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# Special District Executive Meeting

**Friday 30th April 2021**

**11.00 am (please note start time)**

**Virtual Meeting  
using Zoom meeting software**

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The following members are requested to attend the meeting:

Jason Baker  
Mike Best  
John Clark  
Adam Dance  
Sarah Dyke

Peter Gubbins  
Henry Hobhouse  
Val Keitch  
Tony Lock  
Peter Seib

Any members of the public wishing to address the meeting at Public Question Time need to email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) by 9.00am on Thursday 29 April 2021.

The meeting will be viewable online at: <https://youtu.be/8RAUEn9sQDc>

For further information on the items to be discussed, please contact [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk)

This Agenda was issued on Thursday 22 April 2021.

*Alex Parmley, Chief Executive Officer*

**This information is also available on our website  
[www.southsomerset.gov.uk](http://www.southsomerset.gov.uk) and via the modern.gov app**

## Information for the Public

The District Executive co-ordinates the policy objectives of the Council and gives the Area Committees strategic direction. It carries out all of the local authority's functions which are not the responsibility of any other part of the Council. It delegates some of its responsibilities to Area Committees, officers and individual portfolio holders within limits set by the Council's Constitution. When major decisions are to be discussed or made, these are published in the Executive Forward Plan in so far as they can be anticipated.

Members of the Public are able to:-

- attend meetings of the Council and its committees such as Area Committees, District Executive, except where, for example, personal or confidential matters are being discussed;
- speak at Area Committees, District Executive and Council meetings;
- see reports and background papers, and any record of decisions made by the Council and Executive;
- find out, from the Executive Forward Plan, what major decisions are to be decided by the District Executive.

The Council's Constitution is also on the web site and available for inspection in Council offices. The Council's corporate priorities which guide the work and decisions of the Executive are set out below.

### District Executive

Meetings of the District Executive are usually held monthly, at 9.30am, on the first Thursday of the month (unless advised otherwise). However during the coronavirus pandemic these meetings will be held remotely via Zoom video-conferencing. For more details on the regulations regarding remote/virtual meetings please see the Local Authorities and Police and Panels (Coronavirus) (Flexibility of Local Authority and Police and Crime Panel Meetings) (England and Wales) Regulations 2020 as part of the Coronavirus Act 2020.

The Executive Forward Plan and copies of executive reports and decisions are published on the Council's web site:  
<http://modgov.southsomerset.gov.uk/ieDocHome.aspx?bcr=1>

Agendas and minutes can also be viewed via the modern.gov app (free) available for iPads and Android devices. Search for 'mod.gov' in the app store for your device, install, and select 'South Somerset' from the list of publishers, then select the committees of interest. A wi-fi signal will be required for a very short time to download an agenda but once downloaded, documents will be viewable offline.

## **Public participation at meetings (held via Zoom)**

### **Public question time**

We recognise that these are challenging times but we still value the public's contribution to our virtual meetings. If you would like to participate and contribute in the meeting, please join on-line through Zoom at: <https://zoom.us/join> You will need an internet connection to do this.

Please email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) for the details to join the meeting.

If you would like to view the meeting without participating, please see: <https://youtu.be/8RAUEn9sQDc>

The period allowed for participation in Public Question Time shall not exceed 15 minutes except with the consent of the Chairman and members of the Committee. Each individual speaker shall be restricted to a total of three minutes.

If you would like to address the meeting at Public Question Time, please email [democracy@southsomerset.gov.uk](mailto:democracy@southsomerset.gov.uk) by 9.00am on Thursday 29 April 2021. When you have registered, the Chairman will invite you to speak at the appropriate time during the virtual meeting.

### **Virtual meeting etiquette:**

- Consider joining the meeting early to ensure your technology is working correctly.
- Please note that we will mute all public attendees to minimise background noise. If you have registered to speak during the virtual meeting, the Chairman will unmute your microphone at the appropriate time.
- Each individual speaker shall be restricted to a total of three minutes.
- When speaking, keep your points clear and concise.
- Please speak clearly – the Councillors are interested in your comments.

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# Special Meeting of District Executive

**Friday 30 April 2021**

## Agenda

### 1. Minutes of Previous Meeting

To approve as a correct record the minutes of the Special District Executive meeting held on Thursday 15<sup>th</sup> April 2021.

### 2. Apologies for Absence

### 3. Declarations of Interest

In accordance with the Council's current Code of Conduct (as amended 26 February 2015), which includes all the provisions relating to Disclosable Pecuniary Interests (DPI), personal and prejudicial interests, Members are asked to declare any DPI and also any personal interests (and whether or not such personal interests are also "prejudicial") in relation to any matter on the Agenda for this meeting.

Members are reminded that they need to declare the fact that they are also a member of a County, Town or Parish Council as a Personal Interest. Where you are also a member of Somerset County Council and/or a Town or Parish Council within South Somerset you must declare a prejudicial interest in any business on the agenda where there is a financial benefit or gain or advantage to Somerset County Council and/or a Town or Parish Council which would be at the cost or to the financial disadvantage of South Somerset District Council.

### 4. Public Question Time

### 5. Chairman's Announcements

#### Items for Discussion

### 6. Local Referendum on the Future of Local Government in Somerset (Pages 5 - 35)

### 7. Date of Next Meeting (Page 36)



## Local Referendum on the Future of Local Government in Somerset

Executive Portfolio Holder: Councillor Val Keitch, Leader of Council  
Chief Executive: Alex Parmley  
Lead Officer: Roger Quantock, Elections Specialist  
Contact Details: Roger.Quantock@southsomerset.gov.uk

