6. **Structural Change Order**

To receive a report (to follow) by the Dorset Councils' Monitoring Officers on the options open to the Secretary of State for Communities and Local Government for inclusion in a Structural Change Order. The purpose of the Structural Change Order is to underpin the transition from existing councils to a new authority for the Dorset area.
If the Secretary of State is to implement the proposals to replace Dorset’s existing nine principal councils with two multi-purpose councils then this will be brought about through parliamentary orders which will include a structural change order and an election changes order.

An election changes order will prescribe the number of councillors who will comprise the new council and a warding pattern so that elections can go ahead to a completely new council on 2nd May 2019. Recommendations about the size of the new council are being made to the Joint Committee by the Electoral Boundary Review Task and Finish Group and feature elsewhere on the agenda for this meeting.

A structural change order is a tried and tested mechanism for bringing about local government change and managing the transition from existing councils to new councils. Structural change orders were last made in 2008/09 when multi-purpose councils replaced two tier local government structures in areas including Cornwall, Wiltshire and Cheshire.

Much of the content of a structural change order is technical in nature but in some instances the Secretary of State is faced with options which may be sensitive locally and some of which may have practical implications for how new local authority arrangements are implemented.

These are matters for decision by the Secretary of State but the Joint Committee now has an opportunity to express preferences about the content of the structural change order.

This report recommends that representations about the content of the structural change order are made in relation to the:
1. Name of the new council for the Dorset area
2. Legal mechanism to transition to a new council
3. Size and composition of the transition body
4. Identification of an officer to lead the officer implementation team
5. Electoral cycle to be followed by the new council.

Any preferences expressed about the structural change order need to be submitted to the Secretary of State by Thursday 25th January 2018.

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<th>Budget and risk implications in relation to the legal mechanism chosen to transition to a new council are commented upon in appendix 1 to this report.</th>
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| Appendices                  | Appendix 1 – Commentary on the advantages and disadvantages of the implementation executive and shadow council/shadow executive models  
                                  Appendix 2 – Description of the implementation executive and shadow council/shadow executive models |
| Background papers           | Previous structural change orders made in 2008 for the Cornwall, Wiltshire and Cheshire areas.                                    |
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1. **Background**

1.1 A structural change order and an election changes order are key legislative provisions through which local government reorganisation and a new council for the Dorset area will be brought about.

1.2 The structural change order will bring county council and district council functions together in one multi-purpose council for the Dorset area from 1 April 2019. The order also provides a framework for the transition work which must be undertaken before then, so that there is a legally compliant council able to deliver services on 1 April 2019.

1.3 The elections order will set out how many councillors are to form the new council and the new wards which are to return them. The elections order will be made by the Local Government Boundary Commission for England in November 2018. This will follow preparatory work by the Boundary Review Task and Finish Group on the size of the new council and its warding pattern and a formal public consultation by the Commission.

1.4 The Structural Change Order will be made sooner, probably in May 2018. Much of the content of the structural change order will be technical in nature but working with MHCLG (Ministry of Housing, Communities & Local Government) monitoring officers have identified a number of areas where there are choices to be made, for instance the name of the new council. Areas of choice are for final decision by the Secretary of State but there is an opportunity now for the Joint Committee to comment and to influence the Secretary of State’s thinking.

2. **Decision 1 – council name**

2.1 In 2009 when new councils were formed in Wiltshire, Cornwall and Cheshire the names “Wiltshire Council”, “Cornwall Council” and “Cheshire East Council” and “Cheshire West Council” were chosen.

2.2 A geographical prefix such as east or west might be appropriate in some council areas, as in Cheshire where the former county was divided and east and west were used to distinguish between two new councils. It is understood that there is no proposal to use “Dorset” as part of the name for the new council for the Bournemouth, Christchurch and Poole area and so there will be no need to find a way to distinguish between two councils each with “Dorset” in their name.

2.3 **Recommendation 1**

It is recommended that the name of the new council for the Dorset area should be Dorset Council.
3. **Decision 2 - Choice of transition Model**

3.1 The key purpose of the structural change order is to bring county and district functions together and to manage the transition between existing and future council arrangements.

3.2 In an area of local government change there are two options open to the Secretary of State to govern the transition from old councils to a new council – the County Council as a continuing authority with an implementation executive managing the transition [option (a)] or a new legal body with a shadow authority and shadow executive managing the transition [option (b)].

3.3 Both options:

- are councillor led, with an executive comprising councillors drawn from the existing principal councils
- result in a new, multi-purpose council with both district and county council functions
- will allow for safeguarding the employment rights of staff
- will necessitate a new operating model and organisational structure to be approved by councillors
- provide an opportunity to transform ways of thinking and working

but there are also differences and consequences arising from the choice.

