

## CONTROL OF DISPOSALS, CONTRACTS AND RESERVES

### GUIDANCE NOTE

1. The direction which this note accompanies is made under section 24 of the Local Government and Public Involvement in Health Act 2007 (the Act) and must be read in the context of sections 24 to 30 of that Act.

#### *Context*

2. The proposals for restructuring that are being implemented by the Cheshire (Structural changes) Order 2008 which came into effect on 5 March 2008 were put forward by local authorities in the area themselves. The proposals reflect the local circumstances in terms of service delivery, representation and engagement with local communities. The approach the Government has adopted is intended to build on the need for relevant authorities to work together through the Joint Committees and, subsequently, the Shadow Authorities established under the orders and, indeed, successful implementation of the new unitary authorities depends upon this. This direction is intended to further that approach, with local authorities co-operating ever more closely and working towards a common goal.
3. It is essential that all the affected local authorities (which are subject to the accompanying direction) are able to continue delivering high quality services to the public and run their day-to-day business in the period prior to 1 April 2009.
4. It is also of great importance that the Shadow Authorities which have the main transitional function of preparing for and facilitating the transfer to the new unitary authority are able to do so on a firm basis.
5. Any significant changes to level of assets or reserves of one of the authorities which will cease to exist on 1 April 2009 could change the financial situation that the new unitary authorities could reasonably expect to inherit when each becomes the sole principal authority for its area. Furthermore, if there are significant changes, the financial situation would be different to the one on which the original proposals were predicated.
6. The Secretary of State has, therefore, made the enclosed direction to ensure the implementation process can proceed on a clear and sound basis.

#### *Specified person/authority whose consent is required*

7. The direction specifies which person is required to give consent in relation to the matters covered in the direction. For certain disposals of land, the Secretary of State is the specified person.
8. Where the direction specifies a Shadow Authority as the person whose consent is required, the Government believes that this function should be exercised by the Shadow Authority's executive, since article 7 of the Structural Changes Order

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provides that the Shadow Authorities shall adopt executive arrangements as set out in Part 2 of the Local Govt Act 2000, and section 13(2) of that Act provides that "Subject to any provision made by this Act or by any enactment which is passed or made after the day on which this Act is passed, any function of a local authority which is not specified in regulations under subsection (3) is to be the responsibility of an executive of the authority under executive arrangements."

#### *West Cheshire Councils<sup>1</sup>*

9. The direction specifies that the persons whose consent is required for disposals, capital and non-capital contracts, and use of reserves in budget calculations (other than those matters reserved to the Secretary of State) by the West Cheshire councils is the Cheshire West and Chester Council (as established by the Structural Changes Order).

#### *East Cheshire Councils<sup>2</sup>*

10. The direction specifies that the persons whose consent is required for disposals, capital and non-capital contracts, and use of reserves in budget calculations (other than those matters reserved to the Secretary of State) by the East Cheshire councils is the Cheshire East Council (as established by the Structural Changes Order).

#### *Cheshire County Council*

11. The direction specifies different persons whose consent is required for disposals, capital and non-capital contracts, and use of reserves in budget calculations (other than those matters reserved to the Secretary of State) by Cheshire County Council, depending on whether the disposal or contract in question relates to the whole county or a specific part of it.
12. Where a disposal of land is situated in, or a contract relates to, the area of the West Cheshire councils, the Cheshire West and Chester Council is the specified person whose consent is required.
13. Where a disposal of land is situated in or a contract relates to the area of the East Cheshire councils, the Cheshire East Council is the specified person whose consent is required.
14. Any other disposals, any contract which relates to the areas of both West and East Cheshire or which relates to neither of those areas, and the use of reserves in any budget calculation by the County Council will require the consent of the Cheshire West & Chester Council and the Cheshire East Council (referred to below as 'Shadow Authorities' for ease).

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<sup>1</sup> The West Cheshire councils are defined in the direction, as in the Cheshire (Structural Changes) Order 2008, as Chester City Council, Ellesmere Port and Neston Borough Council and Vale Royal Borough Council.