### Purpose of the Report

1. The Secretary of State conducted a consultation on the options for the future of local government in Somerset and this closed on 19 April. Two alternative proposals exist. The Government has outlined that a factor in its considerations will be the degree to which a proposal has local support.
2. Concerns have been expressed about the consultation process and the lack of prominence given to the voice of the most important stakeholders, the actual residents of Somerset, within that consultation. There have been calls from Somerset residents for the councils to take steps to ensure residents' views on the proposed changes and their preference for the future of local government can be expressed in a clear and open manner.
3. This report recommends the holding of a local poll (referendum) to give residents a voice in the debate and help the Secretary of State in understanding and determining the level of support amongst residents for each of the options. If a referendum is to be held to inform the Secretary of State's considerations, it will need to take place in advance of the Secretary of State's decision, which is anticipated before Parliament's summer recess.
4. A report was originally scheduled to be discussed at a Special District Executive and the Council meeting on 15 April 2021. In the light of the Secretary of State's letter of 12 April 2021 (Appendix A) it was decided to adjourn the matter to a future meeting and obtain further legal advice. Legal advice has now been received from Bevan Brittan (Appendix B) and James Goudie QC (Appendix C). In the light of that advice, a response has been sent to the Secretary of State (letter attached as Appendix D).
5. Statements from the Monitoring Officer (Appendix E) and Section 151 Officer (Appendix F) have also been included with this report to offer further assurance to Members on lawfulness, fairness, value for money and the administration of the Council's financial affairs and to respond to the matter raised by the Secretary of State.

## Forward Plan

6. This report did not appear on the District Executive Forward Plan.

## Public Interest

7. All councils in Somerset are agreed that change is needed in local government if it is to be financially sustainable and deliver better outcomes for residents and businesses. The Secretary of State is currently consulting on the two proposed options for change. Whichever option is chosen, will have a significant impact on the residents and businesses of Somerset, the services they receive and the outcomes delivered for decades to come. A referendum will enable our residents to express their views on the two options for change to help inform the Secretary of State's decision.

## Recommendations

8. It is recommended that the District Executive agree:
  - a. To hold a local authority poll (local referendum) of all residents of South Somerset on the Electoral Register at 6<sup>th</sup> May 2021 who are eligible to vote in local elections, on the two options for the future of local government in Somerset;
  - b. To conduct the local authority poll as a postal and online referendum and appoint Civica Electoral Services to conduct the poll;
  - c. The poll be held commencing on Tuesday 18<sup>th</sup> May 2021 and closing at 5.00PM on Friday 4<sup>th</sup> June 2021;
  - d. To hold the local authority poll jointly with such other Somerset Councils that agree and to share the costs of the poll with those councils;
  - e. The poll will follow the single non-transferable vote system and the question to be asked will be:

*"Which of the two options for change in local government in Somerset to replace the existing five councils do you support (select one only):*

- i. **One council for Somerset** ("One Somerset" - the plan for a single council proposed by Somerset County Council)
    - ii. **Two councils for Somerset: Eastern Somerset and Western Somerset** ("Stronger Somerset" the plan for two councils for Somerset – an Eastern and a Western Somerset council –proposed by the South Somerset District Council and the other district councils of Somerset)
  - f. To delegate the role of Counting Officer to Civica Electoral Services;
  - g. To make such resources, including staff resources, as necessary to the Counting Officer to enable the referendum to be conducted;
  - h. To delegate to the Chief Executive, the authority to take any further action necessary in relation to this matter;



- i. To write to the Secretary of State to inform him of the referendum and its dates and ask that the result of the referendum be properly considered as part of the decision making process on the future of local government in Somerset;
- j. To recommend Full Council to endorse the holding of a local authority poll (local referendum) of all residents of South Somerset on the Electoral Register at 6<sup>th</sup> May 2021 who are eligible to vote in local elections, on the two options for the future of local government in Somerset.

## Background

9. All councils in Somerset have recognised the need to change in the way local government works in the county if services are to be sustainable and the challenges the county and our communities face are to be met. In addition, the government signalled that it wanted to see change within Somerset local government and invited all councils in Somerset to submit proposals for change in October 2020.
10. In response to that invitation two alternative proposals have been submitted to the Secretary of State for consideration. These proposals are the **Stronger Somerset** proposal for two new unitary councils – Eastern Somerset and Western Somerset - replacing the existing five councils together with reform, put forward by the four Somerset District Councils and the **One Somerset** proposal for one new unitary council for Somerset, replacing the five existing councils, put forward by Somerset County Council.
11. The government has made it clear that local support will be one of the key criteria in any decision on the future of local government in Somerset. The Secretary of State launched a consultation on 22 February 2021 which closed on 19 April 2021.

## The Consultation

12. In the 9 October 2020 invitation letter to councils to submit proposals for change to local government in Somerset, the Secretary of State for Housing & Communities outlined that there were three key criteria that would be used in reaching his decision around the options for change. The second of these criteria is that the reforms must 'command a good deal of local support in the round'.
13. In launching the consultation, the Government wrote to a number of stakeholder organisations. It also set out that anyone, inside and outside of Somerset, including residents, was able to respond to the consultation but that no approach would be made or publicity undertaken in this regard.
14. Somerset's district councils have made representations to the government outlining their concerns with the consultation process and its ability to support the Secretary of State in determining how each of the proposals meets the second criteria around the level of local support. These concerns can be



- a. There is too limited a number of named consultees to determine the level of support for any proposal.
  - b. The list is dominated by statutory bodies and excludes other key organisations that are important to community life and well-being and have proved to be essential in responding to the pandemic such as:
    - a. Somerset's highly active city, town and parish councils and their representative bodies
    - b. Somerset's voluntary and community organisations
  - c. There are too many bodies on the list which are either led by or form part of Somerset County Council and this may inadvertently skew the process.
  - d. Organisations such as Yeovil College and Bridgwater & Taunton College, who are key to improving skills, developing the economy and supporting improvements in outcomes and quality of life in our communities were omitted.
  - e. Almost as many organisations outside the county are on the consultation list as inside the county, all with an equal say on the future of local services and local communities.
  - f. Whilst any individual or organisation can respond, narrowing the official list invited to respond risks the perception of a hierarchy where some voices are fundamentally much more important than others and therefore may have deterred residents and organisations of Somerset from responding.
  - g. Should a resident of Somerset wish to respond, the process and the structure of the consultation makes it particularly hard: the consultation makes no provision for people without easy access to the internet during the lockdown; and for those who are able to be online, the language is exclusionary and the questions asked are unclear.
  - h. That the available evidence suggests that the overall response rate from people and organisations in Somerset is low and the consultation process will therefore not allow the Secretary of State to make a fully informed decision in cognisance of the true picture as regards criteria 2 and the level of support for each proposal amongst the people who will be affected the most, the residents of Somerset.
15. At the District Council's Network meeting on 10 March 2021, the Secretary of State underlined the importance of residents' views in the reorganisation and reform process, stating that it must be right for residents to have equal footing in terms of responding to the consultation and that although there is a legal list of stakeholders that must be engaged, residents' views and what is popular and supported by the communities are vital. Unfortunately, neither the representations made to government nor the Secretary of State's support for residents' views have resulted in any changes to the consultation process.
16. There has been a call from some groups and sections of the community to let all residents have their say on the future of local government in Somerset through the holding of a referendum. These calls have increased in recent weeks, possibly due to the concerns around the consultation process.
17. In the light of the above, this report recommends the holding of a Local Authority Poll or what is commonly known as a Local Referendum as a means of supporting the Secretary of State in making his decision, particularly in respect of criteria 2 of the decision making process in determining the level of local support.



