development POSC	Specialist Children's Services POSC

Other/Support Committees*		
Personnel Committee	Planning Applications Committee	Electoral & Boundary Review Committee
Flood Risk Management Committee	Governance & Audit Committee	Regulation Committee
Superannuation Fund Committee	Standards Committee	Selection & Member Services Committee
Corporate Parenting Panel	Governor Appointments Panel	School Organisation Advisory Board
Kent Schools Admissions Forum	Joint Appointments Committee – Kent Police Authority	Gypsy & Traveller Advisory Board
Supporting People in Kent Commissioning Body	* Not including: Select Committees, Local Neighbourhood Forums, Member Panels, Sub-Groups and Sub-Committees	

Proposed committee structure



(14) **Overview and Scrutiny:** Under existing legislation, the council has to have at least one Overview and Scrutiny Committee (OSC) plus an OSC for Health and it is proposed that KCC adopts the statutory minimum model. It is suggested that the membership of the main OSC is made up of Members who are not Members of any of the Cabinet Committees, to ensure complete separation of roles and to maintain a single, independent scrutiny function for formal Cabinet, Cabinet Member and Officer decisions. It is also suggested that the relevant parts of the Constitution should be tightened up to ensure that any decision called-in to scrutiny meets a more robust test of reasonableness than has existed hitherto. There would be an expectation of fewer call-ins if improved ‘pre-decision scrutiny’ at Cabinet Committees took place. Crime and disorder will also be undertaken by the single OSC, although the HOSC would be retained in its current form as a separate committee.

(15) **Other Committees:** Executive Advisory Boards, e.g. Gypsy and Traveller Advisory Board, School Organisation Advisory Board, Flood Risk Management, etc, would be subsumed into the new Cabinet Committees, but all current council-side committees, particularly quasi-judicial committees such as Planning and Regulation, would remain, although the opportunity exists to re-examine the terms of reference and delegated powers of these committees. Other committees, e.g. Governance and Audit are not required by statute but are recommended by bodies like CIPFA as good practice and would remain.

(16) **Locality Boards:** Locality Boards could give much greater backbench engagement and, subject to the existing pilots being successful, Locality Boards could be placed on a more formal footing, perhaps as Joint Committees, with commissioning powers. This was envisaged some time ago by the work done by the “Going Local” IMG and reflects the Government’s aspirations in the Localism Bill.

(17) **Impact on Members’ Allowances:** It is suggested that the impact on the Members’ Allowances Scheme would be neutral. Under these proposals, 8 SRAs would disappear (7 POSC chairmen and 1 spokesman on Cab Scrutiny). These could be replaced by 12 new SRAs for the KCC Vice-Chairmen of Locality Boards, although it is likely that there would be a gap between the dissolution of POSCs and the creation of some Locality Boards.

### **Outstanding issues**

(18) There remain many unanswered questions that will require careful consideration, including:

- (a) Chairmanship of Cabinet Committees – Cabinet Members, Deputy Cabinet Members or backbenchers?
- (b) Who sets agendas – Cabinet Members or backbenchers?
- (c) How many Cabinet Committees and how many Members on each?
- (d) What size Cabinet – fewer Members to mirror Cabinet Committees?
- (e) Future role of Cabinet meetings

- (f) Frequency and size of Cabinet Committees? Currently POSCs meet five times per year. If the Cabinet Committees only met five times a year the decision-making process would be slow. If monthly, decision-making quicker but results in an increase (not decrease) in the number of formal meetings
- (g) Public or private meetings? Confidentiality during policy development?
- (h) Would Cabinet Committees be permitted to co-opt? e.g. parent governors and church representatives on Education Cabinet Committees
- (i) Cabinet Sub Committees? Should they be avoided for reasons of resources and too much demand on Member time?
- (j) Chairmanship of OSC?
- (k) Future of IMGs (good for examining detail but not public or transparent part of decision-making process). Could they be disbanded?
- (l) Future of Select Committees?
- (m) What consultation would be required?

### **Recommendations**

(19) The Council is invited to debate the proposed hybrid model of governance outlined above, based on a retention of the Cabinet; the creation of a number of cross-party Cabinet Committees; the scaling back of the overview and scrutiny function; and recognising the future significance of Locality Boards.

(20) If approved in principle, consideration should be given to how this is taken forward and the timescale for proposals to be made to the Council for formal adoption.

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