

NEW SINGLE DISTRICT UNITARY STRUCTURAL ORDER
Councillor Mrs Macpherson
Leader of the Council

1 Purpose

- 1.1 To enable Cabinet to consider the proposed content of the Draft Structural Changes Order which will set out the arrangements for the transition to the new unitary Council in 2020.
- 1.2 To respond to the request for the Council to give consent to the proposed regulations under the Cities and Local Government Devolution Act 2016.

2 Recommendations/for decision

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| <ul style="list-style-type: none">2.1 Cabinet note the content of the draft Buckinghamshire (Structural Changes) Order 2019.2.2 Cabinet consider whether the Council should give consent in accordance with the provisions of section 15 of the Cities and Local Government Devolution Act 2016. |
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3 Executive summary (if longer than 2 pages)

- 3.1 There are three pieces of legislation required at this stage of the Parliamentary process and which will give effect to the decision of the Secretary of State set out in the Written Ministerial Statement on 1st November 2018. They are
 - a) The Changes to the Year of Election Order which in essence delays the District and Parish Council elections for a year. The Returning Officers of the District Councils requested that this Order should be made to save the expense and administration of the election and the expense to the Parish Councils. This Order was laid in December and is made under the negative procedure. It will come into force on 18th January 2019.
 - b) The Modification Order made under the Cities and Local Government Devolution Act 2016 which will modify the legislation which provides for the Structural Changes Order to be made. This means that the Secretary of State can make 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. This Modification Order can be made before 31st March 2019 if one local authority consents. After that date it will require the consent of all five councils. This report asks Cabinet to decide whether to give that consent.
 - c) The Structural Changes Order sets out the arrangements for the transition. The content of this Order has been subject to informal consultation with the five local authorities and the Secretary of State has made the decisions necessary to determine the content of the Order to be laid where agreement could not be reached between the authorities.
- 3.2 Following the Ministerial Statement on 1st November 2018 discussions have taken place between the leaders of the four district councils, the leader of the county council, the chief executives of all five councils and representatives

from the Ministry for Housing, Communities and Local Government (MHCLG) about the content of the Structural Changes Order.

- 3.3 As a result of those discussions and having considered the representations, the Secretary of State has reached decisions about the detail of the draft Buckinghamshire (Structural Changes) Order 2019 (SCO). On 3rd January 2019 the decision as to the content of these orders was communicated to the Leaders & Chief Executives but subject to an embargo.
- 3.4 The summary of the decisions made by the Secretary of State on the draft Orders is set out in the table below;

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 District and 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 Authority on the recommendation of the Shadow Executive
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
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.

- 3.5 This report sets out the context of the key decisions which will be contained within the draft SCO. It also explains the parliamentary process for making statutory instruments (including orders and regulations) under the affirmative procedure.
- 3.6 The report also explains consent requirements and the options available to the Secretary of State in relation to the relevant legislation.
- 3.7 It is proposed that the Structural Change Order and the regulations will be laid in Parliament on 14th January 2019 and will need to be approved by both Houses of Parliament before being made which is likely to occur in March 2019.

4 Supporting information

- 4.1 In a Written Ministerial Statement published on 1 November 2018, the Secretary of State for Housing, Communities and Local Government set out his intention to abolish the current four district councils and county council and to create a new unitary district council for Buckinghamshire, to come into effect on 1 April 2020.
- 4.2 The Written Ministerial Statement included reference to some matters which were decided, such as the date of the first elections to the new council, (7th May 2020) and some matters which the Secretary of State intended to consult on before reaching a decision, such as the size of the new council. Council size refers to the number of seats to which councillors are elected to represent the council.
- 4.3 Since the ministerial statement was made, the Chief Executive and Leader of the Council, together with their counterparts in the other four authorities, have been involved in meetings with representatives from the Ministry of Housing Communities and Local Government (MHCLG) with regard to the matters for consultation and the preparation of the draft Buckinghamshire (Structural Changes) Order 2019 (SCO).
- 4.4 Some of the issues that have been considered in the Orders have been agreed between the leaders of the four district councils and the leader of the county council, including the name of the new council and the number of votes available to those members who serve on both the County and District Councils.
- 4.5 There are, however, a number of issues on which the leaders of the district councils have not been able to reach agreement with the leader of the county council, including the size of the new council and the makeup of the shadow authority and the executive committee. These particular issues have now been determined by the Secretary of State and are set out in the draft SCO.

Arrangements for the new unitary council

Name

- 4.6 The name of the new unitary council will be "Buckinghamshire Council". This name was agreed by consensus between the leaders of the district councils and the county council.