## **The Holding of a Local Authority Poll (Local Referendum)**

### **The Power to Hold a Local Authority Poll**

18. Section 116 of the Local Government Act 2003 provides a specific power for local authorities to hold a local advisory poll (referendum). The Act does not provide for local electors to be able to demand a referendum.
19. The result of a section 116 poll is not binding on the council or any other entity. It is purely advisory. It does however provide clear evidence of the public views on the matter being put before the voters. If the Council decides to hold a section 116 poll to ascertain the views of its residents on the future of local government in Somerset, that poll would be a purely advisory indication of residents' views to assist the Secretary of State in making a decision by providing evidence in respect of local support (the second of the government's assessment criteria).
20. Under section 116 it is up to the Council to determine who to poll and how the referendum is to be conducted. Accordingly, the Council needs to decide: -
  - a. does it wish to hold such a local advisory referendum?And if it does:
  - b. the franchise (who will have a vote)
  - c. the question; and
  - d. how the poll is to be conducted.
21. In addition to the power contained in Section 116, the General Power of Competence set out in Chapter 1 of the Localism Act 2011, in giving councils the power to do anything an individual can do provided it is not prohibited by other legislation, is an alternative route that the Council could use to decide to hold a local poll/referendum, particularly as holding a poll/referendum is not prohibited by other legislation.

### **Franchise**

22. It is proposed that those to be included in the section 116 poll will be all those on the South Somerset Electoral Register on 6 May 2021 who are entitled to vote in local elections.

### **The Voting system and Question to be asked**

23. The Electoral Commission has produced guidance for central Government for assessing referendum questions, and this provides a useful guide for determining the question to be used on the ballot paper for a section 116 poll. These guidelines state that a referendum question should present the options clearly, simply and neutrally, be easy to understand and to the point. It should



be unambiguous, it should avoid encouraging voters to consider one response more favourably than another and it should avoid misleading voters. This point was also echoed by James Goudie QC. The question should be written in plain language (language that uses short sentences, is simple, direct and concise and uses familiar words while avoiding jargon or technical terms that would not be easily understood by most people).

24. The question should be written in neutral language, avoiding words that suggest a judgement or opinion either explicitly or implicitly. The information contained in the question should be factual, describe the question, the options clearly and accurately and the question should avoid assuming anything about voters' views.
25. In considering the question, the voting system needs to be taken in to account. Most polls in England utilise the single non-transferrable vote system, also known as first past the post. It is the system that voters are most familiar with when taking part in elections and polls. Therefore, it is proposed to utilise this system in the local authority poll.
26. Following independent advice from one of the country's leading elections and electoral law specialists it is proposed that the following question is put in the poll to the residents of Somerset:

*"Which of the two options for change in local government in Somerset to replace the existing five councils do you support (select one only):*

- a. **One council for Somerset** (*"One Somerset" - the plan for a single council proposed by Somerset County Council*)
- b. **Two councils for Somerset: Eastern Somerset and Western Somerset** (*"Stronger Somerset" the plan for two councils for Somerset – an Eastern and a Western Somerset council – proposed by the South Somerset District Council and the other district councils of Somerset*)

#### **Conduct of the Referendum.**

27. There are three options that have been considered for running the referendum (all costs being the total cost across the four districts of Somerset):

- i. **Postal poll using a supplier but with the district councils administering the count**

Estimated cost - £178,000 + return postage (approx. £55,000 to £110,000) plus staff time for administration and counting

- ii. **Postal poll and internet poll using a supplier with the supplier also administering the counting process and verifying the result**

Estimated cost - £310,000

**iii. Traditional poll**

This would be a mixture of polling stations and postal votes, administered by the district council election teams.

Estimated Cost – up to £933,000

28. As well as cost, there are a number of other important considerations in the conducting of the poll.
29. Due to the Covid 19 restrictions the 6<sup>th</sup> May 2021 is the first day an election or referendum can be legally held.
30. On 6<sup>th</sup> May, elections for the Police and Crime Commissioners are due to be held. These elections are being conducted in accordance with the Police and Crime Commissioner Elections Order 2012 which facilitates combined elections, but only those types of elections prescribed within the regulations. The list of elections capable of being combined with the PCC elections does not include a referendum to be conducted under Section 116 Local Government Act 2003 and therefore it is not possible to combine the poll with the existing elections.
31. Whilst the poll could be held as an in person poll on another day, councils would not have the power to force public venues such as schools, to provide rooms or other facilities for voters. In addition, this would require considerable resources and significant additional cost at a time when council resources are already stretched.
32. It will be important locally that the result of the poll is able to be regarded as a true reflection of locally expressed opinion. If the poll or part of it was administered by the district council electoral teams, they would undoubtedly uphold the highest standards and provide total impartiality in the process, and other safeguards such as independent observers would be in place. However, contracting out the entire poll to a third party with an excellent reputation for conducting impartial polls would give added assurance that the result is a true reflection of those who expressed a view in the poll. This also reduces the risk of bias referred to by the Secretary of State.
33. Accordingly, it is recommended that the poll be conducted as a postal and on line ballot entirely conducted by a third party, Civica Electoral Services (formerly the Electoral Reform Services). It is further recommended that the poll be held commencing Tuesday 18<sup>th</sup> May 2021 to avoid any confusion with the Police and Crime Commissioner Election, and close at 5.00 PM on Friday 4<sup>th</sup> June 2021, giving residents two clear weeks to return their ballot papers or vote on line.



