

Eden District Council  
Finance Scrutiny Committee  
12 July 2022

## Local Government Reorganisation - Finance Theme Update

<b>Report from:</b>	Interim Director of Resources
<b>Wards:</b>	All Wards
<b>Open Public Item</b>	

### 1 Purpose

- 1.1 To update the Committee on the current position and proposals for the finance theme of Local Government Reorganisation.

### 2 Recommendation

It is recommended that Committee note the report.

### 3 Report Details

- 3.1 Local Government Reorganisation for Cumbria means that there is no formal budget process for the Council to undertake in the lead up to vesting day.
- 3.2 The responsibility for setting both the financial strategy and the budgets for 2023/24 rests with the two shadow authorities Westmorland and Furness for the Eden district area.
- 3.3 Whilst the formal scrutiny roles will also be undertaken by the shadow authorities there will be a need for the sovereign authorities to input towards the financial strategy and the setting of the budgets for the new authorities from 2023/24.
- 3.4 This report and presentation at the meeting will provide an update of the current position with the finance theme board and the proposed future activities along with any input or impact on the Council.
- 3.5 The main current impact on the Council relates to the Section 24 direction a report was considered by Westmorland and Furness Shadow Council on the matter on 10 June and is attached at Appendix 1.

### 4 Policy Framework

- 4.1 The Council has four corporate priorities which are:
- Sustainable;
  - Healthy, safe and secure;
  - Connected; and
  - Creative
- 4.2 This report meets the sustainable and healthy, safe and secure corporate priorities.

## **5 Consultation**

5.1 None.

## **6 Implications**

### **6.1 Financial and Resources**

6.1.1 Any decision to reduce or increase resources or alternatively increase income must be made within the context of the Council's stated priorities, as set out in its Council Plan 2019-2023 as agreed at Council on 7 November 2019.

6.1.2 There are no financial or resources implications arising from this report.

### **6.2 Legal**

6.2.1 There are no legal implications arising from this report.

### **6.3 Human Resources**

6.3.1 There are no Human Resource implications arising from this report.

### **6.4 Statutory Considerations**

<b>Consideration:</b>	<b>Details of any implications and proposed measures to address:</b>
Equality and Diversity	None arising from this report.
Health, Social Environmental and Economic Impact	None arising from this report.
Crime and Disorder	None arising from this report.
Children and Safeguarding	None arising from this report.

### **6.5 Risk Management**

<b>Risk</b>	<b>Consequence</b>	<b>Controls Required</b>
Members of the Committee do not know what reports will be presented.	Could affect the effectiveness of the Committee	Maintained work programme to each Committee.

## **7 Other Options Considered**

7.1 No other options were considered.

## **8 Reasons for the Decision/Recommendation**

8.1 To update the Committee on the current work of the LGR finance theme.

### Tracking Information

<b>Governance Check</b>	<b>Date Considered</b>
<b>Chief Finance Officer (or Deputy)</b>	4 July 2022
<b>Monitoring Officer (or Deputy)</b>	N/A
<b>Relevant Assistant Director</b>	N/A

**Background Papers:** None

**Appendices:** Appendix 1 – Westmorland and Furness Section 24 Report

**Contact Officer:** Paul Sutton, Interim Director of Resources

## Westmorland and Furness Shadow Cabinet

**Date** 10 June 2022

**Title** Agreement of General Consent in Response to Direction Issued Under Section 24 of the Local Government and Public Involvement in Health Act 2007

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**Report from:** Councillor Andrew Jarvis, Finance Portfolio Holder

**Report Author:** Helen Smith, Interim S151 Officer, Westmorland and Furness Council

**Wards:** All

**Key Decision:** Yes

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### 1.0 Purpose/Summary of report

1.1. The purpose of the report is to consider the Secretary of State's Direction restricting certain transactions and made under the Local Government and Public Involvement in Health Act 2007 (the 2007 Act). The Cabinet is asked to consider granting a series of General Consents to the District Councils and County Council to enable the business of existing District Councils and County Council to continue to proceed in the run up to Vesting Day.

