

WESTMORLAND AND FURNESS JOINT COMMITTEE

Meeting Date: 11 April 2022

Report of: Linda Fisher – Technical Lead, Legal and Democratic Workstream and Monitoring Officer (South Lakeland District Council)

Subject: Proposed Shadow Authority Constitution

1.0 SUMMARY

1.1 This report recommends a Constitution for adoption by the Shadow Authority for Westmorland and Furness Council at its first meeting on 17 May 2022.

2.0 RECOMMENDATIONS

2.1 That the Joint Committee:-

- 1. reviews the draft Constitution and provides feedback;**
- 2. subject to any required amendments, recommends the said Constitution for adoption by the Westmorland and Furness Shadow Authority at its inaugural meeting on 17 May 2022 and thereby, amongst other things, creates a Leader and Cabinet Executive within the meaning of Part 1A of the Local Government Act 2000; and**
- 3. delegates authority to the Monitoring Officer for South Lakeland District Council, following consultation with the Chair and Vice-Chair of the Joint Committee to make further amendments which may be beneficial between the date of today's Joint Committee Meeting and the publication of the relevant report for the Westmorland and Furness Shadow Authority.**

3.0 BACKGROUND

3.1 The Cumbria (Structural Changes) Order 2022 ("the SCO") changes the arrangements for local government in the County of Cumbria. Two new Unitary Authorities will come into existence, one known as Cumberland Council and the other as Westmorland and Furness Council.

3.2 The two new Councils assume full responsibility for functions from 1 April 2023 onwards (vesting day) but elections will be held on 5 May 2022 for the Authorities. From the fourth day after the 2022 election until immediately before vesting day what are to be known as Shadow Authorities will exist.

3.3 Part 3 of the SCO sets out what is required of the Shadow Authorities and the role includes:

- the creation of a Leader and Cabinet Executive;
- the designation of Interim Head of Paid Service, Monitoring Officer and Chief Finance Officer (s151);
- the appointment, before 31 December 2022, of the Authority's Head of Paid Service, Monitoring Officer and Chief Finance Officer (s151)
- adoption of a code of conduct for the Shadow Authority;
- formulation of proposals for a scheme of Members' allowances;
- discharge of functions via the shadow executive;
- review and revise the Implementation Plan;
- commence and sustain their running as Shadow Authorities;
- prepare the authorities for the assumption, as Cumberland or Westmorland and Furness Council, of local government functions and full local authority powers on 1 April 2023;
- preparation of any budgets or plans required by Cumberland or Westmorland and Furness Council when those functions are assumed;
- liaison with the county council and relevant district councils and the other Shadow Authority for the purpose of ensuring continuity of service delivery of public services on and after 1 April 2023; and
- complying with the Article 24 Direction (approval of prescribed capital and revenue expenditure by the existing councils)

3.4 The Shadow Authorities have all of the powers of a non-metropolitan county council or a non-metropolitan district council but it is important to note that the Shadow Authorities only carry out the restricted role prescribed in the SCO and other relevant legislation. During the shadow period the county council and the six districts remain responsible for the delivery of all of their existing services.

3.5 Each of the Cumberland and Westmorland and Furness Councils will require a Constitution for the shadow period in order to facilitate its activities. It is important to note that the shadow authority Constitution is a different document to the unitary Council Constitution which will be required post vesting day with the latter document having to cover all functions and services delivered by the new Councils.

3.6 The Monitoring Officer Constitution workstream reviewed several examples of previous shadow authority constitutions with a view to identifying best practice currently available. The proposed Shadow Authority constitution is attached to this report as Appendix 1.

3.7 THE PROPOSED SHADOW AUTHORITY CONSTITUTION

3.8 The Constitution contains the following sections:

- The Powers and Duties of the Shadow Authority
- The Shadow Authority: shadow member roles, the Chair, the Leader, allowances, conduct etc.
- The rights and responsibilities of members of the public
- Functions of the Shadow Authority
- Role of the Chair
- Overview and Scrutiny
- The Shadow Executive: Leader, Deputy Leader and other members
- Other Committees: Senior Appointments Committee and Standards Committee
- The Code of Conduct
- Functions of Officers: Head of the Paid Service, Monitoring Officer and Chief Finance Officer
- Decision making and legal matters
- Review and revision of the Constitution
- Budget and Policy Framework
- Responsibility for Functions
- Procedure Rules: Access to Information, Executive, Overview and Scrutiny and meeting rules
- Financial Procedure Rules

3.8 It is important to note that this is a proposed Constitution drafted for a body of Members not yet in existence. It is intended to be a workable document but one which is easily amended to cater for the wishes of the new Council. Any Member may request the Monitoring Officer to amend the Constitution and if the proposed change is compliant with statute and not likely to conflict with policy then a report will be submitted to the Shadow Authority. The Monitoring Officer may also make minor amendments (following a consultation process with the Chief Finance Officer, the Leader and the Chair) to reflect legislative changes or for any other reason providing no power reserved to the Shadow Authority is changed. These matters would then be reported to the next meeting of the Shadow Authority.

