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DRAFT STATUTORY INSTRUMENTS

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**2008 No.**

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

**PART 5**

**CENTRAL BEDFORDSHIRE: SHADOW AUTHORITY, ITS  
TRANSITIONAL FUNCTIONS AND THEIR DISCHARGE**

**Interpretation of Part 5**

**14.** In this Part—

“Central electoral division” means an electoral division of Bedfordshire established by article 3 of the 2004 Order that is not one of the Bedford electoral divisions;

“shadow authority” means an authority (not being a local authority) which will become a local authority on 1st April 2009;

“shadow executive” has the meaning given by article 16(1); and

“the shadow period” means the period beginning with the day on which this Order comes into force and ending on the fourth day after the 2009 election day.

**Central Bedfordshire Council as shadow authority**

**15.—**(1) During the shadow period the Central Bedfordshire Council shall be a shadow authority for the purposes of the following provisions of this Part.

(2) Subject to paragraph (5), the members of the shadow authority shall be the persons who, on the coming into force of this Order, are—

- (a) councillors of the County Council for the Central electoral divisions; or
- (b) councillors of either of the district councils.

(3) Those persons shall be members of the shadow authority throughout the shadow period notwithstanding the dissolution of the County Council and the district councils on 1st April 2009.

(4) The proper officer of the Mid Bedfordshire District Council shall convene, and make all necessary arrangement for, the first meeting of the shadow authority, which shall be held not later than 14 days after the coming into force of this Order.

(5) Where, after the coming into force of this Order and before 30th September 2008, a by-election is held to fill a casual vacancy arising in any Central electoral division or in any ward of either Mid or South Bedfordshire, the person elected at the election shall be a member of the shadow authority.

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

16.—(1) At its first meeting the shadow authority shall, in accordance with paragraphs (2) and (3), 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within the meaning of Part 2 of the Local Government Act 2000 (arrangements with respect to executives etc), as originally enacted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>(1)</sup> (“the shadow executive”).

(2) Section 11 of the Local Government Act 2000 (local authority executives) shall have effect, for the purposes of paragraph (1), as if subsection (8) were omitted; and the shadow executive shall consist of—

- (a) the two persons who are for the time being the leaders of the district councils,
- (b) six other persons, of whom each of the district councils shall nominate three, being persons who are for the time being councillors of the council by which they are nominated, and
- (c) four persons nominated by the County Council, each of whom is for the time being a member of the County Council for one of the Central electoral divisions.

(3) In making nominations for the purpose of paragraph (2), the district councils and the County Council shall, to the extent that it is practicable to do so, secure that at all times the Conservative Party, the Labour Party and the Liberal Democrats are all represented on the shadow executive by at least one member.

(4) The leader of the shadow executive shall be the person who is for the time being the leader of Mid Bedfordshire District Council.

(5) The deputy leader of the shadow executive shall be the person who is for the time being the leader of South Bedfordshire District Council.

(6) It shall be the duty of the district councils and the County Council to co-operate in the establishment of the shadow executive.

(7) 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 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<sup>(2)</sup>;
- (c) section 15 authorised its executive to delegate functions not only to officers of the shadow authority but also to officers of the district councils or the County Council;
- (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<sup>(3)</sup>.

(8) Part 3 of the 2000 Act (conduct of local government members and employees)<sup>(4)</sup> shall apply in relation to the shadow authority as if—

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(1) 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.

(2) 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.

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

(4) 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.

- (a) it were a district council<sup>(5)</sup>;
- (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 the shadow authority within the meaning of the Bedfordshire (Structural Changes) Order 2008”; and
  - (ii) in subsection (5), “(1) or” were omitted.

(9) The shadow authority shall prepare and adopt a scheme for the payment of allowances to its members; and the Local Authorities (Members’ Allowances) (England) Regulations 2003<sup>(6)</sup>, other than regulations 6 and 17 and Part 5, shall 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**

17.—(1) It shall be the duty of the shadow authority at its first meeting to designate, on an interim basis, an officer of the County Council or of either of the district 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<sup>(7)</sup> (“the 1989 Act”) and subsections (2) and (5) of section 5A<sup>(8)</sup> of the 1989 Act (reports of monitoring officer – local authorities operating executive arrangements), as applied by paragraph (5) (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 the 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), (4) and (5) of section 4 (designation and reports of head of paid service) of the 1989 Act<sup>(9)</sup> (the “interim head of staff”).

(2) The shadow authority may, at any time before 1st April 2009, appoint a person to become, on and after that date—

- (a) the Central Bedfordshire Council’s monitoring officer,
- (b) that Council’s chief finance officer,
- (c) that Council’s head of paid service.

(3) If the power conferred by paragraph (2) is not exercised before 1st April 2009, the person who is on that date—

- (a) the interim monitoring officer,
- (b) the interim chief finance officer, or
- (c) the interim head of staff,

shall be responsible for performing, in relation to the Central Bedfordshire Council, the duties referred to in sub-paragraph (a) or (b) of paragraph (1) or the functions of the head of paid service of a local authority (as the case may be); and he shall perform those duties or such functions until the

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<sup>(5)</sup> Part 3 applies in relation to relevant authorities; see the definition of “relevant authority” in section 49(6).

<sup>(6)</sup> S.I. 2003/1021.

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

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

<sup>(9)</sup> There are amendments to section 4 not relevant to this Order.

person (which may be himself) appointed by that Council after 31st March 2009 to discharge those duties or perform those functions takes up his appointment.

