EXPLANATORY MEMORANDUM TO

THE BUCKINGHAMSHIRE (STRUCTURAL CHANGES) (SUPPLEMENTARY PROVISION AND AMENDMENT) ORDER 2020

2020 No. 348

1. Introduction

1.1 This explanatory memorandum has been prepared by the Ministry of Housing, Communities and Local Government and is laid before Parliament by Command of Her Majesty.

2. Purpose of the instrument

2.1 This Order amends the Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004[1] further to the implementation by order (S.I. 2019/957) of local government reorganisation in Buckinghamshire. From 1st April 2020 the existing county council and the four existing district councils in Buckinghamshire, all of which appoint a member to the conservation board of the Chilterns Area of Outstanding Natural Beauty (AONB), are to be replaced by a single unitary council called Buckinghamshire Council.

2.2 The Order amends the provisions for the appointment of local authority members to the Chilterns AONB Conservation Board ("the Board") to take account of these changes to local government.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None.

Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)

3.2 This entire instrument applies to England only because the instrument is entirely concerned with local government areas in England.

3.3 The instrument does not have any minor or consequential effects outside England.

3.4 In the view of the Department, for the purposes of Standing Order No. 83P of the Standing Orders of the House of Commons relating to Public Business, the subject-matter of this instrument would be within the devolved legislative competence of the Northern Ireland Assembly if equivalent provision in relation to Northern Ireland were included in an Act of the Northern Ireland Assembly as a transferred matter, and the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament, and the National Assembly for Wales if equivalent provision in relation to the relevant territory were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because local government is a devolved matter in Northern Ireland, Scotland and Wales. This instrument is made under sections 7, 11

[1] S.I. 2004/1778

and 13 of the Local Government and Public Involvement in Health Act 2007 ("the Act"), which provides for local government structural and boundary changes in England.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales.

4.2 The territorial application of this instrument is set out in Section 3 under "Matters relevant to Standing Orders Nos. 83P and 83T of the Standing Orders of the House of Commons relating to Public Business (English Votes for English Laws)".

5. European Convention on Human Rights

5.1 Luke Hall, the Minister for Local Government and Homelessness, has made the following statement regarding Human Rights:

"In my view the provisions of the Buckinghamshire (Structural Changes) (Supplementary Provision and Amendment) Order 2020 are compatible with the Convention rights."

6. Legislative Context

6.1 Part 1 of the Act provides for the making of local government structural and boundary changes in England. Orders under section 7 ("section 7 Orders") may make provision for the re-structuring of an area in which there are two tiers of local government and for the establishment of single tier local government in that area.

6.2 The Buckinghamshire (Structural Changes) Order 2019[2] provides for the abolition of the former local government areas and councils and the establishment of a new unitary council for Buckinghamshire (Buckinghamshire Council), which will take on the functions, responsibilities, assets and liabilities of the dissolved councils on 1st April 2020.

6.3 Section 11 of the Act provides for the matters that may be included in a section 7 Order, including – at subsection (4)(e) - the establishment or membership of public bodies in any area affected by the order, and the election of members of such bodies.

6.4 Section 13 of the Act provides that an order made under section 7 can make incidental, consequential, transitional or supplementary provision. Such provisions may relate to the provisions of a previous Order, in this case the Buckinghamshire (Structural Changes) Order 2019. Section 15 of the Act provides that incidental, consequential, transitional or supplementary provisions includes the power to modify any enactment.

6.5 Section 240(6) provides that orders under section 7 may not be made unless a draft has been laid before and approved by a resolution of each House of Parliament.

6.6 Section 86 of the Countryside and Rights of Way Act 2000 ("CROW 2000") provides the Secretary of State with the power to establish by order a conservation board for an AONB. Paragraph 3 of Schedule 13 of CROW 2000 sets out that the relevant Order shall set out the makeup of a conservation board. It also provides that the number of

[2] S.I. 2019/957

local authority members are at least 40 percent of the total number of members and that the number of parish council members is at least 20 percent.

6.7 Article 4 (as amended by the Local Government (Structural Changes) (Miscellaneous Amendments and Other Provision) Order 2009[3]) of the Chilterns Area of Outstanding Natural Beauty (Establishment of Conservation Board) Order 2004 ("the 2004 Order") specifies that there should be 13 local authority members and Article 5 provides that each authority specified in Schedule 1 of the Order shall appoint one member.

