

Report of the Managing Director

Structural Change order update

1 Purpose of report

To note the proposed elements of the structural change order (SCO) that are envisaged for North Northants should the Secretary of State for Housing, Communities and Local Government (MHCLG) approve the proposal to replace the existing two tier form of local government in Northamptonshire with two new unitary authorities. This is a decision of the Secretary of state but there may be an opportunity to influence the content of the SCO and this report outlines those areas that would be presented to MHCLG as the preference for the North Northamptonshire.

2 Executive summary

A decision on the proposal for local government reform in Northamptonshire is anticipated before Parliament's Easter recess (4 – 23 April) but there is the potential for delay. Once the decision is made a Structural Change order will be prepared to go through the parliamentary process and laid later in the year.

Whilst the final decision on its content will be the Secretary of States, there is an opportunity to advise MHCLG of any preferences in the actual detail of the order.

A report will be presented to full council for a decision on 26 February 2019.

3 Appendices

Appendix 1 – Outline of the elements of the SCO with preferences

4 Proposed action:

4.1 To note the elements of preference for the SCO for North Northants should the Secretary of State for Housing, Communities and Local Government (MHCLG) agree to the proposal submitted in August 2018 for two new unitary authorities covering North and West Northamptonshire.

5 Background

5.1 In August 2018 7 of the 8 Northamptonshire councils submitted the 'Northamptonshire Local Government Reform' proposal to the Secretary of State for Housing Communities and Local Government. The proposal is to replace the

existing two tier form of local government with two new unitary authorities one covering the North and the other covering the North.

- 5.2 The Secretary of State has carried out an eight week public consultation on the proposal which ended on the 25 January 2019 and is now considering the responses received. It is anticipated that a decision will be forthcoming before Parliament's Easter recess (i.e. before 4 April 2019) but could be delayed due to other urgent government business which is currently taking place.
- 5.3 If the decision is to approve the proposal and to create a new unitary authority for North Northants then a process will begin with the creation of a Structural Change Order, anticipated in late spring 2019, however this may be delayed.
- 5.4 There is an opportunity before the SCO is finalised and laid before parliament to influence its content.

6 Discussion

- 6.1 The key process for establishing new shadow and unitary authorities is agreement of a Structural Change Order (SCO) by both Houses of Parliament. The SCO sets out the basic governance and operating principles for the shadow authority and subsequent unitary council. It will be drafted by Government officials but it is considered prudent for the councils to seek to influence the content of the SCO's.
- 6.2 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.
- 6.3 The purpose of the Order is to facilitate the transition from 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.
- 6.4 Whilst the Order will be drafted and finalised by Government officials, 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 provide their version of a draft Order - 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.

Content of a Structural Change Order

- 6.5 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.
- 6.6 Appendix 1 shows a summary of the local preferences proposed.

Names of new authorities

- 6.7 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. The proposed name for the north will be “North Northamptonshire Council”.

Choice of transition model

- 6.8 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 emphasising a fresh start in serving communities and being a better catalyst for necessary change.
- 6.9 For North Northamptonshire, the recommended Order proposes the creation of a new legal body rather than a continuing authority.

Types of new authorities

- 6.10 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. It was originally thought that this may influence the election cycle of the new authority but this is not the case.
- 6.11 Government officials have advised that:
- a county unitary cannot apply for borough status;
 - borough status does not transfer over to a new unitary;
 - a district unitary council can apply to the Privy Council for borough status under section 245 of the Local Government Act 1972;
 - 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;
 - 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.
- 6.12 For North Northamptonshire, the recommended Order proposes the new unitary authority be a ‘county council with district functions’.

Timetable for establishment of new authorities

- 6.13 Notwithstanding the practical challenges and tighter timeframes, 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.
- 6.14 For North Northamptonshire, the recommended Order proposes a commencement date – ‘vesting day’ - for the new unitary authority (and corresponding winding-up / dissolution of existing Councils) of 1 April 2020, with the first elections in May 2020.

Shadow authority - style of governance

- 6.15 All current councillors of all councils will automatically become members of the relevant shadow authority in the interim with current dual hatters expected to be given two votes.
- 6.16 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.
- 6.17 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, statutorily, at least one such committee must be appointed. If the choice is to operate with a Committee style of governance, 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.
- 6.18 For North Northamptonshire, the recommended Order proposes an Executive style of governance for the shadow authority. This will only be in essence an implementation executive for the creation of the new unitary council and is the standard procedure, and government preference, for this.

