

Appendices: 1



NORTHAMPTON
BOROUGH COUNCIL

COUNCIL

25 February 2019

Agenda Status: Public

Directorate: Borough Secretary and
Chief Monitoring Officer

Report Title	Local Government Reform in Northamptonshire – Structural Changes Order
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1. Purpose

- 1.1 To consider making representations to Government on legal, governance and electoral arrangements for transition to a prospective unitary authority for the area.

2. Recommendations

- 2.1 The preferences for a Structural Changes Order, as per Appendix 1, be included in a submission to Government.
- 2.2 Amendment of the submitted preferences, as arising from negotiations with Government officials, be delegated to the Chief Executive in consultation with the Leader and the Monitoring Officer - where it is not expedient to formally report to Council or duly appointed Committee.
- 2.3 The submission be accompanied by a statement reiterating the Councils' original position that "Government commits to meeting the significant implementation challenges and ensures that we are collectively equipped to deliver success" as per the Councils' original Joint Proposal.
- 2.4 The submission includes an expression of in-principle desire for a consequential 'Section 24 direction' to apply to all of the Councils, the details of which to be separately agreed between the councils and Government.

3. Issues and Choices

3.1 Report Background

- 3.1.1 In August 2018, this Council and six other Councils (Corby excluded) resolved to submit a joint proposal ('Joint Proposal') for two new unitary authorities covering the county to the Secretary of State for Housing, Communities and Local Government. That proposal was duly submitted and is now for the Secretary of State to consider
- 3.1.2 One of the proposed unitary authorities comprised the current administrative areas of Daventry, Northampton and South Northamptonshire (referred to as 'West Northamptonshire'), to discharge all local government functions of county, borough and district councils.
- 3.1.3 At the time of writing this report, the Secretary of State had not decided whether to accept the Joint Proposal. However, he decided to embark on an eight-week public consultation on it from 29th November 2018 to 25th January 2019. Subject to his consideration of consultation responses, ultimately this could lead to Parliament passing legislation to establish a new unitary authority for West Northamptonshire in spring 2020, with a shadow unitary authority as the interim transition body from spring/summer 2019.
- 3.1.4 This report is prepared in anticipation of such legislation and particular cue has been taken from the deliberations of the Chief Executives' programme board and the Leaders' steering groups - as aided by the contributions of Monitoring Officers. There is considerable complexity involved in local government reorganisation and, in entering this locally unchartered territory, there have been numerous issues for which clarification has been necessary and is still being sought. Hence, it is stressed that the recommended preferences for a Structural Changes Order will no doubt require refinement.
- 3.1.5 Each of the West Northamptonshire councils was due to receive and consider this common report, based on the agreed preferences of the steering group.
- 3.1.6 Much of this report should indeed be common but each sovereign Council will be empowered to decide, through their respective democratic process, what exactly the submission to government will be
- 3.1.7 (For information: The Secretary of State also laid a 'Northamptonshire (Changes to Years of Elections) Order' before Parliament, identifying this as a separate and pragmatic initiative to avoid confusion for the public and unnecessary expense at this time. This was said not to imply that local government reorganisation is or is not favoured. This Order has been confirmed and district and borough elections due in 2019 have been postponed to 2020).

3.1.8 Purpose and Preparation of a Structural Changes Order

Members will be aware that one of the key next steps – should the Secretary of State decide to progress local government reform in Northamptonshire – is the preparation of various statutory instruments and, in particular, laying before Parliament of a Structural Changes Order (“the Order”). If so laid, it can be expected that it would come into force in spring/summer 2019.

Based on recent experience elsewhere, it is anticipated that this will be one Order covering both North Northamptonshire and West Northamptonshire – albeit in correspondingly distinct sections.

The purpose of the Order is to facilitate the transition from the existing Councils to the new authorities. The Order will define the basic governance and operating principles in the lead up to new unitary authorities in Northamptonshire.

Whilst the Order will be drafted and finalised by Government officials, the Councils are invited to state local preferences and thus provide a common position to them. It is considered wise and mutually beneficial for the Councils to submit their preferences - and to do so sooner rather than later to have influence. The Councils will likely be invited by Government to formally consider a draft Order in due course.

3.1.9 Content of a Structural Changes Order

For this report, the working assumption for a Structural Changes Order is that the content is to be based on the Joint Proposal.

