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DRAFT STATUTORY INSTRUMENTS

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**2019 No.**

**The Buckinghamshire (Structural Changes) Order 2019**

**PART 3**

**SHADOW AUTHORITY, ITS TRANSITIONAL  
FUNCTIONS AND THEIR DISCHARGE**

**Buckinghamshire Council as Shadow Authority**

5.—(1) During the shadow period Buckinghamshire Council is a shadow authority for the purposes of the following provisions of this Part.

(2) Subject to paragraph (6), the members of the shadow authority are the persons who, on the coming into force of this Order, are—

- (a) councillors of the county council; and
- (b) councillors of the district councils.

(3) Those persons are to be members of the shadow authority throughout the shadow period notwithstanding the dissolution of the county council and the district councils on 1st April 2020.

(4) The proper officer of the county council must convene, and make all necessary arrangements for, the first meeting of the shadow authority, which is to be held not later than 14 days after the coming into force of this Order.

(5) The proper officer of Wycombe District Council shall act as the deputy to the proper officer of the county council in relation to the discharge of the duty under paragraph (4), discharging such functions as the proper officer of the county council may delegate.

(6) Where, after the coming into force of this Order and before 1st October 2019 or in the circumstances mentioned in article 4(4), a casual vacancy arises in any electoral division of the county council or any ward of the district councils, the person elected at a by-election held to fill the vacancy is to be a member of the shadow authority.

(7) All questions coming or arising before the shadow authority shall be decided by a majority of the members of the authority present and voting at a meeting of the authority.

**Duties of shadow authority: executive arrangements, code of conduct and members' allowances**

6.—(1) At its first meeting, the shadow authority must—

- (a) elect the chairman of the shadow authority;
- (b) in accordance with paragraphs (2) to (12), create a leader and cabinet executive within the meaning of Part 1A of the Local Government Act 2000<sup>(1)</sup> (arrangements with respect to local authority governance) (“the shadow executive”).

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<sup>(1)</sup> Part 1A was inserted by the Localism Act 2011 (c. 20), section 21 and Schedule 2.

(2) Section 9C of the 2000 Act (local authority executives) has effect, for the purposes of paragraph (1), as if subsection (5) were omitted; and the shadow executive is to consist of—

- (a) the person who is the leader for the time being of the county council’s executive;
- (b) eight persons nominated by the county council, each of whom is for the time being a councillor of that council;
- (c) two persons nominated by each of the district councils, each of whom is for the time being a member of the nominating council.

(3) The leader of the shadow executive is the person who is the leader for the time being of the county council’s executive unless the shadow executive decides that another member of the shadow executive is to be the leader of that executive.

(4) Subsection (3)(a) of section 9C of the 2000 Act has effect, for the purposes of paragraph (3), as if, for the words “elected as leader of the executive by the authority” there were substituted “who is the leader for the time being of Buckinghamshire County Council’s executive, unless the shadow executive created under article 6 of the Buckinghamshire (Structural Changes) Order 2019(2) decides that another member of the shadow executive is to be the leader of that executive”.

(5) Section 91A of the 2000 Act has effect, for the purposes of paragraph (3), as if, in each place in which it occurs, for “council” there were substituted “executive”.

(6) At the first meeting of the shadow executive the members of that executive nominated by the district councils in accordance with paragraph (2)(c) must elect one person from among their number to act as the deputy leader of the shadow executive.

(7) Except for the election of the deputy leader in accordance with paragraph (6), all questions coming or arising before the shadow executive shall be decided by a majority of the members of the shadow executive (including the leader of the shadow executive) present and voting at a meeting of the executive and the leader shall not have a second or casting vote.

(8) The following provisions of the 2000 Act shall not apply to the executive arrangements of the shadow authority—

- (a) section 9I; and
- (b) with the exception of sub-paragraphs (7) and (8) of that paragraph, paragraph 2 of Schedule A1.

(9) The county council must nominate nine persons, each of whom is for the time being a member of that council, to act as members of the shadow executive in the absence of the leader or the members nominated in accordance with paragraph (2)(b) (“the substitute members”).

(10) Each of the district councils must nominate two persons, each of whom is for the time being a member of the council by which they are nominated, to act as members of the shadow executive in the absence of the members nominated in accordance with paragraph (2)(c) (“the substitute members”).

(11) When acting as a member of the shadow executive in the absence of a member of that executive a substitute member is permitted to vote on all questions coming or arising before the shadow executive.