<sup>2</sup> The East Cheshire councils are defined in the direction, as in the Cheshire (Structural Changes) Order 2008, as Congleton Borough Council, Crewe and Nantwich Borough Council and Macclesfield Borough Council.

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### *General consents*

15. In the interests both of efficient administration and also to allow the affected local authorities to continue to fulfill their day-to-day functions, the Government recommends the Shadow Authorities should consider giving general consents in relation to matters specified in the direction.
16. Under section 26(2) of the Act, consent may be given:
- a. in respect of a particular disposal or contract, or in respect of disposals or contracts of any description;
  - b. unconditionally or subject to conditions.
17. In practice, this means that each Shadow Authority could, for example, issue a general consent for all non-capital contracts with a value not exceeding £100,000 which are for similar descriptions of matter (such as all leisure or cultural services contracts) or it could give consent in relation to specific programmes or projects (perhaps at the same time as approving a business plan and the expenditure associated with it).

### *Delegating this function*

18. In accordance with article 7(4)(c) of the Structural Changes Order and in line with the relevant statutory provisions, including section 15 of the Local Government Act 2000, the executives of each Shadow Authority may arrange for the discharge of any of their functions by an officer of its constituent district councils or Cheshire County Council.

### *Matters where consent is reserved to the Secretary of State*

19. Paragraph 3 of the direction provides that any disposal of land that a relevant authority is required to make under an enactment requires the consent of the Secretary of State. The purpose of this provision is to remove any uncertainty around the obtaining of consent required for a disposal that an authority is required to make by law. Together with this direction, the Secretary of State has simultaneously issued a general consent (enclosed with this Guidance Note) for any disposal which is required under an enactment. This ensures that when the local authority is required to dispose of land for example under the Right to Buy provisions of the Housing Act 1985 or by reason of a compulsory purchase order, those disposals will, in practice, be unaffected by the direction.

### *Disposals*

20. Paragraphs 5(a)(1) and 8(a) of the direction which relate to disposals of land should be read in conjunction with section 27(1) of the Act.
21. In effect, this means that the threshold of £100,000 is cumulative so that, for example, a disposal of land would require the consent of the relevant Joint Committee or Shadow Authority if that disposal brought the total value of disposals of land by the authority after 31 December 2006 over £100,000.
22. Section 30(2) of the Act provides that “disposing of land” includes the disposing of a freehold or leasehold interest in property, entering into a contract to do so or granting

an option to acquire land or an interest in land. The word “land” covers buildings on land.

23. Although there is no explicit provision relating to the acquisition of land by an authority which is subject to the accompanying direction, we consider that any contract to purchase land would be likely to fall under paragraph 5(a)(2) of the direction as a capital contract.

#### *Capital contracts*

24. Paragraphs 5(a)(2) and 8(b) of the direction should be read in conjunction with sections 27(2) and (3) of the Act.

25. In effect, therefore, the £1m threshold is cumulative from after 31 December 2006 for any capital contract with the same person or relating to “the same or a similar description of matter”. Whether or not a contract relates to another of the “same or similar description of matter” will be a question of fact and degree in each case.

#### *Non-capital contracts*

26. Paragraphs 5(a)(3) and 8(c) of the direction should also be read in conjunction with sections 27(2) and (3) of the Act so that for any non-capital contract which extends beyond 1 April 2009 or which contains a provision allowing the term of the contract to be extended beyond that date, the £100,000 threshold is cumulative from 31 December 2006 for any such contract with the same person or relating to “the same or a similar description of matter”. Again, it will be a question of fact and degree in each case as to whether two contracts relate to the same or a similar description of matter. So a contract to collect domestic waste might not be in the same category as park maintenance services, although both are broadly environmental services, but a contract for the supply of office chairs may well fall within the same category as another contract for the supply of other office equipment.

