



# PAPER E

Purpose: For Decision

## Committee report

Committee	<b>EXECUTIVE</b>
Date	<b>9 JUNE 2016</b>
Title	<b>CONSIDERATIONS FOR A REFERENDUM ON DEVOLUTION</b>
Report to	<b>LEADER AND EXECUTIVE MEMBER FOR RESOURCES, ORGANISATIONAL CHANGE AND CHILDREN'S SERVICES</b>

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### EXECUTIVE SUMMARY

1. At its meeting on 16 March 2016 full council received the following motion from Councillor Pitcher:  
  
*Council agrees that a referendum of Islanders will be held on any agreed or imposed devolution deal with Hampshire local authorities, once the details are known - particularly the financial redistribution and governance elements.*
2. In accordance with procedure rule 11, as this item would have the effect of materially increasing the expenditure upon a service, the motion was adjourned without discussion until the next ordinary meeting of the council, and the Executive would consider whether it desired to report thereon back to the Full Council.
3. This report considers the issues, and costs, relating to the possible holding of such a referendum for the Executive to make recommendations as they see fit to the Full Council.

### BACKGROUND

4. If a devolution deal for an area is agreed with government it will need to be delivered through a combined authority which binds together all of the local authorities in the area responsible for delivering the requirements of the deal. The government's current requirement in all deals is that the Combined Authority is led by a directly elected mayor.
5. In order to establish a combined authority the following needs to be achieved:

- A governance review by every local authority to be included in the combined authority.
  - The preparation of a scheme for the establishment of the combined authority that demonstrates it meets all of the statutory requirements.
  - Consultation on whether the combined authority will fulfil the statutory obligations
  - Approval by Parliament.
6. In the governance review the local authorities are required to answer three questions:
- Is the area covered by the councils proposing to come together properly be seen as constituting a functional economic area?
  - Are the existing governance arrangements for economic development, regeneration and transport in the area effective or would they benefit from changes?
  - What are the alternative options available and in relation to each option, to evaluate the likely improvement in:
    - the exercise of statutory functions relating to economic development, regeneration and transport in the area;
    - the effectiveness and efficiency of transport in the area; and
    - the economic conditions in the area.
7. The scheme for the establishment of the combined authority will need to cover the following areas:
- Intention to establish the Combined Authority
  - Functions, powers and duties of the CA
  - Funding and transfer of property, rights and liabilities
  - Substructures and internal scheme of delegation
8. Once the scheme is formally agreed by the constituent local authorities then a six week period of consultation with the public in the area is required in order for Parliament to be able to formally consider the proposals being made by the local authorities. Once the scheme is published for consultation then it cannot be changed (including the area and local authorities included in it).
9. Evidence from devolution deals around the country is that the government is keen to see their implementation as quickly as possible after being agreed in order that the benefits to the local area can be achieved as soon as possible. For example access to a £30 million investment fund, local control of government delivered services, the development of a locally agreed business rates retention scheme, the financial security of the Isle of Wight (the council's agreed requirement of any devolution deal). Therefore it would be helpful that the council is in a position to react quickly should any proposals be forthcoming; officers continue to liaise with other local authority partners and government departments in this regard.
10. It is important to note that, at this stage, whilst discussions and negotiations continue, no formal devolution deal has been offered by the government for the area to include the Isle of Wight.

11. Full Council has considered 2 reports on the devolution deal, one in September 2015 and one in March 2016. On both occasions council has been very clear that the basis for any deal is that it must “ensure the financial security of Isle of Wight and availability of public services” – known as the “Island Deal”. This has been the basis of the council’s involvement and negotiations to date but at this stage as no formal deal has been proposed it is not known how much of this requirement has been met.

