

SHADOW EXECUTIVE

Date: Tuesday, 22nd October, 2019
Time: 10.00 am
Venue: Mezzanine Rooms 1 - 2, Buckinghamshire County Council, Walton
Street, HP20 1UA - Aylesbury

SUPPLEMENTARY AGENDA 1

9. Spend Protocol Update (Pages 1 - 14)

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Report for:	Shadow Executive
Meeting Date:	22nd October 2019

Title of Report:	General Consent
Shadow Portfolio Holder	Leader: Councillor Martin Tett
Responsible Officer	Rachael Shimmin, Chief Executive
Report Author Officer Contact:	Catherine Whitehead, Monitoring Officer 07399405941 c-whitehead@buckscc.gov.uk
Recommendations:	Members are recommended to agree the general consent as set out at Appendix A .
Corporate Implications:	<p>Legal Comments</p> <p>The statutory provision under which the direction is made provides that consent must be obtained for any relevant land disposal or contract that any of the affected (all five existing) councils seek to enter into during the transitional period. The purpose of the general consent is to ensure that the consent of the Shadow Executive is granted (without the need to make any specific request) in accordance with the agreed spending protocol.</p> <p>S151 Officer Comments</p> <p>The Spending Protocol that was agreed by Shadow Executive in June 2019 is attached as Appendix B. This aims to protect the interests of the new authority and ensure that it starts life in the best possible financial position. It is recommended that the limits included within this are maintained at the same levels.</p>
Options: (If any)	<p>The options available include:</p> <ol style="list-style-type: none"> 1. Not agreeing any consent, and requiring specific consent in relation to each and every contract. 2. Agreeing a form of consent which is different from that set out in the spending protocol. The detail of this would have to be drawn up separately. 3. Agreeing a form of consent in accordance with the agreed protocol.
Reason:	To ensure that the Direction is only employed as a last resort. To enable the transition to proceed without the additional administrative burden of individual consents.

1. Purpose of Report

- 1.1 This report seeks member's approval to a general consent which would allow the existing five councils to conduct their current business without referral to the Shadow Executive within specific limits.

2. Background

- 2.1 On 11 June, the Shadow Executive agreed a spending protocol which provided that, whilst the five existing councils remain responsible for their own financial decision making, they would seek approval from the Shadow Executive for any commitments that could have a significant financial impact upon the new council.
- 2.2 The arrangements in the protocol are that all new financial commitments (revenue and capital) above £100,000 p.a. be reported to the shadow Section 151 Officer and that those above £500,000 p.a. (or lower if in the view of the shadow Section 151 Officer the commitment requires further consideration) be further reported to the Shadow Executive for their approval. The spending protocol is attached at Appendix A.
- 2.3 On 20th August 2019 the Shadow Executive agreed to pursue a direction under s24 Local Government and Public Involvement in Health Act 2007. The intention of the Executive remained that decisions should be taken through consensus in accordance with the agreed spending protocol. Nevertheless, in view of the risks associated with transition, a direction would ensure that the Executive is able to achieve a speedy resolution to any issues that may arise prior to Vesting Day.
- 2.4 A formal letter was submitted in accordance with that resolution which requested a Direction from the Secretary of State. Following a period of consultation, the Secretary of State issued the Direction, with takes effect from 17 October 2019. The Direction, and the explanatory note, are attached at **Appendix C**.
- 2.5 As of 17 October 2019, the five existing councils will require the written consent of the Buckinghamshire Council in relation to:
- the disposal of any land if the consideration for the disposal exceeds £100,000, and any
 - any capital contract of a value exceeding £1m
 - Any non- capital contract exceeding £100,000 where the contract goes past vesting day or could go past vesting day with an extension.
- 2.6 The explanatory note set out the Secretary of State's intention as follows:

“The county and district councils remain responsible for delivering their respective functions until 1st April 2020. The first full elections to the new council will be in May 2020.

It is essential that all the affected local authorities (which are subject to this direction) are able to continue delivering high quality services to the public and run their day-to-day business in the period prior to 1 April 2020.