Council Size and Electoral Arrangements

- 4.7 The new council will have 49 wards across Buckinghamshire each with three electoral seats. This will result in 147 seats, this is a reduction from the current number of county and district seats by 89 seats across the new district area. The district councils supported the Secretary of State's proposal to modify the submission to the larger council size.
- 4.8 The Secretary of State agreed with the District Councils and confirmed that the number of seats to be filled at the elections on 7th May 2020 will be 147.
- 4.9 A boundary review will be held within the first term of the new council, between May 2020 and May 2025. This will involve significant public consultation about the boundaries of the new wards and the level of local representation. A final decision will be made which will determine the optimum number of councillors for the new Buckinghamshire Council and the area to be covered by the new wards before the election in May 2025.
- 4.10 The first term of the new council will be for five years this is for practical reasons to support the administration of future elections but will also allow for a longer period of stability for transition. In the future elections will be held, as they are now, every four years after 2025. This has been agreed by all five Councils.

Arrangements for the transition to the new unitary council

The Shadow Authority

- 4.11 The Shadow Authority will have the transition powers and will be responsible for agreeing the implementation plan to transition to the new Buckinghamshire Council. The Shadow Authority will also set the overall budget which is to be met in proportions by the five Councils. The Shadow Authority will also agree the Scrutiny and other Committee arrangements.
- 4.12 The District Councils were in favour of all areas of Buckinghamshire receiving equal representation on the Shadow Authority. The County Council felt that there should be equal numbers of District and County Council members on the new authority and therefore proposed that only 49 of the 187 District Council seats should have representation on the Shadow Authority. This was a not an issue on which consensus could be reached. The Secretary of State considered the representations from all Councils and agreed with the District Councils and concluded that all members of the existing Councils will sit on the Shadow Authority.
- 4.13 Thirty-four of the County Councillors are also elected as a member of one of the District Councils – these individuals are referred to as dual-hatters. There was consideration as to whether the dual hatters should have two votes (one for each seat they represent). However It was agreed by all five Councils that Councillors who are members of both the county council and a district will only have one vote on the Shadow Authority. This was agreed by consensus.
- 4.14 It is anticipated that the first meeting of the Shadow Authority will be within 14 days of the SCO's approval by Parliament and at that meeting it will appoint

the Shadow Executive Committee in accordance with the SCO.

Membership of the Shadow Executive Committee

- 4.15 The Shadow Executive will be responsible for making the vast majority of decisions on the transition to the new Council. The members to serve on this Committee will be drawn from the existing membership of the five Councils. Only 17 members will serve on the Committee and make the majority of transition decisions. The proportion of members from the five Councils on the Shadow Executive Committee is to be set out in the SCO. The District Councils believed that all Councils should have the same representation. The County Council however felt that it should have the overall majority of members.
- 4.16 As consensus could not be reached, the Secretary of State has considered representations from all five Councils and has decided that there will be 17 members on the Shadow Executive 8 members will be nominated by the county council and 8 members will be nominated by the district councils with 2 members nominated by each District Council. There will also be a Chairman (leader) to bring the total number to 17.

The Chairman of the Shadow Executive Committee

- 4.17 In all Councils across the Country and in all five Councils in Buckinghamshire the councillors elect a Leader at a meeting of the whole Council. In other recent local government reorganisations the Chairman was elected by all the members of the Shadow Executive Committee. The Districts made representations that the Shadow Leader would be more likely to have the support of all the areas of the Council if the election involved all the members of the Shadow Authority. The County Council 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 has reached a decision. He has decided that the leader of the Shadow Executive will be the Leader of the County Council and this will be specified in the Draft Orders. The Deputy Chairman (to act in the absence of the Chairman) will be nominated by the District Council Members only.

The Proposal

- 4.18 The Draft Structural Changes Order sets out in the preamble that its purpose is to implement the proposal from the County Council. The preamble does not form part of the Order. However it would be used to provide context for the specific provisions of the Order. The Order makes it clear that it is implementing the County proposal by specifying that the area of the new Council will cover the area of the existing County Council. It also describes the electoral wards in accordance with the county divisions albeit that the Secretary of State has decided to modify the electoral arrangements in the County proposal from 2 members per ward to 3.
- 4.19 In addition to giving effect to the Order in the ways described above, the SCO also requires that decisions makers 'have regard to' the County Council submission including the Business Case. The District Councils requested that regard should also be had to their submission in so far as it was consistent with the wider provisions of the Order but this was not accepted by the Secretary of State. 'Have regard to' is a legal term which sets out the level of consideration which must be given to the Business Case. For example His Honour Mr Justice Cobb considered the phrase in a High Court Case (R (on

the application of the Governing Body of the Oratory School) v The Schools Adjudicator, et al) and said it means :

“to “have and give clear reasons” for any departure from it. Furthermore, these clear reasons must “objectively be proper reasons, or legitimate reasons“. However, to say that the reasons must be “good”, “cogent” or “compelling” would be raising the bar “far higher than is appropriate.”