27. New contracts of employment come within the scope of this direction and as a category of contracts relating to a similar matter, i.e. employment, the threshold of £100,000 may be reached quite quickly. In valuing the consideration of such contracts, the salary and financial value of other benefits (such as provision of a car) over the fixed term, would need to be taken into account. Once the threshold is reached, the relevant Shadow Authority may wish to consider giving a general consent for employment contracts entered into in the usual course of business where the salary does not exceed a certain amount or for example up to a certain point on set pay scales. More generally, the Shadow Authority and the affected local authorities may wish to consider agreeing a local protocol about the filling of vacancies during the transitional period(s).

#### *Use of reserves*

28. Paragraphs 5(a)(4) and 8(d) of the direction provide that consent is also required “to include an amount of financial reserves in a calculation under section 32(2) or 43(3) of the Local Government Finance Act 1992”. The direction applies to any such calculations made once the direction is in force.

29. The relevant Shadow Authority may wish to give a general consent for the use of reserves up to a certain amount in such calculations, or for use of financial reserves of a particular description.

*Interaction with other consent regimes*

30. As stated in section 26(4) of the 2007 Act, the issuing of a consent by the Secretary of State or a relevant Shadow Authority in relation to this direction does not remove any requirement on any authority to seek separate consent from any relevant person under any other applicable consent regime. Such other regimes are for example those relating to consent required under Part 2 of the Housing Act 1985 (e.g. for voluntary disposals, including Social HomeBuy) or under section 123 of the Local Government Act 1972.

*In the event of disagreements*

31. In the event that the person seeking consent and the person whose consent is required under this direction fail to reach agreement as to the value of any consideration which might be covered by the direction, in accordance with section 26(6) of the Act, the matter is to be referred to the Secretary of State so that the value may be determined. It is the Government's expectation that, if a Shadow Authority objected to an authority which was subject to the accompanying direction transferring land to another organisation as a 'gift' without charge, this matter would be referred to the Secretary of State under section 26(6).
32. It is also possible to envisage a situation where one Shadow Authority refuses consent for a particular disposal or contract while the other gives its consent. The Government encourages the Shadow Authorities to consider agreeing protocols as to the course of action should one party withhold (or be minded to withhold) consent in situations where the consent of both Shadow Authorities is required. Such protocols might include the use of arbitration.

*Co-operating and consulting – all authorities*

33. The arrangements under the direction and this guidance on how they should be carried out should be seen as the minimum level of co-operation that is desirable between affected local authorities in this period of preparing for and facilitating the transition to unitary local government. In accordance with the duty to co-operate, all authorities should seek to share such information as may be useful to the relevant Shadow Authority.
34. Affected authorities might, for example, wish to consider informing the relevant Shadow Authority at the earliest possible opportunity of any contracts that may reach their term during this period or shortly after 1 April 2009. This would enable the contracts to be considered in good time and a wider schedule of work to be agreed.

*Immediate practical implications of this direction*

35. On the coming into force of this direction on 26 May 2008, the relevant authorities will be required to seek consent for a wide variety of transactions according to the criteria above. This will, undoubtedly, include a large number of routine transactions that authorities undertake on a regular basis. In order to ensure these can continue

unhindered, the Government recommends that the issuing of general consents by Shadow Authorities be considered as an urgent priority. This may include general consents for the granting of housing tenancies (which will fall under disposals), for contracts relating to key children's or adult services, and the purchase of raw materials or essential operational and/or office equipment (which are likely to be done under contract). Local authorities should also ensure they check whether any other key contracts may be due for renewal, so that consents can be considered in good time.

36. The Government recommends that Shadow Authorities put in place the necessary arrangements for any additional delegation to officers that may be needed and to put in place any general consents, as may be most appropriate to the local circumstances.

### *Conclusion*

37. The Government expects that relevant authorities will engage with their relevant Shadow Authority constructively and in a timely manner to facilitate the process of complying with this direction, consistent with preparing for and facilitating the successful creation of a new unitary authority.
38. We also expect Shadow Authorities to always act reasonably as public bodies, including by taking pragmatic decisions regarding requests for consent, dealing with these in an efficient and timely manner and considering, where appropriate, the issuing of a general consent and/or use of delegation powers to ensure the affected authorities are able to continue to carry out their day-to-day functions without undue difficulty.