It is also of great importance that the authority that has general transitional duties under the structural change order of preparing for and facilitating the transfer of functions to the new unitary authority is able to do discharge its duties effectively.

Therefore, in the circumstances of Buckinghamshire, the Secretary of State considers that the Buckinghamshire Council Shadow Council should have a say on agreements to be entered into, including in consideration of whether those agreements will be in the best interests of the new council or the residents of the area, and ensuring agreements do not undermine or diminish the benefits or savings anticipated as a result of unitarisation or which may have an effect on the financial position of the new council.

The Secretary of State has, therefore, made the direction to ensure that the implementation process can proceed on a clear and sound basis.”

3 Content of Report

- 3.1 The Shadow Executive has previously indicated that it does not want to impede the councils from carrying out their normal operational contracting functions in advance of vesting day and would wish to provide a general form of consent to the five councils.
- 3.2 The purpose of the general consent is to relax the direction so that consent is automatically granted for any of the actions which would fall outside the spending protocol, and the powers of the direction are therefore only used as a last resort.
- 3.3 It is proposed that the terms of the general consent are aligned to the existing spending protocol. This would mean that the existing councils have the consent of the Buckinghamshire Council to enter into contracts and disposals in excess of the values in the direction subject to the following conditions:
 - Any revenue or capital contract of £100,000 p.a. be reported to the shadow Section 151 Officer
 - Any revenue or capital contract of £500,000 p.a. (or lower if in the view of the shadow Section 151 Officer the commitment requires further consideration) be further reported to the Shadow Executive for their written consent.
- 3.4 Where the spending protocol allows the s151 officer to decide not to refer the matter to the Shadow Executive, consent would also be granted automatically by the general consent.
- 3.5 Where the spending protocol requires a matter to be referred to the Shadow Executive, and the Shadow Executive agrees a proposed disposal or contract without further action, the general consent will also provide that any associated contract or disposal is granted without the need for any further consent.
- 3.6 In circumstances where a contract or disposal consent by the Shadow Executive is needed in between meetings of the Shadow Executive, it is recommended that the Leader is able to take a decision to provide written consent on behalf of the Shadow Executive as required.
- 3.7 It is recommended that a revised spending protocol is agreed in order to implement the general consent arrangements. (Appendix A).

4 Financial Implications

The Spending Protocol is concerned with new commitments that could have future financial implications for the new Authority. It covers asset purchases (including commercial acquisitions), transfers and disposals as well as new contracts and the use of reserves. It is not trying to stop day to day decision making in 2019/20 where budgets have already been approved. The limits included within the currently approved Spending Protocol (see Appendix B) are still deemed appropriate.

5 Legal Implications

The direction gives the Shadow Executive wide powers to limit the powers of the existing councils in relation to contracts and disposals. The purpose of the general consent is to ensure that the Shadow Executive would only need to use the direction in circumstances in which agreement could not otherwise be reached through the agreed protocol. This report does not relate to contracts which will not carry forward into the new Council.

6 Other Key Risks

There is a significant risk that in the absence of the general consent there would be an impact on delivery of transition due to the excessive administration involved in administering contract decisions being carried out by existing councils. The general consent will mitigate this risk.

7 Dependencies

There is an ongoing responsibility to ensure compliance with the spending protocol. The general consent applies if the spending protocol is followed.

8 Consultation

The direction has been the subject of consultation by MHCLG. The general consent has been drafted at the request of the existing councils.

9 Communications Plan

The spending protocol has already been the subject of widespread communication within the existing councils. It is not intended to repeat the communication as a result of the general consent.

10 Equalities Implications

The general consent is intended to prevent change and maintain current practice. The intention is therefore that there will be no impact as a result of this decision.

11 Data Privacy Implications

The general consent is a legal process and does not involve the collation or holding of any specific data. The contract information is already shared as a result of the spending protocol and requires no further action.