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

- 6.19 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, there is proposed to be an equal number (3) of Members from each of the existing councils on the ‘executive’ (with Members being appointed in accordance with the principles of political balance).
- 6.20 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.

- 6.21 For North Northamptonshire, the recommended Order proposes that the shadow authority determines its own 'executive' chairmanship.

Shadow authority functions and duties - implementation

- 6.22 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.

- 6.23 For North Northamptonshire, the recommended Order proposes that the shadow authority determines its own lead Officer.

Elections for the new unitary authority

- 6.24 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, the term of office of councillors on existing Councils would end on the vesting day of the new authority of 1st April 2020.
- 6.25 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 they consider that they have complete flexibility to include whatever is judged best. The first elections will be whole council elections and it is also anticipated that thereafter the Order will determine that they be similarly all-out. Elections by thirds are not preferred by the steering groups.
- 6.26 Moving on to the (whole council) district council election cycle could be achieved for 2023 by having a 3 year term from 2020. 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 current thinking is that elections are likely to work on existing county divisions with 3 Members each, for that first election. (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).

- 6.27 For North Northamptonshire, the recommended Order proposes to align unitary authority elections with the county electoral cycle - and be whole council.

Financial control of existing Councils' spending

- 6.28 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 (£) thresholds. If this is desired, it is expected that such a direction would be achieved separately rather than via the Structural Change Order. Whichever course is taken, it is the preference for such a provision to come into force to assist resource planning for the new unitary authority.

7 Legal powers

For the content of a Structural Change Order, the Government is not obliged to formally engage other than with Parliament. Whilst the wider public and the Councils will have no legal right to comment on any Order short of judicial challenge, there is nothing to legally prevent the Councils showing leadership and seeking to influence content of such an Order.

8 Financial and value for money implications

- 8.1 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) for:

- 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. Government officials have indicated that these amounts can be altered and that, if the Secretary of State directed that consent is required from the shadow authority (which he can do), the shadow authority could choose to delegate this role to its Section 151 Officer.

- 8.2 There are no other financial implications arising from the Advice.

9 Risk analysis

Nature of risk	Consequences if realised	Likelihood of occurrence	Control measures
Delay in a decision on the proposal for local government reform in Northamptonshire or delay in laying or agreeing the Structural Change Order	It may not be possible to prepare everything required by the new unitary authority by Vesting Day of 1 April 2020	medium	Establish a formal joint committee

10 Implications for resources

In terms of the Advice, for re-drafting and negotiating, in the first instance this would be resourced by existing personnel in the Councils. 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

11 Implications for stronger and safer communities and equalities

Whatever the council does and however it makes its decisions, the impact on our communities is of paramount importance. The proposals here should not have any adverse impact on our communities or on how the council meets its statutory duties relating to equalities legislation.

12 Author and contact officer

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13 Consultees

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14 Background papers

Submission to the Secretary of State for Housing Communities and Local Government of the 'Northamptonshire Local Government Reform Proposal'. (August 2018)

Appendix 1 – Preferences for content within the SCO

	Note	Preference for NN
ISSUES RELEVANT TO THE STUCTURAL CHANGE ORDER		
Name of the new authority	Default will be “North Northamptonshire”	North Northamptonshire
No of votes per twin hatters	Should twin hatters have 2 votes on the shadow? (they do in Dorset, and it is probably the default position as they are representing two authorities and sometimes not the same area)	2 votes for twin-hatters on the Shadow
Number of councilors on new authority.	If the Boundary Commission cannot complete a review in time, potential to aim for 3 councillors for each electoral ward. (current thinking is a review could be completed on time)	3 members per existing NN NCC divisions 78 in total
Who will be responsible for convening the first meeting of the shadow authority?	Need to specify which Chief Executive/senior officer in SCO (Although in practice work of clerking committees then shared between councils)	Corby B.C Monitoring Officer
Do we want an order under s24 Local Government and Public Involvement in Health Act 2007?	This is the order that restricts spending/new contracts/disposal of assets from a certain date	Yes – await advice / input of S151s
Do we want an Overview & Scrutiny Committee?	According to MHCLG it is not compulsory but will ensure transparency	Yes
What form of Council do we want to be? District with County powers, or County with District powers?	Something of a sterile debate as the end result is the same	County with District powers (subject to confirmation on election cycles by Cabinet office)

