

Report For:	BUCKINGHAMSHIRE SHADOW AUTHORITY
Meeting Date:	3rd June 2019

SUMMARY

Title of Report:	CONSTITUTION
Responsible Officer	Proper Officer – Sarah Ashmead
Officer Contact: Direct Dial: Email:	Catherine Whitehead, Head of Democratic, Legal and Policy Services (WDC) 01494 421 980 Catherine.Whitehead@wycombe.gov.uk
Recommendation:	<p>That, in accordance with Article 6 of The Buckinghamshire (Structural Changes) Order 2019, Members agree to</p> <ul style="list-style-type: none"> a) Create a leader and cabinet executive within the meaning of Part1 A of the local Government Act 2000 (the Shadow Executive) as set out in the Constitution. b) Approve the Constitution and the detail set out within the Constitution as the arrangements for the Shadow Authority during the Shadow Period as defined in Article 2.
Options:	N/A
Legal & Finance Comments:	The legal and financial implications are set out in the report and throughout the constitution document.
Reason: (Executive only)	N/A

Purpose of Report

The purpose of this paper is to seek members approval to the Shadow Authority Constitution.

Content of Report

1. The draft Structural Changes Order (SCO) provides that the Shadow Authority must put in place executive arrangements in accordance with the Local Government Act 2000. This includes the requirement for the preparation of a constitution containing the authority's standing orders, code of conduct and other information as appropriate or directed by the Secretary of State.
2. This is a non-executive function and so the Shadow Authority must adopt the Constitution at its first meeting.

3. The five councils have worked together to prepare the initial draft of the constitution for the Shadow Authority. The Constitution has also been considered by the Chief Executives of the five Councils. An initial draft of the Shadow Authority Constitution was presented to the meeting of the pre-Shadow Executive for consultation on 22nd March 2019. A further draft was presented to a meeting of the pre-Shadow Executive on 20th May 2019.

Principles

4. There are principles set out in the guidance relating to 'New Political Structures' which underpin the the Constitution and council decision making. These are:
 - Accountability
 - Transparency
 - Efficiency

Accountability

5. It is important that everyone can see who makes which decision and where appropriate can hold the decision maker to account. It is therefore important that only one person (if it is an individual) or one committee makes a decision.

Transparency

6. A constitution should be published and made available on request. It should set out the decision making arrangements. Meetings of the Shadow Authority should be open to the public and reports and papers published for public inspection (except where specific exemptions are necessary). Proper officers and any officer delegations should be recorded in the Constitution.

Efficiency

7. Decision making should aim to be efficient. Papers and documents should be relevant to the decision under consideration and unnecessary material should be avoided. Paperwork should be minimised, and digital delivery should be offered where possible.

Proportionality

8. It is important that the shadow arrangements comply with the existing wider legislation and The Buckinghamshire (Structural Changes) Order 2019 (The Order) as well as the guiding principles above. However, the Shadow Authority Constitution will only apply to the Shadow Authority and will therefore fall away on 31st March 2020 when a new constitution for the Buckinghamshire Council will come into effect. This constitution will therefore only be applicable for a period of 10 months. During that time a constitution for the new Buckinghamshire Council, will be developed to provide detailed arrangements suitable for a council which has the full range of local authority functions.
9. As a result, it is recommended that the principles of transparency, accountability and efficiency should be complemented by a principle of proportionality, and that the arrangements wherever possible should be those necessary to deliver transition.

The Constitution Document

10. The Constitution is made up of a number of key parts – these are:

- A. Summary and Explanation
- B. The Articles (an overall description of the arrangements).
- C. The Responsibility for Functions (who can decide what)
- D. Procedure Rules (the procedures followed when decisions are made)
- E. Codes and Protocols (how decision makers should behave)
- F. Scheme of Allowances (payments to be made to elected Members) - this is covered by a separate report.

A. Articles:

The Policy Framework

11. The draft constitution refers to ‘such plans and strategies which by law must form part of the policy framework’. This limits the documents within the framework to the bare minimum. Members should be aware that the legal requirements for the policy framework relate to specific functions, which sit with either district or county councils. The only matter over which the Shadow Authority would have control is therefore the budget. The law nevertheless requires there to be a policy framework – and there is of course scope for plans to be made which are discretionary.