## **South Somerset District Council Financial Implications**

The total cost of the poll will be approximately £310,000 although there is likely to be variance dependent on turnout and the number of voters choosing to vote on line rather than by post. This cost is for a poll covering the electors in all four districts of Somerset and would be shared with those councils in Somerset that agreed to a poll. Therefore the cost to South Somerset District Council will be approximately £90,400 and will be met from the Local Government Change Reserve.

A statement from the Council's S151 Officer can be found at Appendix F

### **Legal implications (if any) and details of Statutory Powers**

The Local Government Act 2003 Section 116 provides a specific power for local authorities to hold a local advisory poll (referendum). The Localism Act 2011 Section 1 also gives Councils the General Power of Competence to hold a local poll/referendum.

Section 61 of the Coronavirus Act 2020, relates to the power to postpone certain other elections and referendums in the period from 16 March 2020 to 5 May 2021, and this applies to a poll under Section 116 of the Local Government Act 2003. This means that the earliest date a local poll could commence is 7 May 2021.

External Legal advice has also confirmed that the Council is legally able to use the Electoral roll for the purpose of holding a local poll/referendum.

A statement from the Council's Monitoring Officer can be found at Appendix E

### **Council Plan Implications**

The holding of a local authority poll on such a significant potential change for customers, residents and communities supports core values set out in the Council Plan, in particular:

"Open and transparent - Actively communicating, engaging and listening to feedback"

### **Carbon Emissions and Climate Change Implications**

None directly arising from the report.

### **Equality and Diversity Implications**

The holding of a postal and online poll with ballot papers sent directly to each elector will improve access for all residents to consultation on the future of local government in Somerset than is currently the case.



Ministry of Housing,  
Communities &  
Local Government

**Rt Hon Robert Jenrick MP**

Secretary of State for Housing, Communities and  
Local Government

**Ministry of Housing, Communities and Local  
Government**

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Leaders of the Somerset District Councils

[www.gov.uk/mhclg](http://www.gov.uk/mhclg)

Our Ref:10640377

12 April 2021

Dear Leaders

Thank you for your letter of 6 April regarding the actions you are taking to promote access to the current statutory consultation on local government reform and your proposal to undertake a local poll on the two proposals for unitary local government in Somerset.

I welcome the measures that councils are taking to ensure the widest possible awareness of and access to the consultation. It is of course important that any such steps that councils take do not promote, and cannot be perceived to promote, a particular proposal.

As to the exercise you are proposing to conduct in May, it is a matter for your councils to decide whether they wish to proceed, having regard to all the circumstances including:

- the council's powers to undertake the proposed exercise, its feasibility including any proposed use of the full electoral register and to whom it may be made available, and its value for money in the use of public funds;
- the council's obligation to have regard to the publicity code, in particular during this time of sensitivity during the elections of the PCC and council by-elections; and
- the process currently being undertaken in relation to the unitary proposals, particularly the current consultation and the publicly announced timetable which it is expected all will adhere to.

Your councils will need to take their own legal advice on these issues and be satisfied as to the lawfulness and propriety of any actions they take.

I note that you see this exercise as providing us '*with direct evidence of the level of local support in our area*' and that you do not consider that the statutory consultation will allow me '*to make a fully informed decision.*' In short you consider that this exercise '*will help me to assess*' your bid against the criteria set out by my Department in the original invitation letter. I am afraid that I do not share this view. Rather than facilitating my decision making, I believe that were you to undertake the proposed exercise it risks duplicating and detracting from the consultation to which thousands of people in Somerset have already responded, and would be confusing for local people, businesses and others in Somerset. Nor would it be consistent with the published timetable for my decision making which all expect me to follow. On the face of it, it is hard to see how this can represent value for money for the people of Somerset. You would have to account to your local taxpayers for whatever expense is incurred, and the consequences of that for your finances and delivery of local public services.

Moreover, the explanation that you provide in your letter for your proposed course of action is based on a fundamental misunderstanding of the process of the decision making on local government restructuring. As we have consistently made clear, my decision will be a balanced judgement assessing the proposals against all three criteria, having regard to all representations received, including responses to the consultation, and to all other relevant information available to me. My decision will not be made on the basis of which proposal has the most popular support as expressed simply through the number of representations received or the result of a poll. The support criterion is about local support generally, not only that of residents, but also support from the business community, the voluntary sector and other public service providers. It is possible that more than one proposal in an area can be considered to meet the support criterion and the judgement as to which (if any) should be implemented will reflect my balanced assessment against all three criteria.

The statutory process provides for a consultation which allows councils and others whom I consider appropriate to express views and provide evidence about the proposals. As we told the House on the 8 March 2021, the consultation is not a poll or a referendum; for good reasons the statute does not require either a poll or referendum, nor indeed in contrast to certain other statutory processes a public consultation. I reject any suggestion that the consultation that I am carrying out is not fit for purpose or in some way flawed.

Were your councils to decide to go ahead with the exercise that you are now proposing, I would reiterate that in order to fulfil my published timetable the decision-taking process could be well advanced before you have any results from that exercise. Moreover, for those results to have any credibility it is not only the form of the question in which it is important to avoid risking bias in the responses, but also the risk of creating bias must be scrupulously avoided in the material describing the proposals which is circulated to those who are being invited to respond. The format of your letter itself, headed 'Stronger Somerset' the name of one of the proposals, raises questions as to the risk of bias in this exercise, which it may prove difficult to overcome. Without such credibility there are questions as to the weight that can be appropriately given to the results of any exercise such as you are proposing.

In conclusion, I would reiterate that this is a matter for your councils to decide – which I understand they are considering this week, but I would hope my comments give you cause to reconsider pursuing the exercise you are proposing. You might well be best advised to concentrate on further promoting the statutory consultation on which there has already been a very significant number of responses.