3.9 The Executive is to be the Leader plus between two and nine appointed persons.

3.10 The Shadow Authority will have three committees and the Constitution provides that the Overview and Scrutiny Committee will have twelve members whilst the Senior Appointments Committee and the Standards Committee will each have seven members. The Overview and Scrutiny workstream preference is for one Scrutiny Panel which then utilises task and finish groups.

- 3.11** The Chair of the Shadow Authority includes the remit of attending such civic events as are appropriate, for example Remembrance Sunday. Any such events will continue to be organised by the relevant existing local authorities.
- 3.12** Part 3 of the SCO requires that the Shadow Authority, at its first meeting, must create a leader and cabinet executive in accordance with Part 1A of the Local Government Act 2000 and this is achieved via the adoption of the Constitution.
- 3.13** The obligation is to adopt suitable arrangements at the first meeting of the new Shadow Authority but, of course, Members may have different views as to what they wish their Constitution to contain and provide for. To this end, Members should note the ability for the Constitution to be easily amended in accordance with Members' wishes. If Members of the Shadow Authority wish their Constitution to have different provisions then the recommended course of action is for them to approve the proposed Constitution and instruct officers to report to the next Shadow Authority meeting appropriate revisions to the said Constitution.
- 3.14 FURTHER WORK**
- 3.15** Members of the Joint Committee will acknowledge that the Constitution for the Shadow Authority is a significant piece of work. The members of the Joint Committee may have amendments that they wish to be made and, in addition, the Monitoring Officers would welcome the ability to continue to work on the document prior to submission to the inaugural meeting of the Shadow Authority. In relation to this last point it is recommended that the Joint Committee approve the Constitution, subject to any changes they wish to see incorporated, and also delegate authority to the Monitoring Officers, following consultation with the Chair and Vice-Chair of the Joint Committee to make such further amendments to the document which may be felt to be beneficial. Any such changes would be reported to the May meeting of the Joint Committee.
- 3.16 SECTION 24 OF THE PUBLIC INVOLVEMENT IN HEALTH ACT 2007**
- 3.17** Members will be aware that the Government intend to issue a direction pursuant to section 24 of the Public Involvement in Health Act 2007 which, briefly, will regulate the ability of the existing Councils to enter into certain contracts and arrangements. The section is referenced within the body of the Constitution by way of acknowledgement of the role of the Shadow Authority in the process, however, the said role and a protocol for dealing with the requirements will be the subject of a separate, detailed report to the Shadow Authority setting out the detailed mechanism about how the process will be implemented.

3.18 FURTHER CONSULTATION

3.19 The draft Constitution has been consulted upon with all of the various workstreams and the Chief Executives' Programme Board.

4.0 OPTIONS, INCLUDING ALTERNATIVES (IF ANY)

4.1 The Shadow Authority must have suitable arrangements in place to comply with the law and its requirements. The recommended option for the Joint Committee is to consider the appended draft constitution and suggest any amendments it wishes.

4.2 As stated within the body of the report, it will be helpful to allow the draft constitution to continue to be worked upon up to the first meeting of the Shadow Authority so it is suggested that the Joint Committee delegate authority to the Monitoring Officers to continue to work upon the document and make any appropriate amendments following consultation with the Chair of the Joint Committee.

5.0 IMPLICATIONS

5.1 Financial and Procurement

5.1.1 There are no direct financial or procurement issues arising from this report but the proposed Constitution does set in place the framework of financial rules within which the Shadow Authority will operate. The Section 151 Officers have input into the formulation of the said rules.

5.2 Staffing

5.2.1 The proposed Constitution does include the Shadow Authority's officer employment procedure rules which are of particular relevance to the required appointment of both the interim and permanent Statutory Officer posts.

5.3 Legal

5.3.1 The Monitoring Officers workstream has drafted the report and Constitution to deliver the requirements of the Structural Change Order and a sound Constitution. The Constitution has been drafted in such a way that it may easily be amended to cater for the needs of the Shadow Authority during its existence in 2022/23.

5.4 Information Governance

- 5.4.1** There are no direct information governance issues arising though the Constitution does identify the Monitoring Officer as the proper officer to deal with data protection issues.

6.0 HEALTH AND SUSTAINABILITY IMPACT

- 6.1** There are no direct health and sustainability implications associated with this report.

6.2 EQUALITY AND DIVERSITY IMPACT

- 6.3** There are no direct equality and diversity implications associated with this report.

7.0 RISKS

- 7.1** The proposal of a suitable Constitution is a role of the Joint Committee and the risk in not so proposing the document is that the Shadow Authority will not have the required Constitution to facilitate its operation.

8.0 CONCLUSION

- 8.1** This report provides members of the Joint Committee with an opportunity to provide comments on the draft Constitution. It requests a specific delegation to the Monitoring Officer, the Chair and Vice-Chair of the Joint Committee to make any further amendments. It proposes that a report is brought back to the final meeting of the Joint Committee with any amendments. The report ensures we meet the requirements of the SCO and the Terms of Reference for the Joint Committee.

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APPENDICES

Appendix 1 – Proposed draft Constitution for the Shadow Authority