Background Papers	Waste Report - Shadow Executive 20 th August 2019 (exempt) Spending Protocol Report – Shadow Executive 11 th June 2019
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Spending Protocol and General Consent

Principles

- Councils remain responsible for taking day to day decisions for spending on service delivery within agreed revenue and capital budgets for 2019/20;
- Councils are committed to ensuring that the new Council is in the best possible financial position;
- Councils should not enter into any new financial or asset-related commitments (beyond those specifically agreed within their approved budgets) on behalf of the new Council, or create any new liabilities without the agreement of the Shadow Executive – subject to agreed limits for revenue and capital;
- That any agreed protocol to control spending needs to be agile to avoid introducing delays and risks to decision making.

1. Budget Preparation and Monitoring

- 1.1. The Section 151 Officer of each Council will report any matters of concern to the shadow Section 151 Officer as they are identified. A summary of these will be reported to the Shadow Executive.
- 1.2. A high level review of the 2019/20 budgets for the 5 existing Councils will be conducted by the shadow Section 151 Officer and the Section 151 Officers of the existing councils, including understanding all capital commitments and future borrowing requirements.
- 1.3. If there are any potential unmitigated overspends or income shortfalls in the 2019/20 financial year, the relevant Section 151 Officer must inform the shadow Section 151 Officer as soon as possible and this will then also be reported to the Shadow Executive together with proposed actions to address the issue.

2. Future Commitments

- 2.1. Any new commitments that could have a future financial impact upon the new Unitary Council must be initially assessed by the shadow Section 151 Officer and, if it has a significant financial impact, the prior approval of the Shadow Executive is required before any formal decision is then taken by the individual Council.
- 2.2. All new financial commitments (revenue and capital) above a de-minimis level of £100,000 p.a. must be reported to the shadow Section 151 Officer
- 2.3. All new financial commitments (revenue and capital) above £500,000 p.a. (or lower if in the view of the shadow Section 151 Officer the commitment requires further consideration) must be reported to the Shadow Executive for their approval.
- 2.4. Expenditure is calculated as the total cost of any project. Any expenditure which has been broken down into parts (whether through separate contracts or otherwise) must be aggregated.
- 2.5. Financial commitments includes but is not limited to purchase, disposal and transfer of assets, new contracts with significant on-going financial commitments (but not routine items like care packages), write off of debts / loans, new capital schemes (including those with on-going financial commitments) and use of reserves above those already approved.
- 2.6. Key decisions taken by the five authorities must include and record consideration of the financial implications of the decision for the new Council.

3. General Consent

- 3.1. Expenditure not subject to any of the restrictions set out above, and notwithstanding any direction made under s24 Local Government and Public Involvement in Health Act 2007, can be made by the existing Councils without referral to s151 Shadow officer or the Shadow Executive.
- 3.2. This consent does not apply to any situation in which item is to be reported to s151 officer. The s151 officer consent to any items which require his consideration must be in writing.
- 3.3. In the absence of the s151 officer consent must be provided by the new Council Director of Resources
- 3.4. Consent of the s151 officer (or the Director of Resources) will require the prior agreement of the Shadow Executive or where urgency or the situation demands, the Leader acting as the Executive, if the expenditure is above £500,000 or where the s151 officer determines it is required.

