

## Legal Advice – Homelessness Strategy

### Advice Sought

1. The Service Alignment Workstream has sought advice in relation to the Homelessness Strategy and Rough Sleeper Strategy as follows: -
  - i. The validity and legal risks of a recommended option for new Council to adopt and extend the Somerset Homelessness and Rough Sleeper Strategy (SHRSS) (a) for 1 year (to 5 years from 4) or (b) for 1 year and 3 months (to 5 years and 3 months). The current strategy(s) expiring in or after December 2023.
  - ii. The authorisation/ decision process required to achieve the recommended option.

### Background

2. On 18 March 2022 the Secretary of State for Levelling Up, Housing and Communities made the Somerset (Structural Changes) Order 2022 (the **SCO**).
3. The SCO makes arrangements for the transition in Somerset from a two-tier system of local government (i.e. districts and counties) to a single tier (i.e. unitary local government). Where there are currently 4 district councils and one county council in Somerset (together, **Predecessor Councils**), there will, on 1<sup>st</sup> April 2023 (**Reorganisation Date**) be a single council in Somerset responsible for all the functions previously exercised by the Predecessor Councils.
4. The SCO provides that on the Reorganisation Date Somerset County Council (the County”) will become the only local authority in Somerset and that on the same day it will adopt the functions of the district councils. On the same day the council will be renamed as Somerset Council. The County has in effect been designated a “continuing authority” and will continue to exist as the same legal entity (albeit with a new name and additional functions) on and after the Reorganisation Date.
5. Until the Reorganisation Date the SCO will not make any changes to the decision-making capacity of either the Predecessor Councils or SCC and none of the Predecessor Councils’ existing functions, powers and duties will be transferred. However, the Predecessor Councils no longer have the power to plan and make decisions which will take effect on or after the Reorganisation Date. That is now a function of the executive of the County until the Reorganisation Date.

6. The SCO makes a number of provisions covering preparations for, and the implementation of unitary local government in Somerset which will apply between the 18<sup>th</sup> March 2022 and the Reorganisation Date of 1 April 2023 (the Transition Period). In addition to these provisions, the SCO triggers further provisions in other pieces of legislation which also apply to the Predecessor Councils during the Transition Period and in some cases to Somerset Council following the Reorganisation Date.
7. The relevant transitional arrangements are outlined in the Local Government (Structural Changes) (Transfer of Functions, Property, Rights and Liabilities) Regulations 2008/2176 (Transfer of Functions Regulations) (the “Transition Regulations”).

### **The validity and legal risks of recommended option**

8. The Transition Regulations impose a series of obligations in relation to plans and strategies required under various statutes, including when during the re-organisation process these plans must be prepared.
9. Regulation 12 of the Transition Regulations set out the plans and strategies that are required **not later than 24 months after the Reorganisation Date.**
10. Regulation 12 states that “**Where it is practicable to do so** in the period .....ending on the Reorganisation Date..... each .... preparing council which is a county council shall under Paragraph 12 (1) (c)–
  - i. Carry out for the whole of its area a homelessness review within the meaning of the Homelessness Act and
  - ii. Based on the results of that review, formulate, and publish a homelessness strategy within the meaning of that Act.
11. The Transition Regulations thereafter provide that for the purposes of Paragraph 12(1)(c) (outlined above), section 1(3) of the Homelessness Act 2002 shall not have effect; and section 1 of that Act (except subsection (3)) and sections 2 to 4 of that Act shall have effect as if—
  - (i) references to a local housing authority included references to a preparing council which is a county council, and
  - (ii) references to a local housing authority’s district (in whatever terms) includes references to the area of the preparing council i.e., Somerset County Council.

12. I understand that due to the length of time it will take to carry out the review, it is **not practicable to** produce the SHRSS by 1 April 2023. In the circumstances the Transition Regulations Regulation 12(5) state that “Where a ....review....or strategy has not been completed, formulated or prepared (as the case may be) and, where required....., published, before the reorganisation date, the single tier council (the new unitary)....., shall take such steps as are necessary to secure that the .....review.....or strategy is completed, formulated or prepared (as the case may be) and where required, published, **not later than the date that falls 24 months after the reorganisation date”**.
13. In the circumstances, provided we can demonstrate that it is not practicable to conduct a review and implement the new SHRSS before April 2023, the unitary has until before **1<sup>st</sup> April 2025** to conduct the review and introduce the homelessness strategy.
14. The Regulations go on to explain in Regulation 12(6) what will happen to the district strategies currently in existence as follows: -
- i. In the period beginning on the Reorganisation Date and ending on the date on which the [unitary] complies with paragraph 5 [Regulation 12(5) above], [the review and homelessness strategy] that have been carried out, formulated or prepared (as the case may be) and, where required by or under the enactment concerned, published—
    - (a) before the Reorganisation Date, by any council that is a predecessor council in relation to the new unitary; or
    - (b), by the preparing County,shall be treated as if they had been carried out, formulated, prepared, and (where required) published by the single tier (unitary) council for the whole or such part of its area as corresponds to the area to which the .....review, ..... or strategy relates.

