

# East Suffolk Shadow Authority

Agenda  
item 13

## SHADOW COUNCIL

Monday 3 September 2018

## SHADOW SCRUTINY COMMITTEE: PROPOSED TERMS OF REFERENCE AND PROCEDURE RULES (REP 4(SH))

### EXECUTIVE SUMMARY

1. The Shadow Authority is required to have in place, and maintain, a Constitution.
2. This report recommends the adoption of Terms of Reference and Procedure Rules for the Shadow Scrutiny Committee.

Is the report Open or Exempt?

Open

**Wards Affected:**

All

**Cabinet Members:**

Councillor Mark Bee and Councillor Ray Herring

**Supporting Officer:**

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## **1 INTRODUCTION**

- 1.1 By article 8(7) of the East Suffolk (Local Government Changes) Order 2018 ( the ‘Changes Order’), certain provisions of Part 1A of the Local Government Act 2000 – which concerns the arrangements for local authority governance in England – have effect in relation to the Shadow Authority.
- 1.2 Part 1A includes section 9P (local authority constitution) which requires a local authority to maintain a constitution and ensure that it is available for inspection by members of the public. Under section 9P, the authority must supply a copy to anybody who requests one, upon payment of a reasonable fee. The constitution is to include the standing orders, a copy of the authority’s code of conduct, such information as the Secretary of State may direct and such other information as the authority considers appropriate.
- 1.3 At the first meeting of the East Suffolk Shadow Authority, on Monday 4 June 2018 (REP1(SH)), the Shadow Authority adopted the Shadow Council Procedure Rules and Suffolk Code of Conduct and it was stated that further documents to form the Shadow Authority’s Constitution would be developed in due course.
- 1.4 It was also proposed at that first meeting to establish a Shadow Scrutiny Committee comprising of 14 Members of the Shadow Authority, seven of whom must be drawn from the membership of the Overview and Scrutiny Committee of WDC and seven of whom must be drawn from the membership of the Scrutiny Committee of SCDC. The Chairman of SCDC’s Scrutiny Committee, and the Chairman of WDC’s Overview and Scrutiny Committee will nominate the seven Members from their respective Committees to sit on the Shadow Scrutiny Committee, for each of its meetings.
- 1.5 It is now necessary to adopt Terms of Reference and a set of Procedure Rules for the Shadow Scrutiny Committee

## **2 MAINTENANCE OF THE SHADOW CONSTITUTION**

- 2.1 The proposed Shadow Scrutiny Terms of Reference and Procedure Rules have been considered at the meeting of the Member Programme Board on 18 June 2018 and the Member Programme Board recommends to the Shadow Authority that these are adopted.
- 2.2 It is proposed, therefore, that the following documents be adopted to enable the Shadow Scrutiny Committee to carry out its functions, conduct its proceedings and apply the appropriate scrutiny mechanisms in relation to the formation of the new Council:
  - a) Appendix A – Shadow Scrutiny Terms of Reference
  - b) Appendix B – Shadow Scrutiny Procedure Rules

### **RECOMMENDATIONS**

1. That the Shadow Authority adopts the Shadow Scrutiny Terms of Reference and Procedure Rules as set out in Appendix A and Appendix B respectively.

### **APPENDICES**

#### **Appendix A**

Shadow Scrutiny Terms of Reference

**BACKGROUND PAPERS** Please note that copies of background papers have not been published on the Council's website but copies of the background papers listed below are available for public inspection free of charge by contacting the relevant Council Department.

Date	Type	Available From
25/05/18	East Suffolk (Local Government Changes) Order 2018	<a href="https://www.legislation.gov.uk/ukdsi/2018/9780111167564/contents">https://www.legislation.gov.uk/ukdsi/2018/9780111167564/contents</a>

**SHADOW SCRUTINY COMMITTEE - Terms of Reference****1. FORM AND COMPOSITION**

- 1.1 The Shadow Authority has appointed a Shadow Scrutiny Committee which will consist of 14 Members of the Shadow Authority, seven of whom are members of Suffolk Coastal District Council's Scrutiny Committee and nominated by the Chairman of that Committee, and seven of whom are members of Waveney District Council's Overview and nominated by the Chairman of that Committee.
- 1.2 The Shadow Scrutiny Committee will discharge the functions conferred on the Council by Section 21 of the Local Government Act 2000, and any relevant regulations.
- 1.3 No Member of the Shadow Executive may be a member of the Shadow Scrutiny Committee.
- 1.4 Proceedings of the Shadow Scrutiny Committee shall take place in accordance with the Shadow Scrutiny Procedure Rules.