I am copying this letter to the Leader of Somerset County Council, whom I understand you have invited to join you in the exercise you are proposing.

A handwritten signature in black ink that reads "Robert Jenrick". The signature is written in a cursive style with a long horizontal line underneath it.

**RT HON ROBERT JENRICK MP**

**Bevan Brittan Legal Advice**

As with all decisions in the context of local government, when exercising powers the Councils must act for proper purposes, and in good faith. They must exercise the powers properly, following proper procedures in a "Wednesbury reasonable" manner. In other words the Councils must act for proper motives, taking into account all relevant considerations and ignoring irrelevant matters. They must not act irrationally, and must balance the risks against the potential rewards.

Additionally, the Councils must consider their overarching duties, including best value and the fiduciary duty to taxpayers, crime and disorder reduction and equalities, as well as any explicit requirements placed on a specific power.

Whilst there are arguments to support the proposal for a poll, our view is that there is a high risk of challenge based on best value and use of resources should the Councils go ahead, which could undermine the reorganisation proposals. Any challenge could impact upon whether or not there would be any reorganisation in Somerset this time around.

This risk is increased given the views of the Secretary of State who has written to the Councils stating that he is of the view that proceeding would risk duplicating and detracting from the consultation; would be confusing for local people, businesses and others in Somerset; and would not be consistent with the timetable for decision making. He further states that it is hard to see how the proposals can represent value for money.

That said, the Councils clearly have the power to undertake a poll under section 116 of the Local Government Act 2003, and it is a matter for the Members of each Council to determine whether to go ahead having taken into account the above decision making principles, and having balanced the likely risks and benefits accordingly.

Kind Regards

Judith

**Judith Barnes** | Partner  
for **Bevan Brittan LLP**

**SOMERSET**

**FUTURE LOCAL GOVERNMENT**

**REFERENDUMS**

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**OPINION**

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INTRODUCTION

1. Part 1 of the Local Government etc Act 2007 ( the 2007 Act ), and in particular Chapter 1 thereof, relates to: Structural ( and boundary ) changes in England. Sections 1-7 inclusive are concerned with changes from two tiers to single tier of local government. That is what is currently under consideration in Somerset.



2. However, there is an issue whether there should be one unitary, favoured by the upper tier County Council, or two unitaries. The latter is favoured by Districts, four ( out of five ) of which I am instructed to advise.

3. Sections 11-19 of the 2007 Act are concerned with implementation of changes. That stage has not yet been reached. Sections 20-23 inclusive contain supplementary provision, including definitions.

4. Section 7 of the 2007 Act is at the heart of the matter for present purposes. Any change will be implemented by Order made by the Secretary of State ( the SoS ) and subject to Parliamentary process.

5. However, before deciding to make the change the SoS must consult. He has been consulting. The consultation opened on 22 February 2021. The period for consultation responses closed on 19 April 2021. All four Districts have responded.

6. The decision by the SoS is yet to be made. It will have to take into account the consultation responses, the last stage of the consultation process. That however will not be the only information capable of being taken into account, or being required to be taken into account, by the SoS. Moreover, it is necessary that the consultation should have been lawful,

which was not the case in respect of Devon and Norfolk, (2010) EWHC 1456 (Admin), (2011) LGR 64, in which I appeared for Exeter and Norwich City Councils.

7. Section 3 of the 2007 Act gives Guidance from the SoS a significant place in the skeletal legislative scheme. It is a central feature of this Guidance that there are key criteria. These key criteria prominently include the question whether there is “local support”.

8. There are other relevant aspects of the overall legal framework, including that :-

(1) The Districts owe a fiduciary duty to their respective council tax payers, reaffirmed in *Charles Terence Estates v Cornwall Council* (2012) EWCA Civ 1439, (2013) 1 WLR 466, in which I appeared for Cornwall Council, and all public law principles in relation to the reasonable and proper exercise of power;

(2) The Districts are each a “best value” authority under the Local Government Act 1999, including with respect to economy, efficiency and effectiveness;

(3) The Districts each have the specific power to conduct a Poll, or local Referendum, under Section 116 of the Local Government Act 2003 ( the 2003 Act ), which is expressly without prejudice to any other power;

(4) The Districts each has the very broad General Power of Competence under the Localism Act 2011, which is not excluded by there being an overlapping power;

(5) The Districts are subject to limitations on publicity, pursuant to the Local Government Act 1986 and the Code of Recommended Practice; and

(6) Until 6 May 2021 the SoS, the County and the Districts are subject to the Convention on pre-election purdah periods.

9. The power under Section 116 of LGA 2003 is broad, in that :-

(1) It can be exercised in order to ascertain views on any matter relating to the well-being of an authority's area; and

(2) It is for the authority itself to decide not only who to poll, but also how a Referendum is to be conducted; and

(3) It's purpose is to be advisory.

10. The Districts have been advised that they have power to conduct and/or commission a Survey of local residents with respect to local support. I agree.

11. The main question before me is whether such a Survey can be by way of a Referendum under Section 116 of the 2003 Act. I see no reason in principle why not. On that basis, any issue is as to the reasonable and proper exercise of that power, in all the present circumstances, a matter with respect to which the Districts are the primary decision-makers.

## REFERENDUMS

12. The Districts have recently received “ strong advice “ not to go ahead with Referendums, on the basis that would be an unreasonable exercise of ( an undoubted ) power. I do not agree.

13. This advice appears to be for two reasons.

14. The first is that the result would be “ without value”. If that were indeed so, it would be a compelling argument against lawfulness.

15. However, I consider that argument is based on an incorrect premise. The premise is that the result will be too late to be submitted as part of the consultation ( true ) and will not be taken into account by the SoS as part of THAT process ( true).

16. It does not however to my mind follow that the result would be without value. Consultation, including the requirement conscientiously to consider consultation responses, is a necessary condition for the SoS to make a lawful decision. It is NOT a sufficient condition. He must consult lawfully and he must act lawfully in all other respects. His decision, in order to be lawful, must also comply with the Wednesbury principles. They are that the decision-maker must give consideration to all relevant factors, must disregard irrelevant considerations, and must come to a decision to which a reasonable decision maker could come, that is a decision that is not so unreasonable that no reasonable decision maker could make it. Wednesbury principles are concerned with the substance of the decision. Consultation is concerned with procedural propriety.