### 2.0 Recommendation

#### 2.1 It is recommended that Shadow Cabinet:-

- (1) **approve the General Consents to the District Councils and County Council under the Direction made under Section 24 of the Local Government and Public Involvement in Health Act 2007 as attached in Appendix 2; and**
- (2) **provide delegated authority to the Finance Portfolio Holder in consultation with the S151 Officer and Monitoring Officer for all subsequent matters requiring consent which fall within the range £2m to £5m and other matters as delegated within the Consent.**

### **3.0 Background and Proposals**

- 3.1 Section 24 of the 2007 Act permits the Secretary of State to issue a Direction against all Authorities being dissolved under a Structural Change Order. Following the making of the Cumbria (Structural Changes) Order 2022 the Department for Levelling Up, Housing and Communities (DLUHC) made such a Direction on 10th May 2022. A copy of the Direction and the accompanying letter and Guidance Note is attached as Appendix 1. Essentially, the Direction will restrict District Councils and the County Council from entering into revenue contracts and disposals of land over £100,000 or “capital contracts” exceeding £1m (or where the term for payment of such contracts is variable) without the consent of the Executive (Cabinet) of the Shadow Authority. The Direction also gives the Executive (Cabinet) of the Shadow Authority oversight of significant contracts and projects that will have an impact on their financial situation.
- 3.2 The sanctions for not complying with the Direction and consent regime are severe. Any contracts entered into by an authority without the required consent will be legally unenforceable by, or against, the authority in question and its successor new unitary council, and any transfer or acquisition relating to land will be void.
- 3.3 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 2023. Therefore, it has been acknowledged that a General Consent would be helpful to the continued delivery of services to the public in this period. As the Secretary of State’s Direction will come into force on 30 June, the principles behind the General Consent will need to be formally considered by the Cabinet and authority given to determine what financial decisions the District Councils and County Council can make prior to Vesting Date.
- 3.4 Prior to Vesting Date of 1 April 2023, the six District Councils within Cumbria and Cumbria County Council will continue to operate and make decisions for their residents, businesses and visitors. The Secretary of State has issued a Direction which gives the Shadow Executive of Cumberland Council and Shadow Cabinet of Westmorland and Furness Council the power to veto any relevant financial decision which could bind the new authority in a potentially unfavourable way. However to enable those Councils to continue to function it is suggested that there will be many decisions that will be made by the seven Councils which should continue without requiring individual permissions to be sought of the Cabinet. Therefore it is proposed that those decisions listed in the General Consent document at Appendix 2 should be approved. This will provide the opportunity for the Cabinet to concentrate on the relevant decisions that will need

political oversight without creating additional bureaucracy in needing to approve every individual decision by the District Councils and the County Council.

- 3.5 The lack of a general consent does not mean that the associated financial commitment cannot be made. It simply means that there is not an automatic consent and approval will need to be sought following the relevant Council putting forward their rationale. Any such request would initially be considered by the Leader and the Shadow Authority's Section 151 Officer and Monitoring Officer.

#### **4.0 Consultation**

- 4.1 The principles in the general consent have been considered by the Cumbria LGR Programme Board and the detailed proposals have been considered by the Section 151 Officers and Monitoring Officers of the existing seven Cumbrian councils. The seven Section 151 officers had requested the Secretary of State to amend the Section 24 spending limits to £5m for capital and revenue projects; spending above these levels requiring the consent of the new councils. This was not approved and would have required a change in the legislation.

#### **5.0 Alternative Options**

- 5.1 The Cabinet could choose not to grant a General Consent and seek to grant individual decisions for every decision that fall under the Direction. However the low financial thresholds and the wording of the legislation and the Direction, this would mean that a large and unmanageable number of decisions would come to the Cabinet for approval and provide a bureaucratic burden for the seven Councils in running their services.
- 5.2 Alternatively the Cabinet could choose to provide greater or lesser consent as detailed in Appendix 2. However it is proposed that the attached Appendix provides the appropriate level of balance in ensuring oversight by the Cabinet responsible for the new unitary council whilst allowing freedom of the District Councils and the County Council to continue running their services.

#### **6.0 Implications**

##### **Financial, Resources and Procurement**

- 6.1 The s24 Direction is intended to ensure that the new authorities are financially sustainable and will also give the Shadow Cabinet of each new authority oversight of major initiatives that they will be responsible for in the future.

- 6.2 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.
- 6.3 Schedule 1 to Appendix 2 of this report will be circulated prior to the Cabinet meeting.

### **Human Resources**

- 6.4 This report has no direct human resources implications.

