



**SCRUTINY COMMISSION: 30 NOVEMBER 2018**

**REPORT OF THE DIRECTOR OF LAW AND GOVERNANCE**

**DEVELOPMENT OF A UNITARY STRUCTURE FOR LOCAL GOVERNMENT IN  
LEICESTERSHIRE**

**SUPPLMENTARY LEGAL ADVICE**

**1. Purpose of the Report**

To provide supplementary legal advice in relation to the legislation relating to Local Government structural changes.

**2. Recommendation**

It is recommended that the advice be noted.

**3. Legal Advice**

The legal advice in relation to Local Government Re-organisation and the creation of a unitary structure is set out in paragraphs 106 – 111 of the Report to the Cabinet dated 16 October 2018 attached as Annex 1 for ease of reference. In response to a query raised by members of the Commission at the meeting on 14 November that advice is supplemented as set out below:

- i. The relevant legislation<sup>1</sup> provides for the Secretary of State to '*invite*' or '*direct*' any 'principal authority' (defined as a County or District Council) to make proposals for a single tier of Local Government as set out in paragraph 106 of the advice contained within the cabinet report.
- ii. The legal advice provided purposely refers only to the Secretary of State's power to invite proposals and as set out in paragraph 71 of the report that is the basis upon which the Cabinet was invited to consider the issue. That is because the reference to the power granted to the Secretary of State to direct a principal authority to submit a proposal was time limited so that he was not empowered to issue any such direction after 25th January 2008.<sup>2</sup> No such cut-off point exists in relation to the power of the Secretary of State to invite proposals.
- iii. If the Secretary of State is minded to issue an invitation to a principal authority to submit proposals, he may specify a date by which a proposal must be made. In other words, the invitation may be open ended or may have an end date. It is suggested that the latter option is more likely in

<sup>1</sup> Section 2 Local Government and Public Involvement in Health Act 2007

<sup>2</sup> Section 3(1)(a) Local Government and Public Involvement in Health Act 2007

order to allow some certainty and ability to make plans for the Authorities concerned.

- iv. Members may be aware of an alternative model<sup>3</sup> which allows for a ‘fast-tracking’ of structural and consequential boundary changes in a non-unitary District Council area. This power enables regulations to be made by Parliament allowing structural changes to be made provided at least one principal authority requests this. These provisions are subject to a ‘sunset clause’ the effect of which is that this power ceases to exist after 31st March 2019. Bearing in mind that the relevant regulations could only be made following a process of consultation, it was clear that any proposals by the Council for structural change do not fit within the timescales allowed by this process. For this reason, this legislation was not referred to in the advice to the Cabinet.
- v. For clarity, the legal advice refers to the statutory guidance which was issued in 2006 and with which proposals were required to conform at that time. The advice also refers to the guidance issued in February 2018 to Northamptonshire County Council. References to both sources of advice was included in order that members are aware of the guidance and can identify the approach and criteria adopted by the Secretary of State to any re-organisation and structural change proposals to date. It is possible that further and more up to date guidance would be issued by the Secretary of State in the event of an invitation being issued.

#### 4. Boundary Changes

- i. The legal advice contained in the Cabinet Report (paragraphs 109 – 111) sets out the position in relation to boundary changes and the role of the Local Government Boundary Commission for England. It is a matter for the Secretary of State for Housing, Community and Local Government to determine whether he wishes to request advice from the Boundary Commission on any boundary related issues. Members are reminded that the report of the Chief Executive presented to Cabinet on 16th October did not recommend any boundary related changes nor is this an issue referred to in the Terms of Reference of the Working Group established following the resolution of the Council at its meeting on 26th September.

#### Officers to contact

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<sup>3</sup> Section 15 Cities and Local Government Devolution Act 2016

**EXTRACT FROM THE REPORT TO THE CABINET ON 16 OCTOBER**

**Legislative Position and Government Criteria for Reorganisation to a Unitary Structure**

106. Part 1 of the Local Government and Public Involvement in Health Act 2007 sets out a procedure for local government structural and boundary changes in England. This provides for the Secretary of State to invite any 'principal authority' (defined as a County or District Council) to make one of the following proposals:-

- **Type A:** a proposal for a single tier of local government for a county area based on existing county boundaries.
- **Type B:** a proposal for a single tier of local government for an area which is currently a district or two or more districts based on existing district boundaries.
- **Type C:** a proposal for a combination of a whole county or one or more districts in that county with an adjoining county or counties or district(s).
- **A combined proposal:** a combined proposal is a proposal consisting of (1) one or more Type B proposals and one or more Type C proposals; or (2) two or more Type B proposals or (3) two or more Type C proposals.

107. The invitation from the Secretary of State may either specify the type of proposal invited or allow the Authority to choose the type of proposal it submits. In responding to an invitation, the Authority is required to have regard to any guidance from the Secretary of State on what a proposal should seek to achieve and matters to be taken into account in formulating a proposal. Guidance issued in 2006 ('Invitations to Councils in England') sets out the approach and criteria with which proposals were required to conform as follows:

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

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

*ii) those future unitary local government structures must:*

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

108. Following the Caller report on Northamptonshire County Council in February 2018, the Secretary of State (in his invitation letter for revised structural proposals to the Northamptonshire principal authorities) provided guidance as follows:

*“A proposal should seek to achieve for the area concerned the establishment of a single tier of local government, that is the establishment of unitary authorities:*

- a. which are likely to improve local government and service delivery across the area of the proposal, giving greater value for money, generating savings, providing stronger strategic and local leadership, and which are more sustainable structures;*
- b. which command a good deal of local support as assessed in the round overall across the whole area of the proposal; and*
- c. where the area of each unitary authority is a credible geography consisting of one or more existing local government areas and having a substantial population that at a minimum is substantially in excess of 300,000”.*

109. On receipt of a proposal in response to an invitation, the Secretary of State for Housing, Communities and Local Government (MHCLG) may request advice from the Local Government Boundary Commission on any matter relating to the proposal.

110. The Secretary of State may:-

- a. Make an order implementing the proposal with or without modification;
- b. Implement an alternative proposal submitted by the Local Government Boundary Commission with or without modification; or
- c. Decide to take no action.

111. Before making any order, the Secretary of State is required to consult every Authority affected by the proposal (except the authority or authorities which made the proposal) and such other persons as he considers appropriate.