

CABINET

10 JANUARY 2019

PRESENT: Councillor A Macpherson (Leader); Councillors S Bowles (Deputy Leader), P Irwin, H Mordue, C Paternoster, Sir Beville Stanier Bt, P Strachan, J Ward and M Winn

IN ATTENDANCE: Councillors C Adams and R Stuchbury

1. MINUTES

RESOLVED –

That the Minutes of 18 December, 2018, be approved as a correct record.

2. NEW SINGLE DISTRICT UNITARY STRUCTURAL ORDER

There were three pieces of legislation required at this stage of the Parliamentary process and which would give effect to the decision of the Secretary of State set out in the written ministerial statement of 1 November, 2018:-

- (a) The Changes to the Year of Election Order which in essence delayed the District and Parish elections for a year. The Returning Officers of the District Councils had requested that this Order should be made to save the expense and administration of these elections. This Order had been laid in December and would come into effect on 18 January.
- (b) The Modification Order made under the Cities and Local Government Devolution Act, 2016 which would modify the legislation which provided for the Structural Change Order to be made. This meant that the Secretary of State could make that that Order without the need to comply with all the usual requirements including to issue an invitation for a submission and to proceed without carrying out public consultation. The Modification Order could be made before 31 March, 2019 if one local authority consented. After that date it would require the consent of all five councils. The Cabinet report invited Members to consider whether to give that consent.
- (c) The Structural Changes Order set out the arrangements for the transition. The content of this Order had been subject to informal consultation with the five local authorities and the Secretary of State had made the decisions necessary to determine the content of the Order to be laid, where agreement could not be reached between the authorities.

Following the ministerial statement on 1 November, 2018, discussions had taken place between the leaders of the four district councils, the Leader of the county council, the Chief Executives of all five local authorities and representatives from the Ministry for Housing, Communities and Local Government (MHCLG) about the content of the Structural Changes Order.

As a result of those discussions and having considered representations, the Secretary of State had reached decisions about the detail of the draft Buckinghamshire (Structural Changes) Order 2019 (SCO). On 3 January 2019, the decision as to the content of these Orders had been communicated to the Leaders and Chief Executives, but subject

to an embargo. The following was a summary of the decisions made by the Secretary of State on the draft Orders:-

Arrangements	District View	County View	Decision of the Secretary of State
(1) Name	Buckinghamshire Council	Buckinghamshire Council	By agreement
(2) Size of the New Council	Three members per ward (147)	Two members per ward (98)	Three members per ward (147)
(3) 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
(4) Shadow Authority Membership	All existing members (202)	Equal (49:49) District and County Membership (98)	All existing Members (202)
(5) Shadow Executive Membership	Equal representation from each of the 5 Councils	Majority of County members	17 members, 8 from the District and 8 from the County plus County Leader
(6) 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.
(7) Appointment of Interim Officers	To be appointed by the Shadow Authority	To be appointed by the Shadow Executive	To be appointed by the Shadow Authority on the recommendation of the Shadow Executive
(8) Officer to set up the first meeting of the Shadow Authority	Proper Officer of Wycombe District Council (Karen Satterford)	Proper Officer of County Council (Sarah Ashmead)	Both officers with the WDC Proper Officer as deputy
(9) 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 CEX.

The Cabinet report contained a commentary on each of the above. With particular regard to item (5) above, it was reported that the Shadow Executive Committee would be responsible for making the vast majority of the decisions on the transition to the new council. The Members to serve on this Committee would be drawn from the existing membership of the five councils. Only 17 Members would serve on the Committee and make the majority of the transition decisions. The proportion of Members from the five councils on the Shadow Executive Committee would be set out in the SCO. The district councils believed that all councils should have the same representation. The county council had however felt that it should have the overall majority of members.

As a consensus could not be reached, the Secretary of State had considered representations from all five councils and had decided that there would be 17 Members on the Shadow Executive Committee. Eight Members would be nominated by the

county council and eight Members would be nominated by the district councils, with two Members being nominated by each district council. There would also be a chairman to bring the total number to 17.

With reference to item (6) above, Cabinet was reminded that currently all five councils across Bucks elected a Leader at a meeting of the whole council. In other recent local government reorganisations, the chairman had been elected by all the Members of the Shadow Executive Committee. The districts had made representations that the Shadow Executive Leader would be more likely to have the support of all areas if the election involved all Members of the Shadow Authority. The county council had felt that the Leader of the county council should be the chairman of the Shadow Executive Committee.

As consensus could not be reached, the Secretary of State had decided that the leader of the Shadow Executive would be the Leader of the county council and this would be specified in the draft Orders. The Deputy Chairman (to act in the absence of the Chairman) would be nominated by the district council Members only.

With regard to Items (7), (8) and (9), the Shadow Authority would appoint three interim statutory officers – these roles being the head of the paid service (responsible for staff), monitoring officer (responsible for ensuring lawfulness) and chief financial officer (with responsibility for ensuring proper financial management).

The Secretary of State had decided that the Shadow Executive Committee would appoint the interim officers to the Shadow Authority. If the Shadow Authority disagreed with the Shadow Executive, the decision would rest with the Shadow Executive. This would be specified within the draft Orders.