_____ **Andrew Small – Aylesbury Vale District Council**

_____ **Rachael Shimmin – Buckinghamshire County Council**

_____ **Richard Ambrose – Buckinghamshire Shadow Executive**

_____ **Steve Bambrick – Chiltern and South Bucks District Councils**

_____ **John East – Wycombe District Council**

SHADOW BUCKINGHAMSHIRE AUTHORITY SPENDING PROTOCOL

1. Background

- 1.1. The business case produced by Buckinghamshire County Council identified annual revenue savings of £18.2m; fully deliverable by the start of year 3 after the new Council goes live. It also highlighted that significant net capital receipts could be achieved from the disposal of surplus council assets across the five Councils. Although the business case is over two years old there is consensus across the Finance Directors from all the Councils in Buckinghamshire that the overall level of savings is still deliverable although this may take slightly longer to fully achieve.
- 1.2. With the new unitary authority coming into existence from April 2020, all of the financial resources and commitments from the predecessor councils will transfer to the new Buckinghamshire Council at this date. It is important, therefore, that decisions and actions taken in the existing councils are made against the background of not adversely impacting upon the finances of the new Council.
- 1.3. The introduction of a Section 24 notice (Local Government and Public Involvement in Health Act 2007) could be a helpful tool in protecting the finances and interests of the new Unitary Council. In 2009 this allowed the Secretary of State to direct that a relevant authority may not without the written consent of a person or persons specified to:-
 - (a) dispose of any land if the consideration payable for the disposal exceeds £100k;
 - (b) enter into any capital contract under which the consideration exceeds £1m or which includes a term allowing the consideration payable to be varied;
 - (c) enter into any non-capital contact under which the consideration exceeds £100k;
 - (d) commit existing financial reserves by a specified amount.We could, however, discuss with MHCLG about varying the amounts if such a notice was thought to be helpful.
- 1.4. This is a rather crude instrument and could capture things it was not intended to (e.g. care packages) and not stop things that could have an adverse financial impact (e.g. purchase of an asset). In other reorganisations authorities took this view and felt that it would be better to develop a working protocol that would be more flexible to their local needs. This report represents the proposed protocol for the five Buckinghamshire Council's.
- 1.5. Each Council has a Section 151 Officer who has responsibility for the stewardship of the Council's finances. Their duty is obviously to their employing Council. However, they also have a wider fiduciary duty concerning public funds. A shadow Section 151 Officer will be appointed by the Shadow Buckinghamshire Authority to consider the interests of the new Council. This suggested protocol has been developed jointly by the s151 officers across all the Councils in Buckinghamshire in advance of that appointment.

2. Principles

- 2.1 It is suggested that all Councils sign up to some principles during the transition period and that this comes into effect following the first meeting of the Shadow Executive:-

- Councils remain responsible for taking day to day decisions for spending on service delivery within agreed revenue and capital budgets for 2019/20;
- Councils are committed to ensuring that the new Council is in the best possible financial position;
- Councils should not enter into any new financial or asset-related commitments (beyond those specifically agreed within their approved budgets) on behalf of the new Council, or create any new liabilities without the agreement of the Shadow Executive – subject to agreed limits for revenue and capital;
- That any agreed protocol to control spending needs to be agile to avoid introducing delays and risks to decision making.

3. Spending Control

- 3.1 A key risk for the financial success of the new Unitary Council is that the existing councils have structural problems within their base budgets which then adversely impact upon the new Council. This could include such things as:-
- Overspending in 2018/19 that is not properly addressed when setting the 2019/20 budget
 - Use of reserves to fund on-going expenditure;
 - Required savings built into the 2019/20 budgets not being fully deliverable (including transformation programmes);
 - Staffing establishment budgets having high vacancy factors built in;
 - Unrealistic estimates within the 2019/20 budget such as pay award, demand led budgets or income assumptions;
 - Unrealistic estimates or provisions within council tax / business rates forecasts;
 - Building one-off sources of funding into the base budget;
 - A lack of visibility on any projects or developments with an ongoing revenue impact.
- 3.2 The protocol requires the Section 151 Officer of each Council to report any matters of concern to the shadow Section 151 Officer as they are identified. This will ensure that the shadow Section 151 Officer has a clear understanding of the overall financial picture and associated risks. The summary of these will be reported to the Shadow Executive.
- 3.3 A high level review of the 2019/20 budgets for the 5 existing Councils will be conducted by the shadow Section 151 Officer and the Section 151 Officers of the existing councils, including understanding all capital commitments and future borrowing requirements.
- 3.4 If there are any potential unmitigated overspends or income shortfalls in the 2019/20 financial year, the relevant Section 151 Officer must inform the shadow Section 151 Officer as soon as possible and this will then also be reported to the Shadow Executive together with proposed actions to address the issue.

