

## **PART 3**

# **RESPONSIBILITY FOR FUNCTIONS**

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### 1 General

- 1.1 The Cheshire (Structural Changes) Order 2008 (“the Order”) provides for the establishment, on 1<sup>st</sup> April 2009, of a single tier of local government within the Shadow Council’s area.  
With effect from 1<sup>st</sup> April 2009, the County of Cheshire and all of its districts will be abolished.  
With effect from the date of the Shadow Council elections on 1<sup>st</sup> May 2008, and until 1<sup>st</sup> April 2009, the Council will operate as a “shadow authority”, as defined in the Order, having the functions set out in Part 3 of the Order.  
In particular, the Shadow Council will have the following responsibilities:
- 1.1.1 to commence and sustain its running as a shadow authority;
  - 1.1.2 to prepare the Shadow Council for the assumption of local government functions and full local authority functions and powers on 1<sup>st</sup> April 2009;
  - 1.1.3 to prepare any budgets or plans required beyond 1<sup>st</sup> April 2009 when those functions and powers are assumed;
  - 1.1.4 to liaise with Cheshire County Council and the other shadow authority for the purposes of ensuring continuity of public service delivery on and after 1<sup>st</sup> April 2009;
  - 1.1.5 to take all such practical steps as are necessary or expedient to liaise with the other local authorities within its area for the purposes of ensuring continuity of public service delivery on and after 1<sup>st</sup> April 2009;
  - 1.1.6 to exercise any of the Local Government Act 1972 functions referred to in, and in accordance with, Part 3 of the Order.
- 1.2 The powers and functions of the Shadow Council are therefore limited and, consequently, the powers and functions of its Cabinet, committees, sub committees and other decision making bodies are similarly limited. The responsibilities for functions described in this Part of the Constitution must therefore be considered in this context.  
However, upon the assumption of full local authority functions and powers on 1<sup>st</sup> April 2009, these responsibilities will increase.  
Until that date, Cheshire County Council and the district councils within the Shadow Council’s area will continue to have responsibility for local authority functions within their areas.
- 1.3 The Shadow Council is required in this Constitution to set out the allocation of responsibilities for its functions.
- 1.4 The following paragraphs cover functions which are
- the responsibility of the Shadow Council and/or its Committees/Sub-Committees

- the responsibility of the Cabinet
  - the responsibility of Officers
- 1.5 Where a function is not specified as being the responsibility of the Shadow Council, a Committee, Sub-Committee, or officer that function shall, unless otherwise provided to the contrary by law, be the responsibility of the Cabinet.

## **2 Functions Reserved to the Shadow Council**

The following functions are the responsibility of the Shadow Council and will be discharged by the full Shadow Council unless specified to be delegated to another Committee, Sub-Committee or body under this Constitution. The Shadow Council:

1. is accountable to its citizens for the proper discharge of all of its functions and for the delivery of such services as it is responsible for;
2. will keep under review the running of the Shadow Council's affairs and will implement changes where it considers there is a need to do so to improve the way in which the organisation operates, its relationships with the Shadow Council's citizens and the delivery of any services in the most effective and efficient way;
3. will adopt the Shadow Council's Constitution in accordance with the requirements of the Local Government Act 2000 and approve any subsequent amendments to it in whole or in part;
4. will appoint to the following offices
  - Chairman of the Shadow Council
  - Vice Chairman of the Shadow Council
  - Leader of the Shadow Council
  - Deputy Leader of the Shadow Council
  - Members of the Cabinet
  - Chairmen and Vice-Chairmen of Committees, Sub-Committees and Special Committees
  - such other offices as may be required under this Constitution or by the Shadow Council;
5. will decide upon the size of the Cabinet, approve the portfolios to be held within the Cabinet and the allocation of those portfolios;
6. will determine whether functions which are classified as "local choice" functions under the Local Government Act 2000 should be reserved to the Shadow Council or delegated to the Cabinet;
7. will adopt the Shadow Council's Codes of Conduct for Members and Officers and the Protocol on Member/Officer Relations;