(12) Where a vacancy arises as a result of a member or substitute member of the shadow executive ceasing to be a councillor of the council by which they were nominated in accordance with paragraph (2)(b) to (c), or a vacancy otherwise arises in the membership or substitute membership of the shadow executive, the county council or district council which nominated the person to whom the vacancy relates must nominate another person, who is for the time being a member of that council, to act as a member or substitute member of the shadow executive.

(13) The persons who, immediately before 1st April 2020, are the members or substitute members of the shadow executive shall—

- (a) continue as members or substitute members of that executive; and
- (b) on and after 1st April 2020, shall be the members or substitute members of Buckinghamshire Council's executive for the purposes of Part 1A of the Local Government Act 2000,

until the end of the shadow period, notwithstanding the dissolution on that date of the county council or district councils by which they were nominated.

(14) If a member or substitute member of the executive constituted as mentioned in paragraph (13) (b) ceases to be a member of that executive before the end of the shadow period, Buckinghamshire Council may in accordance with the terms of the constitution of the council nominate another member of the council to be a member or substitute member of its executive.

(15) Members or substitute members of the shadow executive nominated in accordance with paragraphs (2), (9) or (10) shall not be appointed to any overview and scrutiny committee established by the shadow authority in accordance with section 9F of the 2000 Act and shall not participate as members of such an overview and scrutiny committee of the council by which they are nominated where that committee is considering matters relating to the exercise of any of the functions of the shadow authority.

(16) The county council and the district councils must co-operate in the establishment of the shadow executive.

(17) With the exception of Chapter 4 (changing governance arrangements) and except as otherwise provided in this article the provisions of Part 1A of the 2000 Act, to the extent that they relate to a leader and cabinet executive, have effect in relation to the 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;
- (c) section 9E authorised its executive to delegate functions not only to officers of the shadow authority but also to officers of the county council and the district councils.

(18) Chapter 7 of the Localism Act 2011<sup>(3)</sup> (standards) applies in relation to the shadow authority as if—

- (a) it were a district council (but not a principal authority in relation to a parish council); and
- (b) references to co-opted members were omitted.

(19) The shadow authority must prepare and adopt a scheme for the payment of allowances to its members; and the Local Authorities (Members' Allowances) (England) Regulations 2003<sup>(4)</sup>, other than regulations 6 and 17 and Part 5, apply in relation to the shadow authority and its members as they apply in relation to district councils and their members.

#### **Duties of shadow authority: appointment of certain officers, etc.**

7.—(1) The shadow authority must designate in the cases below, on an interim basis, an officer of the county council or one of the district councils—

- (a) to be responsible for performing, in relation to the shadow authority, the duties imposed by—
  - (i) subsections (2) and (3) of section 5 (designation and reports of monitoring officer) of the 1989 Act<sup>(5)</sup>; and

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<sup>(3)</sup> 2011 c. 20.

<sup>(4)</sup> S.I. 2003/1021.

<sup>(5)</sup> Relevant amendments, including the insertion of section 5A, were made by S.I. 2001/2237, article 23.

- (ii) subsections (2) and (5) of section 5A of the 1989 Act (reports of monitoring officer - local authorities operating executive arrangements), as applied by paragraph (4) (the “interim monitoring officer”);
  - (b) to be responsible for the administration of the financial affairs of the shadow authority (the “interim chief finance officer”);
  - (c) to be head of the shadow authority’s paid service and, accordingly, to be responsible for performing, in relation to the shadow authority, the duties imposed by subsections (2) and (4) of section 4 (designation and reports of head of paid service) of the 1989 Act (the “interim head of paid service”).
- (2) The shadow authority must before 1st April 2020 in the cases below appoint a person to become, on and after that date—
- (a) the Buckinghamshire Council’s monitoring officer;
  - (b) that council’s chief finance officer;
  - (c) that council’s head of paid service.
- (3) A designation under paragraph (1) ceases to have effect on the day on which a person (who may be the same person as the designated officer) is appointed under paragraph (2) to discharge responsibilities equivalent to those of the designated officer.
- (4) Subsections (2) to (7) of section 5 of the 1989 Act and subsections (2) and (5) of section 5A of that Act apply in relation to—
- (a) the shadow authority;
  - (b) its interim monitoring officer; and
  - (c) 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 were references to the shadow authority, its interim monitoring officer and the executive arrangements that it adopts pursuant to this Order.

