

## **Local Government Reorganisation – the Section 24 Direction and the General and Specific Consents Issued by the Executive of Somerset County Council**

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### **Purpose of the Report**

1. The purpose of this report is to inform members of the content and impact of:
  - (i) the Secretary of State's recent Direction under section 24 of the Local Government and Public Involvement in Health Act 2007 (the Section 24 Direction) and the restrictions it places on different types of expenditure by the Somerset district councils without the consent of the Executive of the continuing Somerset County Council (the County Executive) in the period to 1 April 2023 (Vesting Day);
  - (ii) the General Consent issued by the County Executive on 16 June 2022 to enable the majority of the business of the Somerset district councils to continue without the need to seek specific consent from the County Executive between 16 June and Vesting Day; and.
  - (iii) any requirement to seek Specific Consent for matters not covered by the General Consent and the process for doing so.

### **Public Interest**

2. The Section 24 Direction and the requirement it imposes to obtain consent from the County Council Executive in respect of a wide range of matters is of public interest because it is a constraint on the activities, expenditure and published plans of South Somerset District Council in the period to Vesting Day. It is important to explain the potential impact of the Section 24 Direction on the Council's business and set out the steps taken by the County Executive after consultation with the district councils to mitigate that potential impact by issuing a General Consent ensuring a Specific Consent mechanism is in place to enable business as usual to continue without unnecessary additional bureaucracy. It is in the public interest to ensure that Council services continue to be delivered in a timely and cost-effective manner in the period to Vesting Day.

## Recommendations

3. It is recommended:
  - a) The General Consent issued by the Executive of Somerset County Council under the section 24 Direction be noted;
  - b) That where the General Consent does not apply, all members of the Senior Leadership Team be given delegated authority in consultation with the section 151 Officer to seek specific consents from the Executive of Somerset County Council under the section 24 Direction if required to implement decisions taken or proposed by South Somerset District Council within their respective areas of responsibility.

**Reason:** To ensure that the Council can respond effectively to business and local government reorganisation needs in the period to Vesting Day.

**Note:** Appendices 2, 3 and 4 contain commercially sensitive information relating to the four district councils' financial and business affairs and have been treated as exempt information by the other Somerset councils under paragraph 3 of Schedule 12A of the Local Government Act 1972 - *Information relating to the financial or business affairs of any particular person (including the authority holding that information)*. If Members wish to discuss any of the information contained within the confidential appendices, then a resolution will need to be passed for the meeting to go into confidential session.

## Background

4. Section 24 of the Local Government and Public Involvement in Health Act 2007 allows the Secretary of State to direct that from a certain date the authorities to be dissolved under a Structural Change Order may not, without the written consent of those specified in the direction:
  - Dispose of land for more than £100,000 (note: disposals include granting or disposing of any interest in land; entering into a contract to dispose of land or grant or dispose of any such interest; and granting an option to acquire any land or any such interest)
  - Enter into contracts that exceed the following limits
    - Capital        £1,000,000+
    - Non-capital   £100,000+

**Note:** all of the financial limits set out above are cumulative from 1 January 2007. This means all disposals of land and, for contracts, repeat contracts with the same third party or for a similar description of matter as a previous contract are caught.

5. The purpose of a section 24 direction is to ensure that a new authority has oversight of and a degree of control over the decisions of its predecessor councils which could have implications for the finances and plans of that new authority. It should be noted that prior to this date four of the five Somerset councils, including South Somerset, were operating



under a voluntary finance and assets protocol designed to have a similar effect. However, once a section 24 direction takes effect, if land is sold or contracts are entered into without written consent, the other party cannot enforce them against the new authority, which was not the case under the protocol.

6. On 10 May 2022 the Secretary of State made a section 24 Direction in respect of structural change in Somerset to take effect on 16 June 2022 specifying the County Executive as the body whose written consent was required. On 15 June 2022 the County Executive issued a General Consent to come into effect on 16 June 2022 (Appendix 1). This General Consent and the process for obtaining specific consent were the subject of consultation with the Chief Executives, section 151 Officers and Monitoring Officers of the five Somerset councils. It should be noted that the County Executive can amend this General Consent at any time.

