EXPLANATORY MEMORANDUM TO

THE BUCKINGHAMSHIRE (STRUCTURAL CHANGES) (MODIFICATION OF THE LOCAL GOVERNMENT AND PUBLIC INVOLVEMENT IN HEALTH ACT 2007) REGULATIONS 2019

2019 No. XXXX

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.

1.2 This memorandum contains information for the Joint Committee on Statutory Instruments on the Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019.

1.3 For the Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 a report is required by section 15(12) and (13) of the Cities and Local Government Devolution Act 2016 ("the 2016 Act") and this is published alongside this memorandum.

2. Purpose of the instrument

2.1 These Regulations modify provisions relating to local authority structural and boundary change in the Local Government and Public Involvement in Health Act 2007 ("the 2007 Act") as they apply to councils in Buckinghamshire. As such, they will enable Orders to be made under the 2007 Act to give full effect to Buckinghamshire County Council's proposal for the establishment of a single tier of local government for Buckinghamshire. The Secretary of State has decided to implement this proposal by order, subject to Parliamentary approval.

3. Matters of special interest to Parliament

Matters of special interest to the Joint Committee on Statutory Instruments.

3.1 Prior to the laying of this instrument, The Districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe (Changes to Years of Elections) Order 2018 (S.I. 2018/1355) was made on 12 December 2018, coming into force on 18 January 2019. That Order changed the year of the scheduled elections of councillors in the Districts of Aylesbury Vale, Chiltern, South Bucks and Wycombe. It was made at the request of the district councils in Buckinghamshire following the Secretary of State's decision to implement the proposal to reorganise local government in Buckinghamshire, subject to parliamentary approval.

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 entire 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; or the Scottish Parliament if equivalent provision in relation to Scotland were included in an Act of the Scottish Parliament; or the National Assembly for Wales if equivalent provision in relation to Wales were included in an Act of the National Assembly for Wales.

3.5 The Department has reached this view because it considers that the primary purpose of the provisions in this instrument relate to local government which is within the devolved legislative competence of the Scottish Parliament, the Northern Ireland Assembly and the National Assembly for Wales.

4. Extent and Territorial Application

4.1 The territorial extent of this instrument is England and Wales as the relevant power being exercised extends to 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 Rishi Sunak, Parliamentary Under Secretary of State at the Ministry of Housing, Communities and Local Government, has made the following statement regarding Human Rights:

"In my view the provisions of the Buckinghamshire (Structural Changes) (Modification of the Local Government and Public Involvement in Health Act 2007) Regulations 2019 are compatible with the Convention rights."

6. Legislative Context

6.1 The 2007 Act provides that the Secretary of State may invite[1] any principal authority to make either one of three types of proposal for structural change, or a combined proposal. The types of proposal that may be made are for a single tier of local government for:

- the area of the county concerned ("Type A");
- an area which is one or more districts in the county concerned ("Type B");
- an area which consists of the county concerned or one or more districts in that county, and one or more adjoining counties or districts ("Type C"); or
- a combination of proposals under Type B and/or Type C.

6.2 A Type A proposal has been made by Buckinghamshire County Council. Section 7 of the 2007 Act confers a power on the Secretary of State to implement by order, with or without modification, a proposal that has been made by one or more of the principal councils in the area in response to an invitation under section 2. An order may not be

[1] Section 2 also provides that the Secretary of State may direct a council to make a proposal. However, section 3 provides that such a direction may not be given after 25th January 2008.

made unless the Secretary of State has consulted every authority affected by the proposal (except any authority that has made the proposal) and such other persons as are considered appropriate.

6.3 Section 15 of the 2016 Act confers a power on the Secretary of State to make regulations (subject to the affirmative parliamentary procedure) which may disapply or vary the application of the 2007 Act in relation to structural and boundary changes, in particular, by making provision about how Part 1 of the 2007 Act is to apply in relation to particular cases.

6.4 Regulations made under section 15 of the 2016 Act relating to structural and boundary changes may be made with the consent of the relevant local authorities until 31 March 2019. For a two-tier area consent is required from at least one of the relevant authorities i.e. councils in that area. For the purposes of these Regulations, statute requires as a minimum that there is consent from one authority within the Buckinghamshire county area. Consent was sought from all councils affected by the Regulations and Buckinghamshire County Council gave their consent to the making of these Regulations.

