

Report for:	<b>Shadow Executive</b>
Meeting Date:	<b>22nd October 2019</b>

<b>Title of Report:</b>	<b>General Consent</b>
Shadow Portfolio Holder	Leader: Councillor Martin Tett
Responsible Officer	Rachael Shimmin, Chief Executive
Report Author Officer Contact:	Catherine Whitehead, Monitoring Officer 07399405941 <a href="mailto:c-whitehead@buckscc.gov.uk">c-whitehead@buckscc.gov.uk</a>
<b>Recommendations:</b>	Members are recommended to agree the general consent as set out at <b>Appendix A</b> .
Corporate Implications:	<p><b>Legal Comments</b>  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><b>S151 Officer Comments</b>  The Spending Protocol that was agreed by Shadow Executive in June 2019 is attached as <b>Appendix B</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"> <li>1. Not agreeing any consent, and requiring specific consent in relation to each and every contract.</li> <li>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.</li> <li>3. Agreeing a form of consent in accordance with the agreed protocol.</li> </ol>
Reason:	<p>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.</p>

## 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 20<sup>th</sup> 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.

<b>Background Papers</b>	Waste Report - Shadow Executive 20 <sup>th</sup> August 2019 (exempt) Spending Protocol Report – Shadow Executive 11 <sup>th</sup> June 2019
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