

<p><b>CABINET MEETING – 14 APRIL 2010</b></p> <p><b>EXECUTIVE SUMMARY SHEET – PART I</b></p>	
<p><b>Title of Report:</b></p> <p><b>LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND CONSTRUCTION ACT 2009</b></p>	
<p><b>Author(s):</b></p> <p>Report of the Chief Solicitor</p>	
<p><b>Purpose of Report:</b></p> <p>This Act received Royal Assent on 12 November 2009. This report summarises its contents, except for Part 8 which deals with construction contracts.</p>	
<p><b>Description of Decision:</b></p> <p>That Cabinet notes the summary and the steps which are being taken to implement the provisions of the Act and that a further report will be prepared for Council to consider a petitions scheme.</p>	
<p><b>Is the decision consistent with the Budget/Policy Framework?</b> <span style="float: right;"><b>Yes</b></span></p>	
<p><b>If not, Council approval is required to change the Budget/Policy Framework</b></p>	
<p><b>Suggested reason(s) for Decision:</b></p> <p>To ensure members are informed of pertinent developments under the Act and of the steps which have been and are being taken to give effect to its provision.</p>	
<p><b>Alternative options to be considered and recommended to be rejected:</b></p> <p>The Council is obliged to comply with the legislation as it is implemented.</p>	
<p><b>Is this a “Key Decision” as defined in the Constitution?</b> <b>No</b></p>	<p><b>Relevant Scrutiny Committee:</b> Management</p>
<p><b>Is it included in the Forward Plan?</b> <b>No</b></p>	



**LOCAL DEMOCRACY, ECONOMIC DEVELOPMENT AND  
CONSTRUCTION ACT 2009****Report of the Chief Solicitor****1. Purpose of Report**

This Act received Royal Assent on 12 November 2009. This report summarises its contents, except for Part 8 which deals with construction contracts.

**2. Description of Decision**

That Cabinet notes the summary and the steps which are being taken to implement the provisions of the Act and that a further report will be prepared for Council to consider a petitions scheme.

**3. Background and Current Position****Part 1: Democracy & Involvement****3.1 Chapter 1: Duties Relating to promotion of Democracy  
(sections 1-8) (general duties to be introduced on 15 June 2010,  
and e. petitioning on 15 December 2010).**

Sunderland City Council (hereafter “the Council”) as a ‘principal local authority’, is required to “promote understanding” amongst local people of:

- its functions as an authority;
- its democratic arrangements (i.e. for members of the public to participate in, or influence, the making of decisions); and
- how members of the public can take part in those democratic arrangements and what is involved in taking part – including how to become a member; what members do; and what support is available from the authority.

The Council is also given a similar duty to promote such understanding of its “connected authorities”. These are specified public bodies which have a strong local presence and make decisions directly relevant to local people in Sunderland. They include health bodies; the police authority; schools and further education colleges; the fire and rescue authority; the integrated transport authority; probation services and parish councils.

The Secretary of State can make an Order requiring “connected authorities” to provide information to the Council as the principal local authority, but the Government advises this power will only be used if

the “intention of the duty is significantly frustrated by the failure of one or more authorities to provide the necessary information”.

There is also a similar duty on the Council to promote understanding of courts boards, independent monitoring boards for prisons and immigration removal centres; youth offending teams and lay justices.

The Secretary of State can produce statutory guidance which the Council must take into account in deciding how to discharge these duties.

### **3.2 Chapter 2: Petitions to Local Authorities (sections 10-22)**

The explanatory notes to the Act state the purpose is to make local decision making more transparent by requiring local authorities to respond to petitions which meet certain criteria.

These provisions require the Council to (a) provide a facility for people to submit petitions electronically and (b) make, publicise and comply with a scheme for handling both paper and electronic petitions.