## The General Consent

7. As set out in the report to the County Executive meeting on 15 June, the General Consent is intended to ensure that the right balance is met between giving the County Executive sufficient oversight of decisions made by the District Councils that might bind the future unitary council while also allowing the District Councils to continue to carry out most business as usual until Vesting Day without unnecessary additional cost and bureaucracy. A key consideration for all five councils is the ability to respond effectively to business and local government reorganisation needs during the transition year.
8. The General Consent is set out in Appendix 1, but in summary allows the Somerset district councils to enter into new contracts (over £100k for revenue and over £1m for capital) and to dispose of land (over £100k) where the following criteria are met:

### New contracts:

- funded from within the Council's 2022/23 approved revenue budget with a contract that cannot be extended beyond vesting day or
- an essential response to a civil emergency, for example response to flooding; or
- a new staffing contract which can be funded from within the 2022/23 approved revenue budget **and** which complies with the agreed LGR staffing protocol; or
- **General Fund:** a new capital funded contracts for projects/programmes that are included in the 2022/23 approved capital budget **and** can be funded from financing sources included within the budget reports and/or Treasury Management Strategies agreed in February/March 2022. Such contracts can extend beyond vesting day **if** the individual project has an approved phased budget, and no revenue implications beyond 1<sup>st</sup> April 2023; or
- **Housing Revenue Account:** new capital funded contracts for projects/programmes that are included in the 2022/23 approved capital budget/HRA Business Plan **and** can be funded from financing sources included



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within the budget reports and/or Treasury Management Strategies agreed in February 2022. Such contracts can extend beyond vesting day if within the approved budget for the contract and within HRA business plan value for money and affordability limits; or.

- Arrangements relating to the operation of prudent treasury management that comply with the district council's approved treasury management and investment strategies, prudential indicators, and treasury management practices, where any borrowing does not exceed £5m and 365 days; or;
- outside existing approved budget but fully funded by external grants/contributions, unless grant conditions require match funding exceeding the section 24 thresholds and/or pose potential significant risks and significant obligations to the new authority.

### Land transactions:

- disposals of council dwellings or grant or renewal of leases under the Right to Buy legislation and disposal of other housing revenue account assets in line with approved budgets, financial strategies and business plans; or.
- lease rental agreements for investment properties and continuing past vesting day at market value.
- lease rental agreements for non-investment properties continuing past vesting day where the rental value secured is at least that contained within the approved rental income budget or within the Business Case previously agreed by the Council before 16 June 2022; or
- completion of land and property disposals (over £100k) that are already approved through the District Council's governance arrangements prior to S24 Effective Date and in line with the 2022/23 approved budget and capital strategy. All capital disposal or land sales outside of those identified will need specific consent.

9. Where the General Consent does not apply, the Council will need to obtain a specific consent from the County Executive before dealing with either the property transaction or the contract. At their meeting on 15 June 2022, the County Executive delegated authority to grant specific consents as follows:

<b>up to £499,999</b>	the Section 151 Officer in consultation with the Monitoring Officer and the Section 151 Officers of the District Councils
<b>£500,000 - £5,000,000</b>	the Lead Member for Finance and Human Resources in conjunction with the Section 151 Officer

Amounts over £5,000,000 will fall to be considered by the County Executive.

The section 151 officers are preparing guidance on the Direction, the General Consent and the processes and procedures for obtaining specific consent.

## Financial Implications

10. There are no specific financial implications arising directly from this report. The section 24 Direction and the General Consent from the County Executive are factors that will need to be taken into account as part of the Council's proper decision-making process from now until Vesting Day.
11. A report detailing suggested amendments to the Council's Financial Procedures Rules, including provisions in respect of Local Government Reorganisation and the Direction/General Consent, is set out at Agenda item 10.
12. The potential scale and value of specific consents that may be required during 2022-23 are set out in Appendix 2 (potential land disposals for specific consents), Appendix 3 (capital schemes where specific consents are likely to be required) and Appendix 4 (non-capital schemes where specific consents are likely to be required) where specific consents are likely to be required for non-capital schemes.

**Note:** the Appendices include details of schemes where the five section 151 Officers consider that specific consents are not required.

13. The estimated total value of likely specific consents during 2022/23 is £3.8m in land disposals, £98.6m in capital schemes and £7.8m in non-capital schemes. The estimated total value of schemes where specific consents are not required during 2022/23 is £17.4m in land disposals and £106.4m in capital schemes and £7.8m in non-capital schemes.

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

14. Sections 24 – 29 of the Local Government and Public Involvement in Health Act 2007 apply. Section 24 has been dealt with in the main body of the report. Power to issue general consent is set out in section 26. Section 27 sets out the cumulative calculation (everything since 1 January 2007) rules. Section 28 provides that any disposal in contravention of a direction is void and that contracts entered into in contravention of a direction cannot be enforced against the new authority.

## Risk Matrix

15. The section 24 Direction may impact the Council's ability to deliver if specific consent is required but refused by the County Executive.

## Council Plan Implications

16. The section 24 Direction may impact the Council's ability to deliver against the Council Plan if specific consent is required but refused by the County Executive.