It is emphasised that the Order will be governance focused. It is thus to be noted that the Order is not expected to be able to include Government address of the substantive ‘challenges’ (“asks”) set out by the Councils in their Joint Proposal. So, rather than seek inclusion of this in the Order which might impact on credibility, such address of the ‘challenges’ is still needed to be through other, usual, political and technical channels. To that end, it is recommended to take the opportunity to formally reiterate, by letter, the common stance in the Joint Proposal submitted by the Councils. Namely, that there will be significant implementation challenges – i.e. ‘beginning with a clean sheet’, ‘transition’, ‘transformation and public reform’ and ‘infrastructure’ - that need to be met head on collectively, with Government committing itself and ensuring that the parties are equipped to deliver success.

Although much of the Order will be technical in nature, the Secretary of State has options in some instances which are likely to be politically sensitive locally or have some practical implications - and these are considered in more detail below. As noted earlier, much of this has been addressed by the steering group and preferences expressed and recommended – as in Appendix 1.

Particular options (with preferences in bold font) are:-

Choice of transition model.

Fundamentally, the main purpose of the Order is to bring district and county functions together and to manage transition from existing Councils to new. There are in fact two basic options available to govern that transition – either an existing council as a continuing authority with an implementation executive, or, a new legal body with a shadow authority and shadow governance set-up. Both options are councillor-led, result in a new multi-purpose council, safeguard the employment rights of staff, and necessitate a new operating model and organisational structure to be approved by councillors to provide opportunity for transformation. The Councils' submitted Joint Proposal proposed the creation of new legal bodies as this has the particular advantage of achieving a fresh start in serving communities, as well as avoiding any perception that reorganisation is in fact a 'takeover' of one council by another, so being a better catalyst for necessary change. For purposes of balance, though, it is acknowledged that there is disadvantage of some additional work, risk and cost in creating a new body, for example, consulting all county, district and borough staff on the transfer under the Transfer of Undertakings Protection of Employment Regulations (TUPE), and first-time adoption of a full set of policies to support all the functions of a new body.

For West Northamptonshire, preference is for the creation of a new legal body rather than a continuing authority.

Names of new authorities.

North Northamptonshire and West Northamptonshire are names that have been used locally for some years, particularly for planning and development purposes. They have the benefit of some geographical prefix and historical suffix, though there is little else that is particularly distinguishable. In West Northamptonshire, there have been two informal public consultations on possible names with the most common suggestion being "West Northamptonshire/Northants Council".

For West Northamptonshire, preference is for the name of its new unitary authority to be 'West Northamptonshire Council'.

Types of new authorities.

A new unitary authority will be created as either a district council or a county council and will be given the powers and duties of the other. There is no particularly substantive operational difference. Given the advantage of a district council unitary better signalling a fresh start, it is suggested that the new unitaries be formally established as 'district councils with county functions' as opposed to 'county councils with district functions'.

Government officials have advised that;- a county unitary cannot apply for borough status; that borough status does not transfer over to a new unitary; that a district unitary council can apply to the Privy Council for borough status under section 245 of the Local Government Act 1972; that the chairman and vice-chairman of the district unitary council that has been granted borough status are entitled to take the style of mayor and deputy mayor; that if a predecessor area would like to retain the ability to appoint a civic mayor (as a

right granted by a charter), then there needs to be a parish council or charter trustees for that area to be able to exercise the rights in the charter.

For West Northamptonshire, preference is for the new unitary authority to be a 'district council with county functions'.

Timetable for establishment of new authorities.

Notwithstanding the practical challenges and tighter timeframes, the original quest for establishment of unitary authorities sooner rather than later is still preferable. This was based on the expressed need for service transformation, organisational cultural change and financial sustainability. It is expected that Government would seek early establishment. For interim arrangements, this would suggest shadow authorities operating from the date of the Order until the 2020 election day for the new authorities.

For West Northamptonshire, preference is for a commencement date – 'vesting day' - for the new unitary authority (and corresponding dissolution of existing Councils) of 1st April 2020.

Shadow authority - style of governance.

All current councillors of the Councils will automatically become Members of the relevant shadow authority.

In other areas of reorganisation, current dual hatters (county and district/borough councillors) have been given two votes on all questions coming or arising before the shadow authority in recognition of this dual status. This is a largely political matter and the steering group has identified its preference for the same to be applied in respect of a shadow authority only.