Where petitions meet specified criteria and are therefore deemed to be “active” petitions, there is a requirement to acknowledge the petition within a specific period ( for example days) and to take certain steps set out in the scheme (so long as the petition is not vexatious, abusive or otherwise inappropriate). “Active” petitions must be signed by the minimum number of persons (as specified in the scheme) and require the Council to either do or to stop doing something and relate to a “relevant matter” i.e. either (a) the functions of the authority or (b) an improvement in the economic, social or environmental wellbeing of its area to which any of its partner authorities could contribute. This means that the Council will need to deal with petitions which relate to the functions of partner authorities, not only its own functions.

The petition scheme must include options on how the Council will deal with active petitions, e.g. holding an inquiry or a public meeting; commissioning research; giving effect to the request in the petition; referring to a scrutiny committee; given a written response to it explaining the council’s position on the issues raised. One or more of the specified steps must be taken.

There is an automatic right for the matter raised in an active petition to be debated in full council if enough people (as specified in the scheme) have signed it. This cannot be fixed at more than 5% of the population.

Senior officers can also be called to account before a public meeting of a scrutiny committee, in relation to functions for which the officer is responsible, if enough signatories (as specified in the scheme) request this. The Council can decide which of its officers can be called to

account but the scheme must as a minimum include the Chief Executive and all chief officers.

The Secretary of State may issue guidance on what a petition scheme should contain, including a model scheme which authorities can adopt with or without modification. Consultation has taken place on this. The model contains examples of actions to be taken in respect of:

- alcohol related crime and disorder
- anti-social behaviour
- under-performing schools
- under-performing health services

In an announcement made on 30 March 2010 it was indicated that the duty will be brought into force on 15 June 2010 and the e. petition requirements will come into force on 15 December 2010. Statutory guidance and a model scheme have just been published. These will be considered and be the subject of a further report. A software system has been purchased and staff are being trained on its use.

### **3.3 Chapter 3: Involvement in Functions of Public Authorities (sections 23-24) (in force from 1 April 2010)**

This places a duty on various specified public authorities to involve representatives of 'interested persons' in the exercise of their functions, where they consider it is appropriate to do so. These authorities must consider ways of securing such involvement, through informing representatives, consulting them and involving them in other ways.

The public authorities given this duty include the Arts Council, Sports Council, Environment Agency, Health and Safety Executive, regional development agencies, police authorities, chief officers of police, probation boards, youth offending teams, etc.

An 'interested person' is anyone likely to be affected by, or interested in, the exercise of any function by the public authority in question. The Council will presumably be an 'interested person' in relation to many of these public authorities.

### **3.4 Chapter 4: Housing (sections 25-26) (in force from 12 November 2009)**

The Secretary of State is given power to establish a body to represent (nationally) the views and interests of housing tenants in England, in both social housing and other residential property. S/he can either create such a body, fund others to create it, or fund an existing body. The body may also conduct or commission research into issues affecting such tenants and promote their representation by other bodies.

The Secretary of State is also given power to nominate a body representing the tenants of social housing in England for consultation about certain functions of the social housing regulator under the Housing and Regeneration Act 2008.

### **3.5 Chapter 5: Local Freedoms and Honorary Titles (sections 27-29) (in force from 12 January 2010)**

The existing power of some local authorities to appoint men or women as honorary freemen is extended to all local authorities, including parish councils. Provision is also made to appoint women as honorary freewomen or honorary alderwomen.

### **3.6 Chapter 6: Politically Restricted Posts (section 30) (in force from 12 January 2010)**

The salary threshold for defining politically restricted posts is removed (it was £36,730). This will substantially reduce the number of politically restricted posts in the Council. Such posts are now limited to the head of paid service, chief officers, officers with delegated powers under the Local Government Act 1972, political assistants (which this Council does not have) and officers who regularly advise the council, the executive or their committees or who regularly speak to the media on behalf of the Council. The list the Council must keep of politically restricted posts is being revised to reflect this amendment.

### **3.7 Part 2: Local Authorities: Governance and Audit**

#### **Chapter 1: Governance (sections 31-33) (all in force from 1 April 2010)**

The Council must appoint a designated “scrutiny officer” to:

- Promote the role of overview and scrutiny committees;
- Provide support for them; and
- Provide support and guidance to members and officers in relation to the functions of overview and scrutiny committees.