3.4 The advantages of option (a), are largely practical, in terms of cost and risk. The potential disadvantages of option (a), largely relate to how the future organisation may be perceived by its Members and its employees.

3.5 Conversely, the potential advantages of option (b), largely relate to the opportunities that arise from starting afresh with a new organisation. Equally, its disadvantages are largely practical, in terms of cost and risk; this is expanded upon in the appendices.

3.6 Appendix 1 provides some commentary and an assessment of the advantages and disadvantages of the two alternatives. Appendix 2 outlines how in broad terms a new body with a shadow authority and a continuing authority with an implementation executive would operate during a transition period.
3.7 Recommendation 2

(i) It is recommended that the new council should be created in accordance with option (a) or (b) set out in the body of this report.

Any multi-purpose council is legally either a county with district functions or a district with county functions. Having considered the risks and mitigations if option (a) is preferred, the council will be the county council and will have added the statutory powers and duties of a district in order to create a multi-purpose council. If option (b) is preferred, a new council will be created as either a district council or a county council and will then be given the powers and duties of the other. There will be a choice to make in that case, but the advice of monitoring officers is that this is a technical matter and that there are no meaningful pros or cons attached to either option. The principal issue will be one of appearances and the perceptions of staff, councillors and members of the public. This is a matter of political choice.

(ii) It is recommended that - In the event option (b) is selected; that the new council is established as either [a county with district powers] [a district with county powers]

4. Decision 3 – Composition and chairmanship of the implementation or shadow executive

4.1 In previous structural change orders, provision has been made for the number of county council representatives on an implementation executive to equal the total number of district council representatives. In those previous reorganisations where a shadow authority has been formed this has been upon the basis of direct elections having taken place in advance to the shadow authority. There is insufficient time for elections to a shadow authority in Dorset and so any shadow authority would be formed from the existing councils, as is proposed in Bournemouth, Christchurch and Poole. In previous arrangements, the shadow authority has elected its own executive, with the distribution of Members allocated on the same basis.

4.2 As the county council serves the entire population of the Dorset area and the district councils together serve the same population, this option (for either type of transition body) is proportionate to the population served by each tier of local government. However, when forming a body to manage the transition to a new council a membership based upon population alone under represents the county council which will bring to the table a much greater budget share, service complexity and number of employees than those of the district councils combined.
Previous orders have also prescribed either that the leader of the county council would be the chairman of the implementation executive or that a full shadow council should elect the chairman of the shadow executive.

In our current joint committee arrangements each of the five districts is represented by two councillors and the county council by six councillors. Chairmanship has been decided by the joint committee itself.

MHCLG have indicated that these are matters on which they are willing to be led by the preference of the Joint Committee. In the recommendations below, Members are asked to express their preference on the size and composition of the transition body, whether an implementation executive or shadow executive.

It is also recommended that Members should decide if the chairman of the transition body (whether it is an implementation executive or a shadow executive) should be elected by the transition body itself or prescribed in the order, or (in the case of a shadow executive) elected by a whole shadow council (of 211 councillors).

Recommendation 3

It is recommended that: Members should decide whether;

i) the five district councils should each be entitled to two places and the county council six places on the transition body, a total of sixteen places with Members being appointed in accordance with the principles of political proportionality or,

ii) The places on the transition body should be divided equally between the county council and the districts, with the county council having 10 places and the districts two each; with places being appointed in accordance with the principles of political proportionality and

iii) That the chairman of the transition body should [be a county council Member] [be elected by the transition body] or [be elected by the shadow authority, in the case of the shadow authority model]

Decision 4 - Identification of an officer to lead the implementation team

The structural change order will require the formation of an officer implementation team with a membership drawn from all of the Dorset area councils; the purpose of which is to carry out the transition body’s Implementation Plan which it is required to adopt.
5.2 In some previous structural change orders there has been a requirement that
the implementation team is led by an officer of the county council. Again this is
an area where MHCLG have indicated that they would support our local
preference. Members are asked to consider whether the team should be led by
an officer of the county council or whether there should be the flexibility for the
officer team to be led by an officer of any of the Dorset area councils.

5.3 Recommendation 4

It is recommended that [there should be flexibility for the officer
implementation team to be led by an officer to be appointed at the
discretion of the transition body] or [the implementation team should be
led by an officer of the county council].

6. Decision 5 - Electoral cycle to be followed by the new council

6.1 The structural change order will prescribe whether the new council will follow
the district or county election cycles for whole council elections.

6.2 Until recently MHCLG had advised that the new council would have to follow
the county electoral cycle but are now advising that there is flexibility for the
new council to align with either the district or county cycle. Either approach is
deliverable and this is another instance in which MHCLG will support local
choice.