Members will be well aware of the advantages and disadvantages of the different arrangements of an Executive style or a Committee style authority, although not all will have experience of both. Members therefore need to choose between Executive and Committee style for the shadow authority.

It is highlighted that the shadow authority has limited life but one of the shadow authority's duties in Dorset is to formulate proposals for the style of governance for the new unitary authority. So, the significance of the choice of arrangements for the shadow authority could have been that this is taken to be default for the new unitary authority and written into the Order - however, the indication from Government officials is that this would not be so specified in the Northamptonshire Order. (Formally it will be for the new unitary authority to consider and decide its governance arrangements, as is the case for authorities generally).

In West Northamptonshire, recent steering group deliberations identified preference for an Executive style of governance for the shadow authority as this is judged as offering appropriate leadership and sufficient Member engagement in shaping the future.

With Committee style arrangements, there is choice in whether to have one or more Overview and Scrutiny Committees. With Executive style

arrangements, there is normally no choice and, normally statutorily, at least one such committee must be appointed. Although this might be able to be relaxed via the Order, the steering group has identified its preference for such a committee. If the choice was instead to operate with Committee style arrangements, it is suggested that this is not included in the Order and instead the decision on whether to have an Overview and Scrutiny Committee is left to the shadow authority.

For West Northamptonshire, preference is for dual hatted Members (county and borough/district councillors) to be given two votes on the shadow authority.

For West Northamptonshire, preference is for an Executive style of governance for the shadow authority, and that the shadow authority has an Overview and Scrutiny Committee

For West Northamptonshire, preference is that the style of governance for the unitary authority is not dictated in the Order.

Shadow authority – ‘executive’ composition and ‘executive’ chairmanship.

Whether an Executive style or a Committee style arrangement, a shadow authority will require a shadow executive or a shadow lead committee. Whatever style of governance is chosen, the steering group has proposed the following number of Members from each of the existing councils - 4 DDC, 4 NBC, 4 SNC, 6 NCC - on the ‘Shadow Executive’ (with Members being appointed in accordance with the principles of political balance).

The choice of numbers on the Shadow Executive will be of interest to Government officials, particularly the County Council representation given the significantly greater expenditure on county council functions and the high profile of adults’ services and children’s services. Importantly, however, the composition of the shadow executive should not be determined on quantum alone. Local residents will be more interested in progress being made based upon the quality of the new executive. Reflecting this perhaps, Government officials to date have not insisted on a particular numbers configuration but are keen on mutual agreement between the Councils and assurances that key functions will have adequate representation and focus in order to prepare the Unitary Councils for the effective absorption and delivery of all services. So in order for there to be a proportionally higher District membership of the Shadow Executive than that used in other Unitarisations certain assurances will need to be provided to Government.

In relation, particularly to Adults and Children's services, there would be a planned approach in place. This approach would include gaining lessons learned and advice by engaging with leading local authorities on these services and also working with organisations such as the LGA looking to best practice in the area. There would also be training plans in place for Members to build knowledge and capacity.

It is considered advantageous to work with leading authorities and the LGA, as it allows greater insight into how people services have been delivered successfully, whilst equally working with County colleagues in understanding the current challenges and developments at a local level.

The basic justification for the original steering group proposal (4, 4, 4, 6) remains valid. To reiterate, the situation in Northamptonshire is not 'normal' and there is need to respect local preference, to avoid perception of cultural or geographical bias and to achieve a fresh start - building on the Caller Report. To mitigate possible concerns, there will be statutory provision for transfer of staff from the County Council into the new authority and continuation of cross-council staff and Member training in the meantime on each other's' functions and responsibilities – including corporate parent responsibilities. It is also highlighted that there are current Members of district and borough councils who are and who have been county councillors.

In terms of chairmanship of the shadow authority 'executive' (as distinct from the more ceremonial chairmanship of the authority itself), previous Orders have either identified which councillor is to be the Leader of the shadow authority or, in the most recent Order (Dorset), left this to be determined by the shadow authority itself. It is anticipated that this local discretion would again be acceptable to Government officials.

For West Northamptonshire, preference is for the Shadow Executive to be comprised of 4 Members from Daventry District Council, 4 Members from Northampton Borough Council, 4 Members from South Northamptonshire Council, and 6 members Northamptonshire County Council.

For West Northamptonshire, preference is for the shadow authority to determine its own 'executive' chairmanship.