The information provided as part of the consultation had indicated that the appointment of the officer to lead the implementation team would be made by the Shadow Authority and the districts had supported this approach. The Secretary of State had however specified the Chief Executive of the county council as the leader of the implementation team. The proper officer responsible for setting up the first meeting of the Shadow Authority would be either the proper officer of the county council or Wycombe D C. The Secretary of State had decided that they should do so together with the Wycombe D C proper officer acting as deputy.

The draft Structural Changes Order set out in the preamble that its purpose was to implement the proposal from the county council. The preamble did not form part of the Order but it would be used to provide context for the specific provisions of the Order. The Order made it clear that that it was implementing the county proposal by specifying that the area of the new council would cover the area of the existing county council. It also described the electoral wards in accordance with county divisions albeit that the Secretary of State had decided to modify the electoral arrangements in the county proposal from two Members per ward to three.

In addition to giving effect to the Order in the ways described earlier in this Minute, the SCO also required that decision makers “have regard to” the county council submission, including the business case. The district councils had requested that regard should also be had to their submission insofar as it was consistent with the wider provisions of the Order but this had not been accepted by the Secretary of State. The Cabinet report defined the term “have regard to”.

The matters referred to above would be set out within the SCO which would be made under the provisions of the Local Government and Public Involvement in Health Act 2007. The Act required amongst other things, that an invitation was made by the Secretary of State to all the councils in the area. If there was no such invitation, then a modification to the legislation was required. The Modification Order would be in

accordance with the provisions of either sub section 4 or 5 of section 15 of the Cities and Local Government Devolution Act 2016. Under this Act, the secretary of State must have the consent of all councils under sub section 4, or he could make regulations under sub section 5 in relation to structural or boundary provision, which would require the consent of only one council.

The latter provision was time limited and would expire at the end of March, 2019. This meant that, if for any reason, there was insufficient Parliamentary time to make the Order, then it would not be possible to do so without the consent of all five councils. In summary therefore, sub section 4 required the consent of all local authorities, whereas sub section 5 required the consent of just one. Sub section 5 expired at the end of March. Sub section 4 did not expire.

The proposed modification set aside the requirement to invite local authorities to make submissions (the county council had made its submission without a formal invitation from the Secretary of State). It also set aside the requirement to carry out public consultation. Furthermore, it removed the discretion to consult the Local Government Boundary Commission for England. Instead, the Secretary of State was able to proceed to make a decision with the consent of the relevant local authorities and on the basis of the proposal received from the county council.

The Secretary of State would have to specify the relevant sub section when he laid the regulations and so would need to know whether he was relying on the consent of one local authority (and therefore had to ensure the legislation made its way through the parliamentary process before the end of march), or whether he had the consent of all five councils (and there was no deadline for the legislation to be made. If just one authority did not give consent then the regulations would be made under sub section 5.

The Cabinet report included a copy of the Secretary of State's formal communication to the Leader of this Council summarising the position. It was understood that the draft Order and regulations (statutory instruments) would be laid on 14 January, 2019 and would appear on the Parliamentary web site that day or the day after. The draft statutory instruments would then be considered by the committees.

After those considerations, it would be debated and approved by both Houses of Parliament. In the Commons there was a Standing Committee; Members could vote but any MP could attend. This process would take approximately five to six weeks up to this point. It would then go to the floor of the House of Commons for the approval motion. That approval could not be debated but it could be voted upon. In the House of Lords the process was broadly similar. There was initial consideration by a grand committee, after which it went to the floor of the House of Lords for the approval motion. Unlike, the Commons, the Lords could debate it. The Statutory Instruments would come into force on the day after the day on which they were made. This process had to be completed by the end of March, 2019 if the Secretary of State did not have the consent of all councils in the area.

The Chief Executive updated Cabinet on the discussions held between the Chief Executives of all the Councils and representatives of the MHCLG after the Cabinet agenda had been despatched at which it had become clear that there could be delays in receiving Parliamentary approval to the Structural Change Orders.

The purpose of this special Cabinet meeting was to decide whether to consent to the Modification Order. The Secretary of State required a response before 11 January, 2019 and the urgency procedure provided for in the Constitution had been invoked, precluding call-in of Cabinet's decision in view of the timescale for responding.

Whilst remaining of the view that unitary local government would be the most efficient and cost effective way to deliver high quality services to stakeholders within the Vale, this should not be at the cost of removal by statute of the traditional processes associated with the selection of council leadership. Such arrangements would be totally contrary to the long accepted principles of maintaining local sovereignty, democracy, transparency and accountability. (The objection to giving consent was based on the predominance (9:8) of county council members over district council members on the Executive. Accordingly it was,

RESOLVED –

- (1) That the content of the draft Buckinghamshire (Structural Changes) Order 2019 be noted.
- (2) That, for the reasons outlined above, the Council does not give its consent in accordance with the provisions of section 15 of the Cities and Local Government Devolution Act, 2016.
- (3) That the Leader be asked to write to the Secretary of State to reflect the views of Cabinet.