6.3 The decision is in part a political one and about whether for geopolitical reasons
the new council wishes to align itself with and hold its elections at the same
time as the neighbouring Bournemouth, Christchurch and Poole Council (which
like Swindon Borough and other more urban multi-purpose councils would
follow the district cycle) or align itself with and hold its elections at the same
time as the other more rural multi-purpose councils like Wiltshire and Cornwall.

6.4 Moving onto the county electoral cycle could be achieved by having two 3 year
terms following 2019, leading to harmonisation with the county cycle in 2025,
or two 5 year terms leading to harmonisation in 2029. Members may feel that it
will take the new administration a number of years to establish its agenda for
transformed services and that an initial 3 year term is therefore too short. An
extended initial term of 5 years may therefore be preferable, if moving onto the
county electoral cycle.

6.5 Members will be aware that whole council town and parish elections take place
on the District cycle. If the new authority used the county electoral cycle, the
town and parish elections would be stand alone. This is likely to impact on the
turnout for these elections, which is currently boosted by being combined with
elections for a principal council. Officers suspect that in stand-alone elections,
turnout may not exceed 20%.
6.6 In addition, the cost of each town or parish election is reduced by the shared processes and resources of a combined poll. If town and parish elections were stand alone, the cost will increase significantly, although it is unlikely to double. This cost would be borne by the town and parish councils, but is an additional cost to the public purse. A choice may therefore need to be made about moving the parish electoral cycle to match that of the principal authority. This will be provided for in the structural change order.

6.7 Recommendation 5

i. It is recommended that - the new council should hold all out elections based upon the [district] [county] electoral cycle.

ii. It is recommended that - in the event the county electoral cycle is selected, that the new council should serve for two [3] [5] year terms, before harmonising with the county electoral cycle.

iii. It is recommended that - in the event the county electoral cycle is selected, that the electoral cycle for all town and parish elections within the Dorset area is changed to be in harmony with this.

Dorset Area Monitoring Officers
January 2018
Appendix – 1

1. In establishing a new unitary authority for the Dorset Area the Secretary of State needs to decide whether:
   (a) The district and borough councils will be abolished, with the County Council as a legal continuing authority with an Implementation Executive as the transition body [option (a)]; or
   (b) To abolish all councils, and to create an entirely new council with a Shadow Authority as the transition body [option (b)]. The pros and cons of these two options for the Dorset Area are explored below.

2. The advantages of option (a), are largely practical, in terms of cost and risk. The potential disadvantages of option (a), largely relate to how the future organisation may be perceived by its Members and its employees.

3. Conversely, the potential advantages of option (b), largely relate to the perception of a new organisation being formed legally. Equally, its disadvantages are largely practical, in terms of cost and risk; This is expanded upon below

4. There are approximately 900 people employed by the district and borough councils and approximately 10,000 people employed by the County. About 6,000 of those are schools employees and not under the direct management of the County, however, their employment status is still relevant and would be included in the TUPE transfer.

5. If option (a), was chosen, it would be necessary to transfer the 900 district employees to the County Council, under the Transfer of Undertakings Protection of Employment Regulations (TUPE).

6. If option (b) was chosen, it would be necessary to transfer the 11,000 County Council and district employees (being the employees of all councils) under TUPE to a new employing authority.

7. The TUPE process requires all affected employees to be consulted in writing by their current employer, which can be done collectively; but there remains the capacity for any employee to request an individual conversation. The likely impact would be greater, the larger the number on employees transferring. The resource requirement could be estimated on the basis that if 5% of the staff to be TUPE’d asked for a meeting, the opportunity cost of the additional staff time involved in individual consultation meetings would be about £100k, assuming the staff time involved in each meeting averages £200. I.e. £200 x (10,000 people x 5%). The 5% estimate may be on the high side because it is less likely that school based staff will request meetings.
8. As the largest employer the greatest impact will fall upon the county council. The county council has reservations about its capacity to properly resource such a widespread consultation with its employees.

9. As this is a legal process, a failure to implement it properly may lead to a claim against the new council in the Employment Tribunal and consequent cost. There remains a risk of cost that will be proportionately greater, if more employees transfer. The HR leads, through their work stream, believe that there are practical measures that can be taken to limit or mitigate the risk. The existing Councils have extensive recent experience of applying TUPE and have not been subject to any legal challenges.

10. There may, however, be a distinction between the two approaches in terms of perception. In the event that option (a) was chosen, it may be perceived by employees and Members that the organisation post April 2019 was not really a new one. It is, of course, perfectly possible to deliver positive change to the way in which the organisation works providing it secures the right leadership at a Member and officer level and takes action to signal change; although an underlying negative perception may still persist.

11. Members may feel that choosing option (b), will signal to Members and employees that April 2019 is a fresh start. It will still be necessary to secure the right leadership at a Member and officer level in order to deliver positive change, whichever option is chosen.