**2. ROLE OF THE SHADOW SCRUTINY COMMITTEE**

- 2.1 The Shadow Scrutiny Committee will:
  - (a) support and facilitate the work of the Shadow Council in discharging its duty to prepare for the assumption by East Suffolk Council of full local authority functions and powers on 1 April 2019, as provided in the East Suffolk Council (Local Government Changes) Order 2018 (the Changes Order).
  - (b) receive and comment on reports by the Shadow Executive on the progress of preparations for the implementation of East Suffolk Council on 1 April 2019.
  - (c) review those preparations and related decisions.
  - (d) comment and/or make recommendations to the Shadow Executive and/or Shadow Council, as appropriate to their respective powers and duties under the Changes Order.
  - (e) scrutinise decisions which the Shadow Executive is planning to take, as set out in the Forward Plan or of which proper notice is given;
  - (f) scrutinise decisions of the Shadow Executive and individual portfolio holders before they are implemented and if necessary using the "call-in" mechanism to require the decision taker to reconsider the earlier decision;
- 2.2 The Shadow Scrutiny Committee Rules of Procedure explain that the powers and functions of the Shadow Council under the Changes Order are limited to preparing the Shadow Council for the assumption of full local authority functions and powers on 1 April 2019. Consequently, the powers and functions of its Shadow Executive and Shadow Scrutiny Committee are similarly limited.

- 2.3 It is not expected that a formal work programme will be developed for the Shadow Scrutiny Committee, but instead:
- (a) The members of the Shadow Scrutiny Committee may request to meet to consider items within their remit outlined at paragraph 2.1 above;
  - (b) The Leader of the Shadow Executive may request the Shadow Scrutiny Committee meet to consider decisions or policies that the Shadow Council intends to implement.
- 2.4 The following principles should be adhered to by the Shadow Scrutiny Committee when carrying out its work:-
- (a) a variety of different approaches and formats for meetings may be used;
  - (b) the declaration of interest rules shall apply;
  - (c) the imposition of the Party Whip is regarded as incompatible with the work of the Shadow Scrutiny Committee;
- 2.5 In order that the Shadow Scrutiny Committee can perform its roles properly, it shall be given the following support:-
- (a) effective and properly resourced support from officers;
  - (b) appropriate financial resources;
  - (c) access to the advice of the Council's Interim Monitoring Officer, Interim Chief Finance Officer or Interim Head of Paid Service;
  - (d) the ability to require Members of the Shadow Executive and officers to attend to answer questions.

**1. Arrangements for the Shadow Scrutiny Committee**

- 1.1 Scrutiny of the Shadow council shall be undertaken by the Shadow Scrutiny Committee
- 1.2 It would normally be expected that the Shadow Scrutiny Committee would meet to scrutinise the relevant matters, and operate in line with its terms of reference-set out above. These terms set out the type of matters on which scrutiny may be undertaken.

**2. Who may sit on the Shadow Scrutiny Committee?**

- 2.1 Councillors appointed to the Shadow Scrutiny Committee may take part in scrutiny of the Shadow Council. No member may be involved in scrutinising a decision in which they have been directly involved.

**3. Meetings of the Shadow Scrutiny Committee**

- 3.1 The Shadow Scrutiny Committee may meet to scrutinise Shadow Authority functions as they consider appropriate and as is relevant for the matters subject to scrutiny.
- 3.2 Meetings will be conducted in accordance with the Shadow Committee Procedure Rules unless there are specific exceptions in these Scrutiny Procedure rules.

**4. Who chairs Shadow Scrutiny Committee meetings?**

- 4.1 The Chairman of the Shadow Scrutiny Committee shall be elected at the first meeting of the Shadow Scrutiny Committee.
- 4.2 If the Chairman who would ordinarily chair the meeting is not present, then it shall be chaired by the Vice Chairman or vice versa. If both the Chairman and Vice Chairman are not present, then a vote shall be held of the committee members for the Chairmanship of the meeting.