8. will agree the establishment and composition of, and make appointments to, Committees, Sub-Committees other than those which may be established within the Cabinet;
9. will agree and amend the terms of reference of its Committees and Sub-Committees;
10. where permitted by the law, will make arrangements for appointments to outside bodies;
11. will carry out all duties specified in and comply with the Cheshire (Structural Changes) Order 2008;
12. will be responsible for any non executive Local Development Framework functions which are given to the Shadow Council by the Secretary of State;
13. will review and decide unless provided to the contrary in the Cabinet Procedure Rules whether any Cabinet decision which has not been implemented and has been referred to the Council under the provisions in this Constitution should be reconsidered by the decision taker in accordance with this Constitution and in such cases the Council may offer its advice on the matter in question;
14. will consider any matter which has been referred or submitted to it by the Cabinet;
15. where a matter is referred to it for determination by a Committee or Sub-Committee other than a Cabinet body, under this Constitution or under some other approved policy or procedure, to determine that matter;
16. will adopt or otherwise, as provided in the Shadow Council Procedure Rules, motions submitted under Standing Order No.12 (Notice of Motion) which do not relate solely to an Cabinet function;
17. will approve the Members Allowance Scheme including any pension provision for elected Members following advice from any Independent Remuneration Panel;
18. will appoint/dismiss the head of paid service, designate an officer to act as Interim/Appointed monitoring officer and Interim/Appointed chief finance officer, and appoint/dismiss a person to the position of appointed monitoring officer and appointed chief finance officer in accordance with the Cheshire (Structural Changes) Order 2008;
19. will approve the Shadow Council's response to any issues or proposals in relation to local government boundaries including Electoral Wards, the conduct of elections and the discharge of local authority functions;

20. may determine other matters which may from time to time be submitted to it for determination, either by resolution or through approved procedures, where such matters do not fall within the functions of the Cabinet.

### **3 General Responsibility of the Cabinet, Committees and Sub-Committees**

- 3.1 These bodies are responsible and accountable to the Shadow Council as appropriate in accordance with this Constitution, their terms of reference and under the approved policies, regulations and procedures of the Shadow Council for:
  1. ensuring the effective and efficient discharge of the functions delegated to them;
  2. ensuring that any Shadow Council services are appropriate for and responsive to the needs and views of the Shadow Council's citizens, and are delivered effectively and efficiently;
  3. ensuring that good external relationships and effective local liaison are promoted in relation to any Shadow Council services;
  6. monitoring the functions of the Shadow Council within their remit and contributing to any Shadow Council aims, objectives and policies;
  7. determining policies and objectives for any Shadow Council services, within their remit, reviewing the extent to which they are met, and agreeing any necessary action;
  8. determining the Shadow Council's views on matters specific to their areas of responsibility and related external matters;
  9. ensuring the effective and efficient management of any services and resources falling within their purview in accordance with this Constitution and, where appropriate, the effective and efficient discharge of the responsibilities of any subordinate bodies or person.

## **4 Responsibility of the Cabinet**

Where the Cabinet is exercising a Cabinet function, in whole or in part, as set out in this Section and in Section 5 below, the Cabinet is empowered to take all necessary and appropriate decisions to fulfil the obligations placed upon it subject to any restrictions or constraints imposed by the law or this Constitution.

### **4.1 The Cabinet**

Is responsible for and accountable to the Shadow Council, where appropriate, for the following functions, recognising that certain functions discharged by officers or services within its remit fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council:

1. consulting on, developing, monitoring and reviewing the various elements of the Shadow Council's plans and policies;
2. subject to consultation with the appropriate Scrutiny body or bodies, advising on Budget setting, including all other related financial matters, plans and proposals;
3. ensuring that proper arrangements exist for the effective and efficient management of the Council's executive affairs;
4. ensuring that the Shadow Council prepares for the Performance Management regime and any Government initiatives dealing with such matters which have financial implications.
5. monitoring and auditing the lawful, proper and efficient conduct of the Shadow Council's financial affairs, including the extent to which budgets and financial policies are being and will be met, and requiring or approving any remedial action to be taken where it considers it necessary and appropriate;
6. advising the Shadow Council where appropriate, and determining such matters as may be prescribed from time to time, under the Shadow Council's Constitution as the responsibility of the Cabinet;
7. approving, monitoring and reviewing any Shadow Council Corporate personnel and human resources policies;