Shadow authority functions and duties - implementation. When established, the shadow authority will have certain functions defined in the Order that are centred on preparing the ground for the new unitary authority – many of them under the banner of an 'Implementation Plan' to achieve smooth transition. It will be given certain duties by the Order also - such as the requirement to make interim appointments of its Head of Paid Service, Monitoring Officer and Chief Finance Officer (and of Returning Officer for the 2020 election), to formulate proposals for style of governance (as already noted above) and the Code of Conduct and Members Allowances. To ensure due discharge of those functions and duties, it is understood that the Order will require the formation of a 'Central Implementation Team' (Officers) to assist the shadow authority in delivering the Implementation Plan and identification of a lead Officer. It is considered reasonable to expect that the selection of the lead Officer can be locally determined by the shadow authority rather than being specified in the Order.

For West Northamptonshire, preference is for the shadow authority to determine its own lead Officer.

Elections for new unitary authority. Elections to the new authorities in 2020 would be, in the first Thursday in the month of May, as prescribed in statute for normal council elections. With cancellation of the 2019 council elections by the Changes to Years of Elections Order, existing Members would remain Members throughout the whole of the shadow authority period i.e. until the fourth day after the 2020 election day – notwithstanding that the existing Councils will have been dissolved on 1st April 2020.

As regards by-elections that might arise in the interim, the steering group's preference is that these should not be held.

The Order will prescribe whether the new unitary authorities are to follow the district or county election cycles for their elections. Dorset's experience suggests Government officials accept that, to a degree, the cycle is a matter of local choice, and the officials consider that they have complete flexibility to include whatever is judged best. The first elections will be whole council elections. It is also anticipated that thereafter the Order will determine that elections be similarly all-out and this is the preference of the steering group.

On that basis, considerations are part political and part whether each authority should align with the other's cycle and/or with other like district or county councils, or not. It is judged appropriate to align with a usual election cycle.

Moving on to the (whole council) district council election cycle could be achieved, for example, for 2027 by having a 4 year term from 2020 and a 3 year term from 2024. Moving onto the county electoral cycle could be achieved for 2025 by having a 5 year term from 2020, which is more appropriate than achieving it for 2021 with a term of office of just 1 year from 2020. The steering group's clear preference is to move onto the district cycle, as indicated.

The current understanding is that elections are likely to work on existing county divisions with 3 Members each, for the first election in 2020. (Government officials have advised that they would not expect the Local Government Boundary Commission to have time to review boundaries in time for May 2020).

For West Northamptonshire, preference is for the unitary authority elections to be for a 4 year term in 2020, a three year term in 2024 and thereafter align with the district cycle - and be whole council elections.

For West Northamptonshire, preference is for by-elections not to be held in the interim period.

3.1.10 Next stages relating to a Structural Changes Order

Before an Order is laid before Parliament, the Councils' positions will be subject to consideration by Government officials. The identification of preferences for a draft Order would significantly help in driving the agenda. It is likely that Government officials will raise points, some of which will be administrative and some more substantive.

For substantive points, notwithstanding views of Government officials, it will be important that the position is robustly negotiated as it is 'local' preferences for future 'local' authorities that should prevail where there is discretion.

There needs to be scope for some changes to be agreed and it is intended that these be reported back to Councils' formal meetings. However – again recognising the challenging timeframe – the opportunity to influence next iterations of the Order ought not to be lost due to timing restrictions. Accordingly, it is recommended in such circumstances that authority for negotiating changes be delegated to senior personnel in order to fit given timeframes.

Once the Order is made, other consequential orders may follow that will achieve the demise of the Councils and establishment of successor authorities. These will be subject of further reports as necessary.

3.1.11 Other Matters related to Parliamentary Orders

Civic and armorial matters. It is uncertain at this time as to how much the Order needs to address civic and armorial matters or whether these are included in other Orders. For example, the honorary position of Lord Lieutenant of Northamptonshire might need replacement association with one of the new unitary authority areas.

Government officials have advised that the Government believes that any historic rights which may be associated with existing districts should be preserved locally for the benefit of local residents. For example, a district council may have a charter granting historic rights on the residents of a defined geographical area. The historic rights conferred by that charter will be lost to the area when the area and associated council is abolished.