### **Legal**

- 6.5 The s24 Direction made under s24 of the Local Government and Public Involvement in Health Act 2007 must be read in the context of s24 to 30 of the Act.
- 6.6 A disposal made in contravention of a direction under S 24 is void. A contract entered into by an authority ("the sovereign authority") in contravention of a direction under section 24 is not enforceable against a successor authority.
- 6.7 Under the Direction disposing of land include references to (a) granting or disposing of any interest in land; (b) entering into a contract to dispose of land or grant or dispose of any such interest; (c) granting an option to acquire any land or any such interest. The General Consent includes land and property transaction
- 6.8 The Direction seeks to ensure that implementation process for LGR proceeds on a clear and sound basis. Balancing also the need to continue with sovereign council business as usual prior to April 2023.
- 6.9 The report proposes that a General Consent is provided under S26 (2) of the Act. This provides that a consent for the purpose of the direction may be provided (a) in respect of particular contracts, in respect of disposals or contracts of any description (b) unconditionally or subject to conditions. The amounts outlined within the report exceed the Direction thresholds.
- 6.10 The General Consent does not require sovereign councils to apply a cumulative contract approach as required by the Direction
- 6.11 Alongside this sovereign councils are required to notify the S151 officer of any planned expenditure that result in changes to the financial position of the successor authorities, including use of any

reserves beyond budgeted levels, disposals and acquisition of assets and liabilities

- 6.12 Advice has been received that Grants are covered by the Direction and this is covered by the General Consent wording.
- 6.13 The Secretary of State recognises that in issuing the Direction under S24 of the 2007 Act that there may be a degree of inconvenience and inefficiency in day to day BAU and that it could impose a substantial burden on the Shadow Authorities. Therefore S26(2) of the 2007 Act makes provision for the issuing of a consent (which we call a general consent) to allow what is effectively a pre authorisation of disposals and contracts in excess of values specified in the Direction.
- 6.14 However, it is important to note that S26(2) contemplates that certain controls may be placed on the exercise of a general consent by the imposition of conditions to avoid the risk that transactions by authorities to be dissolved might conflict with the expectation of the Shadow Authority.
- 6.15 Conditions to the General consent are proposed and we would advise that alongside this there is a robust spending protocol to record any such expenditure/ income, to ensure a smooth transition and transparency of application of the General Consent criteria.

### **Health and Sustainability Impact Assessment**

- 6.16 Have you completed a Health and Sustainability Impact Assessment? No
- 6.17 If you have not completed an Impact Assessment, please explain your reasons: this General Consent applies to a number of services and projects which will all have individual impacts and where reports are prepared for sovereign councils an assessment will be carried out as required by that council.

### **Equality and Diversity**

- 6.18 Have you completed an Equality Impact Analysis? No
- 6.19 If you have not completed an Impact Analysis, please explain your reasons: this General Consent applies to a number of services and projects which will all have individual impacts and where reports are prepared for sovereign councils an assessment will be carried out as required by that council.



<b>Risk Management</b>	<b>Consequence</b>	<b>Controls required</b>
<p>That the s24 Direction limits the ability of existing Councils to deliver essential services.</p>	<p>Failure to delivery timely and relevant services to the public and provide for need especially in crisis care, response to health and safety needs and to meet statutory duties and timescales.</p> <p>With inflation running at its highest rate in 40 years, delays in the capital programme can lead to additional costs due to rising material prices and labour costs</p>	<p>To introduce a General Consent to permit business as usual to continue within the agreed limits.</p> <p>Opportunity to modify General Consent if issues are identified.</p>
<p>That the General Consent permits additional financial commitments to be made that would have a negative impact on the future financial sustainability of the new authorities.</p>	<p>Need to identify future savings, including potentially increased income or efficiency savings, in order to achieve 2 financially sustainable organisations.</p>	<p>To ensure the General Consent is not so flexible as to permit such commitments to be made.</p> <p>To set up monitoring processes to understand changes in the financial position of existing Councils and the implications for the financial sustainability of the new authorities.</p> <p>Any matters not covered by the general consent will be required to be discussed with the</p>

Risk Management	Consequence	Controls required
		Finance Portfolio Holder, S151 and Monitoring Officer and further reports and consents may be required.

### Contact Officers

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### Appendices Attached to this Report

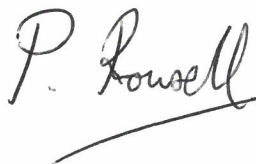
Appendix No.	Name of Appendix
1	Direction made under Section 24 of the Local Government and Public Involvement in Health Act 2007.
2	General Consent (Schedule 1 of Appendix 2 to follow)

**Direction made under section 24 of the Local Government and Public  
Involvement in Health Act 2007**

In exercise of the powers under section 24 of the Local Government and Public Involvement in Health Act 2007 (“the Act”):

1. The Secretary of State directs each authority listed in Column A of the attached Schedule, being an authority which is to be dissolved by virtue of an order made under section 7 of the Act, that it may not, without the consent of the authority(ies) listed in Column B of the attached Schedule, from the date in Column C:
  - 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.

