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STATUTORY INSTRUMENTS

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**2008 No. 634**

**The Cheshire (Structural Changes) Order 2008**

**PART 3**

**SHADOW AUTHORITIES AND THEIR FUNCTIONS**

**Shadow authorities**

6. During the shadow period the Cheshire East Council and the Cheshire West and Chester Council shall each be a shadow authority for the purposes of the following provisions of this Part.

**Duties of shadow authorities: executive arrangements and code of conduct**

7.—(1) At its first meeting<sup>(1)</sup>, each shadow authority shall discharge the duties specified or referred to—

- (a) in paragraph (2); and
- (b) in section 51 of the 2000 Act (duty of relevant authorities to adopt codes of conduct), as applied by paragraph (5),

and it shall discharge those duties in accordance with paragraphs (3) and (6), respectively.

(2) It shall be the duty of a shadow authority to create a leader and cabinet executive within the meaning of Part 2 of the Local Government Act 2000 (arrangements with respect to executives etc), as originally enacted<sup>(2)</sup> (“the shadow executive”).

(3) The shadow authority shall adopt the proposals made to it under article 19—

- (a) without amendment or modification, or
- (b) subject to such amendments or modifications as it thinks fit.

(4) With the exception of sections 25 (proposals), 26 (proposals not requiring referendum), 27 (referendum in case of proposals involving elected mayor), 28 (approval of outline fall-back proposals) and 29 (operation of, and publicity for, executive arrangements) the provisions of Part 2 of the 2000 Act, to the extent that they relate to a leader and cabinet executive, shall have effect in relation to each shadow authority as if—

- (a) its executive were a leader and cabinet executive of a district council;
- (b) the executive arrangements that it makes were executive arrangements of a district council<sup>(3)</sup>;
- (c) section 15 authorised its executive to delegate functions not only to officers of the shadow authority but also—

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<sup>(1)</sup> See paragraphs (11) and (12) of article 13.

<sup>(2)</sup> 2000 c.22. Section 11 was amended by section 62 of the Local Government and Public Involvement in Health Act 2007 (c.28). Subsection (3) of that section, as originally enacted, defines a leader and cabinet executive.

<sup>(3)</sup> In Part 2 of the Local Government Act 2000, “executive arrangements” has the meaning given by section 10; see the definition in section 48(1). Section 48(1) defines “local authority”, in relation to England, as including a district council.

- (i) in the case of the shadow executive for Cheshire East, to officers of the County Council or of any of the East Cheshire councils;
  - (ii) in the case of the shadow executive for Cheshire West and Chester, to officers of the County Council or of any of the West Cheshire councils;
  - (d) for the purposes of the application of Part 1 of Schedule 4 to the 2007 Act (new arrangements for executives: transitional provision: old-style leader and cabinet executive), its executive had been operating at the relevant time within the meaning of that Part of that Schedule(4).
- (5) Part 3 of the 2000 Act (conduct of local government members and employees)(5) shall apply in relation to each shadow authority as if—
- (a) it were a district council(6);
  - (b) references to co-opted members were omitted; and
  - (c) in section 51—
    - (i) in subsection (1), for “before the end of the period of six months beginning with the day on which the first order under section 50 which applies to them is made”, there were substituted “at the first meeting of an authority that is a shadow authority within the meaning of the Cheshire (Structural Changes) Order 2008”; and
    - (ii) in subsection (5), “(1) or” were omitted.
- (6) In complying with subsection (1) of section 51 of the 2000 Act, each shadow authority shall make such amendments or modifications to the proposals submitted to it under article 20 as it considers necessary to secure that, when adopted, the code will satisfy the requirements of subsection (4) of that section.