12. Under option (a) and option (b), it will be necessary for Members and staff to think and act differently, in order for the new organisation to succeed. Members may consider that option (b) is a better catalyst to encourage creative thinking and new ways of delivering services.

13. Similarly, Members may feel that option (b) might make it more likely that there will be positive challenge of existing practice which could create service efficiencies and cultural change. Interim communication messages might also be more positive and ambitious generating greater momentum and engagement.

14. There are though other practical issues that Members will need to consider when choosing a preference.

15. All councils require a range of policies (many of which are in their Budget and Policy Frameworks) in order to deliver services and to function lawfully. If option (a) was chosen, all of the policies that are required to support county functions would remain in place. They could then be
reviewed subsequently without the need to do so prior to April 2019. Any policies to support district functions would need to be adopted.

16. If option (b) was chosen, a full set of policies to support all the functions of the new authority would be required to be adopted. This would first involve establishing a schedule of all of the county and district policies necessary to be adopted in order for the new council to operate lawfully from day one. These policies would then be reviewed and new policies adopted.

17. If option (b) was chosen then the level of resource to be applied prior to 1 April 2019 would be greater than under option (a). As the number and range of county council policies requiring consideration is significantly greater the county council has reservations about being able to properly resource this work.

18. A specific area of concern is the need to have in place on 1st April 2019 equal pay compliant terms and conditions of employment for any new employees after that date and a compliant pay and grading structure. This is a significant area of work for which we have yet to establish a resourcing plan.

19. In terms of the relationship between employees and trades unions and the new authority, there are few legal issues that will make a significant difference. It may be, however, that option (b) will create an opportunity to reset the relationship and to introduce a new more modern approach to collective bargaining and terms and conditions of employment. If all previous authorities are dissolved, it is easier to start discussions with a clean slate; which may provide a better opportunity to achieve a modern fit for purpose outcome.

20. The lack of a continuing authority would mean the new unitary council would need to register for VAT and PAYE with HMRC. It would also need to register as a professional client for treasury management. The impact of these on the finance workstream is considered by finance officers to be negligible.

21. In the event that option (a) is preferred, the SCO will provide for a body called an Implementation Executive (IE) to be created in order to manage the transition to the new arrangements. This body will be a committee of Dorset County Council’s Executive, but with certain statutory requirements attached. It would legally be part of the DCC structure, but the SCO will require district representation. The transitional powers can only be operated by the IE.
22. In the event that option (b) is preferred, the transition to the new arrangements will be managed by a Shadow Authority (SA), comprising all Members of the councils in the Dorset Area. This may have the benefit of being seen to be inclusive as it is comprised of every councillor from all the constituent councils, although there is a logistical challenge in managing a body of such size. There are 211 council seats across the area, but accounting for twin hatted Members, there are currently 176 councillors. The SA would have to meet on at least two occasions, firstly to appoint a Shadow Executive (SE), which would then take charge of the vast majority of the transition function and secondly to agree the new council’s budget. The number of Members and the political balance will be specified in the SCO, which is the subject of recommendation in the report.
Appendix 2

Explanation of a shadow authority:

- During the transition period until 1 April 2019 there would be a shadow authority comprising all 211 councillors of the existing district and county councils.

- A first meeting of the shadow authority would be convened by a lead officer (one of the chief executives) named in the structural change order.

The shadow authority would meet to:

- elect a shadow authority chairman to preside at meetings
- adopt standing orders, a code of conduct and a scheme of allowances
- elect a shadow executive (with an anticipated membership of 16 as per the current joint committee) and
- designate an interim monitoring officer and section 151 chief finance officer.

- The shadow executive would then oversee the transition arrangements from predecessor councils and the preparations to form a new council.

- The shadow authority model requires the creation of an entirely new legal body with the County Council and all district and borough councils being dissolved.

- At the end of March 2019 all of the predecessor councils would be abolished and their staff, assets, rights and liabilities would transfer to the new council.

- From 1 April 2019 the new council would be responsible for the delivery of all district and county services.

Explanation of an implementation executive:

- During the transition period until 1 April 2019 there would be an implementation executive (again with an anticipated membership of 16 drawn from the six existing Dorset area councils in the same proportions as on the current joint committee)
There would be no shadow authority and members of the implementation executive would be appointed directly by each of the existing councils acting individually.

During the shadow period the implementation executive would operate within the county council’s standing orders, as per the existing Dorset Area Joint Committee.

The Implementation Executive model requires the County Council to continue as a legal entity, to form the basis of the new organisation; with the district and borough councils being dissolved.

On 1 April 2019 district councils would be abolished, the county council would become a district as well as a county council (called Dorset Council) and the functions, staff, assets and liabilities of the districts would transfer to the new council.