#### Legal basis for holding a referendum

12. Under section 116 of the Local Government Act 2003 the council has the power to hold a poll (which is a referendum) on:
  - (a) any matter relating to—
    - (i) services provided in pursuance of the authority’s functions, or
    - (ii) the authority’s expenditure on such services, or
  - (b) any other matter if it is one relating to the authority’s power under section 2 of the Local Government Act 2000 (c. 22) (authority’s power to promote well-being of its area).
13. Section 2 of the Local Government Act 2000 defines the council’s power to promote wellbeing as (among others):
  - (a) the promotion or improvement of the economic well-being of their area,
  - (b) the promotion or improvement of the social well-being of their area,
  - (c) The power under this section includes power for a local authority to—
    - (i) enter into arrangements or agreements with any person,
    - (ii) co-operate with, or facilitate or co-ordinate the activities of, any person,
14. Therefore the council does have the power to hold such a referendum.
15. However the referendum is there to “ascertain views” and its outcome is NOT binding on the council.
16. Under the legislation it is for the council to decide:
  - (a) who is to be polled, and
  - (b) how the poll is to be conducted.
17. While the council is required to have regard to any guidance issued by the appropriate person on holding of a referendum, no such guidance has been issued.
18. Having established the legal basis it is necessary to consider a number of steps as follows.

#### Who and how?

19. As detailed above the council has discretion to hold a referendum and to determine who is polled and how the poll should be conducted. This power has been used in some authorities where a poll was undertaken in a specific area on a proposal that only affected that area.

20. As any devolution proposal is likely to impact on all local government electors on the Isle of Wight, then it would make sense for those to be entitled to vote in the referendum be the same as those entitled to vote in local government elections on the Island. These will be the same people who would vote if a directly elected mayor is an outcome of the devolution proposal.
21. As to the “how” question the choices are as follows:
- (a) Conduct on the same lines as a traditional local council election, essentially utilising the 70 (or so) polling stations and sending postal votes to those registered for postal voting.
  - (b) Only utilising the polling stations and therefore meaning that to take part any elector would need to attend at the relevant polling station.
  - (c) Conducting the referendum via an entirely postal vote arrangement.
22. Option (a) will follow the “usual” way that people vote but will make the holding of the referendum more complicated as the following would need to be undertaken:
- (a) Book the polling stations (these will already have used these twice this year and there has been some resistance from some of the polling stations).
  - (b) Book the necessary staff to attend at these polling stations (about 200 people) again the demand on people’s time might mean that some people would be unable to help for this referendum.
  - (c) Supply all the equipment to the polling stations (poll booths, notices, stationery, ballot papers etc).
  - (d) Send out at least three weeks before polling day the 17,000 (approximately) postal votes.
  - (e) In the two weeks before polling day have arrangements in hand to open the postal votes.
  - (f) Undertake a count immediately after polling day (requiring about 100 people and a venue)
23. Costs for this option (based on the cost of the last EU election where similar arrangements were in place) are estimated at: £157,000.
24. Option b – would have no postal vote option, this would mean that potentially the current 17,000 registered postal voters would be excluded from the referendum (some of whom (possibly a majority) will find it very difficult to attend a polling station as this is why they have a postal vote). The following would, however, still be required:
- (a) Book the polling stations (we will already have used these twice this year and had some resistance from some of the polling stations).
  - (b) Book the necessary staff to attend at these polling stations (about 200 people) again the demand on people’s time might mean that some people would be unable to help for this referendum.
  - (c) Supply all the equipment to the polling stations (poll booths, notices, stationery, ballot papers etc.).
  - (d) Undertake a count immediately after polling day (requiring about 100 people and a venue).

25. Costs for this option are estimated at: £134,000.
26. Option c – would mean that all electors would be asked to cast their vote via a postal vote. The ballot papers would be sent to their registered addresses, with a return envelope, (very similar to existing arrangements for postal votes) but as most (about 90,000) electors have not registered for a postal vote we will need a different way of making sure that the returned postal vote is from the elector. This will not be as robust as the existing arrangements (as we do not have the necessary information such as signatures/ dates of birth). The following would still, however, be required:
  - (a) Send out at least three weeks before polling day the 108,000 (approximately) postal votes.
  - (b) In the two weeks before polling day have arrangements in hand to open the postal votes.
  - (c) Undertake a count immediately after the final day for returning the postal votes (requiring about 100 people and a venue).
27. For this particular option there are two possible ways of undertaking the referendum:
  - (a) Using in house resources and expertise – assuming a 40 per cent turnout this is estimated to cost: £101,000.
  - (b) Use an external service, such as Electoral Reform Services (ERS), and they have given an indicative figure for a 40 per cent turnout of £68,000. They have also provided indicative costs for additional enhancements including such things as the option for people to vote online (rather than return their vote in the post), reporting, and video explanations etc. totalling about £5,500. This makes a total estimate of £73,500. This would be subject to compliance with our usual procurement processes.