8. approving, monitoring and reviewing the provision of services to the Shadow Council which are delivered by internal and/or external suppliers;
9. overseeing, approving and co-ordinating policies on national and external communications, public and media relations and public affairs generally;
10. overseeing relationships with, participation in and contribution to external organisations and partnerships, Local Government Association, the North West Regional Assembly or their successors or like bodies;
11. ensuring officers exercising delegated powers on behalf of the Cabinet discharge their responsibilities efficiently and effectively;
12. ensuring that officers discharge their responsibilities efficiently and effectively in relation to Cabinet functions;
13. overseeing the exercise of any Shadow Council powers and duties in relation to Part 1 of the Local Government Act 2000 (Promotion of Economic, Social or Environmental Well Being etc);
14. advising the Shadow Council on strategic matters in relation to corporate governance, community governance and community strategy;
15. monitoring and reviewing issues relating to local working;
16. overseeing the promotion of the Shadow Council's image, role and relationships in the European context, particularly with the European Commission and other European institutions;
17. preparing and approving, as appropriate, Regional and Sub-Regional Plans and Strategies;
18. preparing and approving major planning studies;
19. supporting the North West Regional Assembly or any successors or like body, where appropriate, on regional policy, transportation, planning and environmental issues and related matters and any other matters of relevance to the Shadow Council and ensuring that the Shadow Council's views are made known;
20. promoting employment and investment in the Shadow Council's area, including the preparation and approval of any Economic Development and Tourism Strategies;

21. deciding such other matters as may fall to the Cabinet to determine as required by the law or as delegated to it by the Shadow Council;
22. dealing with any executive Local Development Framework functions which are given to the Shadow Council by the Secretary of State.
23. making decisions upon those executive functions which arise under the Cheshire (Structural Changes) Order 2008.

The Cabinet may discharge these functions itself, through a Task Group/Cabinet Sub-Committee or by delegation to an officer. In addition, the Cabinet may appoint such advisory panels, including any member of the Shadow Council, as it considers appropriate to provide advice to it.

## **5 Responsibilities of Individual Cabinet Members**

It is recognised that certain functions discharged by officers or services within the remit of the Shadow Council fall, by virtue of the Local Authorities (Functions and Responsibilities) (England) Regulations 2000 and any subsequent amendments thereto, to be discharged by the Council, or its Committees. No individual Cabinet Member decision making powers will exist in the initial stages of the life of the Shadow Council. However, it is possible that this might change.

The following are the Shadow Council's Cabinet members:

Councillor Wesley Fitzgerald (Leader)  
Councillor Roland Domleo (Deputy Leader)  
Councillor David Brickhill  
Councillor Paul Findlow  
Councillor Peter Mason  
Councillor David Brown  
Councillor Frank Keegan  
Councillor Andrew Knowles  
Councillor Jamie Macrae  
Councillor Brian Silvester

At present, portfolio responsibilities have not been allocated to Cabinet members.

## **6 Responsibility of Regulatory Committees**

Until the Shadow Council assumes local government functions and full local authority powers on 1<sup>st</sup> April 2009, in accordance with the Cheshire (Structural Changes) Order 2008, the Shadow Council will not exercise regulatory powers and functions. The Shadow Council will, however, take such practical steps as are necessary or expedient to prepare the Shadow Council for the

assumption of local government regulatory functions and full local authority regulatory powers.

## **7 Responsibility of the Staffing Committee**

1. Undertaking the selection process for the appointment, and formulating recommendations to the Shadow Council in relation to:

- the appointment and dismissal of the Head of the Paid Service;
- the designation of an officer to act as Interim Monitoring Officer and Interim Chief Finance Officer;
- the appointment/dismissal of Appointed Monitoring Officer and Appointed Chief Finance Officer;

in accordance with the Cheshire (Structural Changes) Order 2008 in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;

2. undertaking the selection, appointment and dismissal processes for any other staff in accordance with the appropriate procedures set out in the Staff Employment Procedure Rules;
3. hearing and determining any appeals by staff under the Shadow Council's approved personnel policies and procedures including through any appointed Sub-Committee;
4. hearing and dealing with disputes registered with the Shadow Council by recognised Trade Unions.

## **8. Responsibility of the Shadow Council's Scrutiny Committee**

The Shadow Council shall have one Scrutiny committee, and may commission task and finish groups to undertake scrutiny projects.