- 4.20 It does not therefore require that the Business Case is followed. All public law decisions continue to be subject to the wider legal framework including the requirement for example to ‘have regard to’ the equalities impacts of any decision in accordance with the equalities duty. All public law decisions continue to have to be properly made and evidenced.

Officer Appointments

- 4.21 The Shadow Authority will appoint three interim statutory officers on an interim basis, those roles being the head of paid service (responsible for the staff), monitoring officer (responsible for ensuring lawfulness) and chief finance officer (with responsibility for ensuring proper financial management).
- 4.22 The Secretary of State has decided that the Shadow Executive will recommend the interim officers to the Shadow Authority. If the Shadow Authority disagree with the Shadow Executive, the decision will rest with the Shadow Executive. This will be specified within the Draft Orders.
- 4.23 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 supported this approach. The Secretary of State has specified the Chief Executive of the County Council as the leader of the Implementation Team.
- 4.24 The Proper Officer responsible for setting up the first meeting of the Shadow Authority was to be either the Proper Officer of the County or Wycombe District Council. The Secretary of State decided they should do so together with the WDC proper officer acting as deputy.

Consent to Transition

- 4.25 The matters set out above will be set out within the Structural Change Order which will be made under the provisions of the Local Government and Public Involvement in Health Act 2007. The Act requires amongst other things, that an invitation is made by the Secretary of State to all the councils in the area. If there is no such invitation then a modification to the legislation is required. The Modification Order is under the provisions of either subsection 4 or 5 of section 15 Cities and Local Government Devolution Act 2016. The Secretary of State has two options under the 2016 Act. He must either have the consent of all Councils under subsection 4.

(4) Regulations under this section may be made only with the consent of the local authorities to whom the regulations apply (subject to subsection (5)).

- 4.26 Or he can make regulations under subsection 5 in relation to structural or boundary provision which will require the consent of only one Council.

(5) Regulations under this section, so far as including structural or boundary provision in relation to a non-unitary district council area, may be made if at least one relevant local authority consents.

- 4.27 This latter provision is time limited and will expire at the end of March 2019. This means that if for any reason there is insufficient Parliamentary time to make the Order then it will not be possible to do so without the consent of all five Councils.
- 4.28 In summary therefore Subsection 4 requires the consent of all local authorities, whereas subsection 5 requires the consent of just one. Subsection 5 expires at the end of March. Subsection 4 does not expire.
- 4.29 The proposed modification sets aside the requirement to invite local authorities to make submissions (the County Council made its submission without a formal invitation from the Secretary of State). It also sets aside the requirement to carry out public consultation. It also removes the discretion to consult the Local Government Boundary Commission for England. Instead the Secretary of State is 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.
- 4.30 The Secretary of State will have to specify the relevant subsection when he lays the regulations and so will need to know whether he is relying on the consent of one authority (and therefore must ensure the legislation makes its way through the parliamentary process before the end of March) or whether he has the consent of all five (and there is no deadline for the legislation to be made). If just one authority does not consent the regulations will be made under subsection 5.

Next Steps

- 4.31 The draft order and regulations (statutory instruments) will be laid on 14th January 2019 and will appear on the parliamentary website that day or the day after. The draft statutory instruments (SI) are then considered by the committees.
- 4.32 After those considerations it will be debated and approved by both houses of parliament. In the commons there is a standing committee, members can vote but any MP can attend. This process will take approximately 5-6 weeks up to this point. It then goes to the floor of the House of Commons for the approval motion. That approval motion cannot be debated but it can be voted on. In the House of Lords the process is broadly similar. There is initial consideration by a grand committee. It then goes to the floor of the House of Lords for the approval motion but unlike the commons they can debate it. The Statutory Instruments will come into force on the day after the day on which they are made. This process must be completed before the end of March 2019 if the Secretary of State does not have the consent of all Councils in the area.
- 4.33 The first meeting of the Shadow Authority will take place within 14 days of the day the SIs are made. The Shadow Executive meeting will take place within 21 days of the day the SIs are made. The first meeting will consider the Implementation Plan, the budget and the forthcoming calendar of meetings as well as decisions about the interim officer appointments.
- 4.34 The officers of the five Councils are already engaged in working together to draw up the schedule of activity necessary to deliver the transition which will form the basis of the Implementation Plan.