Signed by the authority of the Secretary of State



PAUL ROWSELL

A senior civil servant in the Department for Levelling Up, Housing and Communities

Date: 10 May 2022.

## Schedule

<b>Column A – authorities to be wound up and dissolved on 1 April 2023</b>	<b>Column B – authorities specified under section 24 of the Act as the person whose written consent is required for the matters specified at article 1(b) of this direction and the body through which that power is exercised</b>	<b>Column C – date effective from</b>
Allerdale Borough Council	Cumberland Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Carlisle City Council	Cumberland Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Copeland Borough Council	Cumberland Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Barrow-in-Furness Borough Council	Westmorland and Furness Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Eden District Council	Westmorland and Furness Shadow Authority, power to be exercised by the executive of that council	30 June 2022
South Lakeland District Council	Westmorland and Furness Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Cumbria County Council (in respect of decisions relating to the area of one or more of Allerdale Borough Council, Carlisle City Council or Copeland Borough Council)	Cumberland Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Cumbria County Council (in respect of decisions relating to the area of one or more of Barrow-in-Furness Borough Council, Eden District Council or South Lakeland District Council)	Westmorland and Furness Shadow Authority, power to be exercised by the executive of that council	30 June 2022
Craven District Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Hambleton District Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Harrogate Borough Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Richmondshire District Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Ryedale District Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Scarborough Borough Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Selby District Council	The council of the county of North Yorkshire, power to be exercised by the executive of that council	23 May 2022
Sedgemoor District Council	The council of the county of Somerset, power to be exercised by the executive of that council.	16 June 2022
Mendip District Council	The council of the county of Somerset, power to be exercised by the executive of that council.	16 June 2022
Somerset West and Taunton District Council	The council of the county of Somerset, power to be exercised by the executive of that council.	16 June 2022
South Somerset District Council	The council of the county of Somerset, power to be exercised by the executive of that council.	16 June 2022

# 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. Proposals for restructuring local government are being implemented by Structural Changes Orders in Cumbria, North Yorkshire and Somerset.
2. The Cumbria (Structural Changes) Order 2022<sup>1</sup>, which came into force on 18 March 2022, establishes two unitary councils from 1 April 2023, and provides for:
  - the abolition of the existing county and district councils in Cumbria,
  - transitional arrangements for implementing the structural change, and
  - elections to the two new unitary councils in shadow form in May 2022.

The existing county and district councils remain responsible for delivering their respective functions until 1<sup>st</sup> April 2023 when the two unitary councils take on the role of providing both county and district services across their defined area.

3. The North Yorkshire (Structural Changes) Order 2022<sup>2</sup> which came into force on 18 March 2022, establishes a single unitary council in North Yorkshire from 1 April 2023, which is to be a continuing authority of North Yorkshire County Council, that is the body corporate of the existing county council with a new name and new membership. The Order provides for:
  - the abolition of the district councils in the area,
  - transitional arrangements for implementing the structural changes, and
  - elections to the new unitary council, in transitional form, in May 2022.

The district councils in North Yorkshire remain responsible for delivering their respective functions until 1<sup>st</sup> April 2023 when the unitary council takes on the role of providing both county and district services across the area.

4. The Somerset (Structural Changes) Order 2022<sup>3</sup>, which came into force on 18 March 2022, establishes a single unitary council in Somerset from 1<sup>st</sup> April 2023, which is a continuing authority of the county council, that is the body corporate of the existing county council with a new name and new membership. The Order provides for:
  - the abolition of the district councils in Somerset,
  - transitional arrangements for implementing the structural changes, and
  - elections to the new unitary council, in transitional form, in May 2022.

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<sup>1</sup> <https://www.legislation.gov.uk/ukdsi/2022/9780348231359/contents>

<sup>2</sup> <https://www.legislation.gov.uk/ukdsi/2022/9780348231380/contents>

<sup>3</sup> <https://www.legislation.gov.uk/ukdsi/2022/9780348231366/contents>

The district councils in Somerset remain responsible for delivering their respective functions until 1<sup>st</sup> April 2023 when the unitary council takes on the role of providing both county and district services across their defined area.

5. 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 2023.
6. It is also of great importance that the authorities that have general transitional duties under the structural changes orders of preparing for and facilitating the transfer of functions to the new unitary authorities are able to discharge their duties effectively.
7. Therefore, in these three areas, the Secretary of State considers that the body with general transitional duties 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. As specified in the schedule to the directions, the consenting bodies for the councils to be abolished by the structural changes orders are for Cumbria the two shadow councils, and for North Yorkshire and Somerset, the newly elected councils of the two continuing authorities.
8. 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

9. The direction specifies which person is required to give consent in relation to the matters covered in the direction. The schedule to the directions sets out, for each of the councils that will be abolished by one of the structural changes orders, who is the person specified for giving consent for all matters and how that power is to be exercised.