6.8 This Order updates the provisions of the 2004 Order relating to membership of the Board to fully reflect the changes to local government in Buckinghamshire that will take place on 1st April 2020 and ensures that the membership of the Board continues to comply with the membership provisions in paragraph 3 of Schedule 13 of CROW 2000.

7. Policy background

What is being done and why?

7.1 The Order bringing about local government reorganisation in Buckinghamshire came into force on 23rd May 2019 and provides for a reorganisation date of 1st April 2020. A shadow authority and shadow executive have been established, with the shadow executive having responsibility for overseeing the transition to the new council.

7.2 Local government restructuring in Buckinghamshire will abolish all five of the Buckinghamshire councils that nominate a member of the Chilterns AONB Conservation Board. The new Buckinghamshire Council will be able to nominate members from April 2020. This Order updates the membership provisions of the Board to take account of these changes.

7.3 The Chilterns AONB Conservation Board currently has a total membership of twenty-seven: one representative for each of the thirteen councils specified in Schedule 1 of the Order, two parish council members for each of Buckinghamshire, Hertfordshire and Oxfordshire, and eight members nominated by the Secretary of State for Environment, Food and Rural Affairs.

7.4 Applying the current approach to local authority membership of the Board to the new council would result in Buckinghamshire Council appointing one member and the total local authority membership on the Board would reduce to nine. However, if the representation of the new Buckinghamshire Council on the AONB Board is reduced to one and the number of local authority members reduces to nine, local authority membership as a whole will only be 39% of a total board membership of 23. This fails to meet the threshold of 40% set out in Paragraph 3 of Schedule 13 of CROW 2000.

7.5 The shadow executive of the shadow Buckinghamshire council considers that a single board member is not commensurate with the fact that 50% of the area of the Chilterns AONB falls within the boundaries of the new council (see map at appendix 1). The shadow executive considers that the current membership arrangements, which provide for five board members for the area of Buckinghamshire as whole, better reflects the extent of the AONB that fall within the new council area and has requested that the

[3] S.I. 2009/837.

new council nominate five members to maintain the status quo and the government agrees with this.

7.6 This Order provides for the new Buckinghamshire Council to appoint five members, replicating the current level of representation to continue to reflect the extent of the AONB that is within Buckinghamshire. All other membership of the board is unchanged and the statutory requirement for local authority representation to be at least 40% of the total board membership will continue to be met.

8. European Union (Withdrawal) Act/Withdrawal of the United Kingdom from the European Union

8.1 This instrument does not relate to withdrawal from the European Union.

9. Consolidation

9.1 There are no plans for consolidation as the amendments made by this Order are relatively minor.

10. Consultation outcome

10.1 There is no requirement to consult on the preparation of this Order, which addresses a supplementary and incidental issue arising from the structural change in Buckinghamshire.

10.2 However, the local authority membership of the Board of the Chilterns AONB is a matter of interest to the other eight principal (unitary, county or district) local authorities that make appointments to the Board. These are: the unitary councils of Central Bedfordshire and Luton; Hertfordshire County Council and the Hertfordshire district councils of Three Rivers and North Hertfordshire and Dacorum; and Oxfordshire County Council and South Oxfordshire District Council; as well as the five Buckinghamshire Councils which are due to be abolished. The Chief Executive Officer of the Chilterns AONB has consulted each of these relevant local authorities on future representation for the new Buckinghamshire Council.

10.3 Seven of these eight other principal councils represented on the Chilterns AONB Board agree that Buckinghamshire Council should be able to appoint five members to the Board. Central Bedfordshire has disagreed with the proposal on the grounds that the role is one of scrutiny and strategic advice only and that the approach is at odds with the one taken when unitarisation took place in Bedfordshire. The number of Bedfordshire Councils represented on the Chilterns AONB Conservation Board reduced from three to one through local government restructuring and Central Bedfordshire Council appoints one member.

10.4 These representations were carefully considered. Bearing in mind the need to meet the requirement for 40% local authority membership of the board and the support of seven of the eight relevant councils for the proposed approach, it was decided to proceed with proposed membership arrangements as requested by the shadow council.

10.5 The Department for the Environment, Food and Rural Affairs has been consulted and is content with the changes made by this Order.

11. Guidance

11.1 No guidance has been prepared for this instrument. The Department has worked with the relevant stakeholders in preparation of this Order and does not consider that further guidance is required.