5 Options considered

5.1 The limited options available are set out in the body of the report.

6 Reasons for Recommendation

6.1 To comply with the requests from the Secretary of State

7 Resource implications

7.1 None specific to this paper – unitary funding has been released via the budget process and previous cabinet decisions.

Contact Officer
Background Documents

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Previous Cabinet and Council reports on Modernising Local
Government



Ministry of Housing,
Communities &
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Dear Councillor Macpherson,

On 3 January you met my officials and Special Adviser Lee Scott. In this meeting, my decision on the details of the structural change legislation was communicated and I am now writing to confirm this. I have considered all the information available to me, including that from your earlier discussions with Lee Scott and the written representations I have received. I intend to lay the legislation before Parliament as soon as is practicable.

Before I turn to the details of the structural change legislation, I want to express my gratitude for the constructive way in which everyone has engaged with this process. I remain confident that implementing the proposal from Buckinghamshire County Council, for a single unitary district council, is the right course of action and that it will be a successful implementation, which will significantly benefit those who live or work in Buckinghamshire.

My approach with respect to these details has been to seek consensus between all the Buckinghamshire councils, as I believe that you are best placed to determine these local arrangements.

You have all agreed the following points which will be provided for in the legislation: that the name of the new council should be Buckinghamshire Council; that following the first elections for the new Buckinghamshire Council in 2020, the second elections should follow in 2025 and subsequent elections every four years thereafter; and that where councillors on the shadow authority represent both a district council and a county council, they will have only one vote.

With respect to the makeup of the shadow authority, I have decided in the interests of local democratic accountability that the membership of the shadow authority will include all councillors currently serving a Buckinghamshire council. I understand this means that the shadow Buckinghamshire Council will have a maximum membership of 236, which in practice will be reduced by the number of twin hatters on the authority.

It will be the responsibility of the shadow executive to discharge the functions of the shadow authority and prepare the implementation plan, except as otherwise

provided. Principally, it will be for the shadow authority to set the 2020/21 council tax and budget, which it will be the responsibility of the executive to prepare. On the make-up of the shadow executive, I have decided that this will be formed of 17 members of the shadow Buckinghamshire Council, and that the Chair and Leader of the shadow executive will be the current Leader of Buckinghamshire County Council. The chair of the executive will be a full voting member of the executive, but will have no casting vote. There will be eight further members to represent the county council and eight further members to represent the district councils, two from each. As you have agreed, the nominations will be made by the councils, who will also nominate substitute members (in the case of the county council this will include a substitute for leader). However, the leader's substitute will not take the role of deputy leader of the executive, nor will the leader's substitute chair the executive. There will be a deputy leader of the shadow executive, elected by the district council nominated members of the shadow executive at its first meeting, who would chair the meeting of the shadow executive if the Leader is absent.

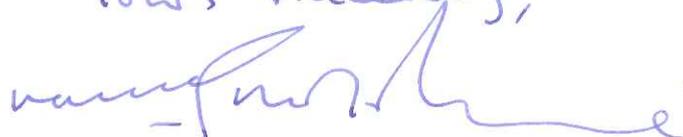
I have decided to implement the county council single unitary proposal, and the shadow authority and executive must have regard to that proposal in discharging the functions for transitioning to the single unitary authority set out in the Structural Change Order. Given the importance of children's services, the structural change legislation will also require the shadow authority and executive to have regard to the June 2018 report from the Children's Commissioner and advice from Hampshire County Council as improvement advisers for Buckinghamshire Children's Services. It is important that the progress that has been made within children's services is not adversely affected by the significant change programme that the executive will be implementing.

The structural change legislation will also specify the following: the first meeting of the shadow authority should be convened by the proper officer of the county council, with the Wycombe proper officer as a deputy; the leader of the implementation team will also be the chief executive of the county council; and the appointment of the interim statutory officers will be the responsibility of the shadow executive, following consultation with the members of the shadow authority.

With regard to the size of the new unitary authority, the structural change legislation will specify that each ward (existing county electoral divisions) will return 3 members, giving a total of 147 members on the new council.

I am writing in similar terms to all the Buckinghamshire council leaders. I am copying this letter to the Buckinghamshire MPs and to Rt Hon Brandon Lewis MP.

Thank you again for your co-operation and hard work in recent weeks. We will continue to provide whatever support we can as you undertake this implementation of a new single unitary district council, for the benefit of the people of Buckinghamshire.

Yours sincerely,


RT HON JAMES BROKESHIRE MP