### Recommendation on process

28. If it is agreed that a referendum is undertaken then it is recommended that it be undertaken by an all postal vote process utilising the services of an external provider at a cost in the order of £73,500.

### Other factors to be taken into account

29. Before a referendum is undertaken there are three critical issues to be taken into account. These are:
  - (a) the referendum question;
  - (b) publicity and explanation of the issues;
  - (c) timing.

### The referendum question

30. The quality of the outcome of the referendum will depend significantly on the clarity of the referendum question so that the electors are clear on how they express their choice. The Electoral Commission has issued some guidance (aimed for use in

national referendums but the issues remain the same) that should be taken into account in determining the actual question.

31. The Electoral Commission's guidelines on the question are that it:
  - (a) is easy to understand;
  - (b) must be to the point;
  - (c) must be unambiguous;
  - (d) avoids encouraging voters to consider one response more favourably than another;
  - (e) avoids misleading voters.
  
32. The checklist (to be used to assess any question) that the Electoral Commission has produced includes the following:
  - (a) Is the question written in plain language? That is, language that:
    - (i) uses short sentences (around 15 to 20 words);
    - (ii) is simple, direct, and concise;
    - (iii) uses familiar words, and avoids jargon or technical terms that would not be easily understood by most people;
  - (b) Is the question written in neutral language, avoiding words that suggest a judgement or opinion, either explicitly or implicitly?
  - (c) Is the information contained in the question factual, describing the question and the options clearly and accurately?
  - (d) Does the question avoid assuming anything about voters' views?
  
33. Care will need to be taken with the completion of the question to ensure all the above are met. To increase the independence of the process it might be necessary to seek external advice (for example from ERS) on the framing of the question.
  
34. Once a question has been prepared there will need to be a process to approve the question, this could be delegated to the chief executive in consultation with the leader of the council. If council decides that the approval of the question should not be delegated then this will require a decision of the council and will add at least two weeks (assuming an extraordinary meeting of the council is called to consider the matter).

#### Publicity and explanation of the issues

35. While a referendum for the devolution deal will not require the sophistication of that for an EU referendum, the council will need to provide the following information to all the electorate:
  - (a) Exactly what the devolution deal is.
  - (b) What it might mean to the Island.
  - (c) What will be the implications of not accepting the deal.
  - (d) What will be the implications of accepting the deal.
  
36. To ensure a good turnout with a meaningful result the issues around the referendum question need to be well explained and publicised to the electorate.

37. The devolution issue has already created a number of comments and it is clear that there is some confusion over what this might actually mean, not helped by the fact that the detailed proposals have not actually been finalised. The issue is very complex and it will need time, care and expertise to enable an appropriate question to be formulated and for a clear description of the issues both for and against any devolution proposal to be explained sufficiently to enable individuals to make an informed decision.
38. In a traditional election there are candidates who have a period of time to present their case. For the EU referendum (for example) there has again been a period of time for the issues to be debated and for various sides of the argument to present their case, and there are very defined organisations who will be leading on either side. It will therefore be necessary to put both sides of the case forward to enable individuals to fully understand the issues.
39. Care will need to be taken to ensure that both sides of the argument are well presented and any material that is presented must be in plain English and avoid jargon.
40. Significant officer resources will need to be utilised to develop and promote the information so as to assist the public with their understanding of the proposals.

#### Timing

41. There are two issues for the timing of any such referendum:
  - (a) When to actually hold such a referendum.
  - (b) The time taken to undertake all the processes to actually hold such a referendum.

#### When to hold such a referendum

42. In theory the referendum can be held at any time but there are some issues to consider:
  - (a) Experience tells us it is never a good idea to hold such polls in school holidays as many people will be away – meaning anything after mid-July and through to September should be avoided.
  - (b) Equally experience tells us that holding such referendum in the autumn/winter does not assist with turnout as with the colder days and the nights drawing in people are less inclined to make a trip to a polling station.
43. Whilst mid-July is probably the best time to hold such a referendum in practicable terms this is not achievable due to the fact that at least nine weeks are needed to prepare for the referendum (see next section). If Full Council on 15 June agreed to hold a referendum, and assuming a devolution proposal had been agreed with the government then the earliest date for completing the ballot is mid to late August. Any delay in the publication of the devolution proposal will push this back even further.