The Scrutiny Committee will/may specifically:

1. discharge the Council's functions under Section 21 of the Local Government Act 2000 (Scrutiny Committees)
2. oversee the Council's overall scrutiny function including the preparation, implementation, monitoring and review of an annual work programme for scrutiny and arrangements for the scrutiny of other public bodies particularly where required to do so by law and where partners can contribute to Community Plan priorities and to Local Area Agreement outcomes;

3. establish such task and finish groups, appointing the Chairman with such membership as it sees fit, to undertake scrutiny on a task and finish basis;
4. ensure that officers discharge their responsibilities effectively and efficiently in relation to the scrutiny function;
5. scrutinise decisions of the Cabinet, and offer advice or make recommendations on the matter under scrutiny once the Committee have considered the issues;
6. refer to the Shadow Council or appropriate Committee/Sub-Committee any matter which, following scrutiny, the Committee determines should be brought to the attention of the Shadow Council or the Committee or Sub-Committee;
7. if requested, offer any views or advice to the Cabinet in relation to any matter referred to the Committee for consideration;
8. undertake general policy reviews with a cross-service and multi-organisational approach wherever possible and make recommendations to the Shadow Council or the Cabinet to assist in the development of future policies and strategies;
9. in performing its role, the Committee may consult and involve the local community and other local public, private and voluntary bodies or organisations;
10. review the Shadow Council's response to its obligations in respect of the overall performance management regime and where appropriate advise the Cabinet and the Shadow Council of its findings;
11. scrutinise decisions after implementation to examine their effect and outcomes;
12. review and making recommendations in relation to matters which are not the direct responsibility of the Shadow Council but which affect the social, economic and environmental well-being of an area, or the Shadow Council's area as a whole, or under any statutory requirement or Shadow Council contract, procedure or practice;
13. develop, maintain and monitor policies and procedures for handling complaints made against the Shadow Council and monitor on a regular basis the level and nature of complaints received and ensure that advice is formulated regarding action to be taken to address areas of concern;

14. monitor the level and nature of Ombudsman complaints and advise the Cabinet, Committees, Sub-Committees and officers on remedial action as appropriate;
15. ensure in conjunction with the Standards, and Governance and Constitution Committees that the Shadow Council has in place appropriate mechanisms to protect organisational Integrity including the development of appropriate policies and guidance;

## **9 Responsibility of the Standards Committee**

The Standards Committee is responsible for:-

1. discharging the Shadow Council's functions under Part 3 of the Local Government Act 2000 (via Sub-Committees if necessary);
2. considering and granting, or otherwise, dispensations in respect of Members' Interests under Part 3 of the Local Government Act 2000;
3. promoting high standards of ethical behaviour by developing, maintaining and monitoring codes of Conduct for Members of the Shadow Council (including Co-opted Members and other persons acting in a similar capacity) and for employees in accordance with best practice and Government guidance;
4. advising the Shadow Council on the adoption or revision of the Codes of Conduct for Members and Officers;
5. ensuring that Members receive advice and training as appropriate on the Members' Code of Conduct;
6. issuing advice to Members on the treatment of personal interests and on conduct matters generally;
7. ensuring that the Shadow Council maintains appropriate links with the Standards Board for England and the Commission for Local Administration in England (Ombudsman);
8. referring issues, which impinge on staff, conduct, performance, terms of employment, training and development to the appropriate Cabinet Member and/or officer;
9. promoting high standards of responsiveness by the Shadow Council to its clients and contacts;

10. advising other persons/bodies on probity and ethics as appropriate, particularly where that person or body is exercising functions on behalf of the Shadow Council;
11. in conjunction with the Shadow Council's Scrutiny Committee, supporting the Shadow Council's statutory officers as appropriate, or their authorised deputies, in the performance of their duties.