12. Impact

12.1 There is no impact on business, charities or voluntary bodies.

12.2 There is no impact on the public sector.

12.3 An Impact Assessment has not been prepared for this instrument because it does not relate to the activities of businesses, charities or voluntary bodies.

13. Regulating small business

13.1 The legislation does not apply to activities that are undertaken by small businesses.

14. Monitoring & review

14.1 This Order makes a minor change to the 2004 Order to reflect the changes to local government in Buckinghamshire at the request of the Buckinghamshire Council shadow executive and as such there are no plans to monitor or review the legislation.

15. Contact

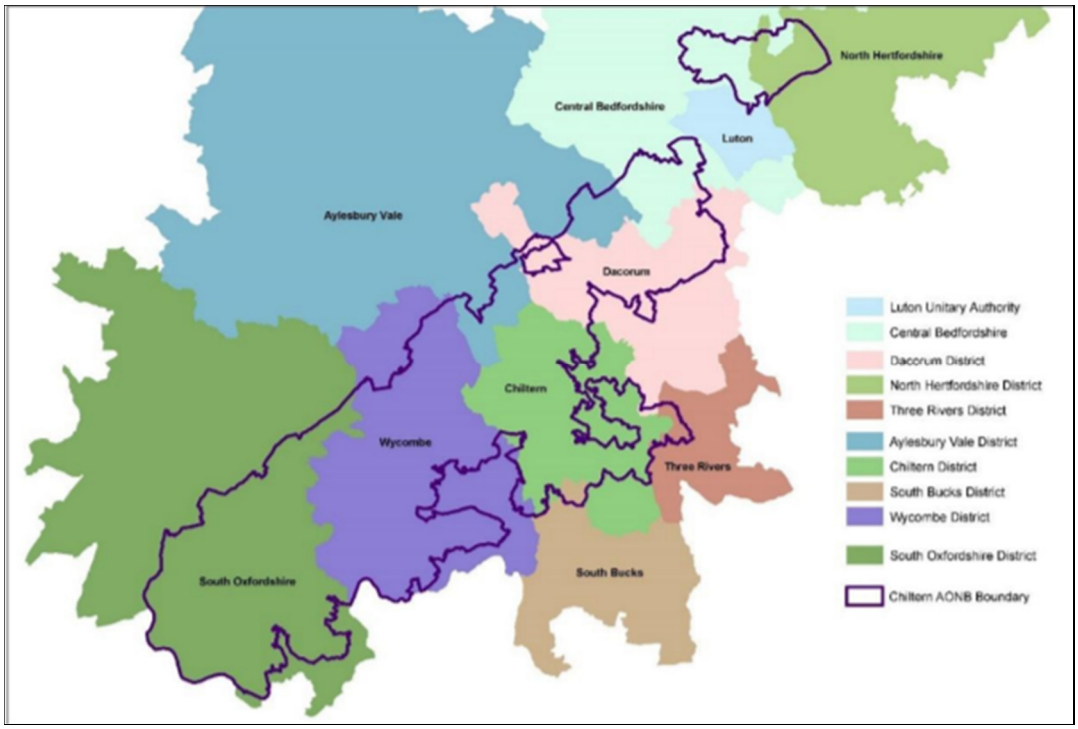
15.1 Kathy Bee at the Ministry of Housing, Communities and Local Government Telephone: 03034444579 or email: Kathy.Bee@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director for Governance Reform and Democracy, at the Ministry of Housing, Communities and Local Government can confirm that this explanatory memorandum meets the required standard.

15.3 Luke Hall, Minister for Local Government and Homelessness at the Ministry of Housing, Communities and Local Government, can confirm that this Explanatory Memorandum meets the required standard.

Appendix 1

Map of Chilterns AONB showing current local authority boundaries



Councils currently appointing members to the Chilterns AONB Conservation Board

Unitary councils	District councils	County Councils
Buckinghamshire Councils (to be replaced by the new unitary Buckinghamshire Council		
	Aylesbury	Buckinghamshire CC
	Chiltern	
	South Bucks	
	Wycombe	
Other relevant councils		
Central Bedfordshire		
Luton		
	Dacorum	Hertfordshire CC
	Three Rivers	
	North Hertfordshire	
	South Oxfordshire	Oxfordshire CC

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