4. Future Commitments

- 4.1 At present the existing Councils are free to continue to run their affairs and make financial decisions without taking into account the impact upon the new Unitary Council. This protocol requires that any new commitments that could have a future financial impact upon the new Unitary Council be initially assessed by the shadow

Section 151 Officer and, if it has a significant financial impact, seek approval by the Shadow Executive, at its next meeting, before any formal decision is then taken by the individual Council.

- 4.2 Therefore, it is recommended that all new financial commitments (revenue and capital) above a de-minimis level of £100,000 p.a. be reported to the shadow Section 151 Officer and that those above £500,000 p.a. (or lower if in the view of the shadow Section 151 Officer the commitment requires further consideration) be further reported to the Shadow Executive for their approval. The spirit of this protocol is that a Council should not 'break down' expenditure items into parts in order that they become lower than the de-minimis levels. It is further recommended that the proposed limits be reviewed after 2-months in terms of their appropriateness.
- 4.3 The key areas covered by the protocol would include purchase, disposal and transfer of assets, new contracts with significant on-going financial commitments (but not routine items like care packages), write off of debts / loans, new capital schemes (including those with on-going financial commitments) and use of reserves above those already approved.
- 4.4 It is also recommended that each Council includes a section in all of their future key decision reports on the financial implications of the decision for the new Council.

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Direction made under section 24 of the Local Government and Public Involvement in Health Act 2007.

- 1) In exercise of the powers under section 24 of the Local Government and Public Involvement in Health Act 2007 ("the Act") the Secretary of State makes this direction which has effect from 17 October 2019.

Interpretation

- 2) In this direction "Buckinghamshire Council" means the new authority which on 1st April 2020 becomes the sole principal authority for Buckinghamshire, replacing Buckinghamshire County Council, Aylesbury Vale District Council, Chiltern District Council, South Bucks District Council, and Wycombe District Council¹.

General

- 3) The Secretary of State directs each authority specified in paragraph 4, being an authority which is to be dissolved by virtue of an order made under section 7 of the Act, that it may not, without Buckinghamshire Council's written consent²:
- a) enter into any capital contract-
 - i. under which the consideration payable by the relevant authority exceeds £1,000,000; or
 - ii. which includes a term allowing the consideration payable by the relevant authority to be varied;
 - b) enter into any non-capital contract under which the consideration payable by the relevant authority exceeds £100,000, where-
 - i. the period of the contract extends beyond 1 April 2020; or
 - ii. under the terms of the contract, that period may be extended beyond 1 April 2020.
- 4) The authorities are:
- a) Aylesbury Vale District Council
 - b) Buckinghamshire County Council
 - c) Chiltern District Council
 - d) South Bucks District Council
 - e) Wycombe District Council

Signed by the authority of the Secretary of State



PAUL ROWSELL

A senior civil servant in the Ministry of Housing, Communities and Local Government

Date: 9 October 2019

¹ <https://www.legislation.gov.uk/ukxi/2019/957/contents/made>

² Pursuant to The Buckinghamshire (Structural Changes) Order 2019 (S.I. 2019/957) which applies Part 1A of the Local Government Act 2000, the function of providing the relevant consent is exercisable by the shadow executive.

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Control of Contracts

Explanatory Note

1. This explanatory note accompanies a direction made under section 24 of the Local Government and Public Involvement in Health Act 2007 (the Act) and must be read in the context of sections 24 to 30 of that Act.