## **10 Responsibility of the Governance and Constitution Committee**

The Governance and Constitution Committee is responsible for:

1. overseeing, monitoring, co-ordinating and implementing the Shadow Council's administrative and political business, including electoral matters; administrative boundaries; support for and facilities for Members, including Members' learning and development and party groups for the purpose of their duties as councillors; and administrative arrangements for and the conduct of the Shadow Council and other meetings;
2. determining policies and conventions in relation to the political management of the Shadow Council, including statutory requirements concerning political balance and rights to information;
3. reviewing the Shadow Council's Constitution and recommending any changes to the Shadow Council;
4. advising the Shadow Council on, and overseeing the promotion of private legislation on behalf of the Shadow Council;
5. recommending to the Shadow Council, as appropriate, the appointment of Members to Committees and Sub-Committees (including any co-opted members other than in respect of Scrutiny Committees);
6. appointing representatives to serve on outside bodies and organisations (including education bodies and establishments) not falling to the Cabinet to appoint;
7. overseeing and monitoring the Members Allowance budget including pensions and keeping under review the scheme for the payment of allowances to Members;
8. approving annual conference and seminar attendance;

9. recommending to the Shadow Council any issues relating to the Honorary Aldermen;
10. approving reasons for absence for Members;
12. approving the overall seating plan for Shadow Council meetings;
13. overseeing and agreeing the arrangements for Members to be indemnified for and insured against risks and liabilities arising from the performance of their duties as Members of the Shadow Council, and as the Council's representatives on outside bodies.
14. overseeing the Shadow Council's role and responsibilities in respect of Corporate Governance;
15. developing a Code of Corporate Governance and to undertake as appropriate an assessment of wider governance issues;
16. supporting the Shadow Council's audit function, both internal and external;
17. ensuring the Shadow Council has in place appropriate policies and mechanisms to safeguard the Shadow Council's resources;
18. supporting the Interim/Appointed and Appointed Chief Financial Officers in relation to the performance of their duties;
19. approving any Shadow Council Statement of Accounts as may be required by the relevant Account and Audit Regulations;
20. ensuring any Shadow Council's Risk Management process is operating effectively.
21. undertaking work, and making recommendations, upon the Shadow Council's political management structure, and upon that which will operate with effect from 1<sup>st</sup> April 2009.

## **11 Joint Liaison Committee**

11.1 The Joint Liaison Committee is responsible for providing Cheshire West and Chester and Cheshire East Shadow Councils with a forum for the discussion of issues of mutual interest.

11.2 The Committee is to act as an advisory group to both the Cheshire East and the Cheshire West and Chester Shadow Councils on the following matters:

- 11.2.1 Joint projects being undertaken during the period ending on 1<sup>st</sup> April 2009;
  - 11.2.2 Potential shared services;
  - 11.2.3 Protocols on sharing arrangements and arrangements for assisting each other;
  - 11.2.4 Partnership arrangements, the aggregation or disaggregation of which will affect the work of the other Shadow Council;
  - 11.2.5 Potential decisions by one Shadow Council which will either have an effect on the decision of the other or which will have a substantial effect on the projected total transition costs;
- 11.3 In the event of any disagreement between the Cheshire East and the Cheshire West and Chester Shadow Councils as to how to proceed on a matter which affects the other, or where there is disagreement as to whether the matter affects the other, the Joint Liaison Committee will have the role of considering the views of both Shadow Councils, and attempting to offer a solution to resolve the disagreement. However, having offered a solution to the Shadow Councils and, in the event of that solution not having resolved the disagreement, the disagreement will be referred, at equal cost to both Shadow Councils, to the Centre for Effective Dispute Resolution ("CEDR"), International Dispute Resolution Centre, 70 Fleet Street, London EC4Y 1EU, to appoint a Neutral Advisor to advise upon the matter. The Neutral Advisor will have experience, at a suitable level, of local authority functions and responsibilities, as well as experience of local government reorganisation.
- 11.4 All negotiations in connection with the disagreement will be conducted in confidence, and the Neutral Advisor will make recommendations in order to resolve the disagreement.
- 11.5 Having considered the advice of the Neutral Advisor, each Shadow Council must decide whether to accept that advice. If either or both of the Shadow Councils do not accept the advice of the Neutral Advisor, they must take such steps as they consider appropriate in the circumstances.
- 11.6 The Shadow Council and its Cabinet may delegate such powers, responsibilities and decisions to any of its own officers, or to any officers of the Joint Implementation Team.

## 12 Powers of Officers

12.2 This Constitution, and the Procedure Rules contained within it, refer to various powers of officers in respect of Shadow Council functions and responsibilities.