44. Additionally this will mean that the Island will have “gone to the polls” three times since May and this may create “voter fatigue”. There is also a question mark over the physical availability of staff to undertake such an exercise.

Time taken to hold the referendum

45. Assuming an all postal vote, taking into account all the above, an absolute minimum timetable for the delivery of a devolution referendum is along lines of (some events can run side by side):

Milestones	Time to deliver	Weeks before polling day
Council to decide to hold a referendum		eight + two days
Preparation of: 1. The question 2. The issues for and against	one week	eight +one day  (these three functions can be run side by side)
Publication of the above	one week	
Preparation of staffing resources needed	two weeks	
Ballot paper and other necessary materials to be sent to printer	one day	six + one day
Time for ballot papers and materials to be printed	one week	six
Preparing the ballot papers and material for sending out	two weeks	five
Period for return	three weeks	three
“Polling day”		0

46. From the above it can be seen once agreed it will take just under nine weeks for a referendum to be held. This will be a similar time even if we engaged with ERS to deliver. This will need to be judged against any timescale we receive from the government to make a final decision.
47. The above assumes that the final approval of the question is delegated to the chief executive, in consultation with the leader, if this is not delegated then a further 2 weeks (at least) will need to be added to the above time frame.
48. If it is decided to hold the poll using polling stations then a further week would be needed to book the polling stations arrange the additional staff and resources for those polling stations.

STRATEGIC CONTEXT

49. This report is required in view of the costs of holding a referendum, not on the issue of any devolution deal itself. The only strategic context is for Executive to consider if the use of resources (at a minimum of £73,500 plus officer time) is the most effective use



of resources given that the outcome of the referendum is not binding, that the government could enforce a devolution deal on the council in any case.

50. In accordance with the Full Council decisions any devolution deal will need to contribute to the financial security to the Isle of Wight.

### CONSULTATION

51. As this report deals with the issues the council has to consider in potentially holding referendum then no formal consultation has been necessary.

### FINANCIAL / BUDGET IMPLICATIONS

52. There is no budget provision for the delivery of a referendum. The council has already agreed to withdraw from reserves to make a balanced budget for this year leaving reserves at the lowest sensible level.
53. In terms of costs it will depend on the route taken and the figures quoted below are only indicative at this stage and are based on a 40 per cent turnout:

<b>Approach</b>	<b>Indicative costs</b>
A poll undertake with both polling stations and postal votes (as per traditional form of voting).	£157,000
Just using all the polling stations and no provision for postal voting at all.	£134,000
All postal votes using in house resources.	£101,000
All postal votes using an external provider.	£73,500

54. In addition to the above there will be significant input for senior management, communications and electoral services team members that are not costed but will divert their time from other ongoing priorities.

### CARBON EMISSIONS

55. There will be some additional carbon emissions resulting from staff travel and electricity consumption for the production of referendum materials (if printed in-house), but these are likely to be small and insignificant in terms of the council's Carbon Management Plan.

### LEGAL IMPLICATIONS

56. Legal implications are as set out in paragraphs 12-17 above.

### EQUALITY AND DIVERSITY

57. The council, as a public body, is required to meet its statutory obligations under the Equality Act 2010 to have due regard to eliminate unlawful discrimination, promote equal opportunities between people from different groups and to foster good relations

between people who share a protected characteristic and people who do not share it. The protected characteristics are: age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation.

58. An initial equality impact assessment has been undertaken and for options a and c there is no negative impact on any of the protected characteristics. However option b (simply using the polling stations and having no postal vote arrangement) will impact negatively on those who cannot attend polling stations (principally the elderly and disabled).
59. If the council decides to hold the referendum then option b (as a process) is not recommended.