6.5 These Regulations provide that Part 1 of the 2007 Act is varied in relation to Buckinghamshire so that:

- the requirement for unitary proposals to be "invited" by the Secretary of State is disapplied; proposals may be made for the purposes of the 2007 Act by any principal authority in Buckinghamshire on their own initiative;
- any unitary proposal received by the Secretary of State from Buckinghamshire councils (not just proposals received in response to an invitation) may be implemented with or without modification by order;
- when making a proposal on its own initiative the authority must have regard to any guidance from the Secretary of State as to what the proposal should achieve and matters to be taken into account in formulating the proposal (although in this case no guidance has been issued);
- the discretion for the Secretary of State to request advice from the Local Government Boundary Commission does not apply as the proposal has not been made in response to an invitation or direction. In any event such advice is not required in this case as the proposal made by the county council is for a single unitary council covering the whole of the current administrative county of Buckinghamshire and the Secretary of State is clear that the proposal satisfies all the government's criteria for unitarisation; and
- the requirement for the Secretary of State to consult the councils affected by that proposal and other persons about that proposal does not apply (reflecting the extensive consultation undertaken by the county council and the period of representation following the Secretary of State's announcement).

6.6 The Regulations allow for pre-existing proposals to be implemented. The Regulations expire at the end of March 2021 to allow sufficient time for orders under sections 7, 11,12 or 13 of the 2007 Act to be made, in order to give full effect to the proposal.

7. Policy background

What is being done and why?

7.1 In 2017 the Government made a manifesto commitment to support those authorities that wished to combine to serve their communities better. The Government considers locally led proposals for unitarisation and mergers between councils by making an assessment against the following criteria: the proposal is likely to improve the area's local government; the proposal commands a good deal of local support in the area; and whether the area itself is a credible geography for the proposed new structures.

7.2 On 28 February 2017, in response to a Parliamentary Question from the now Sir Christopher Chope MP (PQN 65271)[2], the then Minister for Local Government, Marcus Jones MP, stated the criteria against which proposals for local government reorganisation would be assessed: namely that any proposal made by one or more councils in an area for reorganising that area's local government will be considered, and a judgement in the round will be reached "as to whether the proposal, if implemented, is likely to improve the area's local government, commands a good deal of local support in the area, and whether the area itself is a credible geography for the proposed new structures."

7.3 On 1 November 2018, in a Written Ministerial Statement, the Secretary of State announced that the proposal from Buckinghamshire County Council to create a single unitary council, which had been received in September 2016, met the criteria and, subject to Parliamentary approval, should be implemented.[3] This would result in a single tier of local government for Buckinghamshire, replacing the existing two tiers in which services are divided between Buckinghamshire County Council and the four district councils of Aylesbury Vale, Chiltern, South Bucks and Wycombe.

7.4 These Regulations provide that Part 1 of the 2007 Act is varied in relation to Buckinghamshire so that:

- the requirement for unitary proposals to be "invited" by the Secretary of State is disapplied; proposals may be made for the purposes of the 2007 Act by any principal authority in Buckinghamshire on their own initiative;
- any unitary proposal, including pre-existing proposals, received by the Secretary of State from Buckinghamshire councils (not just proposals received in response to an invitation) may be implemented with or without modification by order; and
- the requirement for the Secretary of State to consult the councils affected by that proposal and other persons about that proposal does not apply (reflecting the extensive consultation undertaken by the county council and the period of representation following the Secretary of State's announcement).

7.5 Whilst the Secretary of State intends to lay a draft Buckinghamshire (Structural Changes) Order 2019 as soon as practicable, these Regulations expire at the end of March 2021 to allow sufficient time for further orders under the 2007 Act, which may be necessary to fully implement the unitarisation proposal.

---

[2] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2017-02-23/65271/

[3] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-11-01/HCWS1058/

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 is no requirement for consolidation.

10. Consultation outcome

10.1 No consultation is required for the preparation of these Regulations, which streamline the approach to orders that will, subject to Parliamentary approval, implement unitarisation in Buckinghamshire. However, the Regulations do require the consent of at least one of the councils in Buckinghamshire. The Government shared a draft of the Regulations, and also a draft of the Buckinghamshire (Structural Changes) Order 2019, with the Buckinghamshire councils before seeking consent to these Regulations. The draft Structural Changes Order has been prepared having regard to representations from the councils on its content and the draft is now being finalised for laying before Parliament as soon as practicable. Both the Regulations and the Order relate to a proposal that itself was subject to consultation as described below.

10.2 Further consultation is not considered necessary given the extensive nature of the engagement that has already taken place on the principle of unitarisation and the way forward. Officials are working with all the local authorities in Buckinghamshire on taking forward implementation and in line with the provisions in the draft Structural Changes Order.