12.3 The Shadow Council will appoint an Interim/Appointed and Appointed Monitoring Officer, and an Interim/Appointed and Appointed Chief Finance Officer who both have statutory powers which are identified in the Cheshire (Structural Changes) Order 2008.

12.4 At its meeting on 13<sup>th</sup> May 2008, the Shadow Council agreed that the following powers should be delegated to those officers identified as "Proper Officer" in the table below:

### PROPER OFFICER PROVISIONS

LOCAL GOVERNMENT ACT 1972		
SECTION	SUBJECT MATTER	PROPER OFFICER
83	Declaration of acceptance of office by chairman, vice-chairman or councillor	Lead Officer of Joint Implementation Team
84	Receipt of resignation of office by person elected	Lead Officer of Joint Implementation Team
88(2)	Convening of meeting of Shadow Council to fill casual vacancy in office of chairman	Interim Monitoring Officer
89(1)(b)	Receipt of notice of casual vacancy of councillor from two local government electors	Lead Officer of Joint Implementation Team
96(1)	Receipt of notice of interests in contracts or proposed contracts	Interim Monitoring Officer
96(2)	Recording of disclosures of interests made under section 94 and of notices under section 96(1)	Interim Monitoring Officer
100B(7)(c)	Supply of documents to press	Interim Monitoring Officer
100C(2)	Written summary of exempt proceedings	Interim Monitoring Officer

100D(1)(a)	Compilation of list of and inspection of background papers	Each Member of Joint Implementation Team
100F(2)	Exclusion of document containing exempt information	Interim Monitoring Officer
151	Arrangements for proper administration of Shadow Council's financial affairs	Interim Chief Finance Officer
223(1)	Appearance of Council in legal proceedings	Interim Monitoring Officer
225	Deposit of documents	Interim Monitoring Officer
228(3)	Accounts to be open to inspection	Interim Chief Finance Officer
229(5)	Certification of photographic copies of documents	Interim Monitoring Officer
234(1) and (2)	Authentication of documents	Interim Monitoring Officer
Schedule 12 para 4(2)(b)	Signature of summons to council meeting	Interim Monitoring Officer
Schedule 12 para 4(3)	Receipt of notices regarding address to which summons to meeting is to be sent	Interim Monitoring Officer
Schedule 14 para 25(7)	Certification of resolutions under para 25	Interim Monitoring Officer
<b>LOCAL GOVERNMENT FINANCE ACT 1988</b>		
114	Officer responsible as regards reports	Interim Chief Finance Officer

<b>LOCAL GOVERNMENT AND HOUSING ACT 1989</b>		
2(4)	Deposit of list of politically restricted posts	Lead Joint Implementation Team Officer for Human Resources
15-17	Receipt of various notices relating to political groups under relevant Regulations	Interim Monitoring Officer
	Local Authorities (Standing Order) England Regulations 2001	Lead Joint Implementation Team Officer for Human Resources

### **13 Independent Remuneration Panel**

The Cheshire (Structural Changes) Order 2008 ("the Order") provides for Cheshire County Council's scheme of allowances, as adopted by Cheshire County Council on 18<sup>th</sup> May 2006 ("the Scheme"), to apply to the Shadow Council. The Order also provides for the Scheme, as it applies to the Shadow Council, to be amended or revoked by the Shadow Council.

It is, however, anticipated that the Shadow Council will wish to appoint an Independent Remuneration Panel with the responsibilities to make recommendations to the Shadow Council:

- as to the amount of basic allowances that should be paid to Members;
- about the responsibilities or duties which should lead to the payment of a special responsibility allowance and as to the amount of such allowance;
- about the duties for which a travelling and subsistence allowance can be paid and as to the amount of such allowance;
- as to the amount of the co-optees' allowance;
- as to whether the Shadow Council's allowances scheme should include an allowance in respect of the expenses for arranging for the care of children and dependants and, if it does make such recommendation, the amount of such allowance and the means by which it is determined;

- on whether any allowance should be backdated to the beginning of a financial year in the event of the scheme being amended;
- as to whether annual adjustments of allowance levels may be made by reference to an index and, if so, for how long such a measure should run;
- as to which Members of the Council are entitled to pensions, in accordance with a Scheme made under Section 7 of the Superannuation Act 1972;
- as to treating basic allowance and special responsibility allowance as amounts in respect of which such pensions are payable.