## OPTIONS

60. The options are as follows:
- (a) Deliver a referendum polling all local government electors on the Isle of Wight via a traditional (polling station and postal) ballot at an estimated cost of £157,000.
  - (b) Deliver a referendum polling all local government electors on the Isle of Wight via polling stations only (i.e. no postal vote provision at all) at an estimated cost of £134,000.
  - (c) Deliver a referendum polling all local government electors on the Isle of Wight via an all postal polling system using in house resources at an estimated cost of £101,000.
  - (d) Deliver a referendum polling all local government electors on the Isle of Wight via an all postal polling system using an external service provider at an estimated cost of £73,500.
  - (e) To hold an extra ordinary meeting of the council (if necessary) to agree the final wording of the referendum question.
  - (f) To delegate to the chief executive, in consultation with the leader of the council, to agree the final wording of the referendum question.
  - (g) To delegate to the chief executive the need to deliver an even handed and full public information exercise on the devolution deal, and the implications to the council of either accepting, or not accepting, such a deal.
  - (h) To delegate to the local returning officer to make all necessary arrangements and adjustments necessary to deliver a referendum in accordance with whichever option is chosen.
  - (i) Not to undertake a referendum.

- (j) To defer the matter until the detail of any devolution deal coming forward is known.
- (k) To defer the matter until the details of any “Island Deal” dependent on a devolution offer is known.

**RISK MANAGEMENT**

61. The significant risks are as follows:

- (a) Insufficient staff resources to deliver the referendum – this risk is significantly reduced if an external provider is used.
- (b) Insufficient staff resources to prepare and deliver the referendum question and the communications plan to ensure that individuals understand exactly what they are being asked to consider.
- (c) Insufficient time to hold the referendum and for the council to consider the results within the time frame (as yet unknown) when the council will be required to make a decision on any devolution deal. As the key time frame (for when the council needs to decide on any devolution offer) will be set by government, if this does not allow sufficient time to undertake the referendum then the value of such a referendum must be in doubt.
- (d) The public perception that having undertaken the referendum that the council will be bound by the results even though there is no requirement for the council to follow the outcome of the referendum.
- (e) The reality that the government could enforce a devolution deal on the Island in any case making the cost and time taken to hold the referendum of no value if a deal is enforced.
- (f) There is a risk that if the council wishes to conduct a referendum around a devolution deal linked to the creation of a combined authority then it might not have the time to be part of the proposed deal and therefore miss out on any of the benefits that might accrue from it, including financial security.

**EVALUATION**

62. Option (a) - Deliver a referendum polling all local government electors on the Isle of Wight via a traditional (polling station and postal) ballot at an estimated cost of £157,000.

<b>Pros</b>	<b>Cons</b>
This process would be familiar to the electors as being the way they vote in a whole range of elections.	Will take up significant staff resources that will be diverted from other priorities.
This will not impact negatively on those with protected characteristics.	Is the most costly at an estimated £157,000.

63. Option (b) - Deliver a referendum polling all local government electors on the Isle of Wight via polling stations only (i.e. no postal vote provision at all) at an estimated cost of £134,000.

Pros	Cons
This process is slightly less expensive than option (a).	Despite a reduced amount of staff resources there will still be a significant take up of staff resources that will be diverted from other priorities.
This process will involve slightly less staffing resources.	This will deny those who are unable to attend the polling stations the ability to cast their preference.
	Is estimated to cost £134,000.
	This will impact negatively on those with protected characteristics.

64. Option (c) - Deliver a referendum polling all local government electors on the Isle of Wight via an all postal polling system using in house resources at an estimated cost of £101,000.

Pros	Cons
This process is slightly less expensive than option (a) and (b).	Despite a reduced amount of staff resources there will still be a take up of staff resources that will be diverted from other priorities.
This process will involve significantly less staffing resources.	This will be a process that is less familiar to those that do not currently exercise a postal vote.
Will ensure that all those who wish to vote are able to do so.	Is estimated to cost £101,000.
This will not impact negatively on those with protected characteristics.	

65. Option (d) - Deliver a referendum polling all local government electors on the Isle of Wight via an all postal polling system using an external service provider at an estimated cost of £73,500.