17. This will include taking account of all relevant considerations. Prominent among these will be ALL evidence bearing on the key criterion

of local support, including the result of a Poll, or the fact that a Poll is in progress.

18. The second argument advanced against the Referendums relates to “value for money”. Again, if there was a lack of value for money that would be a compelling argument against lawfulness.

19. However, I consider that argument also appears to be based on an incorrect premise, that the outcome will be without argument. I regard the second value as being tainted by the first. Moreover, within the parameters of reasonableness and fiduciary duty, it is for the Districts to judge cost/benefit.

20. Of course :-

(1) The Districts must be fully informed as to and take full account of the costs”

(2) They should consider whether the Referendum might be counter-productive in relation to the SOS’s eventual decision and/or any subsequent judicial review challenge to it; and

(3) Not only must the Districts have regard to all relevant considerations, also they must not have regard to any irrelevant/improper purpose, such as being seen to go down fighting or to be doing something.

### ADVICE SOUGHT

21. I am asked six questions. I address them in the order in which they are raised in my helpful Instructions, and having had the benefit of a Teams Conference on 20 April 2021.

### FIRST QUESTION

22. I am asked whether I agree with the advice provided by Bevan Brittan in an email dated 13 April 2021.

23. I agree with much of it. However :-

(1) Whereas consultation is normally concerned with the quality of responses, quantity is material in relation to the express criterion of local support;

(2) The focus should be on the SoS' eventual decision under the 2007 Act, not merely on the consultation element;

(3) The focus should also be on the important constitutional fact that the SOS's decision in order to be effective and implemented is subject to approval by both Houses of Parliament, and the outcome of the Polls would precede, and be capable of influencing, Parliamentary debate and decision;

(4) For these reasons, I do not agree that the result would necessarily be without value; and

(5) I do not agree that lack of value for money is demonstrated.

## SECOND QUESTION

24. I am asked whether I consider that the Districts can lawfully hold the Referendums as a reasonable and proper exercise of power in compliance with fiduciary and other duties.

25. My answer is : " Yes ". This is of course provided that the decision is arrived at in a lawful manner



### THIRD QUESTION

26. I am asked as to the risks to the Districts and their respective Members and Officers should they resolve to proceed with a Poll.

27. There may be a challenge; but I regard any risk of personal liability as being very low. This is of course provided that there is no improper behaviour such as having an improper purpose.

### FOURTH QUESTION

28. I am asked how the Districts should deal with the Bevan Brittan advice.

29. Members should be made aware of it.

### FIFTH QUESTION

30. I am asked how the Districts may conduct and manage any Poll in a way that avoids any suggestion of bias as alleged in the letter from the SoS dated 12 April 2021 and also demonstrates that value for money is achieved.

31. In order for the result of the Referendum to have credibility, it, and any publicity accompanying it, must be framed in a way that is consistent with it being a matter of seeking of views as a matter of information and advice in accordance with the Section 116 power, on whether to have one or two unitaries, not in a way that might suggest that it is an exercise in salesmanship, slanted in favour of, and/or against, a particular outcome.

32. However, I do not believe that reference to “ Stronger Somerset” gives an appearance of bias. That is the (legitimate) title of one of the proposals. It is by now very well established. It is no more objectionable than the title “One Somerset” for the alternative proposal.

#### SIXTH QUESTION

33. I am asked finally as to any general issues that may assist in process terms remitting the Districts to hold Polls in a manner that will avoid potential challenge.

34. I have nothing to add, but will be happy to advise further as may be required.

11 King's Bench Walk  
Temple EC4Y 7EQ

[goudie@11kbw.com](mailto:goudie@11kbw.com)

**JAMES GOUDIE QC**  
22 April 2021



Rt Hon Robert Jenrick MP  
 Secretary of State for Housing, Communities and Local Government  
 2 Marsham Street  
 London  
 SW1P 4DF

22 April 2021

Dear Secretary of State

Thank you for your letter of 12 April responding to our proposal to hold a local poll (referendum) on the two proposals for unitary local government in Somerset.

We want to assure you that we fully intend to take account of all the issues you raise, as we consider whether to proceed with our proposal.

We are sorry that you do not share our view that this local poll will help with decision-making. Having reflected carefully and taken further advice from James Goudie, QC, we remain convinced that a clearly expressed view of the local electorate will be of value in the decision-making process ahead.

Should our members agree the proposal, the local poll will follow guidance produced by the Electoral Commission and will ask a question that presents the options clearly, simply and neutrally, will be easy to understand and to the point. It will be unambiguous, will avoid encouraging voters to consider one response more favourably than another and will avoid misleading voters. The poll would be independently run and verified and offer every elector in Somerset one vote.

Voting packs will be delivered to all electors and will include ballot papers and instructions on how to vote either by post or online. Information about each proposal will be given equal prominence in the voting pack.

We believe the local poll will encourage people to express a preference in a way that is familiar, and easy to engage with, for all voters. While we do not yet know how many Somerset voters participated in the consultation – we have promoted it well and we sincerely hope that many did – we do believe that a local poll of the kind we propose will allow us to maximise participation in this hugely important issue.

We are therefore offering the local poll as supplementary and complementary evidence to the current decision-making process you are conducting.

We understand that any local poll is advisory. We think it worth noting that all stakeholders who live in Somerset and are registered to vote here will be able to take part. That would include those from other stakeholder groups, such as employers, the public sector, education and community and voluntary sector. Everyone's voice would be heard, and would count, equally. We would contend that this would be of great help in making the decision and avoid any ambiguity about where local support lay.

We have taken careful legal advice and we are confident of our respective councils' powers to hold a local advisory poll – this is provided for in Section 116 of the Local Government Act 2003 and under the General Power of Competence in the Localism Act 2011. We are advised that the full electoral register may lawfully be shared with a third-party supplier for the purposes of conducting such a poll. The councils will debate and determine the issue of value for money in the use of public funds. We have arrived at the proposed method for conducting the poll by balancing inclusivity and ease of participation with cost. Every elector in Somerset

will be given the chance to have their vote for little more than the price of a second-class stamp.