## Cumulative amounts and general consents

10. Under this direction, from the date set out in Column C of the schedule to the direction, the consent of those specified in the schedule will be required for the entry into any contract falling within paragraphs 1.c) 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 consenting body may issue general consents for types or categories of contracts which it may specify.
11. 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.
12. In practice, this means that the consenting body 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 social care contracts, or all leisure or cultural services contracts) or it could give consent in relation to contracts relating to specific programmes or projects.
13. 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 unitarisations 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.

14. 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.
15. 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

16. As stated in section 26(4) of the 2007 Act, the issuing of a consent by a consenting body 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

17. 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.

# Local Government and Public Involvement in Health Act 2007

## CHAPTER 2 CONTROL OF DISPOSALS ETC

### 24 Authorities dissolved by orders: control of disposals, contracts and reserves

(1) The Secretary of State may direct that, with effect from a date specified in the direction, a relevant authority may not without the written consent of a person or persons so specified—

(a) dispose of any land if the consideration for the disposal exceeds £100,000;

(b) enter into any capital contract—

(i) under which the consideration payable by the relevant authority exceeds £1,000,000; or

(ii) 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 a date specified in the direction; or

(ii) under the terms of the contract, that period may be extended beyond that date; or

(d) include an amount of financial reserves in a calculation under section 31A(3) or 42A(3) of the Local Government Finance Act 1992 (c. 14).

(2) In this Chapter “relevant authority” means a local authority—

(a) which by virtue of an order under section 7 or 10 is to be dissolved; and

(b) which is specified, or of a description specified, in the direction.

(3) In this section—

- “capital contract” means a contract as regards which the consideration payable by the relevant authority would be capital expenditure for the purposes of Chapter 1 of Part 1 of the Local Government Act 2003 (c. 26) (capital finance);
- “non-capital contract” means a contract which is not a capital contract.

(4) A person specified in the direction as a person whose consent is required may be the Secretary of State or such authority or other person as he thinks appropriate; and the direction may specify different persons—

(a) in relation to different matters for which consent is required;

(b) in relation to different relevant authorities or descriptions of relevant authority.

### 25 Directions: further provision about reserves



(1) A direction under section 24—

(a) may provide that the consent of the person or persons specified in the direction is not required for the inclusion, in a calculation under section 31A(3) or 42A(3) of the Local Government Finance Act 1992, of financial reserves of a description specified in the direction;

(b) may, in relation to any authority or description of authority, provide that that consent is not required for the inclusion in such a calculation of an amount of financial reserves not exceeding an amount specified in or determined under the direction.

(2) If a direction contains provision by virtue of subsection (1), the reference in section 24(1)(d) to an amount of financial reserves is to be read as a reference to an amount of financial reserves other than an amount permitted by the direction.

## **26 Directions: supplementary**

(1) In this section “direction” means a direction under section 24.

(2) A consent for the purposes of a direction may be given—

(a) in respect of a particular disposal or contract, or in respect of disposals or contracts of any description;

(b) unconditionally or subject to conditions.

(3) The following enactments have effect subject to any direction—

(a) section 123 of the Local Government Act 1972 (c. 70) (power to dispose of land);

(b) any other enactment relating to the disposal of land by local authorities.

(4) The consent required by a direction is in addition to any consent required by the enactments mentioned in subsection (3)(a) and (b).

(5) Where the consideration or any of the consideration under a contract is not in money, the limits specified in a direction by virtue of section 24(1)(a) to (c) apply to the value of the consideration.

(6) Where—

(a) a question arises in relation to a direction as to the value of any consideration, and

(b) the relevant authority concerned and the person or persons specified under section 24(1) fail to reach agreement,

the value is to be determined by the Secretary of State.

(7) A direction may be varied or revoked by a subsequent direction.

## **27 Consideration to be taken into account for purposes of direction**

(1) In determining whether the limit specified in a direction by virtue of section 24(1)(a) is exceeded in the case of a disposal of land by a relevant authority, the consideration with respect to any other disposal of land made after 31 December 2006 by the relevant authority is to be taken into account.

(2) In determining whether a limit specified in a direction by virtue of section 24(1)(b) or (c) is exceeded in the case of a contract entered into by a relevant authority (“the

contract in question”), the consideration payable by the relevant authority under any other relevant contract shall be taken into account.

