

Briefing Note 06-07-20

Summary of Legal/Procedural Considerations Arising from Local Government Reorganisation

The Legal Framework and Criteria for Approval of Proposals for Reorganisation.

The legislation that facilitates changes in local government structure and boundaries is now the Local Government and Public Involvement in Health Act 2007 (the 2007 Act).

There are two procedures under the 2007 Act relating to local government restructuring:

- i) Invitation by the Secretary of State for proposals for single tier of government; and
- ii) Following a review by the Local Government Boundary Commission for England ("LGBCE").

The second of these isn't relevant to this situation and as such the note focuses on the first of these procedures, and Invitation by the SoS.

Most Recent Criteria for SoS to Exercise Power to Issue Invitation

In 2019 the former SoS for Housing Communities and Local Government set out in a written statement to the Commons the specific circumstances in which he would be prepared to issue a formal invitation to councils under the Local Government and Public Involvement in Health Act 2007, to submit proposals for the establishment of new unitary councils.

The following is an extract from that statement which details the circumstances in which they would consider issuing an invitation to a Local Authority under route i) mentioned above.

"There are two circumstances in which I will consider issuing such an invitation.

The first circumstance is where the following two conditions are met:

- 1. There is a local request for an invitation.*
- 2. That I consider that the request demonstrates local opinion is coalescing around a single option which is reasonably likely to meet the existing publicly announced criteria for unitarisation.*

In forming my view I would carefully consider the request, including the groups making and supporting it and their reasons for so doing. Where I issue an invitation, I would do so to all those councils that I consider to have regard to the area concerned, whether or not they were among those who had made the original request.

The second circumstance is where I consider that doing so would be appropriate given the specific circumstances of the area, including in relation to the long-term sustainability of local services. This is the situation in which my predecessor, the Rt Hon Member for Bromsgrove (Sajid Javid), issued an invitation to the councils in Northamptonshire.

The statement then goes on to set out what happens if an invitation from the SoS is issued to the Local Authorities.

Following such an invitation, it would be for the councils concerned to decide whether to develop and submit proposals for unitarisation, either individually or jointly by two or more councils.

I confirm that I will assess any locally-led unitary proposal that I receive against the criteria for unitarisation which we announced to Parliament in 2017 and which I and my predecessor have consistently used since then. These criteria state that subject to Parliamentary approval a proposal can be implemented, with or without modification, if I conclude that across the area as a whole the proposal is likely to:

- *improve the area's local government;*
- *command a good deal of local support across the area; and*
- *cover an area that provides a credible geography for the proposed new structures, including that any new unitary council's population would be expected to be in excess of 300,000."*

Reference is made to the above because it is the most current statement of the approach and criteria (highlighted) which has been set out by the SoS and it seems likely that a similar approach would apply in future.

Process – From Request to Implementation

There are 5 stages in the process,

- Councils request to SoS to invite them to submit a proposal.
- SoS considers request and decides whether to invite councils to submit a proposal.
- Councils submit proposal including business case and evidence of consultation.
- SoS decides whether the proposal should be approved.
- If SoS approval is obtained councils commence implementation phase.

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N.b. The Buckinghamshire proposal can be found at

<https://www.buckscc.gov.uk/services/council-and-democracy/our-plans/unitary/>

Each Council would need to take a report to its Executive to consider the following decisions:

- exploring agreement in principle to work together;
- the allocation of resources to support the project;
- agreement to jointly approach the Secretary of State with a request to issue an invitation to the County and districts to develop and submit proposals alongside a financial case and proposed timetable;
- appointment of a member working group or Joint Committee to oversee the development of the proposal;
- appointment of a project team to undertake the process of pulling together proposals, appointing consultants and developing the proposals under the management and oversight of the Chief Executives (delegating authority to them to spend the allocated budget); and
- delegation of authority to the Chief Executive/Monitoring Officer to enter into an MoU or similar.

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Criteria by which the SoS will Consider Proposals Submitted by Councils

DCLG produced statutory guidance for the 2006 invitations headed “*Invitations to Councils in England to make proposals for future unitary structures*”, and as yet there has been no subsequent guidance. The criteria for the proposal specified in section 3 were as follows:

“3.1 The criteria with which any proposal must conform are:

i) the change to the future unitary local government structures must be:

- *affordable, i.e. that the change itself both represents value for money and can be met from councils’ existing resource envelope; and*
- *supported by a broad cross section of partners and stakeholders; and*

ii) those future unitary local government structures must:

- *provide strong, effective and accountable strategic leadership;*
- *deliver genuine opportunities for neighbourhood flexibility and empowerment; and*
- *deliver value for money and equity on public services.”*

The Statutory Guidance expands on the above and the following lists some of the **key issues** that will need to be addressed that may influence whether there is support for such a reorganisation:

- Likely costs of reorganisation and future annual savings from a merger;
- Political impact (especially with a reduction in the number of members – will turkeys vote for Christmas?);
- Service improvement and opportunities for innovation;
- Geographical impact on divisions & wards and electoral boundaries and arrangements, along with the impact on communities in particular;
- Will there be further devolution of functions to a more local level with an increase in town and parish councils that would be enabled to deliver services (would the whole area be parished?) A community Governance review would need to be undertaken, probably after unitarisation;
- Environmental impact;
- The impact on council tax between districts, whether it will be harmonised and over what period (e.g. 3, 5 or 7 years);
- Asset impact and ability to deliver wider regeneration and development (e.g. to meet housing need of all tenures);
- Stakeholder views.

It would be advisable for any reports to Councils to be jointly prepared and based on an identical core, as it means all authorities are proceeding on the same basis and there is less chance of any misunderstanding. A covering report may highlight any differences/issues/specific results of consultation that may be appropriate. Cabinet would authorise the submission of the business case, financial case and proposed timetable to the Secretary of State (and full council if thought appropriate).

Once the proposal is submitted the Secretary of State will consider it and then decide whether to formally consult before making a decision and for how long. A significant period (at least three months, possibly longer) for consideration by MHCLG would need to be built into the timetable. If approved by the Secretary of State then MHCLG would work with the Councils to progress the necessary Structural Change Order(s).

Implementation Phase – Creating the New Unitary Authority

The process may vary depending upon the nature of the reorganisation. There is usually a Structural Changes Order that provides for the abolition of the relevant councils and creation of the new Councils for the relevant area and then numerous other existing Regulations apply that deal with finance, assets, staffing by way of transfer equivalent to TUPE etc.

Bucks CC is the most recent county unitarisation and it is worth noting that Bucks sought a “continuing County unitary” model as per the 2009 Counties such as Durham and Wiltshire. However, the SoS instead chose to abolish all of the districts and the County and create a new district Council for Buckinghamshire that then became a county as well. This approach creates extra administration and bureaucracy as part of the process and representations could be made to Government to better reflect the 2008 Orders rather than follow the Buckinghamshire approach. Buckinghamshire Council may be able to articulate some of the extra costs involved and difficulties encountered, such as the need to transfer and re-register all stocks and shares of the pension fund in the name of the new authority; transfer the property titles to the new authority (rather than just change its name) and extra due diligence on prospective liabilities etc. The DCLG “lessons learned” from the 2009 reorganisations suggests that where a County Unitary is being created then it should be a continuing authority.

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