

Spending Protocol and General Consent: Westmorland and Furness Council

Overarching Principles

The Secretary of State has issued a direction under s24 Local Government and Public Involvement in Health Act 2007 (the “s24 Direction”) which requires that Allerdale Borough Council, Copeland Borough Council and Carlisle City Council (the “Cumberland Councils”) obtain the written consent of the executive of the Cumberland Shadow Authority (the “Cumberland Shadow Executive) before entering into certain contracts and that Barrow-in-Furness Borough Council, Eden District Council and South Lakeland District Council (the “Westmorland and Furness Councils”) obtain the written consent of the executive of the Westmorland and Furness Shadow Authority (the “Westmorland and Furness Shadow Cabinet” before entering into certain contracts. Decisions of Cumbria County Council relating to the area of one or more of Allerdale Borough Council, Copeland Borough Council or Carlisle City Council must receive written consent from the Cumberland Shadow Executive. Decisions of Cumbria County Council relating to the area of one or more of Barrow-in-Furness Borough Council, Eden District Council or South Lakeland District Council must receive written consent from the Westmorland and Furness Shadow Cabinet. Decisions of Cumbria County Council will need consent from both Shadow Executives/Cabinet if their decision relates to both areas.

This General Consent applies to all decisions relating to the Westmorland and Furness area. A separate General Consent with different limits applies to all decisions relating to the Cumberland area.

The scope of this General Consent means that it will only apply to matters which are currently within the definition in Section 24 of the Local Government and Public Involvement in Health Act 2007 (and have been made the subject of a Direction made by the Secretary of State under that section in relation to the Cumbria area) and therefore in particular involve the following:

- a) dispose of any land if the consideration for the disposal exceeds £100,000;
- b) enter into any capital contract-
under which the consideration payable by the relevant authority exceeds £1,000,000; or
which includes a term allowing the consideration payable by the relevant authority to be varied;
- c) enter into any non-capital contract under which the consideration payable by the relevant authority exceeds £100,000, where-
 - (i) the period of the contract extends beyond 1 April 2023; or
 - (ii) under the terms of the contract, that period may be extended beyond that date.

Section 24 allows aggregation of these limits for disposals/contracts after 31 December 2006. The Direction makes it clear that aggregation of the limits will apply.

The purpose of the s24 Direction is to ensure Shadow Authorities consider and approve contracts that will become their responsibility, and to ensure that Cumberland Council and Westmorland and Furness Council (the “Unitary Authority”) are in the best possible financial position. However, it is recognised that the effect of the s24 Direction in Cumbria will be that the majority of the Councils’ transactions will be affected by this restriction, negatively affecting Councils’ ability to deliver statutory services and business as usual.

The matters which fall within the definitions of the General Consent can proceed in the normal way as they are subject to a General Consent from the Shadow Cabinet. These matters are approved and require no further consent to be obtained. Nevertheless in these cases it is

expected that outgoing councils will ensure that contracts and agreements allow the maximum flexibility to the successor authorities to achieve future economy, efficiency and effectiveness. For example, limited extensions of existing contracts and break clauses in new contracts will provide early scope for reappraisal.

Outgoing councils are required to notify the S151 Officer of the relevant Shadow Authority of contracts and other changes of circumstances that will result in changes the financial position of the successor authorities, including use of reserves beyond budgeted levels, disposals and acquisition of assets and liabilities and any other issue considered relevant by individual S151 Officers.

Where matters fall outside the definition of the proposed written general consent then approval of the Shadow Cabinet will be required if the contract/ disposal is not to be void. The process for seeking and providing such Consents, including delegation, is set out in the next part of this document.

All references to S151 Officer and Monitoring Officer of the relevant Shadow Authority will also apply to the Interim S151 Officer and Interim Monitoring Officer of the relevant Shadow Authority.

Process for seeking, and giving, of specific Consents

Where a Specific Consent is required, the Authority seeking the Consent shall submit a written request to officers designated for these purposes by the Shadow Cabinet (the “Designated Officers” are the Section 151 Officer and Monitoring Officer of the relevant Shadow Authority) in question providing such information as is reasonably required by those officers.