(3) For the purposes of subsection (2) a “relevant contract” means a contract which is either or both—

(a) a contract entered into after 31 December 2006 by the relevant authority and the person with whom the contract in question is entered into;

(b) a contract entered into after that date by the relevant authority which relates to the same or a similar description of matter as that to which the contract in question relates.

## **28 Contraventions of direction**

(1) A disposal made in contravention of a direction under section 24 is void.

(2) A contract entered into by an authority (“the old authority”) in contravention of a direction under section 24 is not enforceable against a successor.

(3) In subsection (2) a “successor” means a local authority (other than the old authority)—

(a) which is established by an order under section 7 or 10; and

(b) whose area consists of or includes the whole or part of the area of the old authority.

(4) A contract which apart from this subsection would be a certified contract for the purposes of the Local Government (Contracts) Act 1997 (c. 65) is not a certified contract for those purposes if it is entered into in contravention of a direction under section 24.

(5) If an authority includes financial reserves in a calculation under section 31A(3) of the Local Government Finance Act 1992 (c. 14) in contravention of a direction under section 24, the authority is to be treated for the purposes of section 30(8) of that Act as not having made the calculations required by Chapter 3 of Part 1 of that Act.

(6) If an authority includes financial reserves in a calculation under section 42A(3) of that Act in contravention of a direction under section 24, the authority is to be treated for the purposes of section 40(7) of that Act as not having made the calculations required by Chapter 4 of Part 1 of that Act.

## **29 Power to amend**

(1) The Secretary of State may by order—

(a) substitute another sum for any sum for the time being specified in section 24(1);

(b) substitute another date for the date for the time being specified in section 27(1) and (3).

(2) An order under this section may include transitional or saving provision.

## **30 Definitions for purposes of Chapter 2**

(1) In this Chapter—

- “local authority” means a county council in England, a district council in England or a London borough council;

- “relevant authority” has the meaning given by section 24(2).

(2)References in this Chapter to disposing of land include references to—

- (a)granting or disposing of any interest in land;
- (b)entering into a contract to dispose of land or grant or dispose of any such interest;
- (c)granting an option to acquire any land or any such interest.

### 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.

**Schedule 1:** Projects for which consent to award contracts of more than £2m is granted based on the medium term financial plans of the Westmorland and Furness Councils and Cumbria County Council

List to be provide with budget approved amounts

This schedule lists areas where Barrow Borough Council, Cumbria County Council, Eden District Council or South Lakeland District Council request consent to enter into contracts as required under the the Westmorland and Furness General Consents under the Direction made under Section 24 of the Local Government and Public Involvement in Health Act 2007.

Ref	Council	Project / Contract	Proposal within budget? Yes / No	Estimated Budget / Contract Value	Budget approved by	Date budget approved	Contract dates (where applicable)	Reasons why this should be approved
A	Cumbria County Council	Safer Roads, Kirkstone Pass Improvements	Yes	£4,000,000	Cumbria County Council	Feb-22	Sep-22	<p>The Council is seeking to undertake a series of works on one of the County's most well known routes the Kirkstone Pass. A timely decision to award this contract will enable works to be progressed in optimal working windows which have been communicated with the local community.</p> <p>Summary: The A592 was identified as part of the Department for Transport (DfT) research as requiring improvements to make the road safer. This was based on surveys of the road as well as reviewing accident data.</p> <p>Previously, road safety measures tended to be 'reactive' - in other words making safety improvements after a collision. This method is more proactive, looking at the infrastructure of a road to make safety improvements before a collision happens.</p> <p>The aim of this commission is for the successful contractor to undertake the successful design and build of identified safety works on a section of the A592. Safety measures and some outline designs have been completed for this project.</p> <p>The nature of this road, a high, steep Cumbrian pass, a busy tourist route and inclement weather means that a significant amount of planning and co-ordination is required to ensure the work is carried out to a high standard but also minimising impact on local users and tourists. It is likely that delivery of this scheme will be over several years to consider minimising impact.</p>
B	Cumbria County Council	Marina Village, Barrow Construction	Yes	£3,000,000-£4,000,000	Cumbria County Council	Feb-22	Aug-22	<p>The Council is seeking to undertake remediation of the Marina Village Site. A timely decision to award this contract will enable works to be progressed before the core winter weather period. A large proportion of the works involve earth moving and would benefit from drier working conditions.</p> <p>Summary: The Marina Village site is a key development site within Barrow-in-Furness Town Centre and is approx. 26 hectares in area. The site presents an opportunity to enliven the waterfront, provide a new diverse housing offer and bringing a unique and perception changing development to the town.</p> <p>The project will support the wider ambitions for growth in Barrow through enabling development of new higher quality housing in order to attract people to live and work in the town and to help address the labour supply shortages.</p>
C	Cumbria County Council	Grizebeck A595 Improvements Design and CPO	Yes	£2,000,000	Cumbria County Council	Jun-22	Jul-22	<p>Awarding a contract for the Design/ Compulsory Purchase Order process for the A595 Grizebeck project will enable the wider multimillion project to progress towards construction phase. The Design stage has been tendered and is approaching a decision to award. Any delay to the award in July will delay the project programme which must be reported to Cumbria LEP and the Department for Transport.</p> <p>Summary: The A595 Grizebeck Improvement is a proposed 1.4km single carriageway road between Chapels and Grizebeck on the A595. Improving the highway network on the A595 has been identified as critical to support economic growth and the movement of goods and people between West and South Cumbria. The scheme will also ensure the A595 can function adequately as a strategic diversion route for the A590.</p>