This officer cannot be the Monitoring Officer, Chief Finance Officer or Head of Paid Service. Personnel Committee appointed Charlotte Burnham as the designated Scrutiny Officer at its meeting on 25<sup>th</sup> March 2010.

The Secretary of State is also given power to make regulations to broaden the scope of joint overview and scrutiny arrangements (currently limited to county council areas for scrutiny of local improvement targets only. The regulations may allow joint overview and scrutiny committees to be set up by and two or more local authorities and will allow them to make reports and recommendations

on any matters (except certain crime and disorder matters) and to require associated authorities to provide them with information.

### **3.8 Chapter 2: Mutual Insurance (sections 34-35) (commencement date yet to be appointed)**

Following the London Authorities Mutual Limited v Brent LBC, (the LAML decision) of the Court of Appeal in June 2009, a new explicit power is given to “qualifying authorities” to participate with other qualifying authorities in a body corporate set up to provide insurance to each other and other prescribed bodies. The list of ‘qualifying authorities’ includes district and county councils, as well as police, fire and rescue and integrated transport authorities.

The Secretary of State may impose restrictions or conditions on the use of these powers and publish statutory guidance on how they should be exercised.

### **3.9 Chapter 3: Audit of Entities Connected with Local Authorities (sections 36-54) (commencement date yet to be appointed).**

The Audit Commission is given power to appoint an auditor for any relevant entity (i.e. any company, limited liability partnership or industrial and provident society) which is connected with a local authority and meets other qualifying conditions, which will be specified in regulations.

A local authority must notify the Audit Commission when it becomes aware that an entity meets, or ceases to meet, the criteria. The Audit Commission may appoint an auditor for any financial year or the entity (unless it is exempt from audit, e.g. dormant). The entity can if it wishes appoint the same auditor to carry out its statutory audit, at no additional cost.

The Audit Commission appointed auditors must issue a public interest report if any matter relating to the financial affairs or corporate governance of the entity comes to their attention which they consider would be in the public interest to bring to the attention of either the entity itself, the local authority to which it is connected or the public. There are detailed provisions on how the entity and the local authority should deal with any such public interest report.

The auditors are given extensive powers to access information.

### **3.10 Part 3: Local Government Boundary and Electoral Change (sections 55-68 and Schedules 1 to 4) (in force from 1 April 2010)**

The Local Government Boundary Commission for England is established as a body corporate and takes over the functions of the Boundary Committee for England (subject to some modifications). It

will be responsible for reviewing from time to time the areas of each principal council and making recommendations about changes to electoral arrangements. This could cover the number of members, wards and relevant boundaries as well as the name of electoral areas and any consequential parish changes. There are requirements to inform interested parties, consult and take any representations into consideration. The final recommendations must be published in a report and then publicised. An Order is required to give effect to the recommendation(s).

Councils may also request the Commission to undertake a review and to make recommendations for single member electoral areas.

### 3.11 **Part 4: Local Authority Economic Assessments (section 69) (in force from 1 April 2010)**

The Council as a principal local authority, will have a duty to prepare an assessment of the economic conditions of its area. It may revise the assessment, or any part of it, at any time. It must consult such persons as it considers appropriate in carrying out these functions.

The Council will need to have regard to guidance to be issued by the Secretary of State on what an assessment should contain, and how and when it should be prepared and revised. The draft statutory guidance, suggest the assessments should:

- provide a sound understanding of economic conditions and how affect local businesses and residents.
  - Identify economic linkages and wider economy.
  - Identify comparative strengths and weaknesses, challenges and opportunities.
- Identify constraints to local growth and employment and address;
    - economic geography
    - business and enterprise
    - people and communities
    - sustainable economic growth
    - economic competitiveness
    - a worklessness assessment
  - Should have particular regard to government publications
    - “new industry new jobs”
    - “partnership for growth”
    - “transforming places: changing lives: taking forward the regeneration framework”



Sunderland is well placed because of the earlier work undertaken on its Economic Masterplan and the economic assessment and the Masterplan will be closely linked.