Pros	Cons
This process is less expensive than option (a), (b) and (c).	Some input will still be required from senior management to ensure the external contractor delivers the referendum.
This process will involve the least staffing resources.	This will be a process that is less familiar to those that do not currently exercise a postal vote.
Will ensure that all those who wish to vote are able to do so.	Is estimated to cost £73,500.
This will not impact negatively on those with protected characteristics.	
Has the added attraction of people being	

able to vote online rather than return their ballot paper.	
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66. Option (e) - To hold an extra ordinary meeting of the council (if necessary) to agree the final wording of the referendum question.

Pros	Cons
Ensures the full council determines the question.	Adds additional time to the process (estimated at two weeks maybe slightly less).
	If council does not agree the suggested wording this will put the timeframe back even further.
	Absorbs additional member and officer resources in the holding of the additional meeting.

67. Option (f) - To delegate to the chief executive, in consultation with the leader of the council, to agree the final wording of the referendum question.

Pros	Cons
Ensures the question can be determined within the timeframe.	Full council not involved in the determination of the final decision.
Has an element of democratic accountability.	
Limited take up of member and officer resources.	

68. Option (g) - To delegate to the chief executive the need to deliver an even handed and full public information exercise on the devolution deal, and the implications to the council of either accepting, or not accepting, such a deal.

If the decision is taken to hold a referendum then this will be required to ensure that someone has the authority to deliver this critical information to the electorate.

69. Option (h) - To delegate to the local returning officer to make all necessary arrangements and adjustments necessary to deliver a referendum in accordance with whichever option is chosen.

Again if the decision is taken to hold a referendum then the local returning officer will be required to have this delegation to ensure that all the detailed administrative arrangements can be delivered in the time available. He will need to determine such things as how proxies are appointed, the count process etc. Without this delegation all such decisions will need to be considered by the council and the process will not be able to be delivered.

70. Option (i) - Not to undertake a referendum.

<b>Pros</b>	<b>Cons</b>
Will involve the council in no further costs.	Might be seen as the council not consulting fully on the devolution question.
Will not create any issues in relation to timings.	
Avoids potential confusion with electors that this is a non-binding referendum.	

71. Options (j) and (k) would both mean that any decision is delayed until the details of any deal are known. Whilst having some value the reality is that once a deal is announced the time scales for the council to commit itself to the offer are likely to be tight (three months has been mentioned). This would apply regardless of whether the decision to hold a referendum was deferred or not. If a referendum is still desirable then to achieve one in the timescales (regardless of any deferment on the referendum buy the council) would still be very difficult to achieve and would require delegation to officers to ensure key details like the referendum question and details of the ballot were achieved.
72. The need for a statutory consultation on the scheme of governance for the combined authority that needs to be created to oversee a devolution deal provides an opportunity for the Isle of Wight's community to have a significant input into the terms the Island would need to accept if it were to enter into a 'deal' and the benefits that would accrue from it. Although a referendum could not be achieved in the six weeks provided for this consultation it is within the council's gift to shape the nature and extent of this consultation to ensure that the fullest views of the community and captured and taken account of in the final analysis.
73. Given the costs, the tight timescale, the demand on member and officer time, the fact that this is a non-binding referendum, that there will need to be a formal public consultation on any proposed governance scheme for a devolution proposal, option (i) is the recommended course of action.
74. If it is determined that a referendum is undertaken then the following options are recommended:
- (a) Option (d) - Deliver a referendum polling all local government electors on the Isle of Wight via an all postal polling system using an external service provider at an estimated cost of £73,500.
  - (b) Option (f) - To delegate to the chief executive, in consultation with the leader of the council, to agree the final wording of the referendum question.
  - (c) Option (g) - To delegate to the chief executive the need to deliver an even handed and full public information exercise on the devolution deal, and the implications to the council of either accepting, or not accepting, such a deal.
  - (d) Option (h) - To delegate to the local returning officer to make all necessary arrangements and adjustments necessary to deliver a referendum in accordance with whichever option is chosen.

75. If the deferred option is taken then options (f) (g) and (h) should be approved now so as to ensure that all the work necessary could be achieved within the timescales.

#### RECOMMENDATION

76. Given the costs, the tight timescale, the demand on member and officer time, the fact that this is a non-binding referendum, that there will need to be a formal public consultation on any proposed governance scheme for a devolution proposal the recommendation is:
77. Option (i) – Not to undertake a referendum.

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