The Shadow Cabinet will be responsible for determining whether consent should be given to the Councils entering into any of the transactions list above provided that the Shadow Cabinet delegates to the Finance Portfolio Holder in consultation with the s151 Officer the power to grant consent in respect of any transaction where the decision is urgent and any delay incurred in taking the decision would seriously prejudice the relevant Council’s, the Shadow Authority’s or the public interest to the extent that it is appropriate to take the decision before the next meeting of the Shadow Cabinet.

General Consent

General consent under the direction made under s26(2) of the Local Government and Public Involvement Health Act 2007 is granted by the Shadow Cabinet to all contracts and disposals of land as set out below:

1. To dispose of any land and/or property if the market value of the land does not exceed £1,000,000;
2. To enter into any capital contract (as defined for the purposes of Section 24) where the consideration payable or maximum consideration payable under that contract does not exceed £2,000,000 or the contract includes a term to allow the consideration to be varied to but not to more than £2,000,000; or
3. To enter into any non-capital contract
 - under which the consideration payable or maximum consideration payable under that contract does not exceed £2,000,000 the period of the contract extends beyond 1 April 2023 or under the terms of the contract of the period may be extended beyond that date; and
 - where the contract is for an educational or care placement for a specific individual and or a contract for care services to be provided to a specific individual household; or
 - for essential responsive maintenance of buildings and highways; or

- for goods or services which is required as an essential response to a civil emergency; or
- for the supply of utilities (e.g. gas or electricity) for no more than 5 years; or
- relating to the employment of staff or agency workers in positions provided for in the current establishment for each council;
- Enter into any contract relating to those projects listed in schedule 1 for which specific consent of the Shadow Cabinet is also granted.

Conditions

For those matters listed in 1- 4 above the existing Councils can enter into such transactions or disposals without referral to the Finance Portfolio Holder, Section 151 Officer, Monitoring Officer or the Shadow Cabinet of the Shadow Authority on the condition that in cases which fall within 1-4 above but the matter is not within existing approved budgets and cannot be address by existing Council budget virement rules then the General Consent does not automatically apply and specific approval must be sought. The decision to apply or disapply this consent is delegated to the Finance Portfolio holder in consultation with the S151 Officer.

All decisions over the value of £2,000,000 and not covered by this General Consent will be a key decision of Westmorland and Furness Shadow Authority and therefore must be included on the Westmorland and Furness Forward Plan at least 28 days before the spend is to be committed.

All S151 officers to send monthly budget reporting to the Westmorland and Furness S151 Officer as soon as prepared.

Clarifications

All contract values are for the full value of the contract (not annual value), including extensions and exclude VAT unless where it is not recoverable.

For the avoidance of doubt, the following transactions are included in the general consent and do not require further approval:

1. Activities of Cumbria Local Government Pension Scheme (CLGPS) where the amounts involved are likely to exceed the amounts covered by the Section 24 Direction including:
 - 1.1. The investment and divestment of pension fund assets (as agreed by either the Pensions Committee or the S151 Officer in consultation with the Investment Sub Group in accordance with the Constitution);
 - 1.1.1. this includes the payment of investment draw down amounts which is essentially CLGPS paying out to previously agreed investments and takes place where an investment manager invest monies over time (the payments can be in sterling, Euros or US dollars);
 - 1.2. Payment of other investment and administration costs e.g. investment manager fees;
 - 1.3. Pension transfers (i.e. payments by CLGPS to another pension fund e.g. when a fund member moves to another employer and elects to combine their old pension with their new pension); and
 - 1.4. The payment of pension benefits in line with regulations (this would exceed the Section 24 value in aggregate and death grant lump sums may exceed the limit individually on occasion).
2. Transactions relating to treasury management activities in accordance with the approved Treasury Management Strategy and Investment Strategy of each individual authority.

3. Receipt and expenditure 100% funded by revenue grants issued under Section 31 Local Government Act 2003.
4. Payments of levies and taxes.
5. This consent does not require authorities to apply a cumulative amount in applying the general consent.

Grants and Matters Requiring Consent of the Shadow Cabinet

For the avoidance of doubt, the following transactions are not included in the general consent and do require further approval:

- Receipt of grants over £2,000,000 and expenditure of those grants, other than where 100% funded by revenue grants issued under Section 31 Local Government Act 2003; or
- Issuing of grants over £2,000,000.

Review

This General Consent will be kept under review by the Shadow Cabinet and amended or developed as necessary in the light of experience and practical application.