### **Duties of shadow authorities: appointment of certain officers**

**8.—(1)** It shall be the duty of each shadow authority at its first meeting to designate, on an interim basis, an officer of the County Council, one of the East Cheshire councils or one of the West Cheshire councils—

- (a) to be responsible for performing, in relation to the shadow authority, the duties imposed by subsections (2) and (3) of section 5 (designation and reports of monitoring officer) of the Local Government and Housing Act 1989(7) (“the 1989 Act”) and subsections (2) and (5) of section 5A(8) of the 1989 Act (reports of monitoring officer – local authorities operating executive arrangements), as applied by paragraph (4) (the “interim monitoring officer”); and
  - (b) to be responsible for the administration of the financial affairs of the shadow authority (the “interim chief finance officer”).
- (2) A designation under paragraph (1) shall cease to have effect on the day on which a person appointed under paragraph (3) to discharge responsibilities equivalent to those of the designated officer takes up his appointment.
- (3) Not later than 31st December 2008, each shadow authority shall appoint a person (who may, but need not, be a person designated under paragraph (1)) —

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(4) *See, in particular*, the definitions of “old-style leader and cabinet executive” and “relevant time” in paragraph 5 of Part 1 of Schedule 4.

(5) Part 3 was amended by Chapter 1 of Part 10 of the Local Government and Public Involvement in Health Act 2007 (c.28). *See, in particular*, the amendments to section 51 in section 183(3) of that Act.

(6) Part 3 applies in relation to relevant authorities; see the definition of “relevant authority” in section 49(6).

(7) 1989 c.42. Relevant amendments were made by S.I. 2001/2237, article 23.

(8) Section 5A was inserted by S.I. 2001/2237, article 23.

- (a) to be responsible for performing, in relation to the shadow authority and, on and after 1st April 2009, in relation to the Cheshire East Council or, as the case may be, the Cheshire West and Chester Council, the duties imposed by subsections (2) and (3) of section 5 of the 1989 Act and subsections (2) and (5) of section 5A of that Act (including those subsections as they have effect as mentioned in paragraph (4) in relation to times on or before 31st March 2009) (the “appointed monitoring officer”);
- (b) to be responsible, from the date on which he takes up his appointment, for the administration of the financial affairs of the shadow authority and, on and after 1st April 2009, of the Cheshire East Council or, as the case may be, the Cheshire West and Chester Council (the “appointed chief finance officer”); and
- (c) a person to be the head of its paid service.

(4) Subsections (2) to (7) of section 5 of the 1989 Act and subsections (2) and (5) of section 5A of that Act shall apply in relation to a shadow authority, its interim or appointed monitoring officer and its executive arrangements as they apply in relation to a relevant authority and the monitoring officer and executive arrangements of a relevant authority as if references in those subsections to a relevant authority, its monitoring officer and its executive arrangements were references to the shadow authority, its interim or appointed monitoring officer and the executive arrangements that it adopts pursuant to article 7.

(5) Sections 114 to 116 of the Local Government Finance Act 1988<sup>(9)</sup> shall apply in relation to a shadow authority, its interim chief finance officer and its appointed chief finance officer as if—

- (a) references to the chief finance officer of a relevant authority included references to the interim and appointed chief finance officers of a shadow authority;
- (b) references to a relevant authority (in whatever terms) included references to a shadow authority; and
- (c) references to joint committees were omitted.

#### **Other functions of shadow authorities**

**9.**—(1) During the shadow period the shadow authorities shall have, in addition to the duties specified or referred to in articles 7 and 8, the functions described in this article, and such other functions as may be conferred on them by—

- (a) a subsequent order made under section 7 of the 2007 Act by virtue of section 14 of the Interpretation Act 1978 (power to amend)<sup>(10)</sup>,
  - (b) an order under section 20 of the 2007 Act (correction of orders), or
  - (c) regulations under section 14 of the 2007 Act (regulations for supplementing orders).
- (2) Each shadow authority shall take all such practicable steps as are necessary or expedient—
- (a) to commence and sustain its running as a shadow authority;
  - (b) to prepare the authority for the assumption, as the Cheshire East Council or the Cheshire West and Chester Council (as the case may be), of local government functions and full local authority powers on 1st April 2009;
  - (c) to prepare any budgets or plans required by the Cheshire East Council or the Cheshire West and Chester Council (as the case may be), when those functions are assumed; and

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<sup>(9)</sup> 1988 c.41. In section 114, subsection (3A) was inserted by the Local Government and Housing Act 1989 (c.42), Schedule 5, paras 1, 66 and 79(1), and other relevant amendments were made by the Police and Magistrates’ Courts Act 1994 (c.29), Schedule 4, Part 1, para 34 and by S.I. 2001/2237, article 20. (Section 115A, which is not relevant to this Order, was inserted by the Greater London Authority Act 1999 c.29.) Section 115B was inserted, and section 116 amended, by S.I. 2001/2237, article 20.