**5. Work programme**

- 5.1 The powers and functions of the Shadow Council under the Changes Order are limited to preparing the Shadow Council for the assumption of full local authority functions and powers on 1 April 2019. Consequently, the powers and functions of its Shadow Executive and the Shadow Scrutiny Committee are similarly limited. Therefore, any work programme of the Shadow Scrutiny Committee must be considered in this context.

**6. Agenda items**

- 6.1 Any Member of the Shadow Council shall be entitled to give notice to the Interim Head of Paid Service that they wish an item relevant to the role of the Shadow Council to be considered by the Shadow Scrutiny Committee. They shall be requested to complete a suggestion form for the shadow scrutiny work programme and provide this to the Interim Head of Paid Service who will then seek the views of the Chairman and Vice Chairman of the Shadow Scrutiny Committee as to its consideration. If the Chairman and Vice Chairman agree, then the matter will be referred to a meeting of the Shadow Scrutiny Committee to be scheduled.

- 6.2 The Shadow Scrutiny Committee shall also respond, as soon as its work programme permits, to requests from the Shadow Council and the Shadow Executive to review particular areas of Shadow Council activity. Where it does so, the Shadow Scrutiny Committee shall report its findings and any recommendations back to the Shadow Executive and/or Shadow Council. The Shadow Council and/or the Shadow Executive shall consider the report of the Shadow Scrutiny Committee at its next meeting.

## **7. Reports from Shadow Scrutiny Committee**

- 7.1 Once it has formed recommendations on proposals for development, the Shadow Scrutiny Committee will prepare a formal report and submit it for consideration by the Shadow Executive as appropriate (if the proposals are consistent with the existing budgetary and policy framework), or to the Shadow Council as appropriate (e.g. if the recommendation would require a departure from or a change to the agreed budget and policy framework).
- 7.2 The Chairman of the Shadow Scrutiny Committee will normally be responsible for presenting the report to the Shadow Executive or the Shadow Council as appropriate.
- 7.3 If the Shadow Scrutiny Committee cannot agree on one single final report to the Shadow Council or Shadow Executive as appropriate, then up to one minority report may be prepared and submitted for consideration by the Shadow Council or Shadow Executive with the majority report.
- 7.4 The Shadow Council or Shadow Executive shall consider the report of the Shadow Scrutiny Committee at the next available meeting.

## **8. Making sure that scrutiny reports are considered by the Shadow Executive**

- 8.1 Once the Shadow Scrutiny Committee has completed its deliberations on any matter, the Shadow Scrutiny Committee will forward a copy of the final report or recommendations to either or both the Shadow Executive and the Shadow Council for consideration, according to whether the contents of the report would have implications for the Shadow Council's budget and policy framework. If the Interim Head of Paid Service refers the matter to the Shadow Council, they will also serve a copy on the Leader with notice that the matter is to be referred to the Shadow Council. The Shadow Executive must be given the opportunity to respond to the Scrutiny report before the Shadow Council meets to consider it. When the Shadow Council does meet to consider any referral from the Shadow Scrutiny Committee on a matter which would impact on the budget and policy framework, it shall also consider the response of the Shadow Executive to the scrutiny proposals.
- 8.2 The agenda for Shadow Executive meetings shall include an item entitled 'Issues arising from Scrutiny'. Any reports of the Shadow Scrutiny Committee referred to the Shadow Executive shall be included at this point in the agenda (unless they have been considered in the context of the Shadow Executive's deliberations on a substantive item on the agenda).

## **9. Rights of Scrutiny Committee members to documents**

- 9.1 In addition to their rights as Councillors, members of the Shadow Scrutiny Committee have the additional right to documents, and to notice of meetings, as set out in the Access to Information Procedure Rules in Part 4 of this Constitution.

- 9.2 Nothing in this paragraph prevents more detailed liaison between the Shadow Executive and the Shadow Scrutiny Committee as appropriate depending on the particular matter under consideration.