Definition of Key Decision

12. Executive decisions are subject to specific requirements where the decision is classified as a ‘key decision’. The definition of ‘key decision’ is subject to guidance. A key decision must be published on the Forward Plan. ‘Key decisions’ taken by officers must also have decision records. The proposed Constitution states:

A Key Decision means:

- i. *“a decision which, is likely to result in the relevant local authority incurring expenditure which is, or the making of savings which are, significant having regard to the relevant local authority’s budget for the service or function to which the decision relates; or*
- ii. *to be significant in terms of its effects on communities living or working in an area comprising two or more wards or electoral divisions in the area of the relevant local authority.”*

In determining the meaning of “significant” for these purposes the Shadow Authority will have regard to any guidance for the time being issued by the Secretary of State in accordance with section 9Q of the Local Government Act 2000 Act and the value of any decision under consideration (eg £1 million or above could be regarded as significant but this has to be considered in the context of the particular decision).

Responsibility for Functions

Executive Arrangements

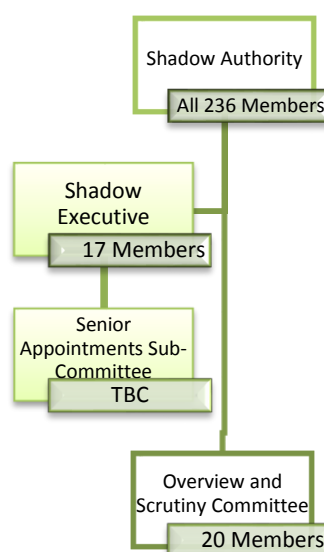
13. The Constitution sets out the delegations to committees, portfolio holders and matters which are to be decided by the Shadow Executive as well as the officer scheme of delegation.
14. The limited functions of the Shadow Authority do not require specific function areas and therefore general statements are sufficient to allow the Shadow Authority to work effectively to deliver transition without a detailed scheme of officer delegation. The majority of the decisions will sit with the Shadow Executive and Implementation Team. The Order designates the Implementation Lead who will carry out the functions granted directly by the Order. The Shadow Executive can put in place detailed portfolio arrangements and delegations at later meetings where desired without the need to refer these to the Shadow Authority and these can be added to the Constitution by the Monitoring Officer as a permitted amendment (under Article 14.2) if required.

Proper Officer Appointments

15. A proper officer list has been prepared which allocates all the proper officer functions that the Shadow Authority will need to carry out to one of the three appointed statutory officers as the Shadow Authority does not have a formal staffing structure.
16. There is one exception which is the Proper Officer for scrutiny, which is a requirement which rests with county councils and unitary councils. As scrutiny is likely to be limited, it is not a significant role but it cannot be any of the three appointed statutory officers. It is therefore recommended to be the Head of Democratic Services, Policy and Partnerships at the County Council.
17. The full list of proposed Proper Officer appointments can be viewed at Part 3 Appendix 1 to the Constitution.

A Committee Structure

18. The Committee Structure has been kept to a minimum due to the limited nature of the decisions which can be taken by the Shadow Authority and the amount of work which it is necessary to carry out within a limited timeframe.
19. The following Committee structure has been devised as that necessary to carry out transition. The sub-committee for hearing standards cases will be drawn if necessary from the Overview and Scrutiny Committee.



Overview and Scrutiny Arrangements

20. The draft Constitution provides for and under 2000 Act the Shadow Authority must have at least one Overview and Scrutiny Committee. A single scrutiny committee will be established with councils nominating a specified number of councillors in accordance with political balance. This will establish an overview and scrutiny committee together with bespoke scrutiny arrangements for the Shadow Authority.
21. The number of members, substitutes, the chairmanship, task and finish groups, work programme, call-in procedures are set out in the Scrutiny Procedure Rules included within the Constitution.

Functions

22. The Order states that the main task of the Shadow Authority will be to set the 2020/21 budget. The Shadow Executive will have responsibility for the implementation of the transition arrangements and will have decision making powers in relation to transition.
23. The main role for the Shadow Overview and Scrutiny will therefore be twofold relating to the budget and oversight of the transition. There may well be other matters which are referred to the Committee as part of the transition.
24. If a standards conduct panel is required the membership will be drawn from the members of the Scrutiny Committee. Certain audit functions will also be carried out through the Scrutiny Committee where required.