Where it is not appropriate or possible for those historic rights to be continued by a unitary (single tier) authority or parish council, Government officials have advised that charter trustees will be established by (presumably consequential) Order to protect and preserve those historic rights. The members of a body of charter trustees are drawn from those Members of the unitary authority who represent the electoral areas to which the historic rights relate and which will comprise the charter trustee area.

Outstanding matters will be taken up with Government officials and others to establish further clarity on the process for their address.

The Order is expected to provide for rights of the existing Councils to transfer on, and presumably this might include some civic and armorial matters. One in particular could be the ability for the shadow authority to apply to the Privy Council for Her Majesty's consent to confer borough status on the new unitary authority. Whether in the Order or separately, it has been judged appropriate by the steering group to seek such ability and this is recommended to be expressed now.

For West Northamptonshire, preference is for the shadow authority to be given the ability to apply for borough status to be conferred on the new unitary authority.

Financial control of existing Councils' spending. Where councils are to be dissolved by Orders, legislation (Section 24 of the Local Government and Public Involvement in Health Act 2007 – a 'Section 24 Direction') allows the Secretary of State to direct limitations on the spend of those councils by applying criteria/thresholds. If this is desired, it is expected that such a direction would be achieved separately rather than via the Structural Changes Order. Whichever course is taken, the steering group has identified preference for such a provision to come into force for all of the existing councils to assist resource planning for the new unitary authority. Detailed provisions would need to be determined (as indicated in 5.1 below).

It is pointed out that the direction does not prevent justified spend, rather it provide checks in the decision-making. Such checks would likely be of use to the shadow authority in preparing for the future but if the Secretary of State gave the checking role to the shadow authority it could, with efficient delegation of those checks, still agree to justified spend in timely fashion. It is for Members to judge whether they would wish to support the County Council's position of allowing councils to have full control of their own spend - notwithstanding that the Government can decide whether to impose such a direction in any event.

For West Northamptonshire, in principle, preference is for a consequential 'Section 24 direction' to be applied to the Councils with the details to be separately agreed between the Councils and Government.

4. Implications (including financial implications)

4.1 Policy

The Advice is pursuant to the Councils' previously agreed position on local government reorganisation.

4.2 Resources and Risk

In terms of the Advice, re- drafting and negotiating of the Order would in the first instance be resourced by existing staff. Members will be aware that much preparatory work is required to set up new authorities, including shadow authorities and any other shadow local arrangements that might be appropriate. To that end there may be need to deploy additional support, including external engagements, funded from the budget identified for such preparations.

4.3 Legal

These are outlined in the body of the report. As an Order will be largely focused on detailed governance to secure the transition from current authorities to new authorities - and some contents of any Order will not be optional anyway - it is not considered necessary or appropriate for the Councils to locally consult on their preferences for a draft Order.

As regards the Advice on negotiations, delegation needs to be to Officers in accordance with legislative rules. Given the significance of the subject, this is proposed to be to the Chief Executives and subject to consultation with the Leader and Monitoring officers of each relevant council.

The implementation of unitarisation will be tightly regulated by parliamentary orders.

4.4 Equality

None arise from the Advice directly.

4.5 Other Implications

Financial

If a 'Section 24 Direction' is applied to the Councils, in summary this would mean written consent is also required from the Secretary of State or 'others he determines'. It is understood that 'others' could be the shadow authority, which in turn could delegate to its Section 151 Officer.

A direction would be expected to apply to:- land disposals over £100,000 consideration; entering into capital contracts over £1m consideration or where there is a term allowing the consideration payable to be varied; entering into non-capital contracts over £100,000 consideration; including an amount of reserves for future spend in budget calculations. (Whilst Government officials have indicated that these amounts can be altered, confirmation is being sought that there is the ability to cite different amounts in a direction without first amending the related legislative provision by a more generic Parliamentary order applying nationally. This can be determined via further dialogue with the Government officials).

In terms of the total of the expenditure incurred by the shadow authority, this would likely be proposed in the Order to be divided among, and paid by, the County Council and District/Borough Councils in such proportion as may be agreed between them; but, where there is no such agreement, there is a process for recourse to the Secretary of State and his appointment of an arbitrator.

There are no other financial implications arising from the Advice

Environmental

None arise from the Advice directly.

5. Background Papers

- 5.1 Proposal on Local Government Reform August 2018
- 5.2 West Steering Group meeting Minutes

Francis Fernandes
Borough Secretary and Monitoring Officer
0300 330 7000