

SUBJECT:	<i>Implementation of a New District Unitary Council</i>
RELEVANT MEMBER:	<i>Leader, Councillor Nick Naylor</i>
RESPONSIBLE OFFICER	<i>Chief Executive; Bob Smith; bob.smith@chilternandsouthbucks.gov.uk</i>
REPORT AUTHOR	<i>Head of Legal and Democratic Services; Joanna Swift; Joanna.swift@chilternandsouthbucks.gov.uk</i>
WARD/S AFFECTED	<i>'Not Ward Specific'</i>

NOTICE OF SPECIAL URGENCY AND URGENT IMPLEMENTATION

Due to the requirement for any legal proceedings to be issued as a matter of urgency because the Regulations in question have already been laid in Parliament, an urgent decision is therefore required by Special Cabinet to decide if the Council should take part in these legal proceedings. For this reason the Chairman of the Overview and Scrutiny Committee has agreed to the following:

- to the urgent implementation of the Cabinet's Decision without the call-in procedure in Rule 4 applying, under Rule 4.2 of the Council's Overview and Scrutiny Procedure Rules;
- to the urgent implementation of a Budget and Policy Framework Decision to be taken by Cabinet Under Rule 4 of the Council's Budget and Policy Framework Procedure Rules; and,
- that the Cabinet's decision is urgent and it is therefore impractical to provide 5 clear days' notice in advance of the Cabinet decision and also the required 28 day notice of the decision as required under the Local Authorities (Executive Arrangements) (Meetings and Access to Information) (England) Regulations 2012.

1. Purpose of Report

This report provides an update for Cabinet following their 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. It invites Cabinet to consider whether the Council should institute legal proceedings under section 222 of the Local Government Act 1972 jointly with the other District Councils.

RECOMMENDATIONS

- 1. That Cabinet note 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**

2. That Cabinet consider whether the Council should participate in 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 jointly with other District Councils.

3. That Cabinet agree that the costs of participating in any legal proceedings should be met from the General reserve in accordance with urgency provisions under the Budget and Policy Framework Procedure Rules.

4. That 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.

2. Reasons for Recommendations

To enable Cabinet to consider whether it is expedient for the promotion or protection of the interests of the inhabitants of South Bucks District for the Council to participate in legal proceedings with other District Councils to challenge the decisions made by the Secretary of State in respect of the Modification Regulations and Structural Changes Order implementing a new unitary District Council in Buckinghamshire by way of judicial review. As the Modification Regulations have already been laid in Parliament and the Secretary of State intends to make them before 31 March 2019, any legal proceedings, associated documents and legal steps must be issued/undertaken with the utmost urgency.

3. Content of Report

3.1 On 1 November 2018 the Secretary of State announced his decision to create a single tier unitary District Council in Buckinghamshire from 1 April 2020, with elections to the new Council taking place in May 2020 and a proposal to postpone the local elections due to take place on 2 May 2019 to avoid District councillors being elected for a single year.

3.2 A working draft of the Structural Changes Order to implement the new unitary Council under section 7 of the Local Government and Public Involvement in Health Act 2007 was shared with Leaders and Chief Executives. On 28 November Cabinet and Full Council considered the proposals and having noted members' views expressed at both Cabinet and Full Council, representations in response to the proposals were submitted to the Secretary of State by the Leader. The Leader continued to take part in subsequent discussions with the County Leader, other District Leaders, Ministers and other parties with regard to the contents of the draft Structural Changes Order.

- 3.3 At a meeting on 3 January 2019 the Leaders were informed that the Secretary of State had decided to proceed to make Modification Regulations which amend certain provisions in the 2007 Act relating to when a Structural Changes Order may be made for the local government reorganisation in Buckinghamshire. At the same meeting the Leaders were informed of key provisions in a revised working draft of the Structural Changes Order. The Council was asked to confirm whether it consented to the making of the Modification Regulations by Friday 11 January.
- 3.4 On 7 January a copy of the revised draft Structural Changes Order was provided to Leaders and Chief Executives. The key provisions of the revised draft Order were reported to a special meeting of Cabinet on 9 January and highlighted in the following table.

Arrangements	District View	County View	Decision of the Secretary of State
Name	Buckinghamshire Council	Buckinghamshire Council	By agreement
Size of the New Council	Three members per ward (147)	Two members per ward (98)	Three members per ward (147)
Election dates and cycles	Electoral cycle for the new Council to be 2020, 2025, 2029	Electoral cycle for the new Council to be 2020,2025,2029	By agreement
Shadow Authority Membership	All existing members (202)	Equal (49:49) District and County membership (98)	All existing Members (202)
Shadow Executive Membership	Equal representation from each of the 5 Councils	Majority of County members	17 members: 8 from the Districts, 8 from the County plus County Leader
Shadow Executive Chairman	To be elected by the Shadow Authority	To specify the County Council Leader	To specify the County Council Leader with a District Council nominee as Deputy.
Appointment of Interim Officers	To be appointed by the Shadow Authority	To be appointed by the Shadow Executive	To be appointed by the Shadow Executive following

			consultation with the Shadow Authority.
Officer to set up the first meeting of the Shadow Authority	Proper Officer of Wycombe District Council	Proper Officer of County Council	Both officers with the WDC Proper Officer as deputy
Officer to lead Implementation Team	To be appointed by the Shadow Authority	The Chief Executive of the County Council	The Chief Executive of the County Council. The deputy to be a District Council Officer.