As to timing, you will be aware that it has not been possible to hold a poll of this sort any earlier in this process for two reasons: 1. Covid-19 restrictions meant that 6 May was the first day an election or referendum could be legally held. 2. The statutory order for PCC elections does not allow a local poll of the sort we propose to be combined with them. We also expect that according to the publicly announced timetable your decision in regard to the current process will be made before the summer parliamentary recess. That would allow time for the result of the local poll to be known before a final decision is taken.

We want to assure you that throughout the consultation period we have acted in the spirit of the guidance issued by MHCLG on 22 February to each of the councils in Somerset to facilitate the widest possible awareness of, and access to, the consultation.

We have, of course, taken full account of the Local Government Publicity Code to ensure we comply with the both the spirit and letter of the code and we will continue to do so.

During the consultation, we were conscious of the guidance in the code that says publicity may set out the local authority's views and reasons for holding those views. Our approach was therefore to raise awareness of the consultation and how to take part, and to explain the position of the district councils and why they have adopted this position. We have never strayed across the line to say, 'Back us'. We have also made regular reference to the existence of an alternative proposal and how people can find out more about that alternative.

Our legal advice is that the reorganisation proposals and consultation exercise are not political and therefore our publicity on these matters is unaffected by the pre-election period for the PCC and by-elections, providing we comply with the publicity code in other respects, which we have.

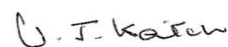
We understand we will need to ensure the local poll is presented and conducted in a way that does not appear to favour one option or another and encourages free choice between the two clearly expressed options.

We thank you for confirming that the proposal for a local poll is a local decision. We can assure you we intend to include all the considerations you set out in your letter as we take this proposal through our local democratic processes.

Yours sincerely



Councillor Duncan McGinty  
Sedgemoor District Council



Councillor Val Keitch  
South Somerset District Council



Councillor Frederica Smith-Roberts  
Somerset West and Taunton Council



**Monitoring Officer Advice**

1. The decision to proceed with a poll (referendum) is an important decision for Members and it is important that Members do so having the benefit of clear legal advice as to the implications and associated risks.

**Secretary of State correspondence**

2. To ensure the Secretary of State was kept informed of our thinking in relation to the conducting of a poll, the Leaders wrote to the Secretary of State on 6 April 2021 to inform him that we were intending to take a report to our Councils seeking authorisation to proceed with a poll (referendum). A response was received to that letter on 12 April 2021 and a copy is attached at Appendix (A).
3. That letter outlines that it is a matter for our council to decide whether they wish to proceed, having regard to all the circumstances including:
  - the council's powers to undertake the proposed exercise, its feasibility including any proposed use of the full electoral register and to whom it may be made available, and its value for money in the use of public funds;
  - the council's obligation to have regard to the publicity code, in particular during this time of sensitivity during the elections of the PCC and council by-elections; and
  - the process currently being undertaken in relation to the unitary proposals, particularly the recently completed consultation and the publicly announced timetable which it is expected all will adhere to.
4. The Secretary of State invited the councils to take our own legal advice on these issues and be satisfied as to the lawfulness and propriety of any actions we take.
5. In light of the important issues raised by the Secretary of State it was considered prudent by the Statutory Officers and Leaders to seek further external legal advice.

**External Legal Advice**

6. Advice was taken from external solicitors, Bevan Brittan, specialising in, amongst other things, Local Government law and Governance. A copy of that advice is attached at Appendix (B). Members attention is carefully drawn to that advice which confirms that Members have the power to conduct a poll but raises significant concerns about the risk involved in the Councils proceeding with a poll outside of the Secretary of State's consultation period particularly as regards value for money.
7. In light of the concerns raised in that advice, it was considered appropriate to take further advice from senior Counsel. In the circumstances James Goudie QC was invited to consider the concerns raised by the external lawyers.

8. James Goudie QC was called to the Bar in 1970 and was appointed as a QC in 1984. He is listed as a leading silk in Administrative and Public Law and Local Government Law in Chambers and Partners and the Legal 500. A copy of James advice is attached at Appendix (C) for Members perusal.
9. James Goudie, like Bevan Brittan, confirms that the Council has the power to conduct a poll under Section 116 of the Local Government Act 2003. In addition, the Districts have the very broad General Power of Competence under the Localism Act 2011. James Goudie considers that the decision to proceed or not with a poll (referendum) is one that Members can lawfully make provided that they are fully informed as to, and take full account of, the costs of the poll. In addition, Members should consider whether the Referendum might be counter-productive in relation to the SOS's eventual decision and/or any subsequent judicial review challenge to it. As with any decision, Members have to have regard to all relevant considerations and must not have regard to any irrelevant/improper purpose.
10. In terms of the specific points raised by the Secretary of State in their letter, the advice confirms as follows;

**The Council's powers to undertake the proposed exercise, the feasibility and the use of the full electoral roll**

As already covered above, the legal advice obtained from the external lawyers and Counsel has confirmed that the Councils have the necessary powers and ability to carry out the poll (referendum).

**Value for money in the use of public funds**

Counsel has referred to the Council's fiduciary duty to council tax payers and the public law principles in relation to the reasonable and proper exercise of power. Counsel has advised of the fact that we are a best value authority including with respect to economy, efficiency and effectiveness. These factors have therefore been considered by the S151 Officers in their Statement at Appendix F.

**The Council's obligation to have regard to the publicity code, in particular during the PCC and council by-elections;**

Counsel's opinion has confirmed that the Districts are subject to limitations on publicity pursuant to the Local Government Act 1986 and the Code of Recommended Practice and up until the 6<sup>th</sup> May are subject to the convention on pre-election purdah periods. In the circumstances, if Members are minded to proceed with the poll (referendum), we will need to ensure compliance with the relevant legislation, Codes and guidance. The poll (referendum) will, however, be conducted after the PCC elections.