Context

1. A proposal for restructuring local government in Buckinghamshire is being implemented by the Buckinghamshire (Structural Change) Order 2019^{1 2}, which came into force on 23 May 2019. The order establishes a unitary Buckinghamshire Council which will be the sole authority in Buckinghamshire from 1st April 2020, abolishes the existing county and district councils from that date, and makes transitional arrangements for Buckinghamshire Council to act as a shadow authority with a shadow executive before that date. The county and district councils remain responsible for delivering their respective functions until 1st April 2020. The first full elections to the new council will be in May 2020.
2. It is essential that all the affected local authorities (which are subject to this direction) are able to continue delivering high quality services to the public and run their day-to-day business in the period prior to 1 April 2020.
3. It is also of great importance that the authority that has general transitional duties under the structural change order of preparing for and facilitating the transfer of functions to the new unitary authority is able to discharge its duties effectively.
4. Therefore, in the circumstances of Buckinghamshire, the Secretary of State considers that the Buckinghamshire Council Shadow Council should have a say on agreements to be entered into, including in consideration of whether those agreements will be in the best interests of the new council or the residents of the area, and ensuring agreements do not undermine or diminish the benefits or savings anticipated as a result of unitarisation or which may have an effect on the financial position of the new council.
5. The Secretary of State has, therefore, made the direction to ensure that the implementation process can proceed on a clear and sound basis.

Specified person/authority whose consent is required

6. The direction specifies which person is required to give consent in relation to the matters covered in the direction. For all matters, Buckinghamshire Council is specified. Buckinghamshire Council's function of providing consent under this direction is to be exercised by the shadow executive, on which all the existing councils are represented, as provided for by The Buckinghamshire (Structural Changes) Order 2019.³

¹ <https://www.legislation.gov.uk/uksi/2019/957/contents/made>

² https://www.legislation.gov.uk/uksi/2019/957/pdfs/uksiem_20190957_en.pdf

³ Article 6(17) of The Buckinghamshire (Structural Changes) Order 2019 applies Part 1A of the Local Government Act 2000. Section 9D(2) has the effect that local authority functions (not excluded by the Act itself or by the subsequent legislation or regulations made under section 9D(3) of the Act) are to be the responsibility of an executive of the authority under executive arrangements.

Cumulative amounts and general consents

7. On the coming into force of this direction on 17 October 2019, the consent of the Buckinghamshire Council will be required for the entry into any contract falling within paragraph 3 of the direction. This may include routine contracts that authorities enter into on a regular basis. In order to ensure these can continue unhindered, as appropriate, the Buckinghamshire Council Shadow Authority may issue general consents for types or categories of contracts which it may specify.
8. Under section 26(2) of the Act, such general consent may be given:
 - a. in respect of a particular contract, or in respect of contracts of any description;
 - b. unconditionally or subject to conditions.
9. In practice, this means that the Shadow Authority could, for example, issue a general consent for all non-capital contracts with a value not exceeding £100,000 which are for similar descriptions of matter (such as all leisure or cultural services contracts) or it could give consent in relation to contracts relating to specific programmes or projects.
10. Paragraph 3 of the direction should be read in conjunction with sections 27(2) and (3) of the Act. The capital and non-capital contract value thresholds of £1,000,000 and £100,000 respectively are cumulative where multiple contracts are entered into with the same organisation, or individual, or of a similar description, and the consent requirement may therefore apply to many 'business as usual' contracts. Moreover, provisions in the Act were drafted to apply in the first instance to the programme of unitarisations underway in 2008/9. Therefore, accumulation of amounts, for the purpose of calculating the value of contracts to which a direction may apply, date back to 1 January 2007.
11. Whether or not a contract relates to another of the 'same or similar description of matter' will be a question of fact and degree in each case. So, a contract to sweep the streets might not be in the same category as park maintenance services, although both are broadly environmental services, but a contract for the supply of office chairs may well fall within the same category as another contract for the supply of other office equipment.
12. New contracts of employment come within the scope of this direction and as a category of contracts relating to a similar matter, i.e. employment, the threshold of £100,000 may be reached quite quickly.

Interaction with other consent regimes

13. As stated in section 26(4) of the 2007 Act, the issuing of a consent by Buckinghamshire Council in relation to this direction does not remove any requirement on any authority to seek separate consent from any relevant person under any other applicable consent regime.

In the event of a disagreement

14. In the event that the person seeking consent and the person whose consent is required under this direction fail to reach agreement as to the value of any consideration which might be covered by the direction, in accordance with section 26(6) of the Act, the matter is to be referred to the Secretary of State so that the value may be determined.