<sup>(10)</sup> 1978 c.30.

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*Status: This is the original version (as it was originally made). This item of legislation is currently only available in its original format.*

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(d) to liaise with the County Council and the other shadow authority for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2009.

(3) The shadow authority for Cheshire East shall also take all such practicable steps as are necessary or expedient to liaise with the East Cheshire councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2009.

(4) The shadow authority for Cheshire West and Chester shall also take all such practicable steps as are necessary or expedient to liaise with the West Cheshire councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2009.

(5) Subject to paragraph (6), the shadow authorities shall have all other powers of a non-metropolitan county council and a non-metropolitan district council.

- (6) The powers conferred by paragraph (5) may be exercised by the shadow authorities only—
- (a) in the discharge of the functions specified or referred to in this article and article 8(3), and
  - (b) in the same manner, and subject to the same conditions and limitations, as if it were a non-metropolitan county council or a non-metropolitan district council, and
  - (c) where the exercise of the power would involve incurring expenditure or acquiring a liability—
    - (i) with the prior consent of the County Council, where the expenditure or liability relates to a matter which, before 1st April 2009, is the responsibility of that Council; or
    - (ii) where the expenditure or liability relates to a matter which, before 1st April 2009, is the responsibility of any of the East Cheshire councils or the West Cheshire councils, with the prior consent of that council.

(7) The total of the expenditure properly incurred by the shadow authorities shall be divided among, and paid by, the County Council, the East Cheshire councils and the West Cheshire councils in such proportion as may be agreed between them; but, where either of the shadow authorities notifies the Secretary of State that there is no such agreement, the Secretary of State may—

- (a) determine the proportion in which that expenditure is to be divided and paid; or
- (b) appoint an arbitrator for that purpose.

(8) The following provisions of the 1972 Act shall apply in relation to the shadow authorities, notwithstanding that those authorities do not have the functions and full powers of a local authority and, as appropriate, to persons standing for election or elected at the 2008 elections:

<i>Part or section of 1972 Act</i>	<i>Description</i>
Section 3(11)	Chairman
Section 5(12)	Vice-chairman
Parts 5 and 5A(13)	General provisions as to members and proceedings of local authorities, access to meetings and documents of certain authorities, committees and sub-committees
Section 103	Expenses of joint committees

(11) Section 3 was amended by the Local Government Act 2000, Schedule 3, para 2.

(12) Section 5 was amended by the Local Government Act 2000, Schedule 3, para 3.

(13) Part 5A was inserted by section 1(1) of the Local Government (Access to Information) Act 1985 (c.43). Sections 100A and 100B were amended by S.I. 2002/715. Section 100D was amended by section 97 of the Local Government Act 2000. Section 100F was amended by S.I. 2006/88 and 2007/969. Section 100H was amended by S.I. 2006/88. Section 100K was amended by section 98 of the Local Government Act 2000. There are other amendments not relevant to this Order.

Section 106	Standing orders
Section 146(14)	Transfer of securities on alteration of area, etc
Section 178(15)	Regulations as to allowances

(9) The shadow authorities shall, notwithstanding that they do not have the functions and full powers of a local authority, be treated—

- (a) for the purposes of Part 2 of, and Schedule 2 to, the Audit Commission Act 1998(16) (accounts and audit of public bodies), as local authorities (and, therefore, bodies subject to audit); but sections 11A(17), 19 and 30 to 32 in that Part, and references in that Part to those sections, shall be treated as omitted,
- (b) for the purposes of section 101 of that Act (indemnification of members and officers of relevant authorities)(18), as relevant authorities,
- (c) for the purposes of Part 1 of the Local Government Act 2003(19) (capital finance etc and accounts), as local authorities, and
- (d) for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001(20), as relevant authorities.