### 3.12 **Part 5: Regional Strategy (sections 70-87 and Schedule 5) (all in force from 1 April 2010)**

There will be a regional strategy for each region except London. The strategy must set out policies in relation to sustainable economic growth, development and the use of land within the region. It must include policies designed to contribute to the mitigation of, and adaptation to, climate change.

The regional strategy will replace both the existing regional spatial strategy (which sets out the Secretary of State's policies in relation to the development and use of land within the region) and the regional economic strategy (the strategy produced by the regional development agency relating to the economic development and regeneration of the region, the promotion of employment, business efficiency and investment, and contribution to sustainable development).

To maintain continuity, on 1 April 2010 (when these provisions come into force) the regional strategy will consist of the existing regional spatial strategy and regional economic strategy.

#### Leaders' Boards

Section 71 which came into force on 25 November 2009) requires "participating authorities" to make a scheme to establish and operate a "Leaders' Board" for the region. District and county councils are 'participating authorities' (as well as any National Park authority). The scheme and business plan was approved by the Secretary of State on 30 March 2010.

The Leader' Board comprises the Leaders/Elected Mayors of the 12 North East Local Authorities and the Northumberland National Park Authority.

The Board is intended to enable the authorities to act collectively at a regional level.

The Secretary of State has power to fund the Leaders' Board, or a participating authority in respect of that Board, as well as the power to withdraw approval for the Board where it is not operating effectively.

The regional development agency (RDA) and the Leaders' Board for the region are jointly the 'responsible regional authorities' (RRAs) for the purpose of fulfilling the obligations to revise and implement the regional strategy. If there is no Leaders' Board, the RDA will act alone.

The RRAs have a duty to keep the regional strategy under review, either when they think appropriate or when specified by the Secretary of State under regulations or by direction. They must also prepare, publish and comply with a statement setting out their policies for involving interested persons when preparing a draft revision of the regional strategy.

They must exercise these functions with a view to contributing to sustainable development and having regard to the desirability of achieving good design.

The RRAs may choose to hold an examination in public when preparing a draft revision of the regional strategy. They must inform the Secretary of State of their decision in this regard. S/he will appoint the person to hold any examination in public and may require one to be held even if the responsible regional authorities think otherwise.

There are various prescribed matters which must be taken into account in preparing a revised regional strategy.

Once the RRAs have prepared and published a draft revision of the regional strategy, along with a sustainability appraisal report on the proposals in the draft, these must then be submitted to the Secretary of State for approval.

The Secretary of State has reserved the power to revise a regional strategy, in whole or in part, where the RRAs fail to do so at the time specified in regulations or directions. S/he also has reserve power to revoke a regional strategy where s/he thinks it necessary or expedient to do so.

The RRAs have a duty to implement and monitor the regional strategy. In particular, they must publish and keep up to date an implementation plan and must make an annual report.

The regional strategy will be of the statutory development plan for an area and applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Until the strategy is revised, the statutory development plan for an area will only consist of the policies that were previously in the regional spatial strategy.

RDAs must have regard to the regional strategy in exercising their functions.

**3.13 Part 6: Economic Prosperity Boards and Combined Authorities (sections 88-120 and Schedule 6) (in force from 17 December 2009)**

**Economic Prosperity Boards**

Any two or more county or district councils may review the effectiveness and efficiency of existing arrangements to promote the economic development and regeneration of the area covered by the review. This area may include the area of a council not actually undertaking the review.

If two or more of the councils carrying out the review conclude that an economic prosperity board (EPB) would be likely to improve (a) the exercise of statutory functions relating to economic development and regeneration in the area and (b) its economic conditions, then they can prepare and publish a scheme to establish an EPB. A county or district council area can only be included in an EPB area if that council consents to inclusion.

