
DRAFT STATUTORY INSTRUMENTS

2022 No.

The Cumbria (Structural Changes) Order 2022

PART 3

SHADOW AUTHORITIES

Shadow authorities

6. During the shadow period Cumberland Council and Westmorland and Furness Council shall each be a shadow authority for the purposes of the following provisions of this Part.

Duties of shadow authorities: executive arrangements

7.—(1) At its first meeting, each shadow authority must create a leader and cabinet executive within the meaning of Part 1A of the 2000 Act⁽¹⁾ (arrangements with respect to local authority governance in England) (“the shadow executive”).

(2) With the exception of Chapter 4 (changing governance arrangements) 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 a 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) in the case of the shadow authority for Cumberland, section 9E (discharge of functions: general) authorised its executive to delegate functions not only to officers of the shadow authority but also to officers of the county council and the Cumberland councils;
- (d) in the case of the shadow authority for Westmorland and Furness, 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 Westmorland and Furness councils.

(3) Chapter 7 of Part 1 of the 2011 Act (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.

Duties of shadow authorities: code of conduct

8.—(1) Subject to paragraph (2), each shadow authority must adopt a code of conduct proposed pursuant to article 25(1) and (2) at its first meeting.

(2) In complying with paragraph (1), each shadow authority must make such amendments or modifications to the proposals submitted to it under article 25 as it considers necessary to secure that, when adopted, the code will satisfy the requirements of section 27 (duty to promote and maintain high standards of conduct) and section 28 (codes of conduct) of the 2011 Act.

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

Duties of shadow authorities: appointment of certain officers

9.—(1) At its first meeting, the shadow authority for Cumberland must designate on an interim basis—

- (a) an officer of the county council or an officer of one of the Cumberland councils 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⁽²⁾; and
 - (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 (5) (the “interim monitoring officer”);
- (b) an officer of the county council or an officer of one of the Cumberland councils to be responsible for the administration of the financial affairs of the shadow authority (the “interim chief finance officer”);
- (c) an officer of the county council or an officer of one of the Cumberland councils 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) At its first meeting, the shadow authority for Westmorland and Furness must designate on an interim basis—

- (a) an officer of the county council or an officer of one of the Westmorland and Furness councils 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; and
 - (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 (5) (the “interim monitoring officer”);
- (b) an officer of the county council or an officer of one of the Westmorland and Furness councils to be responsible for the administration of the financial affairs of the shadow authority (the “interim chief finance officer”);
- (c) an officer of the county council or an officer of one of the Westmorland and Furness councils 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”).

(3) Each shadow authority must before 31st December 2022 appoint a person to become, on and after that date—

- (a) in the case of Cumberland Council —
 - (i) that council’s monitoring officer;
 - (ii) that council’s chief finance officer;
 - (iii) that council’s head of paid service;
- (b) in the case of Westmorland and Furness Council —
 - (i) that council’s monitoring officer;

(2) Relevant amendments, including the insertion of section 5A, were made by [S.I. 2001/2237](#), article 23.

- (ii) that council's chief finance officer;
- (iii) that council's head of paid service.

(4) A designation under paragraph (1) or (2) 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 (3) to discharge responsibilities equivalent to those of the designated officer.

(5) 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) a 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.

(6) Sections 114 to 115, 115B and 116 of the Local Government Finance Act 1988⁽³⁾ apply in relation to a 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.

(7) Subsections (2) to (5) and (6) of section 4 of the 1989 Act apply in relation to a 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 a shadow authority and its interim head of paid service.

Duties of shadow authorities: members' allowances for Cumberland Council and Westmorland and Furness Council

10.—(1) The shadow authority for Cumberland must formulate proposals for the scheme of members' allowances to be adopted by Cumberland Council.

(2) The shadow authority for Westmorland and Furness must formulate proposals for the scheme of members' allowances to be adopted by Westmorland and Furness Council.

(3) Each shadow authority must prepare and adopt a scheme for the payment of allowances to its members.

(4) The Local Authorities (Members' Allowances) (England) Regulations 2003⁽⁴⁾, 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.

Functions of shadow authorities: Implementation Plan

11.—(1) After the dissolution of the Cumberland Joint Committee, the shadow authority for Cumberland must keep under review, and revise as necessary, the Implementation Plan prepared by that Committee.

⁽³⁾ 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.

⁽⁴⁾ S.I. 2003/1021.

(2) After the dissolution of the Westmorland and Furness Joint Committee, the shadow authority for Westmorland and Furness must keep under review, and revise as necessary, the Implementation Plan prepared by the Westmorland and Furness Joint Committee.

(3) Article 24(2) applies in relation to each shadow authority as if—

- (a) the word “preparing” were omitted;
- (b) for “the article 22 functions” there were substituted “the main transitional functions”; and
- (c) for “each Joint Committee” there were substituted, as the circumstances require, “the Cumberland Council” or “the Westmorland and Furness Council”.

(4) Article 24(3) applies in relation to the shadow authority for Cumberland as if—

- (a) for “Each Joint Committee”, there were substituted, “The Cumberland Council”;
- (b) the words “or the Westmorland and Furness councils” are omitted; and
- (c) for “the article 22 functions” there were substituted “the main transitional functions”.