## **The process currently being undertaken in relation to the unitary proposals, particularly the recently completed consultation and the publicly announced timetable**

Whilst the consultation process has ended, the Counsel's advice states that this does not necessarily mean that it is without value. The focus needs to be on the eventual decision, not necessarily on the consultation element only. The Secretary of State is due to reach his decision by the summer recess and the final decision will not be made until the Structural Change Orders have been approved by the Houses of Parliament towards the end of this year. As Counsel's advice confirms, the Secretary of State must take into account all relevant considerations before reaching a decision which would include the result of a local poll or the fact that one is in progress.

### Factors for Member consideration

11. Any decision that Members take must be made in accordance with Wednesbury principles and must take into account all relevant information and disregard irrelevant information.
12. The Secretary of State has stated that local support is one of the key criteria in his decision-making. The poll is an advisory poll only and it is important for members to have regard to the fact that the poll will be conducted outside of the Secretary of States formal consultation process.
13. However, it is important to note that the decision of the Secretary of State has not yet been taken and even once it has been taken, the final decision is not made until such time as the Structural Change orders have been approved by the House of Commons and House of Lords. The Secretary of State has confirmed that his decision will be made before the summer recess and the MHCLG have indicated that the Structural Change Orders are anticipated in the last quarter of this calendar year.
14. As outlined in the report the Somerset District Councils have made representations to the government outlining concerns with the consultation process and its ability to support the Secretary of State in determining how each of the proposals meets the second criteria around the level of local support. In the light of the above, this report recommends the holding of a Local Authority Poll (referendum) as a means of supporting the Secretary of State in making his decision, particularly in respect of criteria 2 of the decision making process, namely in determining the level of local support.
15. In the circumstances Members need to weigh up the value of the benefit of carrying out the poll outside of the formal consultation process versus the cost to council tax payers of conducting that poll (referendum). This is a judgment that members are legally entitled to make after considering all of the information outlined in this report and the accompanying appendices. There is risk of challenge in proceeding with a poll (referendum), however, the advice from Counsel is that the risk of successful challenge is low and that the decision as to whether to proceed with a poll (referendum) is one that members are legally entitled to make.



## Local Government Reorganisation – Potential Residents Poll Report

### Addendum – Advice Note from S151 Officer

In view of the additional legal advice sought in relation to this item, further consideration has been given to the financial implications in respect of this proposal. Having considered this collectively with the S151 Officers of the other three districts, the S151 Officer provides further comments as follows:

#### ***Is the expenditure lawful?***

Advice from the QC makes it clear that Districts can lawfully hold the Referendums as a reasonable and proper exercise of power in compliance with fiduciary and other duties. This supports the S151 Officers' understanding that the expenditure is lawful, provided the Poll is conducted in compliance with such legal powers and duties and the specific advice given by the QC in paragraph 31.

#### ***Are the costs reasonable?***

Three options have been considered on how to conduct the Poll and the estimated costs of each are clearly set out in the report in 6.10, ranging from £233,000 to £933,000 (these exclude the costs of legal advice obtained). The rationale for proposing option 2 has been clearly presented. Whilst a direct contract award to Civica Electoral Services is necessary, given the time constraint and the specialist nature of the service, estimated costs have been presented by the supplier on a transparent basis. The S151 Officer therefore considers the costs to be reasonable for the service received. The option proposed in the report is towards the lower end of the total cost range, at £310,000, which equates to an average 72 pence per person eligible to vote across the four district areas.

#### ***Can the Council demonstrate value for money?***

Based on our understanding of the advice from the QC, and that costs are considered to be reasonable, it is the S151 Officer's view that value for money can be demonstrated.

The QC advises that the results of the Poll would have value and would need to be taken account of in the Secretary of State (SoS) decision and in the subsequent House of Commons and House of Lord's debate.

The advice does not support a view that the SoS is bound to ignore evidence from a Poll conducted after the initial public consultation period has closed.

It is also the S151 Officer's view that in demonstrating value for money it is important that the Poll is conducted in compliance with legal powers, and in line with the QC advice, i.e. that it is conducted "on whether to have one or two unitaries, not in a way that might suggest that it is an exercise in salesmanship, slanted in favour of, and/or against, a particular outcome." If the poll is conducted in this way, which is being

proposed in the report, then the results of the Poll are less likely to be challenged and to have a higher value in subsequent decision-making.

***Risk***

Members should note that a decision to proceed may face the risk of challenge. If this were to happen there is a risk of additional legal and associated costs: it is not possible at this stage to quantify this but such costs could be significant. Any such costs would impact on the General Fund budget and reserves balance.

# BALLOT PAPER



## Somerset West and Taunton Council

### Changes in Local Government

Cast your vote using one of the following methods:

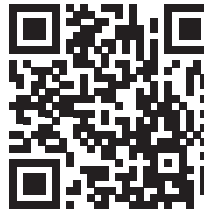


#### VOTE ONLINE

Go to:  
[www.cesvotes.com/somerset21](http://www.cesvotes.com/somerset21)

or scan the quick response barcode with your smartphone.

QUICK RESPONSE  
BARCODE



Security Code Part One

Security Code Part Two



#### VOTE BY POST

Vote by marking a cross 'X' in the box next to your chosen answer.

QUESTION	
<b>Which of the two options for change in local government in Somerset to replace the existing five councils do you support (select one only):</b>	
<b>a. One council for Somerset</b> ("One Somerset" – the plan for a single council proposed by Somerset County Council)	<input type="checkbox"/>
<b>b. Two councils for Somerset: Eastern Somerset and Western Somerset</b> ("Stronger Somerset" the plan for two councils for Somerset – an Eastern and a Western Somerset council – proposed by the Somerset West and Taunton Council and the other district councils of Somerset)	<input type="checkbox"/>



#### VOTING CLOSES

**NOON on FRIDAY 28 MAY 2021**

Your completed ballot paper should be returned in the pre-paid envelope provided and must be received by the Independent Scrutineer no later than the date and time shown above.





## **Date of Next Meeting**

Members are asked to note that a meeting of the District Executive will take place on **Thursday, 13<sup>th</sup> May 2021** as a virtual meeting via Zoom meeting software commencing at 9.30 a.m.

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