Ref	Council	Project / Contract	Proposal within budget? Yes / No	Estimated Budget / Contract Value	Budget approved by	Date budget approved	Contract dates (where applicable)	Reasons why this should be approved
D	Cumbria County Council	Property Minor Works Framework Extension	Yes	£3,000,000	Cumbria County Council	Feb-22	Jul-22	<p>Extension of the property minor works framework is scheduled for the end of June/ Beginning of July 22. To enable the framework to continue to function, providing visibility to the supplier, a timely decision must be made.</p> <p><b>Summary:</b> The Property Maintenance Minor Works Framework was established in 2020 and provides the Capital Programme Property team with five countywide lots each with multiple Suppliers.</p> <p>The agreement has an option to extend by two single year periods after the initial term of two years and is currently 18 months into this initial term. The period of notice for the first additional year (Year 3) is three months prior to the end of the initial term; being 31st August 2022.</p> <p>The Council has a programme of capital maintenance, new build and extensions for all its property. Many of these schemes are delivered through the Capital Works Framework (CWF), which is established to deliver schemes generally within the range of £0.050m to £5m. However, for a number of lower value schemes (up to £0.100m in value) the contractors on the CWF are not the most appropriate or would not offer best value.</p> <p>This Property Maintenance Minor Works framework facilitates the procurement of these low value schemes in a process compliant with procurement rules. Work packages are called off via mini-competition with an option for emergency work only to procure through a direct call-off process. This maintains price competition and ensure value for money as far as is reasonably possible.</p>
E	Cumbria County Council	Highway Surface Treatment Contract Extension	Yes	£5,000,000- £6,000,000	Cumbria County Council	Feb-22	Jul-22	<p>Extension of the Highways Surface Treatment Contract is scheduled for the end of June/ Beginning of July 22. To enable the framework to continue to function, providing visibility to the supplier, a timely decision must be made. In particular, designs must commence for the surface treatment programme for 2022.</p> <p><b>Summary:</b> The Highways Surface Treatment contract was established in 2018 and provides the Highways Service with a single supplier (Kiely Bros Ltd) to undertake Surface Dressing, Micro Asphalt, Slurry Sealing and High Friction surfacing works. The agreement has an option to extend by three single years after the initial period and is currently 9 months into the first of the single year extension periods. (i.e. Year 4).</p> <p>The contract arrangement allows the Council to procure Surface Treatment works in accordance with the area priorities to improve the standard of the network and extend its operational life.</p> <p>In the main, Kiely's have performed well during the first 4 years of the contract especially with the additional constraints and restrictions caused by the Covid-19 outbreak and the Russia/ Ukraine crisis. This is reflected in good overall KPI scores for each of these years.</p> <p>This contract ensures that the works are carried out to the required specifications. It provides continuity of supply and consistency of pricing. It also standardises the delivery of the surface treatment work across the whole County. There is no minimum guaranteed annual spend on the contract, so the Council only pays for the works they require to be carried out.</p>
F	South Lakeland District Council	Ulverston Leisure Centre Phase 1	Yes	£1,173,000	South Lakeland District Council	Feb-22		<p>Approval would see the first phase of development progress which would enable the relocation of leisure uses from the GlaxoSmithKline (GSK) sports site to the SLDC site at Priory Road, Ulverston. This will release land for future employment use. Further project development work on phases 2 and 3 will enable the Westmorland and Furness Council to determine an appropriate strategy for provision and reinvestment in leisure facilities. The scheme includes receipt of £2m from GSK relating to re-provision of facilities to meet planning conditions.</p>