(10) For the purposes of the application of section 83 of the 1972 Act (declaration of acceptance of office) to persons elected at the 2008 elections, references in that section to the proper officer of the council shall be treated—

- (a) as regards the Cheshire East Council, as references to the proper officer appointed by Macclesfield Borough Council; and
- (b) as regards the Cheshire West and Chester Council, as references to the proper officer appointed by Vale Royal Borough Council.

### Functions of shadow authorities relevant to Implementation Plans

**10.**—(1) After the dissolution of the Cheshire East Joint Committee(21), it shall be a function of the shadow authority for Cheshire East to keep under review, and revise as necessary, the Implementation Plan prepared by the Cheshire East Joint Committee.

(2) After the dissolution of the Cheshire West and Chester Joint Committee(22), it shall be a function of the shadow authority for Cheshire West and Chester to keep under review, and revise as necessary, the Implementation Plan prepared by the Cheshire West and Chester Joint Committee.

(3) Article 18(2) shall apply in relation to each shadow authority as if—

- (a) the word “preparing” were omitted;
- (b) for “the article 16 functions” there were substituted “the main transitional functions”; and

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(14) Section 146(2) was amended by the Financial Services Act 1986 (c.60), Schedule 16, para 8(b). There is another amendment not relevant to this Order.

(15) Section 178 was amended by Schedules 11 and 12 to the Local Government and Housing Act 1989 (c.42).

(16) 1998 c.18. As regards England, sections 18 and 20 to 23 were repealed, and sections 19B and 19C inserted by the Local Government Act 2000 (c.22) and S.I. 2000/3335. Part 2 was most recently amended by Chapter 2 of Part 9 of the Local Government and Public Involvement in Health Act 2007.

(17) Section 11A was inserted by the Greater London Authority Act 1999 (c.29), Schedule 8, para 4.

(18) 2000 c.22. In section 101 “relevant authority” has the same meaning as in Part 3 of the Act. The definition of “relevant authority” for the purposes of that Part is to be found in section 49(6).

(19) 2003 c.26.

(20) S.I. 2001/3384.

(21) See article 17(11).

(22) See article 17(12).

- (c) for “each Joint Committee” there were substituted, as the circumstances require, “the Cheshire East Council” or “the Cheshire West and Chester Council”.
- (4) Article 18(3) shall apply in relation to each shadow authority as if—
  - (a) for “Each Joint Committee”, there were substituted, as the circumstances require, “The Cheshire East Council” or “The Cheshire West and Chester Council”; and
  - (b) for “the article 16 functions” there were substituted “the main transitional functions”.
- (5) In article 18(2) and (3), as applied by paragraph (3) and (4), “the main transitional functions” means the functions referred to in article 9(2) and—
  - (a) as regards the shadow authority for Cheshire East, the function referred to in article 9(3); and
  - (b) as regards the shadow authority for Cheshire West and Chester, the function referred to in article 9(4).

### **Allowances payable to members of shadow authorities**

**11.**—(1) The Local Authorities (Members’ Allowances) (England) Regulations 2003<sup>(23)</sup> (“the 2003 Regulations”), other than regulations 6 and 17 and Part 5, shall apply in relation to the shadow authorities and their members as they apply in relation to district councils and their members subject to the modifications specified in the following paragraphs of this article.

(2) For the purposes of regulation 4(1)(a) (requirement for scheme of allowances), the shadow authorities shall be treated as if they had adopted, as their scheme of allowances for the purposes of the 2003 Regulations, the scheme adopted by the County Council on 18th May 2006 (“the county scheme”).

(3) Regulation 4(1)(b) (payment of allowances only in accordance with scheme) shall apply as if references in the county scheme to members of the County Council included references to members of the shadow authorities.

(4) Regulation 10 shall apply as if the county scheme were the scheme made by the shadow authorities for the year beginning on 1st April 2008.

(5) Nothing in paragraph (2) or (4) shall prevent a shadow authority from exercising, in relation to the county scheme as it applies in relation to that authority and its members, the powers conferred by regulation 10(3) of the 2003 Regulations (power to amend or revoke scheme).

(6) Regulation 16 of the 2003 Regulations (publicity for schemes) shall apply as if “making or” were omitted.