(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 the shadow authority, its interim 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 monitoring officer and the executive arrangements that it adopts pursuant to article 16.

(5) Sections 114 to 116 of the Local Government Finance Act 1988<sup>(10)</sup> shall 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 (in whatever terms) included references to the shadow authority; and
- (c) references to joint committees were omitted.

(6) Subsections (2) to (6) of section 4 of the 1989 Act shall apply in relation to the shadow authority and its interim head of staff 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 staff.

### **Duties of shadow authority: proposals for executive arrangements, code of conduct and members' allowances relating to the Central Bedfordshire Council**

**18.**—(1) The shadow authority shall formulate proposals for the executive arrangements that are to be operated by the Central Bedfordshire Council.

(2) In formulating proposals under paragraph (1) the shadow executive shall comply with section 10(2) of the 2000 Act and for that purpose shall assume that the Council's executive is to be a leader and cabinet executive within the meaning of section 11(3) of the 2000 Act as originally enacted<sup>(11)</sup>.

(3) The shadow executive shall formulate proposals for the code of conduct to be adopted by the Central Bedfordshire Council.

(4) In formulating proposals under paragraph (3) the shadow executive shall have regard to section 51 of the 2000 Act and, in particular, shall secure that its proposals are consistent with the requirements of subsection (4) of that section.

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

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

**19.** The shadow authority shall prepare, keep under review, and revise as necessary, an Implementation Plan which shall include—

- (a) such plans and timetables as are in its opinion necessary to secure the effective, efficient and timely discharge of its functions; and

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<sup>(10)</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>(11)</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.

- (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 2009, of the functions that, before that date, are functions of the County Council or the district councils.

(2) For the purposes of—

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

the shadow authority shall have regard to the information supplied to the Secretary of State by the district councils in support of their proposals for single tier local government in central Bedfordshire and, in particular, to the information supplied in relation to the matters specified in paragraphs 3.6 to 3.11 (strategic leadership, neighbourhood empowerment and value for money services) of the guidance “Invitations to councils in England”, issued by the Secretary of State in October 2006<sup>(12)</sup>.

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

- (a) the proper officer of the County Council, or
- (b) the proper officer of either of the district councils,

require the council referred to in the notice to take such action relevant to any function of that council that is to transfer on 1st April 2009 as may be specified in the notice.

#### **Other functions of shadow authority**

**20.**—(1) During the shadow period the shadow authority shall have, in addition to the functions specified or referred to in articles 16 to 19, 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>(13)</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) The 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 Central Bedfordshire Council, of local government functions and full local authority powers on 1st April 2009;
- (c) to prepare any budgets or plans required by the Central Bedfordshire 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 2009.

(3) Subject to paragraph (4), the shadow authority shall have all other powers of a non-metropolitan county council and a non-metropolitan district council.

(4) The powers conferred by paragraph (3) may be exercised by the shadow authority only—

- (a) in the discharge of the functions specified or referred to in this article (including those specified or referred to in articles 16 to 19), 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

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<sup>(12)</sup> The guidance was published by the Department for Communities and Local Government. Copies of the guidance may be obtained from Communities and Local Government Publications, PO Box 236, Wetherby, West Yorkshire, LS23 7NB, quoting Product Code 06 LGSRU 04198 (Tel: 08701 226 236; Email: [communities@twoten.com](mailto:communities@twoten.com) or online at [www.communities.gov.uk](http://www.communities.gov.uk)).

<sup>(13)</sup> 1978 c.30.

- (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 either of the district councils, with the prior consent of that council.

(5) The total of the expenditure properly incurred by the shadow authority shall be divided among, and paid by, the County Council and the district councils in such proportion as may be agreed between Bedford Borough Council, the County Council and the district 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.

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

<i>Part or section of 1972 Act</i>	<i>Description</i>
Section 3( <b>14</b> )	Chairman
Section 5( <b>15</b> )	Vice-chairman
Parts 5 and 5A( <b>16</b> )	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
Section 146( <b>17</b> )	Transfer of securities on alteration of area, etc
Section 178( <b>18</b> )	Regulations as to allowances

(7) The shadow authority shall, notwithstanding that it does 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(**19**) (accounts and audit of public bodies), as a local authority (and, therefore, a body subject

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

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

(16) 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.

(17) 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.

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

(19) 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.

- to audit); but sections 11A<sup>(20)</sup>, 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 the 2000 Act (indemnification of members and officers of relevant authorities)<sup>(21)</sup>, as a relevant authority,
  - (c) for the purposes of Part 1 of the Local Government Act 2003<sup>(22)</sup> (capital finance etc and accounts), as a local authority, and
  - (d) for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001<sup>(23)</sup>, as a relevant authority.

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

**21.**—(1) Except to the extent that any provision of any Act, this Order or regulations under section 13 of the 2000 Act requires otherwise, the functions conferred on the shadow authority by or under this Order shall be delegated to, and discharged by, the shadow executive.

(2) 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 shall comply with any such request within such period as the shadow executive may specify.

### **Central Implementation Team**

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

(2) The members of the Central Implementation Team shall comprise officers from both the County Council and each of the district councils.

(3) The leader of the Central Implementation Team shall be an officer of one of the district councils.

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<sup>(20)</sup> Section 11A was inserted by the Greater London Authority Act 1999 (c.29), Schedule 8, para 4.

<sup>(21)</sup> 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).

<sup>(22)</sup> 2003 c.26.

<sup>(23)</sup> S.I. 2001/3384.