(5) Article 24(3) applies in relation to the shadow authority for Westmorland and Furness as if—

- (a) for “Each Joint Committee”, there were substituted “The Westmorland and Furness Council” ;
- (b) the words “the Cumberland councils or” are omitted; and
- (c) for “the article 22 functions” there were substituted “the main transitional functions”

(6) In article 24(2) and (3), as applied by paragraphs (3), (4) and (5) “the main transitional functions” means the functions referred to in article 13(1) and—

- (a) as regards the shadow authority for Cumberland, the function referred to in article 13(2); and
- (b) as regards the shadow authority for Westmorland and Furness, the function referred to in article 13(3).

Other functions of the shadow authorities

12. During the shadow period the shadow authorities have, in addition to the functions specified or referred to in articles 7 to 11, the functions referred to or specified in articles 13 to 18.

13.—(1) Each shadow authority must take all such practicable steps as are necessary or expedient—

- (a) to commence and sustain their running as shadow authorities;
- (b) to prepare the authorities for the assumption, as Cumberland Council or Westmorland and Furness Council, of local government functions and full local authority powers on 1st April 2023;
- (c) to prepare any budgets or plans required by Cumberland Council or Westmorland and Furness Council when those functions are assumed; and
- (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 2023.

(2) The shadow authority for Cumberland must also take all such practicable steps as are necessary or expedient to liaise with the Cumberland councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2023.

(3) The shadow authority for Westmorland and Furness must also take all such practicable steps as are necessary or expedient to liaise with the Westmorland and Furness councils for the purpose of ensuring continuity of the delivery of public services on and after 1st April 2023.

14. The shadow authorities have all the other powers of a non-metropolitan county council or a non-metropolitan district council.

15. The powers conferred by article 14 may be exercised by a shadow authority only—

- (a) in the discharge of the functions specified or referred to in articles 7 to 11, 13, 17 and 18;
- (b) in the case of the powers of a non-metropolitan county council, in the same manner, and subject to the same conditions and limitations, as if it were a non-metropolitan county council;
- (c) in the case of the powers of a non-metropolitan district council, in the same manner, and subject to the same conditions and limitations, as if it were a non-metropolitan district council; and
- (d) 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 2023, is the responsibility of that council; or
 - (ii) where the expenditure or liability relates to a matter which, before 1st April 2023, is the responsibility of a district council, with the prior consent of that council.

16. The total of the expenditure properly incurred by the shadow authorities is to be divided among, and paid by, the county council, the Cumberland councils and the Westmorland and Furness councils in such proportion as may be agreed between those councils; 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.

17. The following provisions apply in relation to a shadow authority, notwithstanding that it does not have the functions and full powers of a local authority—

- (a) the following provisions of the Local Democracy, Economic Development and Construction Act 2009⁽⁵⁾—
 - (i) section 108 (review by authorities: new combined authority)⁽⁶⁾;
 - (ii) section 109 (preparation and publication of scheme: new combined authority)⁽⁷⁾;
- (b) section 82 of the 2007 Act (council's power to undertake review) in relation to the area of any of the district councils;
- (c) section 86 of the 2007 Act (reorganisation of community governance);
- (d) section 87 of the 2007 Act (constitution of new parish);
- (e) section 88 of the 2007 Act (existing parishes under review);
- (f) section 89 of the 2007 Act (new council: consequential recommendations);
- (g) section 90 of the 2007 Act (council retained: consequential recommendations);
- (h) section 91 of the 2007 Act (grouping or de-grouping of parishes);
- (i) section 92 of the 2007 Act (county, district or London borough: consequential recommendations);
- (j) section 93 of the 2007 Act (duties when undertaking a review);
- (k) section 94 of the 2007 Act (recommendations to create parish councils);

⁽⁵⁾ 2009 c. 20.

⁽⁶⁾ 2009 c. 20. Section 108 was amended by section 6 of the Cities and Local Government Devolution Act 2016 (c. 1).

⁽⁷⁾ Section 109 was amended by sections 6 and 12 of the Cities and Local Government Devolution Act 2016 (c. 1).

- (l) section 95 of the 2007 Act (electoral recommendations: general considerations);
- (m) section 96 of the 2007 Act (publicising outcome); and
- (n) section 98 of the 2007 Act (orders and regulations under this chapter).

18.—(1) The following provisions of the 1972 Act apply in relation to a 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>	
Section 3	Chairman
Section 5	Vice-chairman
Part 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
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) Each 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⁽⁸⁾ 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⁽⁹⁾ (capital finance etc and accounts), as a local authority;
- (d) for the purposes of the Local Authorities (Standing Orders) (England) Regulations 2001⁽¹⁰⁾, as a relevant authority;
- (e) for the purposes of the Data Protection Act 2018⁽¹¹⁾, as a public authority; and
- (f) for the purposes of the Freedom of Information Act 2000⁽¹²⁾, as a public authority.

Discharge of shadow authorities' functions by shadow executives

19.—(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:

(8) 2014 c. 2.
(9) 2003 c. 26.
(10) S.I. 2001/3384.
(11) 2018 c. 12.
(12) 2000 c. 36.

further provision) or 13(13) (functions which are the responsibility of an executive) of the 2000 Act requires otherwise, the functions conferred on a shadow authority by or under this Order are to be delegated to, and discharged by, its shadow executive.

(2) Paragraph (1) does not prevent a shadow executive from requesting its 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.

(13) 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.