

Chief Executive

Rachael Shimmin

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Secretary of State
Fry Building
2 Marsham Street
London
SW1P 4DF

Ref: RS/SA
22nd January 2019

By email and post to: james.brokenshire@communities.gov.uk

Dear Secretary of State,

The Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 and The Buckinghamshire (Structural Changes) Order 2019

I am writing with reference to the pre-action protocol letter dated 18 January 2019 sent on behalf of Wycombe District Council and Chiltern District Council seeking to challenge your decisions dated 3, 7 and 14 January 2019 regarding the above. For ease of reference we adopt the definitions used in that letter.

As you will be aware, Buckinghamshire County Council (the Council), Aylesbury Vale District Council and South Bucks District Council have all been named as interested parties.

Of particular concern to this Council, at section 5.i of the letter it is alleged that the Regulations were laid ultra vires. The grounds for that assertion are that, in laying the Regulations, you did not satisfy the requirements of sections 15(4) or 15(5) of the 2016 Act because you did not have the consent of any of the local authorities to whom the Regulations apply. In support of this the Claimants seek to rely on the fact that the consent provided by the Council (which is a relevant authority for these purposes) was conditional. We do not agree with this assertion and are clear that the Cabinet of the Council has properly given consent to the making of the regulations.

Further, at section 5.ii paragraph 3 it is said that the Leader of the Council confused, when recommending its Cabinet consent to the Regulations, the Regulations for the Order and treated them both as part of single legislative package. In support of this the Claimants quote selectively from the papers provided to the Council's Cabinet at the meeting on 10 January 2019.

Attached below is a link to those papers provided.

<https://democracy.buckscc.gov.uk/ieListDocuments.aspx?CId=124&MId=12360&Ver=4>



These clearly show that whilst the contents of the Secretary of State's letter of 7 January 2019 to Cllr Martin Tett at Appendix 2 of the Supplementary Report was the basis upon which the Council was consenting, our members and the Leader fully understood that they were consenting to the Regulations and not the Order and that the content of the Order could subsequently be varied and would be laid before Parliament after the Regulations. See in particular, the full summary of the Supplementary Report to Cabinet. Had it been the intention of Cabinet to make its consent conditional on there being no change to the Order, that would have been clearly stated. I am also attaching for your information a link to the webcast for this Cabinet meeting which clearly demonstrates that the County Council's Monitoring Officer Sarah Ashmead explained the basis on which the Cabinet were being asked to give consent and the Cabinet discussion which then followed. https://buckscc.public-i.tv/core/portal/webcast_interactive/394964

Following the meeting of the Cabinet, the County Council's Executive Director for Resources and Monitoring Officer, Sarah Ashmead, wrote to MHCLG on 10 January 2019 specifically confirming the consent as follows:

"I can confirm that, following the meeting of our Cabinet today, Buckinghamshire County Council has agreed to consent to the making of The Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019. Our Cabinet is aware that the County Council will therefore be named in the regulations as giving consent. "

It is therefore the Council's clear position that the requirements of section 15 of the 2016 Act were satisfied.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Rachael Shimmin', with a long horizontal flourish extending to the right.

Rachael Shimmin
Chief Executive
Buckinghamshire County Council