3.5 Cabinet expressed concerns about the provisions in the revised draft Order and having considered the effect of the Modification Regulations, decided that the Council would not consent to the making of the Modification Regulations under section 15 of the Cities and Local Government Devolution Act 2016 and that legal advice should be obtained. 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.

3.6 All the 4 District Councils decided not to give consent to the Regulations and Chiltern District Council also decided to take legal advice. However, Buckinghamshire County Council gave conditional consent at their Cabinet meeting on 10 January in the following terms:-

"In line with the main report Unitary Transition Arrangements Cabinet confirmed that the County Council gives consent to the making of the Regulations. This consent is on the basis of the Secretary of State's decision on the draft Structural Changes Order as set out in the letter at Appendix 2 and detailed in the table within the report"

3.7 As the Secretary of State failed to obtain the consent of all of the Councils under section 15(4) of the 2016 Act he relied on the consent of Buckinghamshire County Council to make the Modification Regulations. The preamble to the Regulations states that: *"In accordance with section 15(5)(b) of the 2016 Act, Buckinghamshire County Council, being a relevant local authority to whom the Regulations apply, has consented to the making of these Regulations"*

3.8 On the 9th January the Chief Executives were informed by the Head of Governance Reform and Democracy Unit at MHCLG, that the Secretary of State would lay the revised draft Structural Changes Order before Parliament later (on a separate timetable) to the Modification Regulations. The Modification Regulations were duly laid before Parliament on 14 January 2019. The Structural Changes Order has not yet been laid and it is understood this will be done in March 2019.

3.9 Following the receipt of legal advice Chiltern and Wycombe District Council sent a letter to the Secretary of State on 18 January as a preliminary step before legal proceedings. The Council was sent a copy of the letter as an interested party, together with Aylesbury Vale District Council and Buckinghamshire County. 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. The Secretary of State was asked to respond urgently by Wednesday 23 January and a verbal update on his response will be given at the meeting.

3.10 The Head of Legal and Democratic Services has considered the procedures used by the Secretary of State to make the Modification Regulations and also the provisions of the revised Structural Changes Order and shares the concerns expressed by Chiltern and Wycombe District Council in their pre-action letter to the Secretary of State. Further advice on the legal issues and potential grounds for challenge are set out in confidential appendix to this report. Having regard to this advice and any response from the Secretary of State, Cabinet is asked to consider whether it is expedient for the promotion or protection of the interests of the inhabitants of South Bucks District to participate in legal proceedings for judicial review of the Secretary of State's decisions in respect of the Modification Regulations and the Structural Changes Order, jointly with other District Councils.

4. Consultation

The alternative proposals for structural change in Buckinghamshire have been the subject of stakeholder consultation and engagement.

5. Options (if any)

As set out above.

6. Corporate Implications

6.1 Financial

The costs of any legal proceedings could be up to £100k if the claim is unsuccessful, any District Council participating in the proceedings, would be ordered to pay the Secretary of State's legal costs of defending the claim together with the legal costs of any other interested party who supports that defence, as well as paying for its own legal costs. Therefore the Council's cost would be a proportion of the total as agreed with the other Councils participating in the action. However, if the claim is successful the Secretary of State (and any relevant interested party) would be ordered to pay the Council's legal costs. There is no approved budget for this type of legal proceedings and therefore the costs incurred would have to be met from the General reserve, and adequate funds exist to cover any likely expenditure. As the decision to institute proceedings is urgent consent of the Chairman of Overview and Scrutiny Committee

has been obtained under the Budget and Policy Framework Procedure Rules to allow Cabinet to make this funding decision.

6.2 Legal

The Local Government and Public Involvement in Health Act 2007 sets out the procedure for creation of unitary councils. Section 15 of the Cities and Local Government Devolution Act 2016 enables the Secretary of State to make regulations to modify the procedures where there is a consensus between authorities. Where there is no consensus the Act gives the Secretary of State power to impose a solution provided that at least one relevant authority consents. The use of this power is subject to a "sunset clause" and requires any Modification Regulations to be made by 31 March 2019. The Secretary of State has discretion on the content of Structural Changes Orders but must exercise that discretion reasonably and give reasons where necessary. Grounds for challenging the procedure used by the Secretary of State and the exercise of his discretion are set out in full in the confidential appendix.

7. Next Steps

The period for challenging the Secretary of State's decisions is very limited because the Modification Regulations have already been laid in Parliament and the Secretary of State intends to make them before the 31 March. Therefore, if the Cabinet decides that it is expedient to participate in legal proceedings with other District Councils the necessary legal papers will need to be prepared and issued in the High Court with the utmost urgency.

<p>Background</p> <p>Papers:</p>	<p>Council Report 16th January 2017</p> <p>Council Report 11th April 2018</p> <p>Cabinet Report 28 November 2018</p> <p>Submission of the District Councils to the Secretary of State</p> <p>Cabinet Report 9th January 2019</p> <p>Counsels Advice (subject to legal professional privilege and litigation privilege and exempt from disclosure under paragraph 5 of Part 1 of Schedule 12A to the Local Government Act 1972)</p>
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