The scheme must be submitted to the Secretary of State who (after consulting relevant councils and other appropriate persons) can make an order establishing an EPB if satisfied it is likely to improve both the exercise of statutory functions relating to economic development and regeneration in the area and the economic conditions in the area. An EPB area must consist of the whole of two or more contiguous county or district council areas.

The Secretary of State will also by order specify the constitutional arrangements of the EPB i.e. its membership, voting powers of its members and its executive arrangements. Any order must however provide that a majority of the EPB members are elected councillors of the local authorities within its area and appointed by those authorities. EPB members who are not elected councillors of its constituent councils will be non-voting members, although the voting members may resolve to allow non-voting members to vote.

The Secretary of State can also by order, in response to a submitted scheme:

- (a) direct that any specified functions of a council within an EPB area be exercisable by the EPB, either instead of or concurrently with that council, and either generally, or subject to limitations imposed by the Secretary of State. An EPB must perform any function with a view to promoting economic development and regeneration of its area.
- (b) Specify how the EPB will be funded and provide that its costs be met by its constituent authorities.

- ( c) change the boundaries of an existing EPB (provided any council whose area is added or remove consents) or dissolve an EPB (if the majority of councils in its area consent).

Any constituent council of an existing EPB can review any of the above matters on which the Secretary of State can make an order and, if satisfied any such order would likely improve the exercise of economic development and regeneration functions in the area and its economic condition, can prepare a scheme proposing such an order for submission to the Secretary of State.

EPBs have the potential to dilute the Council's self-autonomy.

### 3.14 **Combined Authorities**

Any two or more county or district councils, EPB or ITA may review the effectiveness and efficiency of transport in the review area and of the existing arrangements to promote the economic development and regeneration of that area.

A combined authority must consist of the whole of two or more contiguous county or district council areas and cannot include any area which is within the area of an existing EPB or ITA. Thus, the Tyne and Wear area cannot be included within the area of a combined authority.

### 3.15 **Part 7: Multi Area Agreements (sections 121-137) (in force from 12 January 2010)**

A multi-area agreement ("MMA") is a document covering an area of two or more local authorities and specifies improvement targets for that area.

An improvement target is one for improving the economic, social or environmental well-being of the MAA area (or any part of it). The target must 'relate' to a local authority for the area, a partner authority, or another person acting, or having functions exercisable, in the area.

"Local authority" includes an EPB or a combined authority. The ITA is a "partner authority", as is the police authority, fire and rescue authority, PCT, local probation board, youth offending team and a development agency, as well as a range of other bodies.

The local authorities for a proposed MAA area may request the Secretary of State to direct that a MAA be prepared and submitted to him/her. The request must nominate one authority as the "responsible authority" in this case the Council, which will prepare and submit the draft. In making any request the authorities must have regard to any statutory guidance issues by the Secretary of State.

On receipt of a request, the Secretary of State can direct the responsible authority to prepare a draft MAA. The responsible authority (and other partner authorities) then have various duties e.g. to consult key stakeholders, co-operate with local and partner authorities in determining their respective targets, have regard to any statutory guidance.

The Secretary of State may approve, reject or require changes to a draft MAA. If approved it will last for the period specified in the Agreement.

Where a MAA has been approved, all local and partner authorities must, when exercising their functions, have regard to each improvement target which relates to them. The responsible authority has a duty to publish information about the MAA.

Provision is made for the submission for Secretary of State's approval of an existing MAA which was not prepared under the new legislation.

In addition, proposals can be made to revise an existing MAA by enlarging its area, extending its life or changing the improvement targets specified in it. There must be consultation on any revision proposals before submission to the Secretary of State.

The Secretary of State must consult on any statutory guidance relevant to this Part of the Act before issuing it.

This section gives statutory force to the existing arrangements and Cabinet has recently revised its targets.

#### 4. **Alternative Options**

The Council is obliged to comply with the legislation as it is implemented.

#### 5. **Reasons for the Decision**

To ensure members are informed of pertinent developments under the Act and of the steps which have been and are being taken to give effect to its provision.