Membership and Chairmanship

25. To enable a reasonable number of members, including opposition to members to be involved in the committee the committee membership has been identified as twenty members. The Chairman of the Overview and Scrutiny Committee may be an opposition member.

Task and Finish Groups

26. In order to keep the size and complexity of the overall constitution document simple it is not recommended that arrangements for task and finish groups are specified at this stage. However if appropriate, ad hoc, informal working groups could be used to undertake specific scrutiny to be reported to the Shadow Executive and/or Shadow Authority as required.

Call-in

27. Given the speed at which implementation needs to progress, it is recommended that grounds for call-in are very clearly defined and should be limited to situations where there has been a failure of process. This is consistent with the approach taken during transition in other authority areas:
 - Where there are reasonable grounds to suggest that a decision has not been made in accordance with the law. **and/or**

- Where the decision was not made in accordance with the principles of Article 12 of the Constitution (defines the types of decision and the decision making process).
and/or
- Where the decision was not published in accordance with the requirements for the Shadow Executive Committee Forward Plan, nor subject to the 'general exception' or 'special urgency procedures' set out in this Constitution.

Other Committees

Senior Appointments Committee

28. In order to achieve the appointment of a permanent Head of Paid Service for the new Council there will need to be member decisions. These are carried out by the Shadow Executive. Given this has 17 members, an interview process involving the whole of the Shadow Executive is likely to be excessive. Therefore it is recommended that there is an Executive sub-Committee with the ability to make staffing appointment decisions on behalf of the authority as necessary.
29. This is a committee which will not be caught by the political balance rules but could draw membership from each of the five authorities. Other non-executive members can be invited to attend and take part in appointment exercises but not vote and this can include opposition members.

Standards Committee

30. A standards committee is no longer a legal requirement provided there is an appropriate process for the determination of complaints about breaches of the member code of conduct. Given the limited nature of the work of the Shadow Authority. If a complaint is made, this can be dealt with in the first instance by the Monitoring Officer in consultation with the Independent Member and it is relatively rare for complaints to proceed beyond this stage. An ad hoc panel is therefore unlikely to need to meet throughout the Shadow Period – and as described above will be drawn from the members of Scrutiny Committee if a panel is required. A procedure for this is set out within the Constitution.

Audit Committee

31. There is no requirement for an Audit Committee but there are activities which the statutory Finance Officer had advised would be appropriate to be carried out by the Scrutiny Committee operating in the guise of an Audit Committee.

Rules of Procedure

32. There are a number of rules of procedure which are required to be included and which set out how the Shadow Arrangements will operate. Effort has been made to keep these to a minimum. For example it is not recommended that the Shadow Arrangements include contract procedure rules as the Shadow Authority is able to utilise the procurement arrangements already in place at any of the five councils provided that a set of suitable procurement rules are in place it is not necessary to create separate rules. The required rules are set out below.

Procedure Rules:

- Access to Information Procedure Rules
- Executive Procedure Rules
- Overview and Scrutiny Procedure Rules
- Council and Committee Procedure Rules

33. These set out how decisions are made in the committees and in the Shadow Authority. They prescribe quorum for meetings; the process for public questions and questions from members; and the rules of debate including the moving of motions and amendments. These rules have been based on simplified examples from other transitions. The simplified rules do not change the way decisions will be made but reduce the number of words describing the procedures.

Process for calling a special meeting of the Shadow Authority

34. It will need to be possible to call a special meeting of the Shadow Authority if the requirement arises. As there are 202 members and each meeting has cost and resource implications this should only be done if considered to be necessary. The process has therefore been drafted as follows:

A special meeting can be called by resolution of the Shadow Authority or by the Chairman in consultation with the Leader. The Interim/Appointed Monitoring Officer, in consultation with the Leader and Chairman, may also call a special meeting.

Questions from Public/Members at Shadow Authority/Executive meetings

The Constitution does provide for public questions at both Authority and Scrutiny meetings.

A Code of Conduct

35. A bespoke code of conduct and protocol for member officer relations has been drawn up and included within the Constitution. This code will apply when members sit on the Shadow Authority. Members will continue to be bound by their own authority codes as appropriate.

Conclusion

36. The Shadow Authority will need to have a Constitution in place at the first meeting of the Shadow Authority.