In the circumstances, the current homelessness strategies adopted by the districts will be treated as the new unitary strategy(s) until such time as the new SHRSS is in place.

In the circumstances, your proposal to extend the SHRSS for one year will be low risk as it will comply with both the Homelessness Act and the Transition Regulations. Your proposal to extend the current strategies by 1 year and 3 months is in compliance with the Transition Regulations but see below as regards the Homeless Act 2002.

## The Homelessness Act 2002

15. S1 of the Homelessness Act 2002 places a duty on district councils or unitary councils to “ensure that a new homelessness strategy for the district is published within the period of five years beginning with the day on which their last homelessness strategy was published”. In the circumstances, whilst your current SHRSS is for four years, I am satisfied that your legal obligation is to publish a new one is within five years. Your option of a one-year extension would therefore be in compliance with this legislation. Your option of a one year and three month extension to March 2025 would not be in compliance with the Act and would therefore require the consent of DLUHC.

## The Process

16. As you are not going to be able to have the new SHRSS in place for the Reorganisation date, there are three options as I see it: -

16.1 For the districts to extend the existing Strategies to five years before 31 March 2023. This will require each Council to seek the approval of its executive to the extension. However, as the district councils no longer have the power to plan and make decisions which will take effect on or after the Reorganisation Date (which an extension would do) I consider this option to be open to challenge; or

16.2 For the County or new unitary **executive** to extend the current strategies to five years after the 1<sup>st</sup> April 2023 but before December 2023 when the South Somerset SHRSS comes to an end.

16.3 For the County or new unitary **executive** to extend the Strategies to five years and three months (i.e. before the Transitional Regulations deadline of 24 months after the reorganisation date) before December 2023 when the South Somerset Strategy comes to an end. This option would not be in compliance with the Homelessness Act 2002 and would therefore require the consent of DLUHC to extend beyond the five years.

17. The adoption of the SHRSS is an executive function so development of the **new** SHRSS will be carried out by the executive of the County or new unitary (depending upon when you are planning to progress matters) and the final SHRSS will require the approval of the unitary executive.

18. I am instructed that you would be seeking to obtain the decision to extend by March 2023. At present the PMO (Roshan Robati) is carrying out a piece of work to prioritise the strategies that will go to the County Executive before the end of March 2023. A list will shortly be circulated to workstream leads and it is important that you invite them to add the SHRSS to that list. The final list of dates for the Implementation Board (the advisory Board made up of County and District members that will make recommendations to the County Executive) and the County Executive are, I believe, currently being finalised and will be available soon.

## Conclusion

19. The County should “where it is practicable to do so” carry out for a homelessness review of Somerset and based on the results of that review, produce the SHRSS by the Reorganisation Date i.e. before 1 April 2023. However, if it is not practicable to introduce the SHRSS by that date, which I understand the case to be, the unitary council must ensure that it is prepared and published not later than 24 months after the Reorganisation Date. This means that it must be adopted before the 1 April 2025. However, to ensure you are compliant with the Homelessness Act, you will need to approve the new SHRSS by December 2024 when the SSDC strategy would be five years old **or seek DLUHC consent to extend beyond the five years to March 2025.**

20. In the intervening period, the current district Homeless Strategy(s) will, from the 1<sup>st</sup> April 2023, be treated as if they had been published by the unitary council. However, as the current Strategy(s) end on Dec 2023 they will need to be extended for a further year **or year and three months**, either by the County before 1 April 2023 or by the new unitary post 1 April 2023 and before December 2023. Whilst the Transition Regulations give the unitary until before 1 April 2025 to implement a new SHRSS, **an extension beyond 5 years would fall foul of S1 of the Homelessness Act. In the circumstances, an extension to March 2025 would require the prior approval of DLUHC.**