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

17. No carbon emissions or climate change implications have been identified as a result of this report

## **Equality and Diversity Implications**

18. No equalities implications have been identified as a result of this report.

## **Privacy Impact Assessment**

19. No privacy impact assessment implications have been identified as a result of this report.

## **Background Papers**

Somerset Structural Changes Order 2022

Section 24 Direction dated 10 May 2022

Report to the Executive of Somerset County Council meeting on 15 June 2022, pages 161 - 192

<http://democracy.somerset.gov.uk/documents/g1631/Public%20reports%20pack%2015th-Jun-2022%2009.30%20Executive.pdf?T=10>

## **General Consent**

General Consent is hereby granted to the District Councils to enter into new contracts (over £100k for revenue and over £1m for capital) and to dispose of land (over £100k) where the following criteria are met:

### **Entering into new contractual arrangements:**

1. Entering into new revenue funded contracts (over £100k excluding recoverable VAT) which can be funded from within the individual Council's 2022/23 approved revenue budget **and** where the contract does not enable extensions beyond vesting day. This could be a contract for goods or services.
2. Any contract required as an essential response to a civil emergency, for example response to flooding.
3. Entering into new staffing contracts which can be funded from within the 2022/23 approved revenue budget **and** which comply with the agreed LGR staffing protocol.
4. **General Fund:** Entering into new capital funded contracts (over £1m excluding recoverable VAT) for projects/programmes that are included in the 2022/23 approved capital budget **and** can be funded from financing sources included within the budget reports and/or Treasury Management Strategies agreed by the Councils in February/March 2022. Such contracts can extend beyond vesting day **if** the individual project has an approved phased budget, and no revenue implications beyond 1<sup>st</sup> April 2023 e.g. a housing development scheme, decarbonisation programme, regeneration project.
5. **Housing Revenue Account:** Entering into new capital funded contracts (over £1m) for projects/programmes that are included in the 2022/23 approved capital budget/HRA Business Plan **and** can be funded from financing sources included within the budget reports and/or Treasury Management Strategies agreed by the councils in February 2022. Such contracts, e.g. social housing development scheme, housing stock decent homes works such as replacement windows, can extend beyond vesting day if within the approved budget for the contract and within HRA business plan value for money and affordability limits.
6. Points 1, 3, 4 and 5 above to include budgets previously approved before February 2022 that carry forward into the 2022/23 financial year (e.g. slippage of unspent but approved capital and revenue budget from 2021/22 into 2022/23).
7. Entering into a contract that relates to the operation of prudent treasury management and complies with the district councils' approved treasury management and investment strategies, prudential indicators, and treasury management practices, where any borrowing does not exceed £5m and 365 days. In the event of any long-term borrowing exceeding £5m and exceeding 365 days specific consent of the County Council S151 Officer is required.

8. Entering into a contract that is outside the existing approved budget but is fully funded by external grants / contributions, unless the grant conditions require match funding exceeding the S24 Threshold (not included in the agreed budget) and/or pose potential significant risks and significant obligations on the Unitary exceeding the S24 Threshold. Town Deals is an example of expenditure which would be included in the general consent as it is externally funded

### **Land disposals:**

9. Disposals of council dwellings or grant or renewal of leases (over £100k) under the Right to Buy legislation and disposal of other housing revenue account assets in line with approved budgets, financial strategies and business plans.
10. All lease rental agreements for investment properties (over £100k and continuing past vesting day) at market value.
11. All lease rental agreements for non-investment properties (over £100k and continuing past vesting day) where the rental value secured is at least that contained within the approved rental income budget or within the Business Case previously agreed by the Council prior to issue of the S24 Effective Date.
12. Completion of land and property disposals (over £100k) that are already approved through the District Council's governance arrangements prior to S24 Effective Date and in line with the 2022/23 approved budget and capital strategy. All capital disposal or land sales outside of those identified will need specific consent.

To aid interpretation the following are examples of financial activities **that can be carried out** by the District Councils without needing the consent of the County Council:

- New use of earmarked reserves and reserves not included in the agreed budget (unless they are to fund new contracts above the S24 financial limits **and** which are outside of the general consent criteria).
- Raising new **and/or** changing 2022/23 fees & charges tariffs.
- Meeting staffing needs (new contracts) that have funding available within the agreed budget and follow the LGR recruitment protocol.
- Debt write-offs of any value in line with the existing Councils' approved constitutions, financial procedures and accounting policies.

### **Specific Consent**

To aid interpretation, the following are examples of financial activities that are not included in the general consent set out in paragraph 3 above and which will require the approval of the County Council:

1. Granting of leases/easements/other rights over non-investment property where the consideration is more than £100k and which are not included/or are significantly different than the agreed revenue budget or in a business case previously agreed by the District Council prior to the s24 Effective Date.





2. Freehold sale of assets (over £100k), for all assets including investment assets, where these have not been previously agreed by the District Council prior to the S24 Effective Date. A list of potential disposals are included in Annex A
3. Community transfers of assets over £100k where these have not been previously agreed by the District Council prior to the S24 Effective Date.
4. General Fund capital projects over £1m where no contract has been signed, it has revenue implications beyond vesting day and/or increased risk for the New Council. Examples from 2022/23 district Council Capital Programmes are included in Annex B