- (5) Sections 114 to 115, 115B and 116 of the Local Government Finance Act 1988<sup>(6)</sup> apply in relation to the shadow authority and its interim chief finance officer as if—
- (a) references to the chief finance officer of a relevant authority included references to the interim chief finance officer of the shadow authority;
  - (b) references to a relevant authority included references to the shadow authority; and
  - (c) references to joint committees were omitted.

(6) Subsections (2) to (5) and (6) of section 4 of the 1989 Act apply in relation to the shadow authority and its interim head of paid service as they apply in relation to a relevant authority and its head of paid service as if references in those subsections to a relevant authority and its head of paid service were references to the shadow authority and its interim head of paid service.

(7) The shadow authority must designate an officer of the county council or of one of the district councils or of the shadow authority to act at the 2020 election as the returning officer.

### **Duties of shadow authority: proposals for executive arrangements, code of conduct and members’ allowances relating to Buckinghamshire Council**

**8.—**(1) The shadow authority must formulate proposals for the executive arrangements that are to be operated by Buckinghamshire Council.

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<sup>(6)</sup> 1988 c. 41. Relevant amendments were made by the Local Government and Housing Act 1989, section 139 and Schedule 5, and by the Local Government Act 2003 (c. 26), section 30 and S.I. 2001/2237.

(2) In formulating proposals under paragraph (1) the shadow authority must comply with section 9B(2) of the 2000 Act and for that purpose is to assume that the Council's executive is to be a leader and cabinet executive within the meaning of section 9C(3) of that Act.

(3) The shadow authority must formulate proposals for the code of conduct to be adopted by Buckinghamshire Council.

(4) In formulating proposals under paragraph (3) the shadow authority must have regard to section 27 (duty to promote and maintain high standards of conduct) and section 28 (codes of conduct) of the Localism Act 2011.

(5) The shadow authority must formulate proposals for the scheme of members' allowances to be adopted by Buckinghamshire Council.

### **Functions of shadow authority: Implementation Plan**

9.—(1) The shadow authority must prepare, keep under review, and revise as necessary, an Implementation Plan which must include—

- (a) such plans and timetables as are in its opinion necessary to secure the effective, efficient and timely discharge of its functions; and
- (b) such budgets and plans as it considers necessary or desirable to facilitate the economic, effective, efficient and timely discharge, on or after 1st April 2020, of the functions that, before that date, are functions of the county council or of the district councils.

(2) For the purposes of—

- (a) preparing, reviewing and revising the Implementation Plan; and
- (b) discharging its functions,

the shadow authority is to have regard to—

- (i) the Business Case dated September 2016 submitted by the County Council to the Secretary of State in support of its proposal for a single tier of local government in Buckinghamshire<sup>(7)</sup>;
- (ii) any advice in relation to children's services which is provided by Hampshire County Council pursuant to the direction dated 12th July 2018 of the Secretary of State for Education under section 497A(4B) of the Education Act 1996<sup>(8)</sup>; and
- (iii) the Report into Children's Services in Buckinghamshire dated June 2018 prepared for the Secretary of State for Education by the Chief Executive of Hampshire County Council<sup>(9)</sup>.

(3) The shadow authority may, by written notice to—

- (a) the proper officer of the county council; or
- (b) the proper officer of any of the district councils,

require the council referred to in the notice to take such action relevant to any of the functions referred to in articles 6 to 15 of this Order as may be specified in the notice.

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(7) "Modernising Local Government in Buckinghamshire" Business Case September 2016. The document is available at [https://www.buckscc.gov.uk/media/1314/mlg-in-bucks\\_final\\_low-res.pdf](https://www.buckscc.gov.uk/media/1314/mlg-in-bucks_final_low-res.pdf) or in hard copy from the Secretary of State on request.

(8) 1996 c. 56. The Secretary of State for Education issued a Direction to Buckinghamshire County Council on 5th March 2018 with a further Direction being issued on 12th July 2018. The Directions were issued under section 497A(4B) of the Education Act 1996 in relation to concerns surrounding the provision of children's social care functions within Buckinghamshire. Copies of the Directions are available at <https://www.gov.uk/government/publications/direction-issued-to-buckinghamshire-county-council--2> or in hard copy from the Secretary of State on request.

(9) The Report following an inspection by the Commissioner for Children's Services appointed by the Secretary of State for Education by direction dated 5th March 2018. The report is available at <https://www.gov.uk/government/publications/buckinghamshire-county-council-report-on-childrens-social-care> or in hard copy from the Secretary of State on request.

