

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

Report from: Councillor Andrew Jarvis, Finance Portfolio Holder

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

Wards: All

Key Decision: Yes

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.

Risk Management	Consequence	Controls required
<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)