## **10. Members and officers giving account**

- 10.1 The Shadow Scrutiny Committee may scrutinise and review decisions made or actions taken in connection with the discharge of the Shadow Council functions. As well as reviewing documentation, in fulfilling the scrutiny role, it may require any member of the Cabinet, the Interim Head of Paid Service and/or any chief officer to attend before it to explain in relation to matters within its remit:-
- (a) any particular decision or series of decisions;
  - (b) the extent to which the actions taken implement Council policy; and/or
  - (c) their performance and it is the duty of those persons to attend, or send an appropriate substitute, if so required.
- 10.2 In pursuance of the Shadow Scrutiny Committee's function of supporting and facilitating the process of transition to East Suffolk Council and in view of the specific circumstances pertaining during the period leading up to 1 April 2019, such requests will only be responded if the Interim Head of Paid Service agrees that the attendance or work requested would support and facilitate the work of the Shadow Council and would not adversely affect the achievement of its statutory functions in preparing for the implementation of East Suffolk Council on 1 April 2019 as provided in the Changes Order.
- 10.3 Where any member or officer is required to attend the Shadow Scrutiny Committee under this provision, the Chairman of the Shadow Scrutiny Committee will inform the Democratic Services team. The Democratic Services team shall inform the member or officer in writing, giving at least 5 working days notice of the meeting at which they are required to attend. The notice will state the nature of the item on which they are required to attend to give account and whether any papers are required to be produced for the Shadow Scrutiny Committee. Where the account to be given to the Shadow Scrutiny Committee will require the production of a report, then the Member or officer concerned will be given sufficient notice to allow for preparation of that documentation.
- 10.4 Where, in exceptional circumstances, the member or officer is unable to attend on the required date, then the Shadow Scrutiny Committee shall, in consultation with the member or officer, arrange an alternative date for attendance to take place within a maximum of 10 working days from the date of the original request.

## **11. Call-in**

- 11.1 A key element of the scrutiny role of the Shadow Scrutiny Committee concerns the arrangements for the "call-in" of a decision taken by or on behalf of the Shadow Executive. A decision by the Shadow Executive, or a key decision made by an officer with delegated authority from the Shadow Executive, may be "called in" by members of the Shadow Council submitting a request in writing on the call in request form to the Interim Monitoring Officer within 5 working days of the publication of that decision. No action can be taken on an item called in for scrutiny.



- 11.2 Call-in should only be used in exceptional circumstances. These are where Members have evidence which suggests that the Shadow Executive decision was not taken in accordance with the usual principles of decision making set out in the Councils' constitution. In order to ensure that call in is not abused; nor causes unreasonable delay, certain limitations are to be placed on its use. These are:-
- (a) a decision must be called-in by at least ten Members of the Shadow Council; and
  - (b) a decision on the same item may only be "called in" for scrutiny by the Shadow Scrutiny Committee on one occasion within a six month period. In that regard, a decision of the Shadow Executive may not be called in where it has already been considered by the Scrutiny Committee of Suffolk coastal District Council or the Overview and Scrutiny Committees of Waveney District Council. The six month period is to commence from the date that the "call-in" request is received by the Interim Monitoring Officer.
  - (c) members who have called in a decision may withdraw their call-in at any time prior to the meeting taking place to hear the call-in, by giving notice in writing to the Interim Head of the Paid Service.
- 11.3 The following arrangements for the call-in of decisions made by the Shadow Executive will apply:-
- (a) when a decision is made by the Shadow Executive (or by any Members of the Shadow Executive with a delegated authority) or a key decision is made by an officer with delegated authority from the Shadow Executive, the decision shall be published electronically. Normally, such publication will be on the Thursday of the week in which the decision was taken. Notification of all such decisions will also be issued to all members within the same timescale by the person responsible for publishing the decision;
  - (b) the relevant notice will bear the date on which it is published and will specify that the decision will come into force, and may then be implemented, on the expiry of five working days after the publication of the decision, unless it is called in;
  - (c) during that period, the Interim Head of Paid Service shall call-in a decision for scrutiny by the Shadow Scrutiny committee if so requested by members (in accordance with Rule 11.1 above), and shall notify the decision-taker of the call-in. An item called in for scrutiny will normally be considered by the Shadow Scrutiny Committee at their next scheduled meeting. However, in consultation with the Chairman and Vice Chairman of the Shadow Scrutiny Committee, they may call an extraordinary meeting of the Shadow Scrutiny Committee on such date as they may determine;
  - (d) any Member considering calling in a Shadow Executive decision, or a Key Decision taken by an officer under delegated authority, first be required to make every effort to discuss the issue with the relevant Executive Member(s) or Leader of the Shadow Council;
  - (e) members using the call-in arrangements have the right to address the Shadow Scrutiny Committee when it deals with the issue;