10.3 Buckinghamshire County Council commissioned an independent engagement programme on unitarisation from Opinion Research Services (ORS), which ran from 31 March to 19 May 2017, and published this alongside the proposal that they had originally submitted in September 2016. This engagement had the following components:

- a consultation inviting residents and stakeholders to provide feedback through a questionnaire, that was available for anyone to complete online and in hard copy;
- a representative telephone survey of 1,005 residents to provide an accurate profile of opinions from the general population across Buckinghamshire;
- five deliberative focus groups with members of the public: one in each of the districts of Chiltern, South Bucks and Wycombe, with one in the north and one in the south of Aylesbury Vale;
- three focus groups with town and parish councillors;
- three focus groups with voluntary and community sector groups; and
- in depth telephone interviews with representatives of Buckinghamshire-based businesses**.**

10.4 The engagement programme generated 3,449 contributions: 2,344 open questionnaire responses (including 20 from organisations); 1,005 responses to the residents' survey; 89 people attended focus groups; and 11 business representatives undertook in depth telephone interviews. A detailed analysis is available.[4]

[4] http://futurebucks.co.uk/wp-content/uploads/2018/04/2017-engagement-final-report.pdf

10.5 In summary, while the engagement programme found high levels of support for the principle of reducing the number of councils in Buckinghamshire in both the open questionnaire and the representative residents' survey, opinions differed as to how this should be achieved. The open questionnaire showed more support for the one unitary authority option, whereas the survey showed an overall preference for two unitary councils across Buckinghamshire. The vast majority of members of the public who took part in the focus groups also accepted the case for the need to reduce the number of councils across Buckinghamshire from the current five, and majorities in all the focus groups preferred the one unitary authority option. Overall, a majority of town and parish councillors favoured two unitary authorities and almost all business representatives interviewed supported reducing the number of councils across Buckinghamshire from five to one unitary authority.

10.6 In March 2018 the Secretary of State announced he was minded to implement the proposal for a single unitary and not minded to implement a proposal for two unitary councils that had been submitted by the district councils, and invited representations on that 'minded to' decision.[5]

10.7 A total of 3,044 representations were received, of which the majority, 2,861, came from members of the public. The representations show overwhelming support for change, with 87 per cent of all representations supporting unitarisation in principle. However, views on the preferred option are more split, with 35 per cent of all representations supporting a single unitary council, and 47 per cent supportive of two unitaries. Of the 2,861 representations submitted by members of the public, 36 per cent supported a single unitary while 46 per cent supported the two unitary option.

10.8 The public sector service providers (Police and Crime Commissioner, South Central Ambulance Service, Buckinghamshire Healthcare NHS Trust and Buckinghamshire CCG) all support a single unitary and highlight that the majority of partner organisations operate on a countywide geography and so support a shared geography with the council to improve the overall provision of services in Buckinghamshire. A majority (69 per cent) of district councillors supported the districts' proposal for two unitaries whilst a majority of county councillors supported the single unitary option.

10.9 Of the 69 representations from town and parish councils and councillors, 14 per cent supported the one unitary proposal, whereas 71 per cent preferred the two unitary option. Town and parish councils and councillors were particularly concerned about their capacity to take on additional devolved activity in a single unitary arrangement.

10.10 The business community (22 representations excluding the 2 LEPS) was split in its support, though Bucks Business First, with a membership of 11,000 businesses, is strongly supportive of the single unitary. The two Local Enterprise Partnerships in the area were also split. Representations from 22, mainly small, voluntary sector organisations were received, with the majority supporting the two unitary option.

10.11 The Commissioner for Children's Services in Buckinghamshire indicated a preference for a single unitary as opposed to two unitary councils; and was strongly opposed to "any LGR [local government reorganisation] proposal which would break-up (disaggregate) the existing children's services structures in Buckinghamshire."[6]

[5] https://www.parliament.uk/business/publications/written-questions-answers-statements/written-statement/Commons/2018-03-12/HCWS535/

[6] https://www.gov.uk/government/publications/buckinghamshire-county-council-report-on-childrens-social-care

10.12 Having had regard to all the evidence – the proposal, the ORS material and the representations received, and all information available to him – the Secretary of State is satisfied that whilst both proposals meet the criterion for a "good deal of local support", only the proposal for a single unitary council satisfies the criteria for "improving local government" and for "being a credible geography" and that in any event the proposal for a single unitary council is better able to meet the criteria overall.

11. Guidance

11.1 The Government has worked closely with the Buckinghamshire councils and no guidance is necessary to accompany this instrument.

12. Impact

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

12.2 There is no, or no significant, impact on the public sector directly from these Regulations.

12.3 An Impact Assessment has not been prepared for this instrument because there is no impact on business, 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 The approach to monitoring of this legislation is that none is required as these Regulations will expire at the end of March 2021.

14.2 The Regulations do not include a statutory review clause as these Regulations will expire at the end of March 2021.

15. Contact

15.1 Kathy Bee at the Ministry of Housing, Communities and Local Government 030 3444 4579 or email Kathy.bee@communities.gov.uk can be contacted with any queries regarding the instrument.

15.2 Paul Rowsell, Deputy Director and Head of the Governance Reform and Democracy Unit at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.

15.3 Rishi Sunak MP, the Minister of Local Government at the Ministry of Housing, Communities and Local Government can confirm that this Explanatory Memorandum meets the required standard.