### Other functions of shadow authority

10. During the shadow period the shadow authority has, in addition to the functions specified or referred to in articles 6 to 9, the functions referred to or specified in articles 11 to 15.

11. The shadow authority must 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 Buckinghamshire Council, of local government functions and full local authority powers on 1st April 2020;
- (c) to prepare any budgets or plans required by Buckinghamshire Council when those functions are assumed; and
- (d) to liaise with the county council and the district councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2020.

12. The shadow authority has all the other powers of a non-metropolitan county council or a non-metropolitan district council.

13. The powers conferred by article 12 may be exercised by the shadow authority only—

- (a) in the discharge of the functions specified or referred to in articles 6 to 9, 11 and 15;
- (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 2020, is the responsibility of that council; or
  - (ii) where the expenditure or liability relates to a matter which, before 1st April 2020, is the responsibility of a district council, with the prior consent of that council.

14. The total of the expenditure properly incurred by the shadow authority is to be divided among, and paid by, the county council and the district councils in such proportion as may be agreed between those councils; but, where the shadow authority 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.

15.—(1) The following provisions of the 1972 Act apply in relation to the shadow authority, notwithstanding that it does not have the functions and full powers of a local authority:

**Table 1**

<i>Part or section of 1972 Act</i>	<i>Description</i>
Section 3	Chairman
Section 5	Vice-chairman
Parts 5 and 5A	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
Section 106	Standing orders

<i>Part or section of 1972 Act</i>	<i>Description</i>
Section 146	Transfer of securities on alteration of area, etc
Section 178	Regulations as to allowances
Section 245	Status of certain districts, parishes and communities

(2) The shadow authority, notwithstanding that it does not have the functions and full powers of a local authority, is to be treated—

- (a) for the purposes of the Local Audit and Accountability Act 2014<sup>(10)</sup> and any regulations made under that Act as if it were a district council;
- (b) for the purposes of section 101 of the 2000 Act (indemnification of members and officers of relevant authorities), as a relevant authority;
- (c) for the purposes of Part 1 of the Local Government Act 2003<sup>(11)</sup> (capital finance etc and accounts), as a local authority;
- (d) for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001<sup>(12)</sup>, as a relevant authority;
- (e) for the purposes of the Data Protection Act 2018<sup>(13)</sup>, as a public authority; and
- (f) for the purposes of the Freedom of Information Act 2000<sup>(14)</sup>, as a public authority.

### **Discharge of shadow authority’s functions by shadow executive**

**16.**—(1) Except to the extent that any provision of any Act, this Order or regulations under section 9D (functions which are the responsibility of an executive), 9DA (functions of an executive: further provision) or 13<sup>(15)</sup> (functions which are responsibility of an executive) of the 2000 Act requires otherwise, the functions conferred on the shadow authority by or under this Order are to be delegated to, and discharged by, the shadow executive.

(2) Before discharging the function mentioned in article 7(1) the shadow executive must consult the members of the shadow authority on the proposed designations of interim officers, such proposed designations to be decided at the first meeting of the shadow executive.

(3) Paragraph (1) does not prevent the shadow executive from requesting the shadow authority to discharge any function specified in a notice given by the shadow executive to the proper officer of the shadow authority, and the shadow authority must comply with any such request within such period as the shadow executive may specify.

### **Implementation Team**

**17.**—(1) Not later than 21 days after the coming into force of this Order, the shadow executive must form a team of officers (“the Implementation Team”) for the purposes of assisting it and, if so required by the shadow authority, that authority.

(2) The members of the Implementation Team are to comprise officers from the county council and each of the district councils.

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<sup>(10)</sup> 2014 c.2.

<sup>(11)</sup> 2003 c.26.

<sup>(12)</sup> S.I. 2001/3384

<sup>(13)</sup> 2018 c.12.

<sup>(14)</sup> 2000 c.36.

<sup>(15)</sup> Section 13 was amended by Schedule 3 of the Localism Act 2011 so that it applies to Wales only from 4th May 2012. The Local Authorities (Functions and Responsibilities) (England) Regulations (S.I. 2000/2853) made under section 13 continue to apply to England.

- (3) The leader of the Implementation Team is to be the Chief Executive of the county council.
- (4) The deputy leader of the Implementation Team is to be an officer of one of the district councils.