Ref	Council	Project / Contract	Proposal within budget? Yes / No	Estimated Budget / Contract Value	Budget approved by	Date budget approved	Contract dates (where applicable)	Reasons why this should be approved
G	Eden District Council	Microsoft Enterprise Licence	Yes (for Eden District Council)	£240,000 for first 3 years based on existing Eden District Council requirements & existing Shadow Westmorland and Furness Requirements	Eden District Council		3 years from Aug-22 with optional 1 year extension	To award a contract for Microsoft Licences for Eden District Council (and Shadow Westmorland and Furness Council) with effect from 1 August 2022 with an option that can be used to ensure licences are in place for the Westmorland and Furness Unitary Council from 1 April 2023. This procurement process has been managed strategically to ensure that the Council's requirements are met, whilst at the same time building options, which will benefit readiness for the new Westmorland & Furness Council by using 'multi tenancy' facility that will allow the Microsoft Licences used by Eden District Council, Barrow Borough Council, South Lakeland District Council and the disaggregated functions of Cumbria County Council to become part of a Master License Agreement that will facilitate the merging and moving of licenses to meet the requirements of the Westmorland and Furness Council, which may total up to c7900 licences which could potentially increase the contract value to £8.2m. The contract will only commit the Council to pay for the licenses required for its own operations.
H	Barrow Borough Council	Town Deal grant funding agreement with University of Cumbria for Barrow Learning Quarter.	Yes	£10,366,667	Barrow Borough Council	Feb-22	Mar-22	Town Deal - The Barrow Learning Quarter project is delivered by the University of Cumbria. An initial grant funding agreement was entered into in March 2022 and a full grant agreement is required for the lifetime of the project. This project will create a new University of Cumbria campus on Barrow Island along with an expanded and upgraded facility at Furness College's Rating Lane site. BAE Systems Ltd are providing the land for the new university campus.  The full grant funding agreement will encompass the initial facility, hence the March 2022 contract date.
I	Barrow Borough Council	Town Deal grant funding agreement with CCC for Local Cycling and Walking Infrastructure.	Yes	£3,966,667	Barrow Borough Council	Feb-22	Mar-22	Town Deal - The Local Cycling and Walking Infrastructure project is delivered by Cumbria County Council. An initial grant funding agreement was entered into in March 2022 and a full grant agreement is required for the lifetime of the project. This project will deliver improvements to three key highways in the town – improving the connection between neighbourhoods and making journeys by bike or on foot easier, safer and more enjoyable.  The full grant funding agreement will encompass the initial facility, hence the March 2022 contract date.
J	Barrow Borough Council	Town Deal grant funding agreement with CCC for Community Wellbeing Hubs.	Yes	£3,866,667	Barrow Borough Council	Feb-22	Mar-22	Town Deal - The Community Wellbeing Hubs project is delivered by Cumbria County Council. An initial grant funding agreement was entered into in March 2022 and a full grant agreement is required for the lifetime of the project. There are four centres that will bring residents together and encourage users to make positive lifestyle choices by providing an easily accessible home for a variety of activities and experiences which are in the process of being developed. The fourth hub is a new, multi-million pound outdoor learning centre at Earnse Bay on Walney, which will provide access for local communities to open spaces and education. The Earnse Bay Outdoor Centre will be built on land presently owned by Cumbria County Council.  The full grant funding agreement will encompass the initial facility, hence the March 2022 contract date.
K	Barrow Borough Council	Levelling Up Fund – Public Realm works contract.	Yes	£11,000,000	Barrow Borough Council	Feb-22	Jul-22	Levelling Up Fund - The Public Realm project is directly delivered by Barrow Borough Council and will improve the Market Hall, improve the frontage and access to the Forum Theatre, and together with the Accessibility project, will enhance access to these cultural assets/attractions and connect them to the rest of the town through better transport infrastructure and improvements to the public realm.  The opportunity is out for tender and the contract award is estimated as July 2022.
L	Barrow Borough Council	Town Deal - Housing Market Renewal works contract.	Yes	£3,000,000	Barrow Borough Council	Feb-22	Jul-22	Town Deal - The Housing Renewal project is directly delivered by Barrow Borough Council and is a multi-million pound scheme that will see investment in almost 300 residential properties across Barrow along with 39 commercial properties. The first phase will deliver improvements to 16 residential properties and 39 commercial premises on Rawlinson Street. The improvements will have a significant impact on the wellbeing of local residents and improve perceptions of Barrow as a great place to live.  The specification is currently being prepared for tender and contract award is estimated as July 2022.