- (f) normally, the Shadow Scrutiny Committee will complete its scrutiny of the issue at that meeting and report the outcome to the next meeting of the Shadow Executive. However, the Shadow Scrutiny Committee may consider that further time is required to consider the issue and would therefore need to recommend to the Shadow Executive that further work be carried out and that the Shadow Scrutiny Committee makes recommendations at a later date. In these circumstances, the Shadow Executive will decide whether or not the decision should be implemented, having regard to the urgency, if any, of the matter;
- (g) if the Shadow Scrutiny Committee agrees with a called-in decision, the decision may be implemented immediately following the Shadow Scrutiny Committee meeting;
- (h) if the Shadow Scrutiny Committee makes an alternative recommendation this will be considered by the Shadow Executive at its next meeting and no action should be taken until a final decision has been made by the Shadow Executive (or the Shadow Council – see (i) below); and
- (i) called-in decisions which are deemed to be contrary to the policy framework, or contrary to or not wholly consistent with the budget, may have to be referred to the Shadow Council for a final decision.

#### **11.4 Call-in and urgency**

11.4.1 The call-in procedure set out above shall not apply where the decision being taken by the Shadow Executive is urgent. A decision will be urgent if any delay likely to be caused by the call-in process would seriously prejudice the Shadow Council's or the public's interest. The record of the decision, and notice by which it is made public shall state whether in the opinion of the decision making person or body, the decision is an urgent one, and therefore not subject to call-in. The Chairman and Vice Chairman of the Shadow Scrutiny Committee must agree both that the decision proposed is reasonable in all the circumstances and to it being treated as a matter of urgency. In the absence of either the Chairman or the Vice Chairman of the Shadow Scrutiny Committee consent shall only be required from one. In the absence of both, the Interim Head of Paid Service or their nominee's consent shall be required. Decisions taken as a matter of urgency must be reported to the next available meeting of the Shadow Council, together with the reasons for urgency.

### **12. The party whip**

12.1 For the purpose of this Section reference to "the party whip" shall mean:-

"Any instruction given by or on behalf of a political Group to any Councillor who is a Member of that Group as to how that Councillor shall speak or vote on any matter before the Shadow Council or any Shadow Committee, or the application or threat to apply any sanction by the Group in respect of that Councillor should they speak or vote in any particular manner."

12.2 The imposition of the party whip is regarded by the Shadow Council as incompatible with scrutiny. The party whip should not therefore be imposed on any member of the Shadow Scrutiny Committee while engaged in the work of Shadow Scrutiny.

### **13. Business at Shadow Scrutiny Committee meetings**

13.1 The Shadow Scrutiny Committee shall consider the following business at its meetings:-

- (a) minutes of the last meeting;
- (b) consideration of any matter referred to the Shadow Scrutiny Committee for a decision in relation to call-in of a decision;
- (c) responses of the Shadow Executive to reports of the Shadow Scrutiny Committee;
- (d) consideration of the Shadow Executive's Decisions Plan; and
- (e) the business otherwise set out on the agenda for the meeting.

13.2 Where the Shadow Scrutiny Committee conducts investigations, the Shadow Scrutiny Committee may also ask people to attend to give evidence at Shadow Scrutiny Committee meetings which are to be conducted in accordance with the following principles:-

- (a) that the investigation be conducted fairly and all members of the Shadow Scrutiny Committee be given the opportunity to ask questions of attendees, and to contribute and speak;
- (b) that those assisting the Shadow Scrutiny Committee by giving evidence be treated with respect and courtesy; and
- (c) that the investigation be conducted so as to maximise the efficiency of the investigation or analysis.

13.3 Following any investigation or review, the Shadow Scrutiny Committee shall prepare a report, for submission to the Shadow Executive Cabinet and/or Shadow Council as appropriate, and shall make its report and findings public.