

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 unitarisation 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.