

The report provided an update on the proposed creation of a new Unitary District Council, following Cabinet's decision on 9 January 2019 not to consent to the Secretary of State's proposed Modification Regulations under section 15 of the Cities and Local Government Devolution Act 2016 and to seek legal advice. A letter confirming the Council did not consent to the making of the Modification Regulations was sent to the Secretary of State on 10 January. It was noted that all four District Councils had decided not to consent, and the County Council had agreed conditional consent.

Legal advice on the Structural Changes Order had been obtained from leading counsel jointly with Wycombe District Council. In view of counsel's advice a letter was sent to the Secretary of State on 18 January as a preliminary step before legal proceedings. The letter expressed concerns about the legality of the decision to lay the Modification Regulations in Parliament based on the conditional consent given by the County Council and without also laying the draft Structural Changes Order, as well as concerns about the recent changes to the proposed governance arrangement for the shadow authority and the lack of reasons for making these changes. As the Regulations had already been laid in Parliament and the Secretary of State intended to make them before 31 March 2019, any legal proceedings, associated documents and legal steps would need to be issued/undertaken with the utmost urgency.

Cabinet were therefore asked to consider whether it was expedient for the promotion or protection of the interests of the inhabitants of Chiltern District to institute legal proceedings for judicial review of the Secretary of State's decisions in respect of the Modification Regulations and the Structural Changes Order, either alone or jointly with other District Councils which could be undertaken under section 222 of the Local Government Act 1972.

The Cabinet resolved that under section 100 (A) (4) of the Local Government Act 1972 (as amended) the public be excluded from the meeting to enable Members to receive legal advice on the potential grounds for instituting proceedings (Paragraph 5) as defined in Part 1 of Schedule 12A of the Act.

After receiving legal advice from the Head of Legal and Democratic Services in private session, the Cabinet expressed thanks to the Head of Legal and Democratic Services for the comprehensive report.

The Cabinet, after acknowledging that the draft Structural Changes Order had yet to be laid in Parliament, and was therefore subject to change, expressed

disappointment with the proposals in the draft Order relating to the Shadow Council's constitutional arrangements which were considered to be unbalanced and undemocratic. The proposed constitutional arrangements lacked checks and balances and handed too much power to the Shadow Executive, at the expense of the Shadow Council, thereby depriving all Members of a say on important decisions. There had also been procedural flaws in how the Secretary of State had dealt with the Modification Regulations and the Order. It was highlighted that that the cost of legal proceedings was small in comparison to the cost of making changes at a later date.

Cabinet supported the implementation of a new Unitary District Council that worked for residents, but felt it was left with no option but to instigate legal proceedings to protect the interests of the inhabitants of the District. A comparison was made with HS2 where the Council had demonstrated it was willing to challenge decisions that were not in residents' interests, and as a result had helped to bring about key mitigation measures in the area.

At the invitation of the Leader a number of non-Cabinet Members then spoke, and during which the following key points were made:

Councillor P Jones felt legal proceedings should not be instigated and in doing so referred to the costs involved; the fact that the new Unitary District Council would comprise of 147 Councillors, as requested by the Districts, and that the Shadow Council would comprise of all 202 Members from the existing Councils. Councillor P Jones also felt that public perception placed more importance upon political balance rather than the balanced representation between the County and Districts. It was suggested that the latter aim could equally be achieved by securing District Member appointments on key Committees.

A number of Members then spoke in favour of instigating legal proceedings. There were concerns regarding the decisions made by the Secretary of State relating to the constitutional arrangements of the Shadow Council. There was support from Members for the creation of a new Unitary District Council, but those Members were also concerned that the constitutional arrangements of the Shadow Council meant that this created dominance in favour of the County Council. The importance of ensuring that the legal status of the new Unitary District Council was robust, and could command respect was also emphasised.

The District Councils had experience of delivering quality and accessible shared services. The importance of ensuring successful implementation was emphasised in order to avoid costly mistakes. It was therefore important to ensure that access and localness of services were maintained when decisions on implementation were made.

RESOLVED that:

- 1. the current position in respect of The Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 and The Buckinghamshire (Structural Changes) Order 2019 be noted.**
- 2. the Council institutes proceedings for judicial review of decisions taken by the Secretary of State for Housing, Communities and Local Government in respect of the Regulations and Order referred to in 1 above, under section 222 of the Local Government Act 1972.**
- 3. the costs of any legal proceedings should be met from the General reserve in accordance with urgency provisions under the Budget and Policy Framework Procedure Rules.**
- 4. the Head of Legal and Democratic Services in consultation with Leader and Chief Executive be authorised to agree any necessary legal documentation required in the course of legal proceedings and to deal with any settlement, compromise or withdrawal of proceedings.**

The meeting ended at 5.40 pm